

## Contract Procedure Rules

### INTRODUCTION

The Council is required by law to have procedural rules that govern the letting of contracts.

### CONTENTS

#### Rule [Page]

<b>Part 1</b> <b>Requirements When Letting Contracts</b>
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1. Definitions [3]
2. Application and Compliance with Contract Procedure Rules [3]
3. Public Contracts Regulations and Concession Contracts [4]
4. Appointment of Consultants [5]
5. Contracts – Delegation to Officers [6]
6. Invitation to Tender [6]
7. Tender Short List [6]
8. Exceptions to Requirement to Invite Tenders [7]
9. Framework Agreements [8]
10. Rights of Third Parties [8]
11. Assignment/ Novation [9]
12. Liquidated Damages [9]
13. Security for Performance [9]
14. Cancellation for Corruption [9]
15. Collusive Tendering Certificate [10]
16. Indemnities [10]
17. Nominated Sub-Contractors [10]
18. European Standards [11]
19. Certification of Contracts [11]
20. In-House Providers [11]
21. Statutory Obligations [11]

<p style="text-align: center;"><b>Part 2</b></p> <p style="text-align: center;"><b>Procedural Requirements Which Apply To All Tenders</b></p>
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- 22. Consultants – When Acting as Contract Supervisor [12]
- 23. Receipt and Custody of Tenders [12]
- 24. Opening of Tenders [13]
- 25. Late or Non-Compliant Tenders (post only) [13]
- 26. Late or Non-Compliant Tenders (electronic tenders only) [13]
- 27. Alterations to Tenders [14]
- 28. Acceptance of Tenders [14]
- 29. Standstill Period on EU Procurement Award Decisions [14]
- 30. Contracts in Writing [15]
- 31. Register of Contracts [16]
- 32. Matters of Urgency [16]

Schedule 1 - Land Disposal Procedure [17 - 21]

## **1. Definitions**

- (1) In these Contract Procedure Rules, "the Officer" means the Chief Executive, Deputy Chief Executive and Executive Director, Place Strategic Directors or relevant Head of Service responsible for the letting of the contract or their duly authorised representative.
- (2) In these Contract Procedure Rules "appropriate consultation" means consultation with the relevant Portfolio Holder whose delegated responsibility includes the subject matter of the contract, or in whose absence the Leader of the Council or in whose absence the Deputy Leader of the Council.

## **2. Application and Compliance with Contract Procedure Rules**

- (1) Every contract, whether made by the Council on its own behalf or for another Authority shall comply with these Contract Procedure Rules, except as otherwise specified in this Rule.
- (2) No exception from any of the following provisions of these Contract Procedure Rules shall be made otherwise than by direction of the Cabinet or, where it is in the Council's interests to take immediate action, by a Strategic Director, after appropriate consultation with the relevant Portfolio Holder.
- (3) Every exception to the provisions of these Contract Procedure Rules made by a Strategic Director and the circumstances whereby it is in the Council's interests to take immediate action by which the exception shall have been justified, shall be reported to either the Portfolio Holder or the next meeting of the Cabinet (as appropriate).
- (4) These Contract Procedure Rules shall have no application to contracts or agreements:
  - (a) entered into with statutory undertakers in respect of work carried out or services supplied by them for which they hold a statutory monopoly;
  - (b) entered into by the Council for another Authority pursuant to instructions given by the Principal.
  - (c) comprising internal contracts or agreements between internal departments or between Council and its owned companies that are deemed to be akin to an internal department under the terms of any relevant legislation concerning the provision of works and/or services which have not been exposed to external competition.
- (5)
  - (a) For any contracts officers should seek advice from Legal Services in relation to the formation of contracts unless a standard form contract is being used or where external legal advice has been obtained.
  - (b) In relation to any contract where the officer or contractor wishes to terminate a contract early, the Officer must seek legal advice from Legal Services or obtain external legal advice and where termination of the contract is being recommended obtain relevant internal authority from the relevant Officer, Portfolio Holder or Cabinet depending on the

### 3. Public Contracts Regulations and Concession Contracts

- (1) These Contract Procedure Rules shall be subject to any procedures or requirements under the Public Contracts Regulations 2015 and where appropriate the Concession Contracts Regulations 2016 including any amended successor or replacement regulations ("the Regulations") and Officer should seek advice from Procurement or Legal Services or external advice where appropriate.
- (2) A contract or a series of similar contracts of the same type, the aggregation of which exceed the financial limits set in the Regulations.  
The current *thresholds (net of VAT) are:*
  - *Contracts for supply services and design contracts with an estimated value above of £213,477 or above;*
  - *Contracts for public works estimated to cost of £5,336,937*

*NB. Financial limits are regularly reviewed so Officers should check with Procurement.*

