

# **SOUTH RIBBLE BOROUGH COUNCIL CONTRACT PROCEDURE RULES**

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# Contract Procedure Rules

## 1. Introduction

- 1.1 These Rules form part of the Council's Constitution and are the Council's Contract Procedure Rules for purchasing goods, works and services for the Council. They do not apply to internal purchases or internal service provision, only where you need to buy something from outside the council.
- 1.2 The Rules apply to any contract that results in a payment being made by the Council as well as to some types of contracts where a service is being provided for the Council which results in some income being generated for the Council.
- 1.3 The Rules also apply to the disposal of surplus goods (see paragraph 40) and to Concession Contracts.
- 1.4 The Rules also apply when an external body, authority, company, consultant or other person has been engaged to carry out procurement or disposal on behalf of the Council.
- 1.5 The rules do not cover grants which the Council may make or receive (unless the grant is part of a contract for services).
- 1.6 The Rules have four main purposes:
  - to comply with the obligations that govern the spending of public money derived from the European Union (EU) procurement regime and applied in the UK through the Public Contracts Regulations (2006);
  - to obtain Best Value in the way we spend money, so that we may in turn offer better and more cost effective services to the public;
  - to avoid corruption and ensure high ethical standards;
  - to protect people who follow the Rules.
- 1.7 The Rules must be read in conjunction with the Council's Financial Procedure Rules, Procurement Guidance and any other internal controls laid down by the Council for example the Council's Anti-Fraud and Corruption Policy and Whistle Blowing policy.

## 2 Compliance

- 2.1 Every contract entered into by the Council shall be entered into pursuant to or in connection with the Council's functions and must comply with:
  - (a) all relevant statutory provisions;
  - (b) the relevant European procurement rules (i.e. the EC Treaty, the general principles of EC law and the EC public procurement directives implemented by the UK Regulations);
  - (c) the Council's Constitution including these Contract Procedure Rules, the Authority's Financial Regulations and Financial Procedure Rules and the Council's Scheme of Delegation
  - (d) the Council's vision, priorities, enabling strategies and policies (e.g. Sustainable

## Procurement Policy)

- 2.2 At all times during the contract award procedure, the Council, through its Members and officers, shall consider and implement the principles of non-discrimination, equal treatment and transparency.
- 2.3 The highest standards of probity are required of all officers and Members involved in the procurement, award and management of Council contracts. Members shall comply with the Code of Conduct for Councillors, and officers shall comply with the Code of Conduct for Officers.
- 2.4 Effective audit trails must be maintained at all stages throughout the procurement procedure, particularly when approval or agreement is required.

### **3. Conflicts of Interest**

- 3.1 Every officer entitled to buy supplies, services or works must make a written declaration of interests and update it immediately when an interest changes.
- 3.2 Authorised Officers must declare any conflict of interest or potential conflict of interest to the Monitoring Officer and take no further part in the award of a contract by the Council.
- 3.3 Subject to the specific exception set out at paragraph 3.4 below, officers must not accept a gift from any contractor/bidder or potential contractor/bidder to any contract being let by the Council or from any firm or organisation with whom the Council has had, is having or may have dealings of any kind, and to do so is a disciplinary offence. Officers must always abide by the Council's Officer Code of Conduct and must declare in the Register of Gifts and Hospitality kept by Democratic Services, if they have been offered such a gift when dealing with a contract for the Council.
- 3.4 The exception to the general rule set out at paragraph 3.3 is:
  - a seasonal or work-related gift such as a calendar or diary with a retail value of less than £25
- 3.5 If offered hospitality or travel assistance from any contractor/bidder, or potential contractor/bidder, to any contract being let by the Council that will in a particular procurement assist them to obtain the best value for money for the Council, (eg in connection with visits to reference or demonstration sites), Authorised Officers may accept this (subject to the specific exceptions set out at 3.6 below) but must declare it in the Register of Gifts and Hospitality.
- 3.6 In the circumstances set out at 3.5 above, Authorised Officers may accept, and need not declare, the following:
  - a short lift in a private or company car, or a taxi, or reasonable refreshments in the course of duty (eg a modest working lunch)
- 3.7 Any other offers of hospitality or travel assistance from contractors/bidders or potential contractors/bidders should be refused. If such an offer is made, Authorised Officers must notify the Monitoring Officer and declare such offers in the Register of Gifts and Hospitality.

#### **4. Procurement Plan**

- 4.1 Prior to the start of each financial year, each Director must prepare a procurement plan setting out their department's contracts to be procured (over £10,000) during that financial year, and where possible for forthcoming years. A copy of the plan must be supplied to the Procurement and Partnerships Manager who shall use this information to formulate and publish an Annual Procurement Plan for the Council.
- 4.2 At the beginning of each financial year, the Procurement and Partnerships Manager shall publish, as appropriate, a prior information notice (PIN) in the Official Journal of the European Union (OJEU). This notice will list the contracts for services and supplies which it expects to procure for the financial year. In relation to contracts for works, the Council shall publish a prior information notice in the OJEU when the works are approved by the Council.

