

# Contract Procedure Rules

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**POLICY STATEMENT:** It is the Council's policy that its Contract Procedure Rules are intended to ensure that proper procedures are followed to protect public funds, produce a tendering and selection process which is open, fair and transparent and contract documentation which incorporates certain essential terms and conditions. In all cases, these Rules may be superseded by the requirements of UK legislation and the EU public procurement regime where applicable and compliance with UK and EU law is the primary consideration in considering any contract. In using these Rules all employees of the Council shall comply with the guidance set out in the Council's Code of Practice on Ordering, Quotations and Tendering Procedures. This Code is produced by the Director of Resources and is intended to ensure the proper administration of the Council's financial affairs in this area.

**1. COMPLIANCE WITH THESE RULES, UNITED KINGDOM LEGISLATION AND EUROPEAN UNION (EU) LAW**

- 1.1 Every contract for the supply of goods, materials or services, or for the execution of works, made by the Council, or by a duly authorised Chief Officer, the Cabinet, or the relevant Cabinet Member acting on its behalf shall comply with the EU Treaties and with any relevant Directives of the EU, with all relevant UK statutory requirements and, except as otherwise provided, these Rules and the Council's Financial Procedure Rules. Where the Council is acting as agent for North Yorkshire County Council or any other principal nothing in these Contract Procedure Rules shall be taken to authorise any departure from the terms of any agency agreement or from the instructions of the principal.
- 1.2 It shall be a condition of any contract between the Council and any person (not being an Officer of the Council) who is appointed to act on its behalf as an agent, consultant or otherwise in relation to a contract that the requirements of these Rules and related Financial Procedure Rules apply to that person as they do to a Chief Officer of the Council.
- 1.3 The terms of these Contract Procedure Rules are subject to other rules of the Council set out in this Constitution namely the Access to Information rules, the Executive Procedure Rules, the Financial Procedure Rules and any other rules which may be appropriate.
- 1.4 Exemption from any of the following provisions of these Rules may be made only by direction of the Cabinet and after consideration of a written report from the appropriate Chief Officer in special circumstances save that in contracts not exceeding £500,000 in value to be let by the Harrogate International Centre ("HIC") the Director of the HIC, in consultation with the HIC Board of Management, shall decide whether such exemption is justified. No exemption shall be granted if the EU public procurement regime applies.

- 1.5 A record of any exemption made in accordance with Rule 1.4 shall be made and kept in accordance with the Constitution of the Council.
- 1.6 Where an exemption is necessary because of an unforeseeable emergency involving immediate risks to persons, property or serious disruption to Council services, Chief Officers may approve the exemption but they must prepare a report for the next Cabinet meeting to set out the action taken.
- 1.7 It shall be left to the discretion of the appropriate Cabinet Member to decide in exceptional cases whether or not these Rules should be complied with for the supply of specialist articles, specialist services or proprietary goods which are obtainable only from one contractor and for which no reasonably satisfactory alternative is available notwithstanding the amount involved. The decision of the appropriate Cabinet Member must be recorded in writing in accordance with the Constitution of the Council.
- 1.8 These Contract Procedure Rules do not apply to contracts of employment for the Council's employees; the engagement of Counsel or the acquisition, disposal or transfer of land.

## **2. INVITATION OF TENDERS AND QUOTATIONS**

- 2.1 Where the estimated value (exclusive of Value Added Tax) of a proposed contract is equal to or exceeds £50,000 tenders shall be invited.
  - 2.1.1 The appropriate Chief Officer must first consider whether a Prior Indicative Notice (PIN) should be placed in the Official Journal of the European Union (OJEU) or the Tender Electronic Daily (TED).
  - 2.1.2 The appropriate Chief Officer shall then determine the method of tendering except that in the cases of single (Rule 5) and serial (Rule 6) tendering where the contract to be let does not exceed £500,000 in value the appropriate Cabinet Member so decides. In equivalent contracts to be let by the HIC the Director of the HIC should consult with the HIC Board of Management. Chief Officers must ensure compliance with the EU public procurement regime.
  - 2.1.3 In all contracts where the estimated value of a proposed contract is equal to or exceeds £500,000 the Cabinet shall determine the method of tendering (including Rule 5 and 6) subject to compliance with the EU public procurement regime.
- 2.2 Where the estimated value of a proposed contract is less than £50,000 but is equal to, or exceeds, £10,000, the appropriate Chief Officer shall

determine whether tenders should be invited and, if so, which method of tendering (if any) should be used.