- (3) The Regulations also apply to below threshold procurement and advice should obtained from the Procurement team.
- (4) If the Council is granting a concession Officers also need to consider the Concession Contracts Regulations 2016 or any successor or replacement regulation where the thresholds are the same as specified above for works and services.
- (5) Each contract falling within paragraph (2) of this Contract Procedure Rule shall be let by means of the restricted procedure or if appropriate the negotiated procedure or a call off can be made under the terms of a relevant compliant framework agreement (please refer to Contract Procedure Rule 9). Any alternative procedure must be agreed with the relevant Portfolio Holder and /or Cabinet (as appropriate).
- (6) Each contract falling within paragraph (2) of this Contract Procedure Rule shall be let on the basis of the most economically advantageous tender to the Council having regard to price, quality, technical merit, aesthetic and functional characteristics, technical assistance, after sales service, delivery date, delivery period, period of completion social value and such other criteria as the Council may have specified in the tender documents.
- (7) For each contract falling within paragraph (2) of this Contract Procedure Rule the criteria for the selection of tenderers shall be only those set out in the relevant Regulations or under the terms of a compliant Framework Agreements that have been let by the Council or other relevant bodies in accordance with the Regulations.
- (8) The Officer shall ensure contract award notices are submitted to the UK e-notification service for publication within the required periods which requirements apply to works, services, supplies or concession agreements and there are also some obligations that apply to below procurement

thresholds so advice should be taken from Procurement.

- (9) The Officer shall notify the Head of Operational Finance of all contracts falling within paragraph (2) of this Contract Procedure Rule that are let during the course of the year.
- (10) For each Works, Supplies and Service Contract awarded under the Regulations the Strategic Director or relevant Head of Service must keep the following information for each contract let:
  - (a) the name and address of the Council;
  - (b) the work, service or supplies to be provided under the contract and the value of the consideration to be given under it;
  - (c) the names of the persons whose offers were evaluated in accordance with regulations and where the Council has used the restricted or negotiated procedure, the reasons why those persons were selected;
  - (d) the names of the persons who were unsuccessful pursuant to regulations and the reasons why they were unsuccessful;
  - (e) the name of the person to whom the contract was awarded and the reasons for having awarded the contract to him;
  - (f) if known to the Council the work, service or supplies under the contract which the person to whom the contract has been awarded intends to sub-contract to another person;
  - (g) in the case of the Council using the negotiated procedure which of the circumstances specified in regulations constituted grounds for using that procedure.

The Strategic Director or relevant Head of Service shall supply a copy of the information specified in paragraphs (a) - (g) above to the Head of Operational Finance at the end of each financial year or upon request.

- (11) Officers should also retain relevant information relating to concession agreements as this may be requested.
- (12) If a public subsidy might apply Officers must obtain appropriate advice from Legal Services and / or the Procurement team and comply with any grant funding requirements.

#### **4. Appointment of Consultants**

- (1) The appointment of consultants shall be in accordance with these Contract Procedure Rules except where the established practice of the particular trade or profession does not accord with these Contract Procedure Rules, in which case the established practice of the trade or profession shall be employed with the prior agreement of the relevant Portfolio Holder subject to the estimated value of the proposed services not exceeding the relevant threshold referred to in Contract Procedure Rule 3(2) .

- (2) In circumstances where the Officer is of the opinion that the established practice of a particular trade or profession does not accord with these Contract Procedure Rules the relevant Officer shall notify the Monitoring Officer in writing the reasons why Contract Procedure Rules should not apply and in particular which Contract Procedure Rules are not applicable. Thereafter the Monitoring Officer will notify the Officer as to whether he agrees with the Officer's view and in that event the he does the relevant Contract Procedure Rules will not apply.
- (3) The Officer must agree via Legal Services terms of any contract prior to the award of a contract unless using a standard form of contract.
- (4) Officers shall notify the Head of Governance of the appointment of a consultant to ensure insurance requirements are met.

## **5. Contracts – Delegation to Officers**

- (1) Subject to sub paragraph (2) unless otherwise directed by the Cabinet or the appropriate Portfolio Holder, the Officer shall have authority on behalf of the Council to enter into any contract or variation(s) which do not exceed the value of £100,000 or does not form part of a series of contracts or variations the total aggregate value or amount of which does not exceed £100,000.
- (2) Provided that such contract(s) or variation(s) are in accordance with the existing practice of the Council and the expenditure involved is authorised within the Council's Financial Procedure Rules.

## **6. Invitation to Tender**

- (1) The provisions of this Contract Procedure Rule apply to all contracts except those covered by the provisions of Contract Procedure Rules 3(1), 6(1)-6(3), 8(1)-8(6).
- (2) No contract which exceeds an estimated value or amount of £250,000 for works services or supplies, shall be made unless at least ten days' public notice has been given on Contracts Finder or such other similar site, expressing the nature and purpose thereof, inviting tenders for its execution and stating the last date when tenders will be received.
- (3) For contracts of an estimated value or amount between £50,000 and £250,000, either public notice may be given as set out in paragraph (2) of this Contract Procedure Rule or the Officer following consultation with Procurement may invite not less than three contractors to tender and the Officer shall keep a written record of this.

