

## REPORT OF THE FINANCE & PROCEDURES OVERVIEW & SCRUTINY COMMITTEE – 19 JANUARY 2005

### 1 CONTRACT PROCEDURE RULES

- 1.1 This item of business was referred initially by the Policy and Finance Committee on 11 November 2004 to Council on 21 December 2004.
- 1.2 Council agreed that the proposals for revision to the Council's Contract Procedure Rules be deferred to the Finance & Procedures Overview and Scrutiny Committee for detailed review.
- 1.3 This was undertaken by the Finance & Procedures Overview & Scrutiny Committee on 19 January 2005.
- 1.4 At that meeting the following recommendations were made to Council:-
  - para. 2.1 – for 'estimated contact value' of up to £10,000 under the column 'procedure to apply', delete the words 'at least 1 quotation' and insert the following:  
*'The procurement officer is required to demonstrate that best value has been achieved in accordance with clause 2.5. Alternatively, 3 competitive quotations should be obtained.'*
  - para. 2.5 delete the sub-heading 'Non-competitive quotations' and the subsequent text contained in paras. 2.5.1 and 2.5.2 and insert the following:-  
*'The cost to be paid by the Council shall be the most advantageous, in terms of price, quality of work and delivery and be consistent with achieving best value. To this end, previous quotations for similar work, current market prices and professional and trade price indices shall be taken into account in order to determine best value.'*
  - para 4.3 be amended to read:-  
*'Any tenders received after the expiration of the time for tendering, or which contravene any provision of these rules, should not be considered and shall be returned to the Tenderer.'*
  - para 5.4.3 delete the words 'an increase or' and insert 'a'.
  - para 5.4.4. – delete the colon and dash after the word tenders and insert  
*'to confirm or withdraw the tender.'*
  - delete the paras 5.4.4.1 and 5.4.4.2
- 1.5 On the assumption that the above recommendations will be agreed, the Corporate Director (Finance and External Services) has taken the opportunity to work through the Rules to ensure that any spin-offs from these changes are incorporated and a consistent approach is adopted.

1.6 The above amendments have been incorporated in the attached Contract Procedure Rules.

1.7 It is proposed that Council **RESOLVES**

That the Contract Procedure Rules, as attached, be agreed.

Sarah Fowler

Head of Administrative & Member Services

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**Background Papers:-**

None

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## APPENDIX

**ROCHFORD DISTRICT COUNCIL**  
**CONTRACT PROCEDURE RULES****INTRODUCTION**

These Rules deal with procedures for obtaining quotations and tenders and entering into contracts for work, goods and services. They apply to purchases and sales, hiring, leasing, licensing of, for example computer software or other intellectual property as well as works contracts and the employment of consultants. The rules do not apply to the acquisition or disposal of land or any interest in land or contracts for the engagement of Counsel. Some contracts, depending on their value are subject to EU Law on procurement. This is a complex area and if officers are not sure whether the EU regime applies, they should contact the Head of Legal Services.

The current European Union contracting thresholds are:-

	£
<b>1 Works Contract</b>	3,834.411
<b>2 Supplies</b>	153.376
<b>3 Services</b>	153,376

These limits are changed at regular intervals and details of the latest thresholds can be obtained from the Head of Legal Services.

**1 GENERAL****1.1 Interpretation**

- 1.1.1. In these Contract Procedure Rules, unless the context requires otherwise, the following words and phrases shall bear the respective meanings set out below:-

‘building contract’ means any contract for the execution of building or civil engineering works.

‘Head of Service’ means the Chief Executive, any Corporate Director or Head of Service of the Council or any officer designated to act on behalf of a Head of Service for the purpose specified.

‘CPR’ means .

‘contract’ means any contract made by or on behalf of the Council for any of the purposes set out in CPR 1.5.

‘Council’ means the Full Council or any Committee authorised to act on behalf of the Council.