- 2.2.1 If Rule 5 or Rule 6 is selected then the appropriate Cabinet Member should approve the use of these methods of tendering except in relation to contracts of this value proposed to be let by the HIC where the Director of the HIC may approve the use of Rule 5 or Rule 6 in consultation with the HIC Board of Management.
- 2.2.2 In relation to contracts of this value where none of the formal tendering procedures are deemed appropriate, written quotations must be obtained from at least three persons.
- 2.3 Where the estimated value of a proposed contract is less than £10,000 then Financial Procedure Rule 10 applies and must be complied with. This means that written quotations can be obtained from at least 3 persons but this is not compulsory.

### 3. **SELECTIVE TENDERING**

#### 3.1 Ad hoc List : Public Notices And Invitations To Tender

- 3.1.1 This Rule shall apply where the appropriate Chief Officer has decided that invitations to tender for a contract are to be made to some or all of those persons who have replied to a public notice.
- 3.1.2 For the purpose of this Rule, public notice shall be given:-
- (i) in at least one local newspaper; and
  - (ii) where the estimated value of the contract is equal to or exceeds £50,000 in at least one newspaper or journal circulating among persons who undertake such contracts.
  - (iii) If a notice is placed in the Official Journal of the European Union (“OJEU”) then, at the discretion of the appropriate Chief Officer and subject to compliance with any specific UK statute or regulations, the notices in (i) and (ii) above need not be published. A notice must not be published at national or local level before the OJEU notice is published and it must not at any time contain information additional to that published in the OJEU.
- 3.1.3 The public notice for the purposes of Rule 3.1.2 (i) and (ii) above, shall:-
- (i) specify in reasonable detail the contract into which the Council wishes to enter; and
  - (ii) invite persons interested to apply for permission to tender; and

- (iii) specify a time limit, being not less than 10 working days, within which such applications are to be submitted to the Council.

A notice required to be placed in the OJEU must strictly comply with the relevant EU Directive

3.1.4 After the expiry of the period specified in the public notice invitations to tender for the contract shall be sent to:-

- (i) not less than three of the persons who applied for permission to tender, selected by the appropriate Chief Officer
- (ii) where fewer than three persons have applied or are considered suitable, those persons which the appropriate Chief Officer considers suitable.
- (iii) Where a notice has been required to be published in the OJEU specific regulations may apply as to the time limits to allow expressions of interest to be made and as to the selection of persons invited to tender. The relevant EU Directive and Regulations must then be applied.

### 3.2 Standing Approved List : Limited Invitations to Tender

3.2.1 This Rule shall apply where the appropriate Chief Officer has decided that invitations to tender for a contract are to be limited to those persons whose names are included in a list compiled and maintained for that purpose. This Contract Procedure Rule is in all cases subject to, and may be overridden by, the requirements of the EU public procurement regime.

3.2.2 The said list shall:-

- (i) be compiled and maintained by the appropriate Chief Officer(s);
- (ii) contain the names of all persons who wish to be included and who are approved by the appropriate Chief Officer(s);
- (iii) indicate in respect of a person whose name is so included, the categories and value of contracts in respect of which approval has been given.

3.2.3

- (i) In accordance with Council policy, Standing Lists shall be compiled using the Constructionline register of local and national pre-qualified construction and construction

related contractors and consultants. Before they can be registered, firms have to satisfy Constructionline's own pre-qualification commercial, financial and technical criteria. Registered firms are then reassessed each year on financial standing and on a rolling basis for technical competence.

- (ii) Where the estimated value of a contract is equal to or exceeds £500,000, potential tenderers must also be the subject of specific approval by the Director of Resources from a financial vetting viewpoint, after consideration of a report from a specialist finance organisation approved by the Director, on the potential tenderer's credit worthiness and financial strength.

3.2.4 The lists shall be reviewed at regular intervals taking into account updated information from Constructionline, internal and external feedback on performance, overall workload, litigation or financial matters. The appropriate Chief Officer may approve the addition or deletion of persons to or from the Lists.

