

## Contract Procedure Rules

### INTRODUCTION

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

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### 1. Preamble and Definitions

- (1) It is not possible in these Contract Procedure Rules to detail all the statutory requirements that may apply to a procurement process or to set out all the Requirements. Officers are responsible for ensuring compliance and/or for obtaining advice from the Procurement Team or from Legal Services if there is anything that they are unsure about. If there is any conflict between these Contract Procedure Rules and the Requirements or any other statutory obligations, then in that event the terms of the Requirements and/or other statutory obligation will prevail.
- (2) In these Contract Procedure Rules, "the Officer" means the relevant Council officer detailed in the Scheme of Delegation to Officers and where appropriate it also includes the "Proper Officers" as detailed in the designation of Proper Officers in Part 3 of the Council's Constitution.
- (3) In these Contract Procedure Rules, "the Lead Officer" means an officer of the Council who is responsible for carrying out a procurement and/or the management of a contract (as applicable).
- (4) 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.
- (5) In these Contract Procedure Rules, "Requirements" means the Procurement Act 2023 and any regulations made under the 2023 Act (currently the Procurement Regulations 2024) - these apply to procurements commenced and contract awards made on or after the 24<sup>th</sup> February 2025.
- (6) Note, the Public Contracts Regulations 2015 and where appropriate the Concession Contracts Regulations 2016 continue to apply to procurements commenced and contract awards made prior to the 24<sup>th</sup> February 2025. Where a contract has been awarded under either of these Regulations and is subsequently being modified, the Officer must consult with the Procurement Team and/or Legal Services to ensure the relevant rules are complied with.
- (7) The Requirements are intended to improve transparency in procurements in relation to the award, entry into and management of contracts. Officers may be required to publish several notices on the central digital platform from the pre-procurement stage right through to contract expiry and/or termination. Officers must consult with the Procurement Team (unless external legal advice has been obtained) prior to commencing a procurement to confirm the procurement process to be followed and the applicable notices that must be published.
- (8) In these Contract Procedure Rules, all values are to be treated as inclusive of VAT.

## 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 these Rules.
- (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, but no exception is permitted that would cause the Council to be in breach of the Requirements or any other statutory obligations.
- (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) For any contracts, Lead 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.
- (5) In relation to any contract, where the Lead Officer or contractor wishes to terminate a contract early, the Lead Officer should seek legal advice from Legal Services or obtain external advice and where it is likely that the contract will be terminated based on the advice obtained the Lead Officer should also:-
  - (i) discuss with Democratic Services, to ensure that any necessary internal authority is obtained
  - (ii) ensure that financial services are aware of any potential financial risks to the Council
  - (iii) obtain the required the required authority; and
  - (iv) consult with the Procurement Team to ensure that a contract termination notice is published in accordance with the Requirements.
- (6) In relation to any contract where the Lead Officer wishes to exercise a break option or make a decision not to extend a contract (where permitted to do so in the contract terms), where this decision is likely to lead to additional liabilities or costs and/or create greater risk to the Council, the Lead Officer must seek advice from Financial Services to ensure appropriate financial impact / budget implications are considered. Where the contract is a Public Contract, Lead Officers must consult with the Procurement Team to ensure that a contract termination notice is published in accordance with the Requirements.

### **3. Public Contracts**

#### **General requirements**

- (1) These Contract Procedure Rules are subject to the Requirements. Lead Officers and Officers must ensure its procurements comply with the Requirements and these Contract Procedure Rules.
- (2) Where the Requirements apply to a procurement, Lead Officers must engage with and plan the procurement process in advance with the Procurement Team and where appropriate, obtain advice from Legal Services or external advice on the Requirements prior to commencing any procurement.
- (3) Before commencing a procurement, Lead Officers must consider if there are any subsidy issues and if so, seek advice from Legal Services on the implications of the Subsidy Control Act 2022.
- (4) Any notice or document or information which is published or given in accordance with the Requirements must be published or given by publishing it on the central digital platform.
- (5) Lead Officers shall notify in writing the Head of Operational Finance of all Public Contracts let during the course of the year.

#### **Specific requirements and objectives under the Procurement Act 2023**

- (6) In carrying out a Covered Procurement, Lead Officers must have regard to the importance of the objectives under the Requirements namely:
  - (i) delivering value for money;
  - (ii) maximising public benefits;
  - (iii) sharing information for the purpose of allowing suppliers and other to understand the Council's procurement policies and decisions; and
  - (iv) acting and being seen to act, with integrity.