#### **5. Who has authority to carry out procurement on behalf of the Council?**

- 5.1 Any procurement carried out on behalf of the Council may only be undertaken by officers with the appropriate delegated authority to carry out such tasks as set out in the Council's Constitution. Officers with delegated authority may only authorise other officers who have the appropriate skills and knowledge appropriate to the task. Officers shall be informed by his/her Director/Service Head, in writing, of the extent of any delegated authority and any applicable financial thresholds for each procurement. These officers shall be known as Authorised Officers.
- 5.2 Within approved budgets Directors/Service Heads may authorise members of their staff to place orders against Framework Agreements which have been entered into by the Council.
- 5.3 For all High Value procurements, prior approval of the proposed contract award procedure including the evaluation criteria to be applied, shall be sought from the relevant member of the Senior Management Team. Additionally for all High Value Procurements above the EU threshold, and for any involving the transfer of staff, Authorised Officers must seek prior approval of the proposed contract award procedure, including the proposed evaluation criteria and weightings to be applied from Cabinet unless Cabinet have previously delegated that decision.
- 5.4 All High Value contract award decisions and any which involve any potential transfer of the Council's employees shall be referred to Executive Cabinet.
- 5.5 Any contract awards which constitute a Key Decision (i.e. a contract worth £75,000 or more) must be published in the Forward Plan prior to any decision being taken as described in the Council's Constitution.

#### **6. Exempt Contracts**

- 6.1 The Rules do not apply to the following types of Contract:
- (a) individual agency contracts for the provision of temporary staff (The arrangements with staffing agencies, however, should be subject to a competitive procurement process in accordance with these Contracts Procedure Rules);
  - (b) employment contracts and
  - (c) contracts relating solely to disposal or acquisition of an interest in land (including

buildings)

If you are in any doubt about whether the Rules apply, you **must** always check with the Procurement Manager.

## **7. Pre-Procurement Procedure**

7.1 Before commencing a procurement, it is essential that the Authorised Officer leading the procurement has identified the business need and fully assessed any options for meeting those needs. Consideration shall be given to the Council's Procurement Strategy, Sustainable Procurement Policy and procurement guidance, as appropriate.

7.2 Before undertaking a procurement the Authorised Officer shall:

- (a) consider all other means of satisfying the need (including recycling and reuse where appropriate);
- (b) prepare an estimate of expenditure in accordance with Rule 8;
- (c) undertake a risk assessment
- (d) complete an Equality Impact Assessment where any change in service provision is proposed that will have Equality Impacts
- (e) establish a business case for the procurement and consider whether the procurement should follow the Council's Project Management Framework/ Toolkit. Procurements which may benefit from use of the toolkit are usually higher value and are:
  - unique, new or complex leading to significant system, process or service changes,
  - impact on numerous services
  - have a significant reputational impact on the Council

If you are unsure as to whether the Project Management Framework should apply, you should consult the Policy and Performance Advisor for a decision.

The level of resource and detail deployed in carrying out the requirements of 7.1 and 7.2 shall be appropriate to the nature and the value of the Procurement.

## **8. Calculating the Contract Value**

8.1 Prior to commencing any procurement you must estimate the total monetary value of the contract (exclusive of VAT) over its full duration, including any extension options (not the annual value). The estimated total value of the contract will determine which procedure you must then adopt.

8.2 Where the duration of a contract is for an indefinite period, or where it's term cannot be defined, the contract value should be taken to be the estimated value of the contract over a period of four years.

8.3 Circumstances may arise where a number of low value contracts for similar works/goods or services are given to one Contractor within a 12 month period. In this case, 12 months

expenditure should be aggregated to determine which procedure should be followed. When the value of those contracts is aggregated the effect may be to move the total purchase from one value band to another. This may mean that a different procurement method has to be followed to comply with these rules, or it may be necessary to seek a waiver of these rules in such circumstances.

- 8.4 Authorised Officers should make the best use of the Council's purchasing power by aggregating purchases wherever possible
- 8.5 Contracts must not be artificially split to avoid the Rules or the EU Regulations
- 8.6 If, following calculation of the estimated value, the intermediate route (below £75,000) is selected, and, after evaluating in accordance with the evaluation criteria, the preferred offer is valued at over £75,000, then the matter shall be referred to the Legal Services Manager for further advice. The Legal Services Manager shall be given full details including how the estimated value was calculated, the amount of the estimated value, the value of all quotations received and the evaluation model applied leading to selection of the preferred offer.
- 8.7 If, after following the intermediate route, some of the quotations received are valued at over £75,000, but the preferred quotation is less than £75,000, then the preferred quotation may be accepted in accordance with these Contracts Procedure Rules.

## **9. Low Value Procurement: Below £10,000**

- 9.1 Where the estimated value or amount of the proposed contract is less than £10,000, The Authorised Officer shall ensure that best value is achieved and that the arrangements made secure the best available terms for the Council. Good practice would be to obtain written or electronic quotations, however, evidenced verbal quotations are acceptable.
- 9.2 The purchase order must be made on an official purchase order and shall specify the services, supplies or works to be provided and set out the price and terms of payments.
- 9.3 Two authorised officers must be involved in the ordering and receiving process.
- 9.4 Every purchase order (whether issued as a result of higher, intermediate or lower value procurements) **must** contain the current approved standard form of terms and conditions of contract between the Council and the supplier. A quotation and a purchase order will create a legally binding contract.

