

## **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 42) and to Concession Contracts (Paragraph 43).
- 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 Quotations for grant funded contracts for goods, services or works, where they are procured by the Council, should be invited, in accordance with these rules, except to the extent that any specific requirements for the receipt of the grant specify different requirements, in which case the specific grant procedures must be followed, and the procurement completed in accordance with the relevant grant procedural requirements.
- 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 and at evaluation/ decision making stages.

### **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. Such declarations should be made as soon as the conflict or potential conflict of interest becomes apparent and should be complete and accurate, noting any involvement the officer has already had, prior to the declaration of interest.
- 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, (e.g. 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 (e.g. 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 Principal Procurement Officer who shall use this information to formulate and publish an Annual Procurement Plan for the Council.
- 4.2 Any procurements planned with a contract value of £75,000 or above should be communicated to Democratic Services for inclusion on the Forward Plan

#### **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 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.
- 5.3 All High Value contract award decisions and any which involve any potential transfer of the Council's employees shall be referred to Executive Cabinet.
- 5.4 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 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 Rules)
  - (b) contracts of employment which make an individual a direct employee of the Council
  - (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 Principal Procurement Officer.

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

- 7.1 Before commencing 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 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 its 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 low value route (below) £10,000 is used, and, after evaluating in accordance with the evaluation criteria, the preferred offer is valued at over £10,000, the matter shall be referred initially to the Director/ Head of Service for approval who shall consult the Legal Services Manager. Provided that the preferred offer is within 10% of the pre-quote estimate, and the Director/Head of Service and the Legal Services Manager are of the opinion that a robust exercise with an appropriate level of competition has been carried out, with a genuine pre-tender estimate, they may collectively approve the contract award.
- 8.7 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 initially to the Director/ Head of Service for approval who shall consult the Legal Services Manager. The Director/Head of Service and 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. Provided that the preferred offer is within 10% of the pre tender estimate and the Director/Head of Service and Legal Services Manager are of the opinion that a robust exercise has been carried out with a genuine pre-tender estimate, they may collectively recommend that the process be continued under the High Value route and that full details of the process followed be included in the subsequent report requesting approval for the award decision to be submitted to Cabinet.
- 8.8 The electronic request for waiver from located on Connect may be used for the purpose of gaining approval described under 8.6 and 8.7.

## **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 (including at least one local supplier where possible); however, evidenced verbal quotations are acceptable. The Authorised Officer should ensure that the number and type of quotations received are appropriate and proportionate to the contract risk and value.
- 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 Request for Quotations shall be invited through the Council's e-procurement portal "The Chest", 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 At least one local supplier should be included in the suppliers to be invited to quote where possible.
- 10.3. 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 the quotation must be received and
  - (c) include the instructions for submission and state that no quotation will be considered unless it is received in accordance with those instructions.
  - (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. The evaluation criteria shall be strictly observed at all times throughout the contract award procedure by any person involved in the evaluation.
- 10.4 Where the risk in a specific procurement is perceived to be high, then that procurement shall be treated as a High Value Procurement.
- 10.5 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 e-procurement portal "The Chest" and where considered appropriate and necessary in order to stimulate suitable and sufficient competition, a trade journal or the local press. 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 26.4, 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, and 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

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 2012 the main current EU thresholds are as follows:

- (a) services contracts £173,934;
- (b) supplies contracts £173,934;                      and
- (c) works contracts £4,348,350.

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 must consult the 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 Chest and where considered appropriate and necessary in order to stimulate suitable and sufficient competition, a trade journal or, the local press. 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 organisations who register their interest will be able to access a pre-qualification questionnaire from the Chest. 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 Under the Negotiated Procedure a notice is placed and participants are selected in the same way as the restricted procedure. The authority would determine the winning offer through negotiation with the participants.
- 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 Under the Competitive Dialogue procedure a notice is placed and participants are selected in the same way as for the restricted procedure. The authority would then conduct a dialogue with those selected to develop their proposed solutions to its requirements before formally closing the dialogue and seeking final tenders from them.
- 16.2 **The Competitive Dialogue procedure may only be used for particularly complex contracts** where at the outset the authority:
- is not objectively able to define the technical means capable of satisfying its needs or objectives; and/or
  - is not objectively able to specify the legal and/or financial make-up of the project

In addition the authority must consider that the use of the open or restricted procedure will not allow the award of the Contract.

16.3 The Competitive Dialogue procedure is not recommended for contracts valued at below EU thresholds. **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** (Not to be used when procuring from a Framework agreement as suppliers on framework agreements are already pre-qualified)

17.1 In all procurements the Council shall only enter into a contract with a Contractor if it is satisfied as to the Contractor's –

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

The level and detail of assessment shall be proportionate to the risk and value of the contract. Shared Financial Services shall be consulted for all procurements above £100,000 for the completion of an appropriate financial assessment.