‘most financially advantageous’ means the lowest if payment is to be made by the Council and the highest if payment is to be made to the Council and, in either case, refers to a tender which conforms to the Council's specification and tendering requirements.

‘nominated officer’ means an officer to whom power to act has been delegated by the Scheme of Delegations in Part 3 of this Constitution, or who has been nominated for the purpose of the relevant Rule in writing by a Head of Service.

‘person’ or ‘persons’ shall include a firm, partnership, company or public authority.

‘quotation’ means a bid for a Council contract to be submitted to the nominated officer otherwise than under Rule 3.2.

‘tender’ means a bid for a contract to be submitted in accordance with Rule 3.2.

1.1.2 Where there is a requirement to consult the relevant member and that member is unavailable, the officer concerned shall consult another member nominated for the purpose by the Leader of the Council.

1.1.3 References to contract values are to the value excluding Value Added Tax (if any).

## **1.2 Contract Principles to be Applied**

All the following principles must be applied to every contract or proposed contract to be entered into by or on behalf of the Council:-

1.2.1 appropriate quality standards should be required

1.2.2 the cost to be paid or sum to be received by the Council shall be the most advantageous, in terms of price, quality of work and delivery, and be consistent with achieving Best Value;

1.2.3 tendering and contracting procedures are carried out fairly and openly;

1.2.4 wherever practicable, the sustainable use of resources shall be sought;

1.2.5 all legal requirements, including where applicable the EU procurement rules shall be complied with by the Council.

1.2.6 Adequate records shall be kept for all contracts entered into.

### 1.3 Responsibility for Contracting Procedures

Every officer to whom the letting of contracts has been delegated under the Scheme of Delegations in Part 3 of this Constitution shall comply with these Rules and be responsible for compliance by those acting under their instructions (including consultants).

### 1.4 Consultants to Comply With Standing Orders

Every consultant engaged to manage or let a contract for the Council, or provide services in connection with a contract:-

- (1) shall be supplied with a copy of these Rules;
- (2) shall be required to enter into a written contract to comply with these Rules as though the consultant was a chief officer of the Council;
- (3) on request, shall produce to the nominated officer or the Chief Finance Officer all records maintained in connection with the administration of the contract and following completion of the contract and payment of the final account, deliver all such records to the officer responsible for the contract.

### 1.5 Rules to Apply to All Contracts

The Contract Procedure Rules apply to every contract or proposed contract to be entered into by or on behalf of the Council for:-

- 1.5.1 the supply of goods, materials, computer software, plant and equipment (including by lease, licence or hire);
- 1.5.2 the carrying out of work;
- 1.5.3 the supply of services including consultancy services; and
- 1.5.4 any combination of these.

UNLESS

- (A) *compliance with the Rules has been waived under 1.6;*
- (B) *The exceptions under Rule 2.3 apply.*

### 1.6 Waiving Standing Orders

The Council may approve exceptions from Contract Procedure Rules in such cases as they think fit, but only after consideration of a written report submitted by a Head of Service (or another officer to whom this responsibility is delegated) after consultation with the Monitoring Officer and the Chief Finance Officer.

## 2 TENDERS AND QUOTATIONS

### 2.1 Summary of Requirements for Tenders and Quotations

The following table sets out which procedure shall apply to various values of contract:-

<b>Estimated Contract Value</b>	<b><i>Procedure to Apply</i></b>	
<i>Up to £10,000</i>	The Procurement Officer is required to demonstrate that best value has been achieved in accordance with Clause 2.5. Alternatively, 3 competitive quotations should be obtained.	2.5
<i>£10,000 - £25,000</i>	<i>At least 3 written quotations</i>	2.6
<i>Between £25,000 and £75,000</i>	<i>Competitive Tender (Minimum of 3)</i>	2.2/2.3
Between £75,000 and the relevant European Union Contracting threshold	Competitive Tendering ( <i>Minimum of 4</i> )	2.2 / 2.3
Between £25,000 and the relevant European Union Contracting threshold but tendering requirement waived by Council	Procedure to be approved by Council	1.6
Above European Union contracting threshold	In accordance with EU Directives if applicable otherwise competitive tendering or other procedure approved by Council	1.2.5 or 2.2 or 1.6