## **10. Intermediate Value Procurement: £10,000 to £75,000 (Quotations)**

- 10.1 For procurements valued over £10,000 but at or below £75,000 at least 3 written Request for Quotations shall be invited before a formal purchase order is issued specifying the supplies, services or works to be provided. Quotations shall be received and opened in accordance with Rule 19.
- 10.2 Intermediate value procurements may be advertised on the Council's website. However, such advertising may be inappropriate if it is considered that this will result in a disproportionate response for the nature and value of the procurement. Advertisements on the website shall be replaced by advertisements on "The Chest" referred to at 10.3 below, when this software is rolled out and made available either through the Shared Procurement Team or to individual departments

- 10.3 It is anticipated that the regional e-procurement portal “ The Chest” including software enabling Authorised Officers to carry out all quotations electronically will be introduced during 2011/12, however until such a time that individual departments are rolled out to send and receive quotations and tenders electronically, then quotations must not be received electronically by those departments (also see CPR 20).
- 10.4. Invitations to quote shall:
- (a) specify or refer to a specification of the goods, materials, services or work required and
  - (b) state the date and time by which quotation must be received and
  - (c) state that no quotation will be considered unless it is received in accordance with the instructions for quoting and where this is submitted in writing (i.e. hardcopy) in an envelope addressed to the Authorised Officer. The Quotation envelope must not identify the quoter and must bear the word "Quotation" followed by the subject to which it relates.
  - (d) have the evaluation criteria set out in the invitation to Quote. All quotations shall be evaluated in accordance with the evaluation criteria set out in the quotation documents. All contracts, except where lowest price was predetermined to be the appropriate contract award criterion, shall be awarded on the basis of the offer which represents the Most Economically Advantageous offer to the Council. The evaluation criteria shall be predetermined and listed in the invitation to Quote, in order of importance. In addition, the evaluation criteria shall be strictly observed at all times throughout the contract award procedure by any person involved in the evaluation.
- 10.5 Quotations should be stored securely and confidentially and shall remain unopened in the custody of the Authorised Officer until the appointed time for opening ( See CPR 19)
- 10.6 The Authorised Officer must notify the Procurement and Partnerships Manager of the eventual outcome of the procurement exercise for entry into the Contracts Register.
- 10.7 Where the risk in a specific procurement is perceived to be high, then that procurement shall be treated as a High Value Procurement.
- 10.8 Any procurement that may involve a transfer of staff shall be treated as a High Value Procurement.

## **11. High Value Procurements: Above £75,000 (Tenders)**

- 11.1 All Procurements with a cumulative value of over £75,000 shall be classed as High Value Procurements.
- 11.2 Additionally any contract where Council employees may be transferred to other bodies, or where risk in the procurement is perceived to be high shall be treated as a High Value Procurement.

- 11.3 All high value procurements must be advertised on the Council's website (Current Contract Opportunities), and where considered appropriate and necessary in order to stimulate suitable and sufficient competition, a trade journal or, the local press. The requirement to advertise on the Council's web site shall be replaced by a requirement to advertise on "The Chest" referred to at 10.3 when this software is rolled out and made available, either through the Shared Procurement Team or to individual departments. The Council's web site shall include a link and signpost contractors to The Chest.
- 11.4 For all High Value Procurements, prior approval of the proposed contract award procedure including the evaluation criteria to be applied, shall be sought from the relevant member of the Senior Management Team. Additionally for all High Value Procurements above the EU threshold, and for any involving the transfer of staff, Authorised Officers must seek prior approval of the proposed contract award procedure, including the proposed evaluation criteria and weightings to be applied from Cabinet unless Cabinet have previously delegated that decision.
- 11.5 In addition to the contract award provisions at paragraph 25.4, any procurement of £75,000 or more in value constitutes a key decision and notification of the decision to be taken must therefore be included in the relevant Forward Plan at an early stage, as described in the Council's Constitution, before the contract award decision is taken.
- 11.6 One of the four contract award procedures set out in Contract Procedure Rules 13,14,15 and 16 shall be used as appropriate for the particular procurement, i.e. open, restricted, negotiated or Competitive Dialogue.
- 11.7 Nothing in these Rules prevents you from adopting any aspect of the High Value Procurement procedures in the procurement of intermediate or lower value supplies, works or services.

## **12. Contracts Subject to the Regulations: Above the EU Threshold**

- 12.1 Where the estimated value of a contract exceeds the current EU threshold then the contract shall be tendered in accordance with the Regulations. Under the Regulations, the contract may be tendered under the Open, Restricted, or, in exceptional circumstances exhaustively set out in the Regulations, the Negotiated or Competitive Dialogue (for particularly complex contracts) procedure. For each contract tendered in accordance with the Regulations, a contract notice shall be published in the prescribed form in the Supplement to the Official Journal to the European Union (OJEU) to invite tenders or expressions of interest for Part Services Contracts, Supplies and Works Contracts subject to the Regulations. Contracts for Part B services do not need to be advertised in OJEU. The full list of Part A and Part B services is available from the Procurement Team.

Advertisements published in addition to the OJEU notice must not appear in any form before a contract notice is submitted to OJEU and must not contain any information additional to that contained in the contract notice.

- 12.2 With effect from 1 January 2010 the main current EU thresholds are as follows:

- (a) services contracts £156,442;
- (b) supplies contracts £156,442; and
- (c) works contracts £3,927,260.

The EU thresholds set out above are revised by the OJEU every two years.



12.3 The Regulations set out the minimum timescales for receipt of expressions of interest and tenders. Where the Council has published a Prior Information Notice announcing its forthcoming contracts for the year ahead, then the Council may rely on reduced timescales if appropriate.

12.4 The EU Directives and UK Regulations are long and complex, and only the principal requirements can be given here. Officers are advised to refer to the guidance on the Loop and to consult the Corporate Procurement and Legal Services departments prior to commencing any procurement which is subject to the Regulations.

### **13. Open Procedure**

13.1 All suppliers applying in response to a notice by the published deadline are invited to tender. If publication of a notice in the OJEU is not required (i.e. when the value of the contract does not exceed the EU threshold) then a notice giving at least 14 days public notice shall be published on the Council's website (Current Contract Opportunities), and where considered appropriate and necessary in order to stimulate suitable and sufficient competition, a trade journal or , the local press. The requirement to advertise on the Council's web site shall be replaced by a requirement to advertise on the e-procurement portal "The Chest" referred to at 10.3 , when this software is rolled out and made available, either through the shared procurement team, or to individual departments. The Council's web site shall include a link and signpost contractors to The Chest

### **14. Restricted Procedure**

14.1 Only those suppliers selected by the Council are invited to tender. Suppliers shall be selected on the basis of published pre-qualification criteria related to those matters set out in Contract Procedure Rule 17.