17.2 Pre-Qualification Questionnaires (PQQ's) may be used to assess a bidders ability to perform the contract in question (selection criteria) but must not be used to assess how a contractor will perform the contract (award criteria). PQQ's are not recommended for contracts below £75,000 in value.

17.3 Template Pre-qualification questionnaires which may be adapted to meet individual procurement requirements are available from the Procurement Team

17.4 Any procurement subject to the Regulations shall be in full compliance with those Regulations. The Regulations stipulate what must and /or may be taken account of, in assessing eligibility, economic and financial standing and technical and /or professional ability.

## **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 tender submission;
- (l) any further information which will inform or assist tenderers in preparing tenders.

## **19. Submission, Receiving and Opening of E- Tenders/Quotations through the Chest**

19.1 Every response to an invitation to tender/quote for a transaction valued over £10,000 must be submitted through the Chest by no later than the time and date specified for submission of tenders/quotations in the invitation to tender/quotation document.

- 19.2 Tenders and Quotations must be stored securely and confidentially on the Chest until the closing date and time has passed.
- 19.3 The Principal Procurement Officer or Authorised deputy shall verify (remove the e-seal) and release all tenders and quotes to the Authorised Officer once the deadline for their receipt has passed. This verification role may be given to a suitably trained Authorised Officer for intermediate value quotes.
- 19.4 The Chest will automatically record the date and time of receipt of each submission and will list late submissions separately. No quotations or tenders which have been received on to the Chest after the deadline for receipt has passed may be considered.
- 19.5 The Principal Procurement Officer or other Authorised Officer shall complete a Record of Tenders/Quotations Received form summarising the quotations received
- 19.6 The Authorised Officer must notify the Principal Procurement Officer of the eventual outcome of the procurement exercise for entry into the Contracts Register by completing and submitting the final sections of the Record of Tenders/Quotations Received Form
- 19.7 The closing date for the receipt of tenders/quotations may be extended, in appropriate circumstances, at the written discretion of the Legal Services Manager.
- 19.8 Tenders and Quotations shall not be opened until the deadline has passed for their receipt.

## **20. Traditional Hard Copy Tenders and Quotes (Exceptional Circumstances Only)**

- 20.1 The Council's preferred method of tendering is by electronic means through the Chest. However, in very exceptional circumstances (e.g. contracts where there are items required, which cannot be submitted electronically), tenders and quotes may be submitted in hard copy format with the prior approval of the Legal Services Manager and the Principal Procurement Officer
- 20.2 Tenders and Quotations received in accordance with Paragraph 20.1 shall be addressed to the Principal Procurement Officer, Shared Financial Services, Town Hall Market Street, Chorley, PR7 1DP in a sealed envelope endorsed with the word "Tender" or "Quotation" as appropriate, followed by the subject matter to which it relates. No marks shall be included upon the envelope that identifies the bidder prior to the opening of the envelope. The Principal Procurement Officer shall record the date and time of receipt of such Tenders and Quotations and shall keep them in a secure place where they shall remain unopened until the time and date specified for their opening.
- 20.3 Tenders and Quotations received in accordance with this paragraph 20 shall be opened by the Principal Procurement Officer or authorised Deputy and at least one other Authorised Officer. An immediate record shall be made of the Tenders/Quotations received including tenderer name, value, and the date and time of opening on the Record of Tenders/Quotes Received Form.

## **21. Evaluation**

- 21.1 Tenders subject to the EU Regulations shall be evaluated in accordance with the 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 or Quote.

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 descending order of importance;
- be weighted according to their respective importance (mandatory for High Value Tenders, optional for intermediate and low value procurement);
- 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;
- 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, i.e. the tender that achieves the highest score in the objective assessment.

21.4 The evaluation criteria must be consistently and 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 including the scores and comments and justification for those scores and shall sign the final selection record.

21.5 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 including the scores and comments and justification for those scores, and the lead officers of the evaluation team shall sign the final selection record.

## **22. Tender/Quotation Clarification**

22.1 Tenderers may request clarification on aspects of the Tender/Quotation documentation prior to submission by submitting a clarification question through the Chest. The Authorised Officer must ensure equal treatment of all bidders, and where relevant should anonymise the question

and publish that together with the response to all potential bidders through the Chest. Care should be taken not to reveal the identity of the Tenderer or any information which may be deemed to be commercially confidential to them during the clarification process.