3.2.5 Invitations to tender for a contract shall be sent to:-

- (i) not less than three of those persons selected by the appropriate Chief Officer from the list of those approved for a contract of the relevant category and value; or
- (ii) where fewer than three persons are approved for a contract of the relevant category and value, all those persons on the list.

3.2.6 In exceptional cases and in consultation with the Director of Resources the appropriate Chief Officer may invite tenders in accordance with Rule 3.2.5 from persons on the Standing Approved Lists maintained by other organisations approved by the Director of Resources.

3.2.7 In inviting applications for inclusion on a list of tenderers or in selecting persons from whom tenders are to be invited the appropriate Chief Officer shall take all appropriate steps to ensure fair competition by using an appropriate and equitable method of rotation for selecting tenderers.

#### **4. OPEN TENDERING**

4.1 This Rule shall apply where the appropriate Chief Officer has decided that tenders for a contract are to be obtained by open competition.

4.2 At least 10 days public notice shall be given in one or more local newspapers and also, where the value of the contract is equal to or exceeds £50,000, in one or more national newspapers or journals

circulating among such persons as undertake such contracts. The notice shall express the nature and purpose of the contract, state where further details may be obtained, invite tenders for its execution and state the place, last date and time when tenders will be received.

- 4.3 If a notice is required to be placed in the OJEU then the provisos in Rule 3.1.2 (iii) will apply.

## **5. SINGLE TENDERING**

- 5.1 This Rule shall apply in exceptional circumstances to contracts to be let not exceeding £500,000 in estimated value where the appropriate Cabinet Member has decided in the best interests of the Council that a tender be invited from a single Contractor selected by the appropriate Chief Officer or negotiated with a Contractor already engaged by the Council. The Director of HIC shall in equivalent circumstances consult with the HIC Board of Management and in relation to contracts not exceeding £500,000 in estimated value may decide that the single tendering process shall be used in the best interests of the Council.
- 5.2 In all contracts equal to or exceeding £500,000 in estimated value the Cabinet shall decide whether the single tendering process shall be used in the best interests of the Council.

## **6. SERIAL TENDERING**

- 6.1 This Rule shall apply in exceptional circumstances to contracts to be let not exceeding £500,000 in estimated value where the appropriate Cabinet Member has decided that tenders for a contract, where that contract forms part of a serial programme, are to be obtained by negotiation with a particular Contractor in the best interests of the Council. The Director of HIC shall in equivalent circumstances consult with the HIC Board of Management.
- 6.2 In all contracts equal to or exceeding £500,000 in estimated value the Cabinet shall decide that the serial tendering process shall apply.
- 6.3 The basis of the said negotiation shall be the rates and prices contained in the initial contract awarded competitively following an invitation to tender in accordance with Rules 3 or 4 and the negotiations must be recorded in writing by the appropriate Chief Officer.

## **7. SUBMISSION OF TENDERS AND QUOTATIONS**

- 7.1 Where in pursuance of these Rules an invitation to tender or quote is issued, other than under Rule 2.3, every such invitation shall state that no tender or quotation will be considered unless it is enclosed in a



sealed envelope provided by the Council which shall bear the word "Tender" or "Quotation" as appropriate - followed by a brief description of the subject to which it relates but having no other name, address, postal franking or other mark indicating the identity of the sender. Every invitation to tender or quote should state that the Council does not bind itself to accept the lowest tender or quotation or any bid received.

7.2 The tenders or quotations shall be kept in the custody of the Director of Resources or the appropriate Chief Officer respectively until the time and date specified for their opening.

7.3 No tender or quotation received after the time and date specified in the invitation shall be considered unless there is clear evidence that it was posted by first class post at least the day before tenders or quotations were due to be received.

## **8. OPENING OF TENDERS AND QUOTATIONS**

8.1 The Director of Resources shall be notified in advance of the time and place of the opening of tenders received in accordance with Rules 3 or 4 and may be represented on that occasion.

8.2 The appropriate Cabinet Member shall be notified in advance of the time and place of opening of tenders received in accordance with Rules 3 or 4 and may be present on that occasion.