14.2 If publication of a notice in the OJEU is not required then the notice requirements are the same as in the open procedure (see Contract Procedure Rule 13.1 above) except that the notice shall state that the restricted procedure is being used. The notice shall contain details of the proposed contract and specify a time limit which shall be no less than fourteen days from the date of publication of the notice within which interested parties may register to express their interests. All persons who have registered their interest will be furnished with a pre-qualification questionnaire. The Council will only invite to tender those suppliers selected on the basis of the pre-qualification questionnaire.

14.3 If the EU Regulations apply then a notice in OJEU is required and a minimum of five suppliers shall be invited to tender, or, where less than five suppliers meet the selection criteria, such number as do meet the selection criteria.

14.4 Where the EU Regulations do not apply a minimum of three suppliers shall be invited to tender, or, where less than three suppliers meet the selection criteria, such number as do meet the selection criteria.

### **15. Negotiated Procedures**

15.1 Only those suppliers selected by the Council are invited to negotiate. Suppliers are selected on the basis of published pre-qualification criteria relating to those matters set out in Contract Procedure Rule 17.

15.2 The negotiated procedure is not recommended for contracts valued at below EU thresholds. The negotiated procedure will only be applicable in limited circumstances, usually where the Council is unable to ascertain prior overall pricing of the services or is unable to draw up specifications which are sufficiently specific. Advice from Legal Services and the Procurement Team must be sought on all occasions prior to the use of the negotiated procedure.

## **16. Competitive Dialogue**

16.1 This is a three stage process under EU Consolidated Procedures that may be used for complex purchases where requirements are defined in output terms. Subject to certain qualifying requirements purchasers may seek initial proposals from economic operators (Stage1) and then have dialogue with some or all applicants in successive stages (Stage 2), prior to requesting final bids from the economic operators that can meet the output specification (Stage 3). This facility for dialogue that facilitates changes to initial proposals is not allowed under the open or restricted procedures.

16.2 Only those suppliers selected by the Council are invited to participate. Suppliers are selected on the basis of published pre-qualification criteria relating to those matters set out in Contract Procedure Rule 17.

16.3 The Competitive Dialogue procedure is not recommended for contracts valued at below EU thresholds. The procedure will only be applicable in limited circumstances, usually where the Council is unable to ascertain prior overall pricing of the services or is unable to draw up specifications which are sufficiently specific. Advice from Legal Services and the Procurement Team must be sought on all occasions prior to the use of the Competitive Dialogue procedure

## **17. Pre-qualification**

17.1 The Council shall only enter into a contract with a Supplier if it is satisfied as to the Suppliers –

- (a) eligibility;
- (b) economic and financial standing.
- (c) technical and /or professional ability.

17.2 Technical and/or professional ability includes:

- (a) the supplier's performance in respect of recent contracts providing similar works services and supplies;
- (b) the educational and professional qualifications of the supplier and/or its managerial staff or those providing the services or managing the work;
- (c) quality management systems including human resources, health and safety and environmental management systems, where relevant to the performance of the contract. This is in relation to the tools, plant or technical equipment available to the supplier for carrying out the contract and the proportion of the contract which the supplier intends possibly to subcontract.
- (d) the appropriate arrangements are in place to eliminate any unlawful discrimination and the promotion of equality of opportunity and good relations between persons of different racial groups.

17.3 Any procurements subject to the Regulations shall be in full compliance with those Regulations.

## **18 The Invitation to Tender**

- 18.1 The ITT or ITN shall include details of the Authority's requirements for the particular contract including:
- (a) a description of the services, supplies or works being procured;
  - (b) the procurement timetable including the tender return date and time, which shall allow a reasonable period for the applicants to prepare their tenders;
  - (c) instructions for completing and returning the tender documentation
  - (d) notification that tenders received after the closing date and time will not be considered
  - (e) a specification and instructions on whether any variants are permissible;
  - (f) the Council's terms and conditions of contract
  - (g) the evaluation criteria including any weightings as considered appropriate;
  - (h) pricing mechanism and instructions for completion;
  - (i) whether the Council is of the view that TUPE may apply;
  - (j) form and content of method statements to be provided
  - (k) rules for submitting of tenders and whether tenders may be submitted electronically;
  - (l) any further information which will inform or assist tenderers in preparing tenders.

## **19. Submission, Receiving and Opening of Tenders/Quotations**

- 19.1 Every response to an invitation to tender/quote for a transaction valued over £10,000 should be delivered to the specific Director/Head of Service or Authorised Officer authorised to receive tenders or, where appropriate, to the Procurement Manager:
- (i) no later than the time and date specified for submission of tenders/quotations in the invitation to tender/quotation document
  - (ii) with no labelling or marking indicating the identity of the sender on the envelope or packet
  - (iii) clearly marked in large bold letters with the subject matter to which the tender/quotation relates.
- 19.2 The Tenders/Quotations shall be recorded on the Record of Tenders/Quotes received form, recording the date and time the submission was received.
- 19.3 Tenders and Quotations shall be stored securely and confidentially and shall remain unopened in the custody of the Authorised Officer until the appointed time for opening.
- 19.4 All Tenders and Quotations received shall be numbered, dated and time stamped on receipt and recorded consecutively in a register maintained for this purpose.
- 19.5 A minimum of two persons shall be present at the opening of intermediate value quotations, including a Head of Service or his/her authorised Deputy, or a member of the Shared Services Procurement Team, and one other officer. Upon opening a summary of the main terms of the submission received shall be recorded in the quotation register, together with the name of the Bidder and the date and time of quotation opening
- 19.6 An Authorised Officer from Democratic Services must open all High Value tenders observed by at least one Member of the Council unconnected with the procurement in question. Upon opening, a summary of the main terms of the submission received shall be recorded in the

register of tenders, together with the name of the Tenderer and the date and time of tender opening.