- 22.2 During the evaluation process, Authorised Officers may clarify aspects of a submitted Tender or a Quotation which are unclear, lacking in detail, ambiguous or appear to show a misunderstanding of the requirements. The areas requiring clarification should be set out in writing by the procurer and a written response requested from the tenderer. All such communications should be issued or recorded through the Chest to ensure a full e-audit trail of the procurement.
- 22.3 For more complex service procurements where officers want to obtain a fuller understanding of bidders proposals and method statements it may be appropriate to hold a clarification meeting. In such circumstances a formal written record of the meeting shall be completed and agreed by all parties. Minor points of clarification and obvious errors (e.g. mathematical error) should be dealt with in accordance with Clause 22.2 above and should not require a meeting.

When conducting clarification, as throughout the procurement process, the Procuring Officer must bear in mind the rules and principles of the EU Regulations i.e. transparency, equal treatment and non-discrimination.

### **23. Errors in Tenders/Quotations**

- 23.1 Errors in Tenders/Quotations must be dealt with by asking the Tenderer to confirm the Tender as submitted or withdraw their bid. However, where a Tenderer has made a visible and genuine arithmetical error they may be given an opportunity to correct that error. Other than where a procurement is being carried out under the Competitive Dialogue or Negotiated procedure where fine tuning and clarification are permitted, no other adjustment, revision or qualification is permitted.
- 23.2 Tenders/Quotations must state how errors in Tenders/Quotations must be dealt with.
- 23.3 Careful consideration must be given to the effect of any procedure adopted when dealing with errors in Tenders and the reflection which any such procedure may have on the integrity on the Officers and Members of the Council. It is essential that whatever procedure is adopted is transparent and fair and equitable to all Tenderers.

### **24 Post Tender Negotiation**

- 24.1 Where 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.
- 24.2 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.

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

- 25.1 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.

25.2 The Authorised Officer shall consider and include, where relevant, in the Tender documentation the appropriate type (employee liability, public liability, professional indemnity, etc.) and level of insurance requirements for each contract.

## **26. Awarding Contracts**

26.1 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.

26.2 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.

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

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

26.5 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.

26.6 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.

## **27 Standstill Period**

27.1 TC "

27.2 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.

## **28. 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 Principal Procurement Officer of all contracts awarded, irrespective of value, as soon as possible after the Contract Award.

## **29. Letters of Intent**

- 29.1 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

## **30. Contract Terms and Conditions**

- 30.1 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 supplier's 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.
- 30.2 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.

## **31. Execution of Contracts**

- 31.1 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.
- 31.2 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.

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

- 32.1 The Authorised Officer with delegated authority in respect of a particular procurement shall maintain a list of all tenders received.
- 32.2 Each Director/Head of Service shall maintain his/her own register of all contracts entered into by his/her department.
- 32.3 The Principal Procurement Officer shall maintain a register of all Higher Value and Intermediate value contracts entered into by the Council.
- 32.4 Authorised Officers shall notify the Principal Procurement Officer of all intermediate and high value contract awards for entry into the Contracts Register by completing and submitting the final sections of the Record of Tenders and Quotations Received Form

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

- 33.1 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.

33.2 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.

33.3 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.

33.4 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.

33.5 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.

#### **34. 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.

#### **35 Framework Agreements**

35.1 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.

35.2 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.

- 35.3 All Framework agreements procured by the Council must be tendered in accordance with these Contract Procedure Rules.
- 35.4 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.
- 35.5 Where a public sector framework is used in accordance with the above provisions, without entering into a full, separate procurement process, all other relevant aspects of these procurement rules will still apply, including any approval which may be required for the procurement award procedure (in this case to use the identified framework), approval for the evaluation criteria and weightings (in the event of a further competition under the framework), and approval for the contact award prior to contract acceptance.
- 35.6 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.
- 35.7 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.
- 35.8 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.

## **36. Joint Procurement**

- 36.1 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.
- 36.2 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.
- 36.3 Approval for Joint Procurement arrangements shall only be given where the joint procurement arrangement assures compliance with the EU Procurement Regulations.
- 36.4 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).

## **37. 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.

### **38. Statistical Returns**

- 38.1 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.
- 38.2 The Principal Procurement Officer 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.