[NB. For contracts of an estimated value of up to £50,000 refer to Contract Procedure Rule 8(7).]

- (4) The Officer may send out electronic documents and receive electronic responses. The receipt of tenders must be in accordance with Contract Procedure Rule 24.

## **7. Tender Short List**

- (1) Where an invitation to tender for a contract includes persons or bodies who replied to a public notice, then the Officer will not be required to have any

shortlist approved by the Cabinet or the Portfolio Holder provided that a compliant selection criteria is used to short list relevant bidders to be invited to tender.

- (2) Public notice shall be given as set out in Contract Procedure Rule 6(2) inviting applications from persons or bodies who undertake such contracts to be placed on a list from which contractors selected by the Council will be invited to submit tenders for such work.
- (3) After the expiration of the period specified in the public notice, invitations to tender for the contract shall be sent to not less than three of the persons or bodies who applied for inclusion in the list, or if fewer than three persons or bodies have applied and are considered suitable, to all such persons.
- (4) Where the contract is within the works or services areas approved by the Council as being suitable for execution by In-house Providers, such Providers shall in all cases be invited to tender for contracts for the provision of such works or services, unless the contract is let in accordance with the Regulations in which case the Strategic Director or relevant Head of Service must follow the selection criteria set out in accordance with the Regulations.

## **8. Exceptions to Requirement to Invite Tenders**

- (1) Unless Contract Procedure Rules 2 and 3 apply nothing in these Contract Procedure Rules shall require tenders to be invited in respect of contracts falling within the following categories.
- (2) In the case of contracts for the work, services or supplies:-
  - (a) the work, services or supplies are proprietary articles or are sold only at a fixed price and no reasonably satisfactory alternative is available; or
  - (b) the prices of the work, services or supplies are wholly controlled by trade organisations or Government Order and no reasonably satisfactory alternative is available.
- (3) The work, services and supplies provided consist of repairs to or the supply of parts of existing proprietary machinery or plant.
- (4) In the case of specialised work, services or supplies or where effective competition is for any reason prevented and, with the consent of the appropriate Portfolio Holder or where appropriate (depending on the relevant financial threshold) the Cabinet, the Officer may obtain estimates from one or more persons or bodies and upon satisfaction therewith and, with the consent of the appropriate Portfolio Holder or where appropriate (depending on the relevant financial threshold) the Cabinet, may make the contract with such person or body.
- (5) With the prior consent of the Cabinet, Portfolio Holder or Officer (as appropriate) any existing contract entered in accordance with these Contract Procedure Rules can be extended (here meaning where there is not an existing contractual right to extend the term) provided that it is established that the contract needs to be extended for justifiable operational reasons and that this does not cause the relevant procurement threshold to be exceeded having due regard to the aggregation rules referred to in Contract Procedure Rule 3.

- (6) Tenders shall have been invited on behalf of any consortium, collaboration or similar body and/or procurement arrangement of which the Council is a member, in accordance with a method of letting contracts adopted by such body. Provided that where tenders are so invited as aforesaid by an Officer of the Council, the delivery, opening and acceptance of tenders shall comply with the provisions of these Contract Procedure Rules, save where those provisions are inconsistent with any method by which tenders so obtained on its behalf are dealt with unless the Cabinet and /or Portfolio Holder has agreed that their tender procedures shall prevail.
- (7) For a contract with an estimated expenditure of up to £50,000 and it is not considered by the Officer to be reasonably practicable or in the Council's interests to invite tenders, the Officer must seek three written quotations for the contract unless it is impracticable so to do.
- (8) Any land disposed of by the Council shall be in accordance with the Land Disposal Procedure Rules contained at Schedule 1 to these Contract Procedure Rules.

## **9. Framework Agreements**

- (1) Where the Council has either entered into a Framework Agreement itself or is procuring via an external Framework Agreement the Officer may place orders or seek tenders under a Framework Agreement by reference to a price list or other document in order to obtain best value in terms of quality and price and must ensure that there is reasonable competition under the Framework Agreement in order to ensure that the Council obtains best value unless a direct award can be made under the terms of the Framework Agreement.
- (2) Where Officers are considering using an external Framework Agreement they must ensure that the Council is entitled to use the relevant Framework Agreement and that it complies with the Regulations
- (3) Any order or tender placed or sought under a Framework Agreement must comply with the requirements contained in Contract Procedure Rules 14, 5, 23, 25 or 26 (as appropriate) and 30 unless these requirements are not considered by the Officer to be compliant with the terms of any call off being made under the terms of the framework agreement being used.
- (3) Any call off arrangement made under the terms of any Framework Agreement which exceeds the sum of £50,000 shall be opened in accordance with Contract Procedure Rule 25 or 26 (as appropriate) and reference to tenders shall be construed accordingly.