- 19.7 Where the procurement process has been managed through the Shared Services Procurement Team, tenders and quotations may be received and opened by the Procurement & Partnerships Manager or authorised deputy in accordance with the Chorley Borough Council Contract Procedure Rules
- 19.8 No quotations or tenders may be opened after the appointed time unless the Council has received documentary evidence which demonstrates beyond all reasonable doubt that the quotation/tender left the possession of the tenderer in sufficient time to permit, in normal circumstances, its receipt prior to the due date and time specified, provided no quote/tender shall be considered which has been received after other quotes have been opened. In such circumstances, it shall entirely be the tenderers responsibility to track their tender submission, notify the Council and provide the aforementioned evidence, prior to the tender closing date. Any quote/tender which is not considered will be kept by the Authorised Officer and a record kept until a quote/tender is accepted, subject to the preparation of a formal contract. The Authorised Officer will then destroy the unopened quotation three months after the contract award (if any) or quotation/tender opening whichever is later
- 19.9 The closing date for the receipt of tenders/quotations may be extended, in appropriate circumstances, at the discretion of the Legal Services Manager.
- 19.10 Tenders and Quotations shall not be opened until the deadline has passed for their receipt.

## **20. Electronic Tendering**

- 20.1 It is anticipated that the regional e-procurement portal “ The Chest” including software enabling Authorised Officers to carry out all tenders and quotations electronically will be introduced during 2011/12. Following implementation all procurement in excess of £10,000, must be procured through the Chest, by the appropriate authorised officer. This will include making requests for quotation or tender documents electronically available.
- 20.2 Quotation responses and responses to tender invitations and invitations to negotiate above £10k must be submitted to the Councils e-tendering software as this provides a full audit trail including :
- (a) evidence that the transmission was successfully completed is obtained and recorded;
  - (b) that tenders submitted electronically are kept in a separate, secure and locked “electronic box” which is not opened until the deadline has passed for receipt of tenders.
- 20.3 Rules for opening electronic quotations and tenders will mirror those outlined in CPR 19 save that the opening process and recording process will be electronic not manual and that the Procurement & Partnerships Manager or authorised deputy will open high value tenders witnessed by another officer from the department concerned.

## **21. Tender Evaluation**

- 21.1 Tenders subject to the EU Regulations shall be evaluated in accordance with the relevant regulations and the evaluation criteria set out in the OJEU notice and invitation to tender. All

other tenders and quotations shall be evaluated in accordance with the evaluation criteria notified to tenderers in the contract notice and/or invitation to tender.

21.2 All contracts, except where lowest price was predetermined to be the appropriate contract award criterion, shall be awarded on the basis of the offer which represents the Most Economically Advantageous Tender to the Council (MEAT).

21.3 MEAT evaluation involves scoring tenders objectively by a panel of officers and/or independent experts using criteria which should:

- be pre-determined and listed in the invitation to tender/ quotation documentation in order of importance;
- be strictly observed at all times throughout the tender process;
- reflect the principles of Best Value;
- include price;
- adopt whole-life costing where appropriate, particularly in the case of capital equipment where the full cost of maintenance, decommissioning and disposal should be taken into account. Additionally the use of energy efficient products or the use of sustainable materials with a longer life span may impact on the whole life cost.
- be capable of objective assessment;
- be weighted according to their respective importance;
- include, where applicable, the quality of the tenderers' proposals to accept a transfer of staff under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE); and
- avoid discrimination or perceived discrimination on the basis of nationality, or other cause contrary to any of the Council's policies.

Where this evaluation methodology is used, any resulting contract must be awarded to the tenderer which submits the most economically advantageous tender, ie the tender that achieves the highest score in the objective assessment.

21.4 The evaluation criteria must be strictly observed at all times through the contract award procedure by any officer involved in the tender evaluation process. The Authorised Officer must keep comprehensive records of the evaluation exercise and the lead officers of the evaluation team shall sign the final selection record.

## **22. Post Tender Negotiation**

22.1 Where a procurement is conducted pursuant to the Regulations through either the open or restricted procedures no post tender negotiations are permitted. The Council may seek clarification from Suppliers where appropriate.

22.2 At all times during the procurement (whether subject to the Regulations or not), the Council shall consider and implement the principles of non-discrimination, equal treatment and transparency.

## **23. Evaluation Team**

23.1 For each contract subject to the Regulations or above £75,000, the Authorised Officer shall form an Evaluation Team with responsibility for evaluating tenders. The Authorised Officer shall keep comprehensive written records of the evaluation exercise and the lead officers of the evaluation team shall sign the final selection record.

## **24. Bonds, Guarantees and Insurance**

24.1 For high value procurements, the evaluation team shall consider as part of its pre-qualification assessment whether a performance bond and/or a parent company guarantee (if applicable) shall be required from the preferred Supplier.

24.2 The Evaluation Team shall consider the appropriate type (employee liability, public liability, professional indemnity, etc.) and level of insurance requirements for each contract.