8.3 Tenders received under Rules 3 or 4 shall be opened on the same occasion in the presence of:-

- (i) the Director of Resources or an officer of the Council designated by that Director; and
- (ii) the appropriate Chief Officer or an officer of the Council designated by that Chief Officer

8.4 A tender received under Rules 5 or 6 or quotations received under Rule 2.2 shall be opened on the same occasion in the presence of:-

- (i) the appropriate Chief Officer or an officer designated by that Chief Officer; and
- (ii) another member of staff designated by the appropriate Chief Officer.

8.5 All tenders or quotations so received shall be recorded in detail, in writing, and that record shall be certified by the signature of all the persons present at the opening. A copy of this record shall be sent to the Director of Resources.

8.6 No persons other than the designated Cabinet Member and officers shall be present at the opening of tenders and/or quotations unless, in exceptional circumstances, approval is given by the Director of Resources. The Director of Resources may require such persons to sign a confidentiality agreement.

## 9. ACCEPTANCE OF TENDERS AND QUOTATIONS

9.1 The appropriate Chief Officer shall have the authority to accept the verified lowest tender or quotation, if payment is to be made by the Council, or the verified highest tender or quotation if payment is to be received by the Council.

9.2 In respect of accepting the most economically advantageous tender or quotation (ie other than the verified lowest) where the estimated value of the contract does not exceed £10,000, the appropriate Chief Officer shall have the authority to accept such a tender or quotation.

9.2.1 Where the estimated value of a contract exceeds £10,000 but does not exceed £50,000 the appropriate Chief Officer shall have the authority to accept the most economically advantageous tender or quotation provided that:

- i) the selection of the successful tender is made in accordance with pre-determined evaluation criteria recorded in writing; and
- ii) the reasons for accepting other than the verified lowest tender or quotation are recorded in writing.

9.2.2 Where the estimated value of a contract exceeds £50,000 but does not exceed £150,000, the appropriate Chief Officer shall have the authority to accept the most economically advantageous lowest tender provided that, in addition to the conditions set out at 9.2.1(i) and 9.2.1(ii), he/she consults the Director of Resources.

9.2.3 Where the estimated value of a contract exceeds £150,000, but does not exceed £500,000, acceptance of the most economically advantageous tender must be subject to the approval of the appropriate Cabinet Member, in addition to the conditions set out at 9.2.1(i), 9.2.1(ii) and 9.2.2.

9.2.4 The Director of the HIC, after consultation with the HIC Board of Management shall have authority to accept the most economically advantageous tender or quotation in all contracts not exceeding £500,000 in value relating to the HIC.

9.2.5 In all cases, the approval of Cabinet is required for the acceptance of the most economically advantageous tender where the estimated value exceeds £500,000.

9.3 Acceptance must be subject to:-

- (i) financial and other enquiries being made;
- (ii) checking of the tender or quotation and related documents;
- (iii) provision and execution of a bond, parent company guarantee and/or other security where required;
- (iv) appropriate and sufficient insurance cover being obtained where required which must be verified before works commence;
- (v) completion of a formal contract document where required;
- (vi) fulfilment of any other requirements of the Council's Financial Procedure Rules.

9.4 Immediately following the opening procedures laid down by these Rules tender(s) or quotation(s) as appropriate and all related documents should be checked by the appropriate Chief Officer or other person appointed to act on the Council's behalf in relation to contracts (see Rule 1.2).

9.5 If any arithmetical error or other discrepancy is found which would affect the tender in an otherwise successful tender, the tenderer should be given details of the error or discrepancy and afforded an opportunity of confirming, correcting or withdrawing his offer (subject to the conditions of tender and/or contract in each instance) but no additional information about the other tenderers or the tendering process should be given.

9.6 Where the verified lowest tender is to be accepted, if the error or discrepancy is of such consequence that the tender or quotation cannot be confirmed as the lowest or if the tenderer withdraws, then the next lowest tender will be checked, examined and dealt with in the same way.

9.7 Where the acceptance of a tender is likely to result in the approved budget being exceeded, or where a tenderer indicates strictly in accordance with the Conditions of Tender an alternative to an item specified and as a result there is potential cost saving to the Council the appropriate Chief Officer may decide in consultation with the Director of Resources that post-tender negotiations are to be conducted with the preferred tenderer.