“Covered Procurement” means the award, entry into and management of a Public Contract.

“Public Contract” means any contract for the supply of goods, services or works which has an estimated value of not less than the relevant public procurement tendering threshold (see Rule 3.9) and is not an exempted contract.

- (7) In carrying out a Covered Procurement, Lead Officers must also:
  - (i) treat suppliers the same unless a difference between suppliers justifies different treatment (in which case the Council must take all reasonable steps to ensure it does not put a supplier at an unfair disadvantage or advantage); and

(ii) have regard to the National Procurement Policy Statement as updated from time to time.

### **Estimating the contract value**

(8) The contract value must be estimated before commencing a procurement to determine whether the contract is above or below the relevant public procurement tendering threshold and in turn to determine which rules must be followed.

(9) The public procurement tendering thresholds (as of 1 January 2024) are:

- £213,477 for goods, services or works;
- £5,336,937 for works contract; or
- £5,336,937 for concession contracts.

*NB. The public procurement tendering thresholds above are inclusive of VAT. The public procurement tendering thresholds are updated every 2 years and so Officers should consult with the Procurement Team if unsure on the correct values or any other aspect.*

(10) Lead Officers must estimate the value of a contract in accordance with the Requirements. Advice needs to be obtained from the Procurement Team prior to estimating the value of a contract to ensure the estimation is carried out correctly and that the aggregation and anti-avoidance provisions are complied with. If the estimated contract value is underestimated, there is a risk of non-compliance with these Contract Procedure Rules and the Requirements.

### **Procurement procedures**

(11) A Public Contract must be awarded by carrying out a procurement procedure in accordance with the Requirements. The procurement procedures are:-

- (i) The open procedure (a single stage competitive tendering procedure); or
- (ii) Competitive flexible procedure (a multi stage competitive tendering procedure) - participation of suppliers in which may or may not be limited to members of an appropriate Dynamic Market.

In addition, the Council can award a Public Contract using:

- (iii) Compliant framework agreements; or
- (iv) Direct award provisions (where a direct award justification applies).

(12) Prior to commencing a procurement for the award of a Public Contract, Lead Officers need to consider:

- (i) whether early market engagement is necessary – if so, it must be carried out in accordance with the Requirements;
- (ii) whether the contract requirements could reasonably be supplied and appropriately be awarded under more than one contract (i.e. if it could be divided into lots); and
- (iii) whether and how barriers can be removed or reduced to permit small to medium-sized enterprises to participate.

### **Awarding a Public Contract**

- (13) Every Public Contract shall be let based on the most advantageous tender that the Council considers:
  - (i) satisfies the Council's requirements; and
  - (ii) best satisfies the award criteria (which can include social, economic and environmental criteria that are relevant to the subject-matter of the contract).
- (14) Any conditions of participation and award criteria for a Public Contract shall be in accordance with the Requirements and/or under the terms of any compliant framework agreements that have been let by the Council or other relevant bodies in accordance with the Requirements.
- (15) As part of the procurement process, Lead Officers must assess if a supplier is excluded or excludable under the relevant Requirements. Where it is considered that a supplier is an excluded or excludable supplier, Lead Officers must consult with the Procurement Team or Legal Services prior to taking any action.
- (16) For each Public Contract awarded under the Requirements, the Strategic Director or relevant Head of Service must keep such records as the Council considers sufficient to explain a material decision made for the purpose of awarding or entering into a Public Contract and this information should be kept in most cases for a period of three years from the date of the contract is entered into or the day on which the Council gives notice of a decision not to award. The following information should be retained for each Public Contract procurement:
  - (i) the procurement reference number;
  - (ii) the work, service or supplies to be provided under the contract and the value of the consideration to be given under it;
  - (iii) the names of the persons whose offers were evaluated in accordance with Requirements the reasons why those persons were selected;
  - (iv) the reasons for the process adopted;

- (v) the names of the persons who were unsuccessful pursuant and the reasons why they were unsuccessful;
- (vi) the name of the person to whom the contract was awarded and the reasons for having awarded the contract;
- (vii) all records and communications between the Council and suppliers in respect of that procurement;
- (viii) 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 subcontract to another person (and where known, the details of the nominated sub-contracting entity); and
- (ix) all material information in relation to the decision to exclude a supplier and/or to award a Public Contract and/or not to award a Public Contract.

(17) 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 upon request.

