

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

## **CONTENTS**

1. Introduction
2. Compliance
3. Conflicts of Interest, Gifts and Hospitality
4. Procurement Plan
5. Who has authority to carry out procurement on behalf of the Council
6. Exempt Contracts
7. Pre-Procurement Procedure
8. Calculating the Contract Value
9. Low Value Procurement: Below £20,000
10. Intermediate Value Procurement: £20,000 to £100,000 (Quotations)
11. High Value Procurement; Above £100,000 (Tenders)
12. Contracts Subject to the Regulations: Above the EU Threshold
13. Suitability Assessment and Pre -Qualification
14. The Invitation to Tender
15. Submission, Receiving and Opening of Tenders/Quotations
16. Traditional Hard Copy Tenders
17. Evaluation
18. Tender/Quotation Clarification
19. Errors in Tenders/Quotations
20. Post Tender Negotiation
21. Bonds, Guarantees and Insurance
22. Awarding Contracts
23. Standstill Period
24. Contract Award Notice
25. Letters of Intent
26. Contract Terms and Conditions
27. Execution of Contracts
28. Records of Tenders and Contracts/Contracts Register
29. Approved / Standing Lists of Contractors
30. Nominated and named Sub Contractors
31. Framework Agreements
32. Joint / Collaborative Procurement
33. Procurement by Consultants
34. Contract Extension
35. Variations
36. Termination of Contract
37. Disposing of Surplus Goods
38. Concession Contracts
39. Waivers of Contract Procedure Rules
40. Non-Compliance
41. Change of Authorised Officer
42. Review and Amendment of Contract Procedure Rules
43. Emergency Procedures

## **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 37) and to Concession Contracts (Paragraph 38).
- 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 (2015);
  - 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 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. Corporate Plan, Procurement Strategy and 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, Gifts & Hospitality**

- 3.1 Every officer entitled to buy supplies, services or works shall comply with the requirements of the Officer Code of Conduct in respect of conflicts of interest, 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 £20,000) 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 an Annual Procurement Plan for the Council.
- 4.2 Any procurements planned with a contract value of £100,000 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 (Scheme of Delegation). 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 Revenue Expenditure**

Subject to the provisions of Paragraph 5.6, Directors and their Authorised Officers may seek Tenders and Quotations in accordance with these Contracts Procedure Rules for any item of revenue expenditure for which budget provision has been made, and may accept such Tenders/ Quotations in accordance with these Contracts Procedure Rules, up to a total contract value of £100,000. Contract awards above £100,000 constitute a Key Decision and must appear on the Forward Plan.

### **5.3 Capital Expenditure.**

Subject to the provisions of Paragraph 5.6, Directors and their Authorised Officers may seek Tenders and Quotations in accordance with these Contracts Procedure Rules, the particulars of which are shown as approved in the Council's capital programme for the

current financial year and which have also been approved/comply with any additional requirements of the Council's Financial Regulations. Directors and their Authorised Officers may accept Tenders /Quotations in accordance with these Contracts Procedure Rules and the Council's Financial Regulations up to a total contract value of £100,000. Contract awards above 100,000 constitute a Key Decision and Cabinet authority must be obtained. Such proposed decisions must appear on the Forward Plan.

- 5.4 For the sake of clarity the decision to commence a procurement exercise (as opposed to a decision to award a contract in the circumstances described in paragraphs 5.2 and 5.3 above) is not deemed to be a Key Decision unless the decision forms part of and is taken at the same time as a decision that will result in a change to service provision which will have a significant effect on two or more wards of the Council
- 5.5 Any procurement which involves the transfer of Council Staff shall be treated as a High Value (above £100,000) Procurement and, as such, Cabinet authority must be sought for such acceptance.
- 5.6 For all High Value Procurements above the EU threshold, prior approval of the proposed contract award procedure including the evaluation criteria and weightings to be applied, shall be sought from the relevant Executive Cabinet Portfolio Member as a delegated decision.

## **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 Contracts Procedure 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)
  - (d) contracts for advice by and representation by a lawyer with regard to legal proceedings (or contemplated legal proceedings)