### 2.2 Competitive Tenders

Competitive tenders shall be invited for all contracts except where;

- 2.2.1 *the contract is to be entered into with or through other local authorities or public bodies or any partnership arrangement agreed by Council at rate(s) or price(s) established by competitive tendering, or at competitive rate(s) or price(s) or*

- 2.2.2 the Council have waived this Rule under CPR 1.5 or where one of the exceptions set out in CPR 2.3 applies.

2.3 Exceptions from Competitive Tendering

Exceptions from the competitive tendering requirement may be made by the Chief Executive with the agreement of the Chief Finance Officer where:-

*2.3.1 there are genuine reasons of urgency making competitive tendering impractical, in which case, unless the Chief Executive otherwise decides, at least three quotations shall be invited under CPR 2.6;*

- 2.3.2 special expertise or manufacturing capacity is required, which is only available from such a limited number of sources that competitive tendering is impractical, in which case, at least three quotations shall be invited under CPR 2.6;

- 2.3.4 special expertise or manufacturing capacity is required for which only one source has been identified after reasonable enquiries have been made, in which case, *Rule 2.5. will apply;*

- 2.3.5 the work to be carried out or goods to be supplied comprise repairs, or parts for existing plant equipment, or vehicles, or updating computer software, or are required to be compatible with existing plant, equipment, vehicles or software, in which case, *Rule 2.5. will apply;*

- 2.3.6 the contract is to extend an existing contract and is the most economical means of obtaining what is required by the Council in which case, *Rule 2.5. will apply;*

- 2.3.7 a consultant is proposed to be re-engaged to carry out further work on a project which they have worked on before and engaging new consultants would be inappropriate, or lead to extra costs in which case, *Rule 2.5. will apply.*

2.4 Exceptions to be Reported to Council

All exceptions made from the competitive tendering requirements shall be documented and reported by the Chief Executive to *the Leader of the Council and Chairman of the relevant Committee* as soon as practicable.

2.5 Best Value

The cost to be paid by the Council shall be the most advantageous, in terms of price, quality of work and delivery and be consistent with achieving best value. To this end, previous quotations for similar work, current market prices and professional and trade price indices shall be taken into account in order to deliver best value.

## 2.6 Competitive Quotations

If the estimated value of a contract is between £10,000 and £25,000 at least three quotations (or tenders if appropriate) shall be invited from at least three prospective contractors or suppliers recognised as capable of performing the contract. Where, because of the specialist requirement of the contract less than three prospective tenders can be identified, all of them shall be invited to quote.

## 2.7 Alternative Competitive Tendering Procedures

The Head of Service shall decide which of the following procedures is to be used:-

- 2.7.1 tenders invited through a public notice in a local newspaper circulating in the District if the contract is likely to be capable of being performed by local contractors and in an appropriate trade journal circulating among persons who could be prospective tenderers; or
- 2.7.2 tenders invited from a shortlist of at least *three (four if over £75,000)* of the contractors selected by the Head of Service from amongst those who replied to a public notice in a trade journal circulating among prospective tenderers (and a local newspaper, if appropriate) inviting expressions of interest in the proposed contract *or, if less than four replying, all of them*; or
- 2.7.3 tenders invited from at least *three (four if over £75,000)* of the contractors included in a standing list of contractors relevant to the proposed contract maintained in accordance with CPR 2.8, such contractors to be invited to tender in turn so that all have a fair chance of winning the Council's contracts save that in addition a maximum of two contractors who have carried out similar work for the Council in the last two years may be nominated by the Head of Service from the standing list in agreement with the Chief Finance Officer.