## **25. Awarding Contracts**

25.1 The Council shall only award a contract where at the time of contract award this represents the Most Economically Advantageous offer or is the lowest price depending on contract award criterion included in the OJEU notice or Invitation to Tender/Quote.

25.2 A contract must only be awarded and signed by a person authorised to do so, who must ensure that the appropriate budget holder has the funds in place to sustain the contract prior to award.

25.3 Unit Directors/ Heads of Service should ensure that proper records of all procurement activity are retained in electronic or hard copy format as appropriate.

25.4 All High Value contract award decisions and any which involve any potential transfer of the Council's employees shall be referred to Executive Cabinet.

25.5 Any procurement of £75,000 or more in value constitutes a key decision and must therefore be included in the relevant Forward Plan as described in the Council's Constitution, before the contract award decision is taken.

25.6 The highest standards of probity are required of all officers and members involved in the procurement, award and management of Council contracts. It is essential to maintain effective audit trails at all stages throughout the procurement procedure particularly where approval or agreement is required.

## **26 Standstill Period**

26.1 TC "

26.2 Once the decision to award a contract is made, each tenderer must be notified in writing on the outcome of the tender process. This notification must include full reasons for the award decision :

- (i) details of the contract award criteria;
- (ii) characteristics and relative advantages of the successful bidder
- (iii) the score the tenderer obtained against those award criteria;
- (iv) the score the winning tenderer obtained; and the name of the winning tenderer.
- (v) a precise statement of the standstill period.

## **27. Contract Award Notice**

All contracts awarded under the Regulations must be announced by means of a Contract Award Notice in OJEU transmitted no later than 48 calendar days after the date of the award.

The Authorised Officer must notify the Procurement Manager of all contracts awarded, irrespective of value, as soon as possible after the Contract Award.

## **28. Letters of Intent**

28.1 Letters of intent shall only be used in exceptional circumstances and, by prior written agreement with the Legal Services Manager, as follows:

- (a) Where a Supplier is required to provide services, supplies or works prior to formal written acceptance by the Council; or
- (b) Where the Council's form of tender does not include a statement that until such time as a formal contract is executed, the Council's written acceptance of a tender shall bind the parties into a contractual relationship

## **29. Contract Terms and Conditions**

29.1 Contracts shall be entered into on the Council's terms and conditions, or an appropriate industry standard form of contract or other form of contract approved by Legal Services. This may be a suppliers contract suitably amended to protect the Council's interests. However where the contract has been tendered the contract shall be in accordance with the tender Conditions. The Contract Conditions shall be included with each purchase order and invitation to tender or negotiate.

29.2 Where contracts are subject to the Regulations, the rules relating to technical specifications shall be followed and any reference to a technical standard, make or type shall be prefaced with the words "or equivalent". This requirement applies to both Part A and Part B Services.

## **30. Execution of Contracts**

30.1 Any contracts valued at above £75,000 shall be passed to Legal Services for sealing execution and secure storage, unless otherwise agreed with the Legal Services Manager. All other contracts may be signed by an officer with appropriate delegated authority.

30.2 Electronic signatures may be used in accordance with the Electronic Signature Regulations 2002 provided the sufficiency of security arrangements has been approved by the Legal Services Manager.

### **31. Records of Tenders and Contracts/ Contracts Register**

31.1 The Authorised Officer with delegated authority in respect of a particular procurement shall maintain a list of all tenders received.

31.2 Each Director/Head of Service shall maintain his/her own register of all contracts entered into by his/her department.

31.3 For every individual contract the Authorised Officer shall maintain a contract file.

31.4 The Procurement & Partnerships Manager shall maintain a register of all Higher Value and Intermediate value contracts entered into by the Council.

31.5 Authorised Officers shall notify the Procurement & Partnerships Manager of all intermediate and high value contract awards using the appropriate forms, for entry into the Contracts Register and /or Tender/Quotation Register.

### **32. Approved / Standing List of Contractors**

32.1 The Council may maintain Approved Standing lists of Suppliers that meet its pre-qualification requirements. Quotations and tenders for contracts that are not subject to the Regulations may be invited from Suppliers included on an approved list. Where the Authority intends to use an approved list for services, supplies or works contracts, the Approved List should be reviewed and advertised on a regular basis.

32.2 Each Approved Standing List shall:

- (a) be compiled and maintained by the relevant Authorised Officer;
- (b) contain the names of all persons who wish to be included in it and who after appropriate enquiries have been made by the Authorised Officer concerned, are approved by the Council or Cabinet as provided for in the scheme of delegation; and
- (c) indicate whether a person whose name is included in it is approved for contracts for all, or only some, of the specified values or amounts or categories.

32.3 At least four weeks before each Standing List is first compiled, a notice inviting applications for inclusion in it shall be published in accordance with Contract Procedure Rule 13 if a notice in OJEU is not required.

32.4 Each Standing List shall be amended as required from time to time to include new applications for inclusion and to delete any person no longer thought fit to be included. Each Standing List shall be formally reviewed in the manner set out below by the appropriate Director/ Head of Service at intervals not exceeding three years. At least four weeks before each review, each person whose name appears in the Standing List shall be asked whether s/he wishes his/her name to remain there. Notices inviting applications for inclusion in the list shall be published in the manner provided by Contract Procedure Rule 32.3 above.



32.5 Where an invitation to tender for a contract is limited to those named on the Standing List maintained under this Contract Procedure Rule, an invitation to tender for that contract shall be sent to at least four of the persons on the list. These people will be approved for a contract for that value or amount or of that category, or, if there are fewer than four such persons, to all such persons. If there are more than four people, the Authorised Officer, will select the people who will receive invitations, and the manner in which they are sent. This will be either generally or in relation to a particular contract or to a category of contracts provided that the manner of selection shall include a system of rotation from persons appearing on the Standing List.