### **39. Contract Extension**

- 39.1 Any contract which has been procured in accordance with these Rules may be extended in accordance with its terms (subject to financial resources) by the Director/ Head of Service or Authorised Officer provided an extension clause was included for within the contract terms and conditions.
- 39.2 Other existing Contracts which have been procured in accordance with these Rules may be extended by the Director/ Head of Service or Authorised Officer, provided that the total period of this and any previous extension will not together exceed 1 year. The authorised officer must keep a record of the reason for the decision to so extend. A formal Waiver of the Rules must be obtained if the proposed extension will add more than £10,000, or more than 20% (whichever is the higher) to the original total Contract value
- 39.3 Any extension exceeding £75,000 in value shall require the approval of the Executive Cabinet or relevant Executive Cabinet Portfolio Member.
- 39.4 If the original contract was subject to the EU procurement regulations, the contract can only be extended within the parameters identified in the original EU contract notice.  
If the contract was not subject to the EU procurement regulations, any extension must not take the total value of the contract above the relevant EU thresholds.
- 39.5 If the contract was awarded as a framework agreement, the total framework period, including any extensions, cannot exceed four years, except in exceptional circumstances relating to the subject of the framework agreement. For example, a longer duration could be justified in order to ensure effective competition if four years would not be sufficient to provide return on investment.
- 39.6 The length of call-offs under a framework agreement should not last for more than four years. The length of call-offs, as with other contracts, should be appropriate to the purchases in question and should reflect value for money considerations. However, individual call-offs from the framework can extend beyond the end date of the framework itself.
- 39.7 When negotiating a contract extension the authorised officer must make every effort to negotiate improved contract terms with regard to the cost and quality and shall always be

satisfied that the extension will achieve Best Value for Money and is reasonable in all the relevant circumstances.

- 39.8 All extensions to any Council contracts must be in writing and reported to the Principal Procurement Officer in order that the Contracts Register can be updated accordingly.
- 39.9 Once a Contract has expired it cannot then be extended.

#### **40 Variations**

- 40.1 Variations to Contract shall be dealt with in accordance with these Contracts Procedure Rules and the Council's Financial Regulations.
- 40.2 All Contract variations must be carried out within the scope of the original Contract. Contract variations that materially effect or change the scope of the original Contract are not allowed.
- 40.3 All Contract variations must be in writing and signed by both the Council and the Contractor except where different provisions are made within the Contract documentation. The value of each variation must be assessed by the Authorised Officer and all necessary approvals sought prior to the variation taking place including registrations on the Council's forward plan if applicable.
- 40.4 Contracts procured under the EU Regulations **must not** be extended or varied without first consulting Legal Services and the Principal Procurement Officer.
- 40.5 The Authorised Officer shall always be satisfied that the variation will achieve Best Value for Money and is reasonable in all the relevant circumstances.

#### **41. Termination of Contract**

- 41.1 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.
- 41.2 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.

#### **42. Disposing of surplus goods**

- 42.1 Heads of Service are responsible for the disposal of their own surplus goods and shall make adequate and safe arrangements to do so.
- 42.2 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 42.5 below) a minimum of three sealed bids shall be invited.

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

42.4 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.

42.5 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.

### **43 Concession Contracts**

The rules apply to Concession Contracts (please refer to the Definitions at the back of this document). A simple example would be a concession to pitch an ice cream van and sell ice cream on council land.

### **44 Waivers of Contract Procedure Rules**

44.1 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.

44.2 For Higher Value Procurements, approval for waivers to the Rules must be obtained from Cabinet.

44.3 For intermediate value procurements, waivers may be granted via the electronic request for waiver form located on Connect (SRBC) / Sharepoint (CBC) by the appropriate Director/ Head of Service, in consultation with the relevant Cabinet Member and the Legal Services Manager, prior to contract award.

44.4 The e-form must be used on all occasions. This will form an e- record of the reasons and justification for the waiver request and the decision.

44.5 Waivers may not be made retrospectively.

### **45. 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.

**46. 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

### **“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”;

### **“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. A simple example would be a concession to pitch an ice cream van and sell ice cream on council land. If unsure as to whether a proposed contract would come within the scope of this definition please consult with the Legal Services Manager.

### **“Contract Award Procedure”**

One of four procedures as set out in Contract Procedure Rules 13 (Open Procedure), 14 (Restricted Procedure), 15 (Negotiated Procedure) or 16 (Competitive Dialogue Procedure)

### **“Contracts Register”**

A register held and maintained by the Principal Procurement Officer 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;

### **“Grant Funded Contract”**

shall mean a contract which is procured by the Council and is funded or part funded by grant monies.

### **“ITN”**

Invitation to negotiate;

### **“ITT”**

Invitation to tender;

### **“Key Decision”**

A key decision is defined as any decision in relation to a Cabinet function which is likely:

(a) to result in the Council incurring expenditure which is, or the making of savings which are, significant. The financial threshold above which expenditure/savings become significant is set at £75,000. This financial threshold is applicable to both the revenue and capital budgets.

(b) to be significant in terms of its effect on the communities living in an area comprising two or more Council wards.

**“Legal Services Manager”**

Legal Services Manager or authorised deputy

**“Local Supplier”**

Any Supplier within the South Ribble borough or any neighbouring borough

**“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.