## **10. Rights of Third Parties**

- (1) There shall be inserted in every written contract a clause that excludes the rights of third parties under the Contracts (Rights of Third Parties) Act 1999, unless the Officer considers it appropriate to include third party rights.

## **11. Assignment/Novation**

- (1) There shall be inserted in every written contract for work, services or supplies a clause which prohibits the contractor from assigning or novating the contract



without the written consent of the Council unless the Officer is making a call off under the terms of a third-party framework agreement that permits assignment or novation without consent.

## **12. Liquidated Damages**

- (1) Officers should consider whether it is appropriate to include clauses dealing with liquidated damages for contracts that are estimated to exceed £250,000 in value or amount for work, services or supplies where the Council might incur losses or additional expenses for any delays and it must be a genuine estimate of a potential loss caused by any delays.

## **13. Security for Performance**

- (1) Where a contract is estimated to exceed £1m in value or amount and is for work, services or supplies by a particular date or series of dates, the Officer shall consider whether the Council should require security for its due performance and shall, after consultation with the Section 151 Officer, either certify to the Monitoring Officer that no such security is necessary or shall specify in the conditions of tender, the nature and amount of the security to be given.
- (2) In the event of security being required, the Council shall require and take a Bond or other sufficient security for the due performance of the contract and in such cases, no works shall be started until a satisfactory Bond or other security has been provided, provided that the Officer, after consultation with the Section 151 Officer and the Monitoring Officer, may agree that in exceptional circumstances, such works may be commenced prior to the Bond or sufficient security being provided, subject to the contractor first agreeing in writing that no payments under the contract will be made by the Council until such Bond or security has been provided by the contractor.
- (3) Where a tender specification requires the provision of a Bond or other sufficient security for due performance of the contract and the successful tenderer is another local authority or public body, following acceptance of the tender, the Officer after consultation with the Section 151 Officer, may certify to the Monitoring Officer that no such security is necessary.
- (4) In any other case, the Officer may require security for due performance of the contract if the Officer so considers it necessary.

## **14. Cancellation for Corruption**

- (1) There shall be inserted in every written contract of a value in excess of £50,000, a clause empowering the Council to rescind the contract and to recover from the contractor the amount of any loss resulting from such cancellation:
  - (a) if the contractor shall have offered or given or agreed to give to any person, any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract with the Council or for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Council; or

- (b) if the like acts shall have been done by any person employed by the contractor or acting on the contractor's behalf (whether with or without the knowledge of the contractor); or
- (c) if in relation to any contract with the Council, the contractor or any person employed by the contractor or acting on the contractor's behalf shall have committed any offence under the Bribery Act 2010, or shall have given any fee or reward, the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

## **15. Collusive Tendering Certificate**

- (1) In every tender submitted to the Council the tenderer shall certify that the tender sum has not been fixed or the amount adjusted by or under or in accordance with any agreement or arrangement with any other person.
- (2) In every tender submitted to the Council, the tenderer shall certify that none of the following acts have been done and undertakes not to do any of the following acts at any time prior to the formal acceptance of the tender:
  - (a) communicating to a person other than the person calling for the tender the amount or approximate amount of the proposed tender, except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain insurance premium quotations required for the preparation of the tender;
  - (b) entering into any agreement or arrangement with any other person that the tenderer shall refrain from tendering or as to the amount of any tender to be submitted;
  - (c) offering or paying or giving or agreeing to pay or give any sum of money or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender for the said work any act or thing of the sort described above.

## **16. Indemnities**

- (1) The Officer must ensure that where an external third party has been appointed that any procurement process or award complies with the Regulations and that they indemnify the Council against any liability arising from any successful procurement challenge.

## **17. Nominated Sub-Contractors and Suppliers**

- (1) The Officer may nominate a sub-contractor to a main contractor provided that it complies with the Regulations and these Contract Procedure Rules and does not cause the amount of the main contract to increase unless it is approved by the Officer in accordance with paragraph (3) of this Contract Procedure Rule.
- (2) The Officer must consider whether any sub-contractor should provide direct warranties to the Council for the due performance of the works supplies services as appropriate.

- (3) Where the tender exceeds the prime cost sum in a main contract previously approved by the Cabinet or relevant Portfolio Holder, the Officer shall submit a report to the Cabinet or relevant Portfolio Holder who shall determine whether or not to instruct the Officer to nominate the sub-contractor to the main contractor.

## **18. European Standards**

- (1) Where the Officer gives reference to a British Standard or a specific named product he/she must state the British Standard or specific named product and then the words 'or equivalent' unless the Officer can demonstrate that there is no equivalent.