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 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) satisfy themselves that they have the necessary authority to deal with the procurement and that there is budget provision for the procurement in accordance with the provisions of Rule 5
- (d) undertake a risk assessment
- (e) complete an Equality Impact Assessment where any change in service provision is proposed that will have Equality Impacts
- (f) 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 your SMT member 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 it is proposed to procure a Contract on terms which will provide for renewal on a "rolling" basis, the Authorised Officer must make a reasonable estimate of the term of the contract in order to estimate the Contract Value. If during the term of the Contract it appears that the estimated Contract Value may be exceeded by anticipated further renewals of the contract, the provisions for contract extension at paragraphs 34.2 to 34.5 shall apply. This rule shall not apply to rolling contracts where the annual value is below £10,000. Such contracts shall be subject to an annual review.
- 8.3 Circumstances may arise where a number of low value contracts of the same type, for regular, routine, similar goods or services for similar 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.
  - 8.3.1 The requirement to aggregate under the circumstances described at 8.3 will not apply where The Authorised Officer identifies that the spend activity is:
    - (a) unknown or unplanned and therefore cannot be specified at the commencement of the 12 months period or
    - (b) of a similar general category but is so varied that it would be impractical or difficult to specify, the aggregate annual value is less than £20,000, and a blanket

discount arrangement, schedule of rates or other such general framework agreement would be impractical and lead to additional cost.

- 8.3.2 In any event, the Authorised Officer shall ensure that best value is achieved, make best use of the Council's purchasing power by aggregating where appropriate, undertake periodic review of the procurement decision, and keep appropriate records including the reason for any decision not to aggregate, throughout.
- 8.4 Authorised Officers should make the best use of the Council's purchasing power by aggregating purchases wherever possible
- 8.5 Contracts must comply with the Public Contracts Regulations and must not be artificially split to avoid these Rules or the Regulations
- 8.6 If, following calculation of the estimated value, the low value route (below) £20,000 is used, and, after evaluating in accordance with the evaluation criteria, the preferred offer is valued at over £20,000, 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 £100,000) is selected, and, after evaluating in accordance with the evaluation criteria, the preferred offer is valued at over £100,000, 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 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. Provided that the preferred offer is within 10% of the pre tender estimate and the Director/Head of Service and the 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.

## **9. Low Value Procurement: Below £20,000**

- 9.1 Where the estimated value or amount of the proposed contract is less than £20,000, 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. Where the estimated value or amount of the proposed contract is more than £10,000 the expectation is that at least 3 Request for Quotations shall be invited via email or through the Council's e-procurement portal "The Chest" – if this does not happen then the reasons for not so doing should be recorded.
- 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: £20,000 to £100,000 (Quotations)**

10.1 For procurements valued over £20,000 but at or below £100,000 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.

10.2 Where an Intermediate Value procurement is above £25,000 in value, and is openly advertised, the 2015 Public Contracts Regulations require that the opportunity is also advertised on the Government one stop shop "Contracts Finder". Additionally, for all contract awards above £25,000, whether the opportunity was openly advertised or not, a Contract Award Notice must be published on Contracts Finder. In both instances, the notices must include the specific details listed in the Regulations, and in both instances, these notices may be accommodated through the Chest.

10.3 At least one local supplier should be included in the suppliers to be invited to quote where possible.

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 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.

10.5 Where the risk in a specific procurement is perceived to be high, then that procurement shall be treated as a High Value Procurement.

10.6 Any procurement that may involve a transfer of Council staff shall be treated as a High Value Procurement.

**11. High Value Procurements: Above £100,000 (Tenders)**

11.1 All Procurements with a cumulative value of over £100,000 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".
- 11.4 In addition to advertising on the Chest, all High Value procurements shall be advertised on the Government one stop shop "Contracts Finder" in accordance with the 2015 Public Contracts Regulations. Additionally, for these procurements, a Contract Award Notice must also be published on Contracts Finder. In both instances, the notices must include the specific details listed in the Regulations, and in both instances, these notices can be accommodated through the Chest.
- 11.5 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 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 Competitive Procedure with Negotiation, Competitive Dialogue or Innovation Partnership 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 published by the EU Publications Office and must not contain any information additional to that contained in the contract notice.

- 12.2 With effect from 1 January 2018 the EU thresholds are as follows:

- (a) Services contracts £181,302;
- (b) Supplies contracts £181,302;
- (c) Schedule 3 (Social & Other Specific) services contracts £615,278
- (d) Works contracts £4,551,413                      and
- (e) Concessions £4,551,413

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

- 12.3 The EU Directives and UK Regulations are long and complex, and set out minimum timescales for receipt of expressions of interest and tenders. Officers **must** consult the Shared Procurement Team and Legal Services department prior to commencing any procurement which is subject to the Regulations.

## **13. Suitability Assessment & Pre-Qualification** (Not to be used when procuring from a Framework agreement as suppliers on framework agreements are already pre-qualified)

- 13.1 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, prior to contract award.