### **33. Nominated and Named Sub-contractors**

If a sub-contractor, supplier or sub-consultant is to be nominated or named to a main contractor, quotations or tenders must be invited in accordance with these Contracts Procedure Rules and the terms of the invitation shall be compatible with the main contract.

### **34. Framework Agreements**

34.1 Framework agreements are agreements with suppliers for the provision of supplies, works or services on agreed terms for a specific period. Unlike normal contracts which require certainty (on price, quantity and other details), Framework Agreements usually state only non-binding estimated quantities against which orders are placed as and when required during the contract period (sometimes this procedure is known as “call-off”). As soon as the quantity/price etc are fixed and an order placed, a contract is formed. Frameworks offer benefits of bulk-buying, improved service and reduced administration costs over the period of the arrangement.

34.2 A framework agreement may have the option or requirement for you to hold a “further - competition” with all of the suppliers included on the framework who are capable of meeting your requirement. Quotations invited under a further competition shall be received and opened in accordance with paragraph 19 of these Contract Procedure Rules, unless received and opened by the public sector framework provider (e.g. Yorkshire Purchasing Organisation) on the Council’s behalf, who may receive and open such bids in accordance with their contract procedural rules.

34.3 All Framework agreements procured by the Council must be tendered in accordance with these Contract Procedure Rules.

34.4 Where the Council has entered into a Framework Agreement through procurement or is able to place orders from existing Framework Agreements procured by central government agencies, public sector consortia, other local authorities or other third parties, then the Council may benefit from using those contracts without entering into a full, separate procurement.

34.5 Authorised Officers shall investigate whether call-off contracts or frameworks are relevant to their procurement activity as better value for the Council may be obtained by using an existing Council or other framework.

34.6 Legal/Procurement Advice should be sought in advance before awarding a contract to a supplier using a framework agreement not procured directly by the Council.

34.7 Any appropriate Council Framework Agreements in place shall be used regardless of value, provided the standing order requirements in relation to delegated authority are met. An effective audit trail shall be maintained.

## **35. Joint Procurement**

- 35.1 Any Higher Value joint procurement arrangements (where the Council's portion of the Contract value exceeds £75,000) with other local authorities or public bodies shall be approved by Cabinet or, where a more urgent decision is required, by the relevant member of the Senior Management Team in consultation with the appropriate Cabinet Member.
- 35.2 Any Intermediate Value joint procurement arrangements (where the Council's portion of the Contract value exceeds £10,000) with other local authorities or public bodies shall be approved by The Director/Head of Service.
- 35.3 Approval for Joint Procurement arrangements shall only be given where the joint procurement arrangement assures compliance with the EU Procurement Regulations.
- 35.4 If approval is given for the joint procurement, the parties involved in the procurement should appoint a "lead body" to carry out the procurement. The procurement should then be conducted in accordance with the lead body's Rules. If this approach requires any waivers of the lead body's Rules, it shall be that body's responsibility to seek approval for, and obtain, such waiver(s).

## **36. Procurement by Consultants**

Any consultants used by the Council shall be appointed in accordance with these Contracts Procedure Rules. Where the Council uses consultants to act on its behalf in relation to any procurement, then the Authorised Officer shall ensure that the consultants carry out any procurement in accordance with these Contracts Procedure Rules. No consultant shall make any decision on whether to award a contract or who a contract should be awarded to. The Authorised Officer shall ensure that the consultant's performance is monitored.

## **37. Statistical Returns**

- 37.1 Each year the Council shall make a statistical return to the Department for Communities and Local Government or such other central government department with this responsibility for onward transmission to the European Commission concerning the contracts awarded during the year under the European Regulations.
- 37.2 The Procurement & Partnerships Manager is responsible for this statistical return and will make the necessary arrangements for information to be collected annually. Authorised Officers shall comply with these arrangements.

## **38. Contract Extension/ Variation**

- 38.1 Any contract may be extended or Varied in accordance with its terms (subject to financial resources) by the Director/ Head of Service or delegated officer provided an extension/ variation clause was included for within the contract terms and conditions.
- 38.2 Any extension exceeding £75,000 in value shall require the approval of the Executive Cabinet or relevant Executive Cabinet Portfolio Member.
- 38.3 Any external company, authority, body, consultant or other person managing a contract on behalf of the Council must liaise continuously with the Council's officer responsible for the contract and keep the Council aware of intentions to vary or extend a contract or make any

extra payment in excess of the agreed total contract value. The provisions of paragraph 38.1 above shall apply where applicable.

38.4 Contracts procured under the EU Regulations **must not** be extended or varied without first consulting Legal Services and the Procurement and Partnerships Manager

38.5 The Authorised Officer shall always be satisfied that extension/ variation will achieve Best Value for Money and is reasonable in all the relevant circumstances.

### **39. Termination of Contract**

39.1 For any contract exceeding £75,000 in value, termination shall be approved by the Executive Cabinet or Executive Cabinet Portfolio Member. In emergency situations, the relevant Director may authorise termination of higher value Contracts. In this case, full details including the reason for the contract termination shall be reported back to Council at a later date.

39.2 Contracts of a lesser value than £75,000 may be terminated early by agreement prior to the expiry date or in accordance with the termination provisions set out in the contract. Legal advice should be sought as appropriate.

### **40. Disposing of surplus goods**

40.1 Heads of Service are responsible for the disposal of their own surplus goods and shall make adequate and safe arrangements to do so.