## **19. Certification of Contracts**

- (1) No Officer shall enter into a contract that is required to be certified in accordance with the Local Government (Contracts) Act 1997. Any request for certification shall be referred to the Monitoring Officer who will decide if such certification is appropriate and if appropriate, will arrange for the certification to be given in accordance with the Act.

## **20. In-House Providers**

- (1) For the purposes of these Contract Procedure Rules, an In-house Provider seeking to obtain a contract from the Council in competition with external tenderers shall be treated in similar manner to any other potential contractor and references herein to "tenderers" and "contractors" shall be construed accordingly.

## **21. Statutory Obligations**

- (1) The Officer shall ensure that every contract awarded complies with all the Council's statutory obligations and in doubt the Officer must seek advice from Legal Services or an external adviser. The Officer must also ensure that all contracts let by the Council contain suitable provisions in relation to compliance with statutory obligations.

**22. Consultants – When Acting as Contract Supervisor**

- (1) It shall be a condition of the engagement of any consultant (not being an officer of the Council) who is to be responsible to the Council for the supervision of a contract on its behalf, that in relation to that contract that person shall:
  - (a) comply with the requirements of these Contract Procedure Rules in the same way as the Officer, subject to the modification that the procedure to be followed in inviting and opening tenders shall be approved in advance by the Officer; and
  - (b) at any time during the performance of the contract, produce to the Officer on request, the records maintained in accordance with these requirements; and
  - (c) on completion of the contract, transmit such records to the Officer.

**23. Receipt and Custody of Tenders**

- (1) All tenders in relation to works, goods or services will only be accepted if submitted and received by the Council electronically via the Delta Portal (or such other comparable system as shall be approved by the Monitoring Officer from time to time) or if received in accordance with the terms of a framework agreement where a relevant call off is being made. In circumstances when it is established that the tender documents are too large by the Monitoring Officer the following procedure shall apply:
  - (a) If due to the nature of works documentation, if tenders cannot be submitted electronically, tenderers must be informed that their tender will only be considered if they are:
    - (b) sent in a plain sealed envelope or parcel with a label on which is printed the word "Tender" followed by the subject to which it relates and then the words "Closing date 12 noon on ....." followed by the closing date; and
    - (c) the sealed envelope or parcel does not contain any name or mark indicating the sender, provided that a postage stamp, postal franking mark or customs declaration(or similar) shall not be regarded as being such a name or mark ; and
    - (d) such envelope or parcel shall be addressed to and remain in the custody of The Legal Services Manager, Rowan House, 33 Sheepen Road, Colchester, CO3 3WG until the time appointed for their opening.
- (2) Every tender received by the Officer shall be numbered and marked with the date and time of receipt and a copy provided to Legal Services.

**24. Opening of Tenders**

- (1) All tenders received both electronically or hard copies for any contract following an invitation to tender pursuant to these Contract Procedure Rules

shall be reviewed at the same time.

- (2) Tenders for contracts of an estimated value not exceeding £250,000 shall be opened in the presence of at least two officers designated for the purpose by the Monitoring Officer.
- (3) Tenders for contracts of an estimated value in excess of £250,000 but not exceeding £500,000 shall be opened in the presence of the Monitoring Officer, or an officer designated by the Monitoring Officer, and the Officer, or an officer designated by the Officer.
- (4) Tenders for contracts of an estimated value in excess of £500,000 shall be opened as under paragraph (3) of this Contract Procedure Rule though in addition the relevant Portfolio Holder shall be given not less than 48 hours' notice by the Officer of the time and place appointed for the opening of tenders and may attend or appoint another Portfolio Holder to be in attendance.

## **25. Late or Non-Compliant Tenders (post only)**

- (1) Records of any non-compliant tenders and of the date and time of receipt of any late tenders must be kept by the Officer.
- (2) Tenders received late (where tenders are required to be received via the post) may only be considered if the other tenders have not yet been opened and:
  - (a) failure to comply is the Council's fault; or
  - (b) it is clear that the tender was sent in such a way that in the normal course of events it would have arrived on time
- (2) It shall be the responsibility of the tenderer to ensure that the tender is received by the Council by the specified time and the marking of the tender envelope with the date and time of receipt by an officer of the Council in the presence of the tenderer shall be conclusive proof. The Officer shall ensure that every tenderer is aware of this requirement.
- (3) All tenders received after the specified time shall be so marked in the register of tenders maintained by Legal Services and shall be promptly returned to the tenderer unopened (except to the extent necessary to ascertain the tenderer's name) by the Legal Services Manager and no details of such tender shall be disclosed.