- 9.8 The basis of the negotiation shall be the rates and prices included in the preferred tender received following an invitation to tender in accordance with Rules 3 or 4. Two or more officers including an internal auditor if deemed appropriate by the Director of Resources should be present when post tender negotiations are carried out and a written report must be submitted to the Director of Resources.

**10. NOMINATED SUB-CONTRACTORS AND SUPPLIERS**

- 10.1 Where a sub-contractor or supplier is to be nominated to a main contractor and the estimated amount of the sub contract exceeds £10,000 then, unless the appropriate Chief Officer is of the opinion in respect of any particular nomination that it is not reasonably practicable to obtain competitive tenders or quotations, tenders or quotations for nominated sub-contracts shall be invited and dealt with in accordance with these Rules as if they were for a contract directly with the Council.

## 11. CONTRACT CONDITIONS

11.1 Every contract which exceeds £10,000 in value shall be evidenced in writing, signed in accordance with Financial Procedure Rules, and shall specify:

- (i) the goods, materials or services to be supplied and/or the work to be executed; and the obligations to be performed by the contractor, and
- (ii) the payment to be made or the way in which payment is to be calculated together with a statement of any discount or other deduction; and
- (iii) the period(s) within which the contract is to be performed; and
- (iv) the damages, if any are to be specified, payable for non compliance with, or non-performance of, the contract

11.2 In addition, where a contract is equal to or exceeds £50,000 in value it shall:

- (i) be incorporated into a formal written document and, if considered necessary by the Solicitor to the Council, be signed under seal by all parties, or;
- (ii) be signed (if not to be sealed) by at least two duly authorised Officers of the Council;
- (iii) if considered necessary by the Solicitor to the Council in consultation with the appropriate Chief Officer, provide for the payment of liquidated and ascertained damages by the contractor where he fails to complete the contract within the time specified.

The requirements of sub-clauses (i) and (ii) above apply equally to contracts for the acquisition and sale of land but only in respect of the relevant document, ie transfer or lease which effects the actual conveyance of the said land.

11.3 The Council shall take sufficient security by way of a performance bond, parent company guarantee or through other means for the due performance of any contract which exceeds £100,000 unless the Solicitor to the Council in consultation with the appropriate Chief Officer considers it to be unnecessary. In no circumstances shall contracts for supplies, services or works commence unless and until any required performance bond, parent company guarantee or other security has been executed. This Rule applies to all contracts above £100,000 except for Highway Agency contracts where the arrangements are the subject of separate negotiations between the Solicitor to the Council

and North Yorkshire County Council. In addition, performance bonds or parent company guarantees are not required where a measured term contract or sectional completion supplements are to be used, provided staged valuations are less than £50,000.

- 11.4 Where an appropriate British Standard implementing a European Standard (BSEN) or a European Technical Approval or a British Standard Code of Practice issued by the British Standards Institution is current at the date of the tender, every contract shall require that all goods and materials used or supplied, and all the workmanship, shall be at least to the standard required by the appropriate British/European Standards Specification or Code of Practice or any revised or draft standards instituting an equivalent or higher specification.
- 11.5 There shall be inserted in every written contract a clause providing that if the contractor, any employee of the contractor, or anyone acting on the contractor's behalf in relation to the contract or any other contract with the Council does or has done any act:
- (a) which amounts to inducement or reward to any person for doing or omitting to do any act relating to the obtaining of the contract;
  - (b) which is an offence under the Prevention of Corruption Acts 1889-1916, or
  - (c) which amounts to the giving of a fee or reward the receipt of which is an offence under Section 117 of the Local Government Act 1972,

the Council will be entitled to terminate the contract forthwith and recover from the contractor any additional expense incurred by such termination.

## 12. **DECLARATION OF INTERESTS**

- 12.1 If it comes to the knowledge of a Member or an employee of the Council that a contract in which he or she has a personal or prejudicial interest has been or is proposed to be entered into by the Council, he or she shall immediately give written notice to the Director of Resources (Members) or his/her chief Officer (employees).
- 12.2 A shareholding in a body not exceeding a total nominal value of £1,000 or 1% of the nominal value of the issued share capital (whichever is the less) is not a pecuniary interest for the purposes of this Contract Procedure Rule.
- 12.3 The Director of Resources shall maintain a record of all declarations of interests notified by Members. Each Chief Officer shall maintain a record of all declarations of interest notified by employees in their

respective departments.