40.2 The same competitive process as for buying supplies, services and works shall also be applied to the disposal of surplus goods unless it has been agreed by the Head of Service that the goods in question are to be disposed of to a charitable/not-for-profit organisation or disposal arrangements have been agreed within the original contract for purchase.

In all other cases, in principle:

- competitive bids need not be invited if the goods are valued at or below £1,000 but you can do so if you wish;
- if the estimated value of the goods is greater than £1,000 (higher value) then (subject to 40.5 below) a minimum of three sealed bids shall be invited.

40.3 If you are in any doubt, professional advice shall be sought when making valuations.

40.4 The highest value unconditional bid received should usually be accepted. If for any reason, it is considered that another (conditional) bid offers better value for money to the Council, the Authorised Officer may choose that bid but must set out in writing the reasons for reaching that conclusion and the evidence on which it is based.

40.5 For higher value items, Authorised Officers may consider sale by auction instead of sealed bids, but before starting this process, must assess the likelihood of achieving best value (taking account of the risks involved and the competitiveness of the market in question) and must also fully account for the total cost of the process including the commission payable to the auction provider.

### **41 Waivers of Contract Procedure Rules**

41.1 Waivers of any of these contract Procedure Rules shall only be given in exceptional circumstances and in all cases must make clear which rules are being waived and be justified because:

- the nature of the market for the works to be carried out or the goods or services to be provided has been investigated and is demonstrated to be such that a departure from the requirements of the Rules is justifiable; or
- the contract is for works, supplies or services that are required in circumstances of extreme urgency that could not reasonably have been foreseen; or
- there are other circumstances which are genuinely exceptional and not of the Council's own making.

41.2 For Higher Value Procurements, approval for waivers to the Rules must be obtained from Cabinet or, if time is of the essence, by delegated decision of a Head of Service in consultation with the Legal Services Manager and the appropriate Cabinet Member on receipt of a written report.

41.3 For intermediate and lower value procurements, waivers may be granted in writing by the appropriate Director/ Head of Service, in consultation with the Legal Services Manager, prior to contract award.

41.4 The Authorised Officer must keep a record of the decision approving a waiver and the reasons for it and forward a copy of this to the Procurement & Partnerships Manager for entry into the appropriate authority register.

41.5 Waivers may not be made retrospectively.

## **42. Non- Compliance**

If it comes to notice of an Authorised Officer that there has been non-compliance with these Contract Procedure Rules in respect of any contract for which s/he is responsible as the Authorised Officer of the procuring department, s/he shall without delay notify the Director of Corporate Governance who shall take such action as s/he deems necessary.

## **43. Review and Amendment of Contract Procedure Rules**

The Monitoring Officer is responsible for keeping the Rules under review ( with a formal review and if necessary revision every three years) and monitoring compliance.

## DEFINITIONS

### **“Annual Procurement Plan”**

A plan identifying major projects so that appropriate resources can be identified. It also provides a basis for PINs and other information provided to suppliers to give advance notice of bidding opportunities;

### **“Authorised Officer”**

An Authorised Officer of the Council with appropriate delegated authority to act on the Council's behalf in accordance with the Constitution

### **“Council”**

“Council” means South Ribble Borough Council

### **“Concession Contract”**

A concession contract is used where the Council wishes to engage a party to provide a service, consideration for which is in the form of the party (“the concessionaire”) being given a right to charge the public for the services being provided.

### **“Best Value for Money”**

The optimum combination of whole life costs and benefits to meet the customer's requirement. Such term equates to the EU procurement requirement “most economically advantageous offer”;

### **“Contracts Register”**

A register held and maintained by the Procurement & Partnerships Manager containing details of contracts entered into by the Authority

### **“Framework Agreement”**

An agreement which allows the Council to call off from a supplier to provide supplies, services or works in accordance with the terms of the agreement. The Framework Agreement itself usually constitutes a non binding offer with no obligations on the Authority to call off from the Supplier. If the Council calls off from the Supplier a binding contract comes into being. A Framework Agreement can be a binding agreement where it is executed as a deed;

### **“ITN”**

Invitation to negotiate;

### **“ITT”**

Invitation to tender;

### **“Key Decision”**

A key decision as defined in the Constitution;

### **“Most Economically Advantageous Offer”**

From the Council's perspective the most economically advantageous offer from a Supplier assessed by reference to relevant evaluation criteria linked to the subject matter of the contract in question for example, quality, price, technical merit, aesthetic and functional characteristics, running costs, cost effectiveness, after sales service and technical assistance, delivery date and delivery period or period of completion;

### **“OJEU”**

Official Journal of the European Union;

**“PIN”**

Prior Information Notice for publication in OJEU;

**PURCHASING CONSORTIUM**

A group of public sector bodies which aggregate their requirements and by doing so exact greater leverage from the market. With the agreement of suppliers, if permissible, the consortium may offer its contracts to other local authorities or public bodies.

**“Regulations”**

The UK regulations implementing the EC public procurement directives;

**“RFQ”**

Request for quotations;

**“STANDING OR APPROVED LISTS OF CONTRACTORS”**

A method of procurement where a list of suppliers is drawn up in response to an advertisement in the relevant trade/local press/ website(s). The potential contractors are vetted using the responses to the Pre-Qualification Questionnaire (PQQ) and the list is then used to select specific suppliers for individual contracts. Care needs to be taken to ensure that the list is carefully managed so that it does not become out dated and that it fully represents the range of innovative solutions that may be available in the market.

**“Supplier”**

Any person or body of persons providing, or seeking to provide, supplies, services or works to the Council.