## **26. Late or Non-Compliant Tenders (electronic tenders only)**

- (1) Records of any non-compliant tenders and of the date and time of receipt of any late tenders must be kept by the Officer.
- (2) Tenders received late may only be considered by the Officer if the other tenders have not yet been opened and only if the Officer is satisfied that there are external circumstances beyond the bidders reasonable control that caused a delay in any bid submission being successfully uploaded.
- (3) It shall be the responsibility of the tenderer to ensure that the tender is received by the Council by the specified date and time.

- (4) All tenders received after the specified time shall be so marked in the register of tenders maintained by Legal Services.

## **27. Alterations to Tenders**

- (1) Persons or bodies tendering shall not be allowed to alter their tender after the specified time for the receipt of tenders, except as provided in paragraphs (2) and (3) of this Contract Procedure Rule.
- (2) If arithmetical errors are found in tenders, a tenderer shall be given details of such errors and afforded an opportunity of confirming (provided that the bid price can be properly determined based on a revised calculation) or their bid submission will be deemed non-compliant and rejected.

## **28. Acceptance of Tenders**

- (1) If a decision to accept a tender by the Cabinet, a Portfolio Holder or the Officer amounts to a Key Decision, then the tender shall not be formally accepted until the call-in period contained in the Call-in Procedure has expired.
- (2) Subject to the following paragraphs of this Contract Procedure Rule, tenders shall be accepted by the Cabinet, relevant Portfolio Holder or by the Officer in respect of those matters for which authority to enter in a contract has been delegated to the relevant Portfolio Holder or the Officer.
- (3) For contracts having an estimated value in excess of £50,000 formal notification of the acceptance of a tender shall be given in writing by the Legal Services Manager or by an officer duly authorised by the Monitoring Officer.
- (4) Except where Contract Procedure Rule 3 applies the Cabinet or a relevant Portfolio Holder shall not accept or recommend the acceptance of a tender other than the lowest tender, if payment is to be made by the Council, or the highest tender if payment is to be received by the Council, unless it has considered a written report from the Officer.
- (5) Where the Officer acting under Contract Procedure Rules 12 or 29 accepts a tender in the circumstances described in paragraph (4) of this Contract Procedure Rule, the Officer shall advise the Monitoring Officer of the proposed course of action and forthwith record in writing the reasons for so doing and such record shall be available for inspection.

## **29. Standstill Period under the Regulations**

- (1) There is a requirement for a "standstill" period between the notification of an award decision in a public procurement covered by the Regulations and the conclusion of a contract with a supplier or suppliers.
- (2) For any Council procurements that are covered by the Regulations, a minimum of ten (10) calendar days mandatory standstill period is required between communication of the notification of award decision and contract conclusion, with day one (1) being the day after the award decision is issued, by email, and in writing to all tenderers.

- (3) The notification by the Council of the award decision, based on the most economically advantageous tender, should contain;
  - (a) the award criteria;
  - (b) the score the tenderer obtained against those award criteria;
  - (c) the score the winning tenderer obtained;
  - (d) the name of the winning tenderer.
- (4) The requirement to debrief in this manner highlights the need for a robust and fair evaluation matrix as well as a transparent and auditable evaluation process. Consequently officers will need to have all the elements of the debriefing process in place prior to the notification, as a rapid response is likely to be required to any request by an unsuccessful bidder. Officers should seek appropriate advice regarding any potential Freedom of Information Act implications prior to disclosing any details.
- (5) If an unsuccessful bidder requests further information by the end of the second working day of the standstill period, the Council must provide additional information as part of the debriefing process. The additional debriefing will include;
  - (a) the reasons why the tenderer was unsuccessful and;
  - (b) if the tenderer submitted an admissible tender, the characteristics and relative advantages of the successful tender
- (6) The Council is required to provide such additional information at least 3 working days before the end of the standstill period. This will require the Council to take into account the effect of UK public holidays. If a supplier misses the two working day deadline, the normal debriefing requirements which the directive indicates would apply (purchaser must debrief promptly and in any case 15 days from a written request).
- (7) If the Council enters into any arrangement with a third party in accordance with Contract Procedure Rule 8 (6) the Officer must ensure that the external party complies with this Contract Procedure Rule 29.

### **30. Contracts in Writing**

- (1) With the exception of contracts entered into by the Council for another Authority pursuant to instructions given by the Principal, every contract which exceeds £50,000 in value shall be in writing and shall specify:
  - (a) the work, services and supplies, matters or things to be executed, furnished, had or done; and
  - (b) the price to be paid with a statement of discounts and other deductions; and
  - (c) the time or times within which the contract is to be performed.

Where the Officer is not required to enter a formal contract in writing the Officer shall be required to keep a written record of all the agreed terms and conditions relating to the work, services and supplies procured.