## 2.8 Standing Lists of Contractors

Standing lists shall be compiled, kept up to date and reviewed by the Head of Service for the purpose in accordance with the following rules:-

- 2.8.1 when a standing list is to be prepared or reviewed, public notice shall be placed in a local newspaper and a trade journal circulating among prospective applicants inviting suitable contractors to apply within not less than 28 days;
- 2.8.2 standing lists shall be reviewed every four years. Contractors on an existing list shall be invited to apply to remain on the list and shall be allowed not less than 28 days in which to reply, unless the Council has resolved not to invite a contractor to re-apply following consideration of



a report from the Head of Service or Chief Finance Officer relating to the financial status or performance of a contractor;

2.8.3 any contractor may, by giving written notice to the Council, withdraw from any standing list.

2.8.4 *A copy of current standing lists shall be available for inspection by Members on the Council's intranet*

### 3 TENDERING ARRANGEMENTS

#### 3.1 Terms to be included in Contracts

##### 3.1.1 General

(a) All contracts must state:

- (i) the work to be done or the goods or services to be supplied; and
- (ii) the price and any deductions;

**(b) Contracts not made by an order must state the time within which the contract is to be carried out.**

##### 3.1.2 Liquidated Damages

In appropriate cases, contracts valued at more than £100,000 must provide for adequate liquidated damages to be paid by a contractor that fails to complete the contract in the time specified.

##### 3.1.3 Specifications and Standards

All contracts where a specification issued by the British Standards Institution or a European Standard is current at the date of the tender or quote and is relevant shall require as a minimum that the goods or materials used in their execution or services supplied shall be in accordance with that specification.

##### 3.1.4 Security

The Council may insist that the contractor provides adequate security for carrying out the contract and may specify the nature of that security.

##### 3.1.5 Corruption

Every contract must state that the Council may cancel the contract and recover any resulting losses from the contractor, if the contractor, its employees or agents, with or without its knowledge:

- (i) improperly offers or gives anyone anything in order to influence the way in which any contract with the Council is given, completed or carried out; or
- (ii) commits any offence under the Prevention of Corruption Acts 1889 to 1916 or section 117(2) of the Local Government Act 1972.

#### 3.1.6 Data Protection

**All contracts shall require a contractor to comply with the requirements of the Data Protection Act 1998 or any re-enactment of that Act in so far as any Data supplied by the Council or obtained on behalf of the Council is kept secure and is not disclosed to any other party without the express consent of the appropriate Head of Service.**

### 3.2 Invitation to Tender

Every invitation to tender shall be in writing and state:-

- (a) that all tenders must be delivered in a plain sealed envelope addressed to the nominated officer and bearing the words 'tender for ....' and the title of the contract, but without any name or mark from which the sender might be identified; and
- (b) that the Council does not bind itself to accept any tender.

- 3.3 Tender envelopes received shall remain unopened in the custody of the nominated officer until the time appointed for their opening.

## 4 **RECEIPT AND OPENING OF TENDERS**

- 4.1 All the tenders for a contract shall be opened together in the same place after the expiration of the time for tendering in the presence of at least two officers of different disciplines, usually the nominated officer and a Chief Officer who has not been involved in the tender invitation.
- 4.2 All tenders received shall be recorded
- 4.3 Any tenders received after the expiration of the time for tendering, or which contravene any provision of these Rules shall not be considered and shall be returned to the tenderer.
- 4.4 All tenders and accompanying documents shall be treated as confidential until their contents become public in the normal course of the Council's business.