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

- (1) Officers shall have authority on behalf of the Council to enter into any contract or variation(s) up to the value of £100,000 (including a series of contracts or variations where the total aggregate amount does not exceed £100,000) provided that:
  - (i) such contract(s) or variation(s) are in accordance with these Contract Procedure Rules and the Regulations;
  - (ii) the expenditure is authorised within the Council's Financial Procedure Rules; and
  - (iii) the Cabinet or the appropriate Portfolio Holder does not direct otherwise.
- (2) Any variations to a Public Contract must be permitted by the original procurement or by the Requirements. Note, there may be a requirement to publish a contract change notice and to apply a standstill period, so appropriate advice needs to be obtained from the Procurement Team or Legal Services prior to a variation being made to a Public Contract.
- (3) Lead Officers may also be required to publish other information where the original contract (if varied) exceeds the relevant public procurement tendering threshold. Lead Officers must consult the Procurement Team or Legal Services in these circumstances.

## 5. 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 has an estimated contract value which exceeds the public procurement tendering thresholds shall be made unless a tender notice has been published on the central digital platform, advertising the opportunity and providing a minimum of twenty-five days participation period (or 10 days in urgent circumstances or where the contract is a light touch contract).
- (3) For contracts with an estimated value between £50,000 and the relevant public procurement tendering threshold, either:
  - (i) below-threshold tender notice must be published advertising the opportunity and a below-threshold contract details notice must be published; or
  - (ii) the Lead Officer following consultation with Procurement Team may invite a minimum of three particular or pre-selected suppliers to tender and the Lead 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(1)(vi).]

- (4) In relation to a Covered Procurement, Lead Officers must communicate with suppliers and receive communications from suppliers electronically (i.e. via the Delta Portal) in accordance with the Requirements and this should also be the case for below threshold procurement where practicable.
- (5) The receipt of tenders must be in accordance with Contract Procedure Rule 16.

## 6. Tender Shortlist

- (1) In relation to a Covered Procurement, Lead Officers will not be required to have any shortlist approved by the Cabinet or the Portfolio Holder provided that the conditions of participation are compliant with the Requirements and the shortlist of relevant bidders to be invited to tender complies with the conditions of participation set out in the procurement documents.
- (2) Note, for the award of a contract below the relevant public procurement tendering threshold, the Requirements prohibit restricting the submission of tenders by reference to a condition of participation. Although the Council may make satisfaction of condition of participation a condition to be awarded a contract.

## 7. Exceptions to Requirement to Invite Tenders

(1) Subject to Contract Procedure Rules 2, 3 and 8(2) and 8(3) nothing in these Contract Procedure Rules shall require tenders to be invited in respect of contracts falling within the following categories: -

- (i) 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.
- (ii) The work, services and supplies provided consist of repairs to or the supply of parts of existing proprietary machinery or plant.
- (iii) 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 Lead 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.
- (iv) 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.
- (v) 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.
- (vi) For a contract with an estimated expenditure of up to £50,000 and it is not considered by the Leader Officer to be reasonably practicable or in the

Council's interests to invite tenders, the Lead Officer must seek three written quotations for the contract unless it is impracticable so to do.

- (vii) For a contract between the Council and another local authority.
- (viii) For a contract between the Council and a company owned by the Council under a vertical arrangement under the Requirements.

(2) Authority to award a contract in accordance with Contract Procedure Rule 8(1) must be in accordance with the Scheme of Delegation to Officers.

### **Below-threshold Contracts**

(3) Lead Officers must have regard to the obligations set out in the Requirements for regulated below-threshold contracts which means a contract which is below the public procurement tendering thresholds (refer to Contract Procedure Rule 3(9) for the threshold amounts) and is not:-

- (i) an exempted contract
- (ii) a concession contract; or
- (iii) a utilities contract.

(4) There are also additional obligations in the Requirements in relation to notifiable below-threshold contracts which is a regulated below threshold contract that has a value of not less than £30k. The additional requirement may require a below threshold tender notice and a contract details notice, so advice should be obtained from the Procurement Team

### **Land Disposal**

(5) 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.

## **8. COMMERCIAL PURCHASING TOOLS**

(1) Prior to commencing a procurement, Lead Officers should consider if using a framework, dynamic market or dynamic purchasing system (referred to collectively as "commercial purchasing tools") would be appropriate in the circumstances rather than carrying out a competitive procurement procedure (such as the open or competitive flexible procedure). If unsure, Lead Officers must consult with the Procurement Team.

### **Frameworks**

(1) Whilst the Council is permitted to set up a framework and to award contracts (including Public Contracts) in accordance with the framework, Lead Officers must ensure that the framework complies with the Requirements. Note, if

Leader Officers are seeking to set up an open framework, the Procurement Team must be consulted before doing so.