- (2) Every contract in writing shall be signed by the Council as follows:
- (a) contracts up to a value of £100,000 shall be signed by the Proper Officer;
  - (b) contracts of a value in excess of £100,000 but not exceeding £500,000 shall at the discretion of the Proper Officer either be signed by the Officer and the Proper Officer or be sealed by the Council;
  - (c) contracts of a value in excess of £500,000 shall be sealed by the Council;
  - (d) contracts for the purchase and/or disposal of land and/or buildings where approval has been obtained by the Officer in accordance with the Council's Constitution will be signed by the Proper Officer notwithstanding any other provisions contained in these Contract Procedure Rules.
- (3) The Officer shall ensure that a copy of the completed contract documentation is provided to Legal Services for secure storage.

### **31. Register of Contracts**

- (1) The Head of Operational Finance shall maintain a register of all contracts entered into by the Council (including consultants) and shall specify from time to time exactly what details need to be provided by the Officer.
- (2) Strategic Directors and Heads of Service shall ensure that details of every contract entered into by them or their service area (as appropriate) shall be provided to the Head of Operational Finance for inclusion in the register.

### **32. Matters of Urgency**

- (1) Nothing in these Contract Procedure Rules shall preclude the operation of Council Procedure Rule 18 and Cabinet Procedure Rule 22 in relation to matters of urgency provided that this is compliant with the Regulations.



# Colchester City Council

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## Land Disposals Procedure

### INTRODUCTION

This procedure describes the Council's process for the disposal of land and its purpose is to make the Council's procedure transparent.

For the purposes of this procedure, a disposal of land means any freehold disposal, by sale or exchange, of Council owned land or buildings and any disposal by the granting of a lease for a period greater than 7 years. Leases of 7 years or less are not covered by this procedure.

Each land disposal will be treated on its own merits and nothing in this procedure will bind the Council to a particular course of action in respect of a land disposal. The Council's actions in disposing of land are subject to statutory provisions, in particular, to the overriding duty on the Council under section 123 of the Local Government Act 1972 to obtain the best consideration that can be reasonably obtained for the disposal of land. This duty is subject to exceptions contained in the ODPM Circular, Disposal of Land for less than best consideration - Local Government Act 1972: General Disposal Consent (England) 2003 "General Disposal Consent".

The Council will dispose of land in accordance with:

- Statutory provisions
- Procedures contained within the Council's Constitution

Land will not be disposed of at less than the best consideration that can be reasonably obtained, unless the transaction is covered by the exceptions contained within the General Disposal Consent.

### LAND DISPOSAL TYPES

#### 1.0 Disposal by Private Sale

1.1 A disposal by private sale may take place after a period during which the land is placed on the market including advertising and generally making known including signage that it is available for sale. Each bid will be assessed on the basis of the Council's responsibility to obtain the best consideration that can be reasonably obtained.

1.2 If land is to be sold by private sale without being marketed then reasons justifying this course of action must be recorded in writing.

A private sale without the land being marketed may be justified by way of example where:

- (a) the land to be disposed of is relatively small in size and an adjoining or closely located landowner is the only potential or likely purchaser; or

- (b) the nature of the Council's land ownership and that of the surrounding land ownership is such that the land must be sold to adjoining or surrounding landowners if best consideration is to be obtained; or
  - (c) the Council's land is part of a larger area of land that is proposed for development, redevelopment or regeneration and the nature and complexity of the proposed development of the overall site is such that the Council's strategic objectives and best consideration can only be achieved by a sale to a purchaser with an existing interest in land in the area.
- 1.3 A legally binding agreement will not be reached until contracts for the lease or sale of land are signed and (if applicable) exchanged.

## **2.0 Disposal by public auction**

- 2.1 Sale by public auction may be appropriate where there is no obvious potential purchaser and where speed and the best consideration can be obtained by auction.
- 2.2 Any decision to proceed by way of public auction must be recorded in writing and the record shall include the reasons justifying a sale by public auction, reserve price (if any) and authorise an officer to attend and act on behalf of the Council.
- 2.3 The binding contract will be made on the acceptance of the highest bid providing it has reached the reserve price. Contracts for the sale or lease will immediately be signed and exchanged.

## **3.0 Disposal by formal tender**

- 3.1 A sale by formal tender may be appropriate where the land ownership is not complex and the Council is seeking obligations to be placed on the successful tenderer which are clear and capable of specification in advance.
- 3.2 Formal tenders will not be appropriate where the land ownership position is complex or the development proposals for the land are insufficiently identified or otherwise incapable of detailed specification at the pre-tender stage.
- 3.3 Any decision to proceed by way of informal tender must be made in writing and include the reasons justifying a sale by informal tender. The Council's rules for tender offers contained in the Contract Procedure Rules will be followed. Any exceptions to the usual tendering process must be authorised by the Monitoring Officer (as defined in the Council's Constitution).
- 3.4 The nature of a formal tender process is that a legally binding relationship is formed when the Council accepts a tender in writing. It is essential therefore that every aspect of the disposal is specified in the tender documents
- 3.5 Sale of land by formal tender will require a detailed specification to be prepared. This will specify the land being sold, any requirements to be met by the tenderer and any obligations that must be met.