- 13.2 A pre-qualification stage is not permitted in any procurement below the EU threshold for Goods and Services. (currently £181,302 for calendar years 2018/19. -This threshold is updated every two years.) However, suitability assessment questions relating to a potential provider may be asked provided that the questions are relevant and proportionate to the subject matter of the procurement.
- 13.3 A pre-qualification stage may be used in above EU threshold contracts. However, in all instances, statutory guidance published by Crown Commercial Service (CCS) must be followed. This includes use of a core set of standardised questions. For further information and advice, Authorised Officers should contact the Shared Procurement Team.
- 13.4 Where appropriate, bidders may self-certify during the tender/ quotation process, with relevant and proportionate checks only being carried out on the shortlisted bidder.
- 13.5 Any procurement subject to the Regulations shall be in full compliance with those Regulations and the statutory Crown Commercial Service guidance. 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.

#### **14 The Invitation to Tender**

- 14.1 The ITT 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;
  - (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.

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

- 15.1 Every response to an invitation to tender/quote for a transaction valued over £20,000 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.
- 15.2 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.

- 15.3 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.
- 15.4 The Principal Procurement Officer or other Authorised Officer shall complete a Record of Tenders/Quotations Received form summarising the quotations received.
- 15.5 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.
- 15.6 The closing date for the receipt of tenders/quotations may be extended, in appropriate circumstances, at the written discretion of the Legal Services Manager.
- 15.7 Tenders and Quotations shall not be opened until the deadline has passed for their receipt.

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

- 16.1 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.
- 16.2 Tenders and Quotations received in accordance with Paragraph 16.1 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.
- 16.3 Tenders and Quotations received in accordance with this paragraph 16 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.

## **17. Evaluation**

- 17.1 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.
- 17.2 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).
- 17.3 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. This is mandatory for High Value Tenders and recommended for intermediate value procurements. Authorised officers must consult the Principal Procurement Officer where it is intended not to follow this recommendation for intermediate value procurements above £50,000 and provide a valid justification for this.;
- 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.

- 17.4 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.
- 17.5 For each contract above £100,000, 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.

## **18. Tender/Quotation Clarification**

- 18.1 Bidders 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.
- 18.2 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 bidder. All such

communications should be issued or recorded through the Chest to ensure a full e-audit trail of the procurement.

- 18.3 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 18.2 above and should not require a meeting.

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

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

- 19.1 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 specifically provided for in the Regulations (e.g when using the Competitive Dialogue procedure) no other adjustment, revision or qualification is permitted.
- 19.2 Tenders/Quotations must state how errors in Tenders/Quotations must be dealt with.
- 19.3 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 the procedure adopted is transparent, fair and equitable with equal treatment to all bidders.

## **20 Post Tender Negotiation**

- 20.1 Where procurement is conducted pursuant to the Regulations through either the Open or Restricted procedures no post tender negotiations are permitted. However, the Council may seek clarification from Suppliers where appropriate.
- 20.2 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.

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

- 21.1 For high value procurements, the Authorised Officer shall consider and include in the procurement documentation, whether a performance bond and/or a parent company guarantee (if applicable) shall be required from the preferred Supplier.
- 21.2 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.

## **22 Awarding Contracts**

- 22.1 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.

- 22.2 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.
- 22.3 Directors/Heads of Service should ensure that proper records of all procurement activity are retained in electronic or hard copy format as appropriate.
- 22.4 All High Value contract award decisions and any which involve any potential transfer of the Council's employees shall be referred to Executive Cabinet.
- 22.5 Any procurement of £100,000 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.
- 22.6 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.

## **23 Standstill Period**

- 23.1 TC "0

## **24. Contract Award Notice**

- 24.1 All contracts awarded under the Regulations must be announced by means of a Contract Award Notice in OJEU transmitted no later than 30 calendar days after the date of the award.
- 24.2 All contracts awarded above £25,000 in value whether openly advertised or not must be published on Contracts Finder in accordance with the Regulations and published Crown Commercial Service (CCS) guidance.

## **25. Letters of Intent**

- 25.1 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.

## **26. Contract Terms and Conditions**

- 26.1 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.

- 26.2 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".

## **27. Execution of Contracts**

- 27.1 Any contracts valued at above £100,000 shall be passed to Legal Services for sealing execution and secure storage, unless otherwise agreed with the Legal Services Manager.
- 27.2 All contracts valued at above £20,000 but below £100,000 should be signed by at least two appropriately Authorised Officers.
- 27.3 All other contracts may be signed by an officer with the appropriate authority.
- 27.4 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.

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

- 28.1 Each Director/Head of Service shall maintain his/her own register of all contracts entered into by his/her department.
- 28.2 The Principal Procurement Officer shall maintain a register of all Higher Value and Intermediate value contracts entered into by the Council.
- 28.3 Authorised Officers shall notify the Principal Procurement Officer of all intermediate and high value contract awards for entry into the Contracts/ Transparency Register by completing and submitting the final sections of the Record of Tenders and Quotations Received Form.
- 28.4 Additionally the Authorised Officer must notify the Principal Procurement Officer of all contracts awarded, above £5000, as soon as possible after the Contract Award, for inclusion in the Contract/Transparency Register.