- (2) Where an external framework agreement is being considered (i.e. a framework not set up by the Council), Lead Officers must ensure that:
  - (i) the framework has been set up correctly and complies with the Requirements;
  - (ii) the Council is eligible to use the framework;
  - (iii) the scope and maximum value of the framework permits the Council to source its specific requirements through it;
  - (iv) the call-off procedures and terms and conditions are appropriate; and
  - (v) the Council is aware of all associated fees chargeable under the framework.
- (3) Any contract awarded under a framework must comply with the requirements contained in Contract Procedure Rules 5, 10, 16, 18 and 22 unless these requirements are not considered by the Lead Officer to be compliant with the terms of any call off being made under the terms of the framework agreement being used.
- (4) Any call off arrangement made under the terms of any framework shall be carried out with competition in accordance with Contract Procedure Rule 18 and reference to tenders shall be construed accordingly unless it is appropriate for an award without competition to be made (where permitted under the framework).

### **Dynamic markets**

- (5) The Council is permitted under the Requirements to award a Public Contract by reference to a suppliers' participation in an appropriate dynamic market. If the Lead Officer is establishing and/or procuring a Public Contract using a dynamic market, it must consult with the Procurement Team prior to doing so to confirm it is appropriate in the circumstances and to ensure the relevant notices are published.

### **Dynamic purchasing systems**

- (6) Dynamic purchasing systems established under the PCR 2015 must come to an end as set out when they were established, or by 23 February 2029 whichever is earlier. Lead Officers must consult with the Procurement Team prior to using a dynamic purchasing system to confirm it is appropriate in the circumstances and to ensure the relevant notices are published.

## 9. Contract Terms

### **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.

### **Assignment/Novation**

(2) 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 Lead Officer is making a call off under the terms of a third-party framework agreement that permits assignment or novation without consent.

(3) There shall be inserted in every written contract for work, services or supplies a clause which permits the Council to assign or novate the contract with no requirement to obtain consent from the contractor.

### **Liquidated Damages**

(4) 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.

### **Security for Performance**

(5) 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.

(6) 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.

(7) 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.

(8) In any other case, the Officer may require security for due performance of the contract if the Officer so considers it necessary.

### **Specific contract terms under the Requirements**

(9) Nothing should be included within any contract that is awarded in accordance with these Contract Procedure Rules that would conflict with the terms to be implied under the Requirements relating to the method of payments and payment terms.

(10) Lead Officers need to provide the following information to the Procurement team for each relevant reporting period (i.e. the previous 6 months ending 31 March or 30 September) to enable a payment compliance notice to be issued:

- (i) the Council has made a payment under a Public Contract; or
- (ii) a sum is owed by the Council under a Public Contract that has become payable (during the relevant reporting period above).

(11) Note, the Council is also required to publish information about any payment of more than £30,000 (inclusive of VAT) made by the Council within 30 days of the end of the quarter in which the payment was made.

(12) The Requirements imply the payments terms in every Public Contract entered into by the Council, including that:

- (i) undisputed sums due to be paid under a Public Contract must be paid before the end of 30 days beginning with the day on which a valid invoice is received or if later, the day on which the payment falls due in accordance with the valid invoice; and
- (ii) on receiving an invoice, the Council must notify the payee without undue delay if it considers the invoice invalid or disputes the invoice.

The Requirements also cascade the above obligations in relation to implied payment terms to relevant sub-contracts.

(13) For Public Contracts with an estimated value of more than five million pounds, the Council must:

- (i) set and publish a minimum of three key performance indicators - unless the Officer considers that the supplier's performance under the contract could not be appropriately assessed by reference to key performance indicators; and
- (ii) publish a copy of the contract being entered into.

- (14) Lead Officers should consult with the Procurement Team or Legal Services in respect of whether key performance indicators are required under the Requirements and if so, the appropriateness of these.
- (15) Lead Officers should ensure that the specific contract terms under the Requirements are incorporated into the contract terms and conditions when awarding a Public Contract and should have regard to the 'Guide to contract management under the Procurement Act 2023' document included in Schedule 2.

### **Cancellation for Corruption**

- (16) 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:
  - (i) 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
  - (ii) 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
  - (iii) 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.

### **Collusive Tendering Certificate**

- (17) 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.
- (18) 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:
  - (i) 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;

- (ii) 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;
- (iii) 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.