- 3.6 The Council will place a public advertisement seeking expressions of interest and publicise the selection criteria by which it will assess tenders. Those individuals selected will then be invited to submit their tender bids.

#### **4.0 Disposal by exchange of land**

- 4.1 Disposal by exchange of land will be appropriate when it is advantageous to the Council and other parties to exchange land in their ownerships and will achieve best consideration for the Council.
- 4.2 Any decision to proceed by way of exchange must be made in writing and include the reasons justifying the manner of disposal.
- 4.3 The exchange will usually be equal in value. However, an inequality in land value may be compensated for by other means where appropriate and with the agreement of the relevant Assistant Director. This will be determined by means of an independent valuation.

#### **5.0 Disposal by informal/negotiated tender**

- 5.1 A disposal by informal/negotiated tender differs from a formal tender in that neither the Council nor the successful bidder is legally obliged to enter into a contract for the disposal of land. The informal/negotiated tender process allows the Council to identify one preferred bidder with whom it may then negotiate further detailed terms or proposals for the development of the land concerned.
- 5.2 The Council will use a public advertisement to request informal development proposals for land that meet a given specification. This process is particularly useful for large or complex development or regeneration sites requiring development and where the proposals may need to be developed in co-operation with the preferred bidder to meet the Council's strategic objectives and to achieve the best consideration that can be reasonably obtained.
- 5.3 Any decision to proceed by way of informal/negotiated tender must be made in accordance with paragraph 3.3 of this Procedure.

#### **6.0 Receipt and Opening of tenders**

- 6.1 Formal and informal tenders must be submitted in accordance with Contract Procedure Rule 23.
- 6.2 Opening of formal and informal tenders must comply with Contract Procedure Rule 25 or 26 (as appropriate).

#### **7.0 Late bids and other considerations**

- 7.1 In the context of the methods of land disposal dealt with in this document, a late bid may occur:-
- (a) in the case of a private sale, after a sale or lease has been agreed, but before contracts are signed or (if applicable) exchanged; or
  - (b) in the case of a public auction, after the auction has been closed, but the reserved price not having been met; or

- (c) in the case of a formal tender, after the closing date for tenders, but before opening of the tenders; or
- (d) in the case of disposal by exchange after a sale or lease has been agreed, but before exchange of contracts; or
- (e) in the case of an informal/negotiated tender, after receipt of bids, but before contracts are signed or (if applicable) exchanged

7.2 Each “late bid” will be considered in the context of the individual circumstances at the time. This may include commercial reasons. The Council’s approach to “late bids” will vary depending upon the method of land disposal used. In each case, its overriding duty will be to obtain best consideration that it can reasonably obtain (subject to any exceptions in the General Disposal Consent). The Council’s approach to late bids is as follows:

- (a) The Council discourages the submission of late bids in all cases when it is disposing of land. It will attempt to minimise problems by aiming for early exchange of contracts.
- (b) Where land is being disposed of by way of formal tender, bids received after the deadline for receipt of tenders will only be considered prior to the opening of tenders.
- (c) Late bids cannot be considered where land is being disposed of by public auction after a successful bid has been accepted.
- (d) Except as provided in paragraphs (b) and (c) above, until the Council has entered a legally binding contract or agreement with another person it will consider late bids unless there are good commercial reasons for not doing so. This should be explained to any purchaser when a disposal of land by private sale or negotiated/informal tender is agreed.
- (e) Consideration of a late bid does not mean that it will necessarily be accepted even if it is the highest bid. The Council will take into account the likelihood of the late bid proceeding to completion in a timely manner and the possibility of late bids being used as a spoiling or delaying tactic.
- (f) Subject to the above, the Council may, in appropriate circumstances ask both the late bidder and the person to whom the land was previously to have been sold and / or the otherwise highest bidder, to submit their last and final bids in a sealed envelope by a set deadline.
- (g) A decision on whether to accept a late bid for a private sale, informal tender or by exchange will to be made either by Cabinet or in accordance with the Schemes of Delegation to Cabinet Members or Officers (as appropriate).

## **8.0 General Disposal Consent**

- 8.1 The General Disposal Consent makes provision for the Council to dispose of land at less than full market value, known as an “under-value”. Specified circumstances must apply as follows:-
- (a) The Council considers that the purpose for which the land is to be disposed of is likely to contribute to the promotion or improvement of the economic, social or environmental wellbeing of the whole or parts of its area, or any person resident or present in its area.
  - (b) The difference between the unrestricted or market value of the land to be disposed of and the consideration for the disposal does not exceed £2 million.
- 8.2 The Council must still comply with its duty to obtain best consideration for the restricted value and comply with normal and prudent commercial practices including obtaining the view of a professionally qualified valuer as to the likely amount of any under-value.