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

- 29.1 The Council may maintain Approved Standing lists of Suppliers that meet its suitability 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.
- 29.2 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.
- 29.3 At least four weeks before each Standing List is first compiled, a notice inviting applications for

inclusion in it shall be published on the Chest, and where relevant Contracts Finder

- 29.4 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 29.3 above.
- 29.5 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.

### **30. 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.

### **31 Framework Agreements**

- 31.1 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 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.
- 31.2 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 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.
- 31.3 All Framework agreements procured by the Council must be tendered in accordance with these Contract Procedure Rules.
- 31.4 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.
- 31.5 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.

- 31.6 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.
- 31.7 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.
- 31.8 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.

### **32. Joint / Collaborative Procurement**

- 32.1 Authority to engage in joint/ collaborative procurement activity shall be in accordance with the requirements of paragraph 5. However, in the event that the joint/ collaborative procurement activity requires a commitment at the outset, prior to bids being invited, Cabinet approval must be obtained prior to committing to the joint/ collaborative procurement where the estimated value of the Council's proportion of the procurement exceeds £100,000.
- 32.2 The Authorised Officer shall ensure that the joint/collaborative procurement activity complies fully with the EU Procurement Regulations
- 32.3 In any joint or collaborative procurement process 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).

### **33. 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.

### **34. Contract Extension**

- 34.1 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.
- 34.2 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 £20,000, or more than 20% (whichever is the higher) to the original total Contract value.

- 34.3 Any extension exceeding £100,000 in value shall require the approval of the Executive Cabinet or relevant Executive Cabinet Portfolio Member.
- 34.4 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.
- 34.5 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.
- 34.6 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.
- 34.7 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.
- 34.8 Once a Contract has expired it cannot then be extended.

### **35 Variations**

- 35.1 Variations to Contract shall be dealt with in accordance with these Contracts Procedure Rules and the Council's Financial Regulations.
- 35.2 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.
- 35.3 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 registration on the Council's forward plan if applicable.
- 35.4 Contracts procured under the EU Regulations **must not** be extended or varied without first consulting Legal Services and the Principal Procurement Officer.
- 35.5 The Authorised Officer shall always be satisfied that the variation will achieve Best Value for Money and is reasonable in all the relevant circumstances.

### **36. Termination of Contract**

- 36.1 For any contract exceeding £100,000 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.
- 36.2 Contracts of a lesser value than £100,000 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.

### **37. Disposing of surplus goods**

- 37.1 Heads of Service are responsible for the disposal of their own surplus goods and shall make adequate and safe arrangements to do so.
- 37.2 An appropriate competitive process shall 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.

### **38 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.

### **39 Waivers of Contract Procedure Rules**

- 39.1 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.
- 39.2 For Higher Value Procurements, approval for waivers to the Rules must be obtained from Cabinet.
- 39.3 For intermediate value procurements, waivers may be granted by the appropriate Director/Head of Service, in consultation with the relevant Cabinet Member and the Legal Services Manager, prior to contract award.
- 39.4 An e-form will be developed for the purpose of requesting, securing and recording approval for Intermediate Value Waivers. This must be used on all occasions when it is available. In the meantime, a paper report should be produced and retained for this purpose.
- 39.5 Waivers may not be made retrospectively.

### **40. Non-Compliance**

If it comes to the 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 Monitoring Officer who shall take such action as s/he deems necessary. Further if there is any

discrepancy between the amount of the Contract Award and the amount actually paid then the matter should also be brought to the attention of the Monitoring Officer without further delay.

**41. Change of Authorised Officer**

If during the life of a contract there is a change in the Authorised officer who is leading on that particular contract then the outgoing officer should ensure that the new Authorised Officer is fully briefed on all relevant issues relating to that contract.

**42. 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.

**43. Emergency Procedures**

Where a need for urgent action arises between meetings of the Cabinet, but is not considered sufficient justification for calling a special meeting, such decision may be taken by the Chief Executive (or other designated officer) in accordance with the requirements of Standing Order Number 38 of the Council's Procedure Rules (standing Orders). Officers should refer to the Constitution or contact Legal Services for further advice and information.

## **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 Finder”**

Contracts Finder is the Government’s one stop shop for suppliers to find new procurement opportunities totally free of charge, specifically referred to in the 2015 Public Procurement Regulations

### **“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:

January 2018

(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 £100,000. 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.

**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.