## 5 **ACCEPTANCE OF TENDERS**

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- 5.1 Subject to the provisions of this Rule, the Head of Service may accept the most financially advantageous tender.
- 5.2 In the case of contracts to be financed from capital, a tender shall not be accepted unless any necessary Government approvals and borrowing authorisations having been received and where the tender exceeds the capital programme budget by no more than 10% up to a maximum of £25,000 the Chief Executive and/or Chief Finance Officer approve. In the case of building works, before accepting the tender the Head of Service responsible must take appropriate technical and professional advice, and do so in accordance with guidelines (if any) which may be laid down from time to time by the Chief Executive.
- 5.3 In the case of works or services or the supply of goods or materials to be financed from the revenue budget or revenue reserves authority to accept a tender is subject to sufficient provision existing in the approved revenue budget or approval to spend from a Revenue Reserve.
- 5.4 The following provisions apply to negotiations with tenderers and amending their tenders:-
- 5.4.1 in exercising the powers contained in CPR 5.1, 5.2 and 5.3 above, the officer responsible may negotiate with the tenderer submitting the most financially advantageous tender, to obtain improvements in terms of price, delivery or content, but shall not alter the original specification unless the revenue budget or capital programme budget is exceeded, or the Chief Executive considers other special circumstances exist, in which case all those persons who originally submitted a tender for the contract shall be given an opportunity to re-tender;
- 5.4.2 negotiation after receipt of formal tenders and before the letting of a contract shall not take place without the written authorisation of the Head of Service and shall be undertaken in accordance with arrangements approved by the Monitoring Officer and the Chief Finance Officer. Amendments to tenders, once agreed, shall be put in writing and signed by the tenderer;
- 5.4.3 In the event of any amendment made under 5.4.1 and 5.4.2 above resulting in a decrease in the total tender of more than 10% for contracts over £25,000 such alteration shall be reported to the next following meeting of the Council;
- 5.4.4 Notwithstanding any other provision of this Rule persons tendering shall be allowed, after the tenders have been opened on being provided with details of errors of arithmetic discovered in their tenders to confirm or withdraw their tender.

## **6 TENDERS OTHER THAN *MOST FINANCIALLY ADVANTAGEOUS***

- 6.1 Tenders, other than the most financially advantageous, may only be accepted after consultation with the Leader of the Council and relevant Chairman of the Committee responsible for the function.
- 6.2 All tenders accepted after such consultation shall be reported to the next meeting of the Council.

## **7 RECORDS OF TENDERS**

- 7.1 Heads of Service shall maintain a record of tenders received, tenders accepted and amendments agreed by them under the powers given to them by these Rules; such record to be in a form agreed with the Chief Finance Officer and copied to the Corporate Director (Law, Planning & Administration)

## **8 CONTRACTS TO BE IN WRITING**

- 8.1 Every contract shall be in writing except for purchases using petty cash or other small cash transactions which would not in the normal course of business be reduced to writing.
- 8.2 Every contract for more than £25,000 in value shall be in a form approved by the Head of Legal Services and shall either be –
  - (a) sealed with the common seal of the Council; or
  - (b) signed on behalf of the Council by the nominated officer, or such officer as the nominated officer has authorised in writing.
- 8.3 Every other contract shall be in a form approved by the Head of Legal Services or in accordance with guidance as to the form of contracts issued by him/her from time to time and shall be signed by the nominated officer.

## **9 SUB CONTRACTORS AND NOMINATED SUPPLIERS**

- 9.1 This Rule applies where a sub contractor or supplier is to be nominated to a main contractor by the Council.
- 9.2 Where the estimated cost of the sub-contract or of the goods to be supplied by the nominated supplier is £25,000 or more, competitive tenders shall be invited from at least *three (four if over £75,000)* tenderers for the nomination unless CPR 2.3 applies.
- 9.3 The terms of the invitation shall require an undertaking that the sub contractor if selected, will be willing to indemnify the main contractor against the main contractor's obligations under the main contract in relation to the work or goods to be carried out or supplied by the sub-contractor.

- 9.4 The provisions of Standing Orders 4,5,6 and 7 (invitation to tender and receipt, opening and acceptance of tenders) shall apply to tenders received under this Rule.
- 9.5 The Head of Service responsible shall nominate to the main contractor the person whose tender is successful, but if that tender is not the most advantageous received, the acceptance shall require the approval of the Monitoring Officer and Chief Finance Officer and the circumstances shall be reported to the Council.