### **Indemnities**

- (19) The Officer must ensure that where an external third party has been appointed to advise the Council on or run a procurement process on the Council's behalf that any procurement process or award complies with the Requirements and that they indemnify the Council against any liability arising from any successful procurement challenge.

## **10. Standards**

- (1) Where the Officer in a procurement references a standard or a specific named product they must 'or equivalent' unless the Officer can demonstrate that there is no equivalent.

## **11. 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.

## **12. 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.

## **13. 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.

## **PART 2 – Procedural Requirements Which Apply To Every Tender**

### **14. 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:

- (i) comply with the requirements of these Contract Procedure Rules in the same way as the Lead Officers / Officers, subject to the modification that the procedure to be followed in inviting and opening tenders shall be approved in advance by the Lead Officer; and
- (ii) at any time during the performance of the contract, produce to the Lead Officer on request, the records maintained in accordance with these requirements; and
- (iii) on completion of the contract, transmit such records to the Lead Officer.

### **15. 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.

### **16. Opening of Tenders**

(1) All tenders will be received electronically for any contract following an invitation to tender pursuant to these Contract Procedure Rules unless any exceptions are agreed by the Monitoring Officer in writing due to circumstances beyond the reasonable control of the Council or tenderers and Lead Officers shall follow any alternative procedure required by the Monitoring Officer.

### **17. Non-Compliant Tenders**

(1) Lead Officers must keep a record of any non-compliant tenders and reasons why they are considered non-compliant.

### **18. 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) 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 there bid submission will be deemed non-compliant and rejected.

## **19. Acceptance of Tenders**

- (1) If a decision to accept a tender by the Cabinet, a Portfolio Holder or the Officer is a Key Decision and/or it relates to a Public Contract, then the tender shall not be formally accepted until the call-in period contained in the Call-in Procedure had expired leaving a decision that can be implemented and any mandatory standstill period that applied had expired without the notification of a formal challenge having been received.
- (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 an officer authorised by the Monitoring Officer.
- (4) The Cabinet, relevant Portfolio Holder or Officer (as appropriate) shall not accept or recommend the acceptance of a tender unless the award is to a supplier that submitted the most advantageous tender that satisfies the Council's requirements, and which best satisfies the award criteria.

## **20. Contract Award and Standstill Period under the Requirements**

- (1) Officers must not enter into a Public Contract until: -
  - (i) the Council has provided tenderers who submitted an assessed tender with an assessment summary;
  - (ii) the Council has published a contract award notice; and
  - (iii) the mandatory standstill period has expired without notification of a formal challenge having been received.
- (2) The "mandatory standstill period" is the period of eight working days beginning with the day on which a contract award notice is published in respect of the contract.
- (3) The contract award notice must contain the information detailed in the relevant Requirements.

- (4) Where the Council has entered into a Public Contract it must publish a contract details notice within the time period specified and in accordance with the Requirements.
- (5) 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.

## **21. 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:
  - (i) the work, services and supplies, matters or things to be executed, furnished, had or done; and
  - (ii) the price to be paid with a statement of discounts and other deductions; and
  - (iii) 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:
  - (i) contracts up to a value of £100,000 shall be signed by the Proper Officer;
  - (ii) 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;
  - (iii) contracts of a value in excess of £500,000 shall be sealed by the Council;
  - (iv) contracts for the purchase and/or disposal of land and/or buildings where approval has been obtained by the Officer for the disposal in accordance with the Council's Constitution will be signed by the Officer provided it is within the agreed scheme of delegation and within approved financial limits but any lease or transfer or other disposals will be signed under seal notwithstanding any other provisions contained in these Contract Procedure Rules.
- (3) Officers shall ensure that a copy of the completed contract documentation is provided to Legal Services for secure storage.

## **22. 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.

## **23. 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 Requirements.

# 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.

Where the disposal of land includes the carrying out of any works or the Council's input into a technical / works specification, prior legal advice must be obtained from Legal Services or external legal advice to confirm that the transaction is not a public works contract, and, if it is, to ensure that it is structured so that it is not.

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 than can be reasonably obtained, unless the transaction is covered by the exceptions contained within the General Disposal Consent.

### LAND DISPOSAL TYPES

#### 1. 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. 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. 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. 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. 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. Receipt and Opening of tenders**

6.1 Formal and informal tenders must be submitted in accordance with Contract Procedure Rule 15.

6.2 Opening of formal and informal tenders must comply with Contract Procedure Rule 16 or 17 (as appropriate).

## **7. 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. 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.