



**CITY OF YORK COUNCIL**

**Interim until July 2010**

**Contract Procedure Rules  
(Draft)**

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## City of York council Contract Procedure Rules

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## CONTRACT PROCEDURE RULES

### 1 Introduction

1.1 The council has a duty to make best use of its assets and finances on behalf of Council Tax payers and the wider community. It is extremely important therefore, that works, goods and services are procured in a way that is carefully regulated, lawful, ensures transparency and accountability, represents value for money (VFM) and serves to deter fraud and corruption. All contractual commitments made by the council must:

- a) comply with all relevant statutory provisions and European Union (EU) Public Procurement Directives e.g. Construction Industry Tax;
- b) offer best value and protect the council from any loss arising from the failure of a contractor to perform the contract;
- c) be made properly and in a fair and equitable manner, in a way that enables the council to demonstrate the reasonableness, lawfulness and probity of the decision to award a contract to any given person or third party organisation;
- d) ensure that the council pays a fair and proper price.

1.2 The following rules and procedures for procuring works, goods and services (the Rules) must be observed at all times and apply across all parts of the whole organisation, including all Member fora and directorate services, schools, as well as all arms length organisations, agencies and partnerships with whom the council does business and for whom the council is the relevant accounting body. They should be read alongside the regulations for ordering and paying for works, goods and services, set out in Section D of the council's Financial Regulations, the Procurement Guidance Manual which provides supplementary guidance to these procedures and the council's overall Corporate Procurement Strategy.

1.3 It is the responsibility of Chief Officers to ensure that these Rules are complied with, for ensuring the lawfulness and probity of all contracts entered into, and that all contracts are properly documented, administered and controlled in a way that best safeguards the council's interests and meets its strategic objectives. Directors must notify the Chief Finance Officer (CFO) and Chief Internal Auditor (CIA) of all known failures to comply with these Rules.

- 1.4 All officers have a responsibility to:
- a) comply with these Rules when procuring works, goods and services;
  - b) take all necessary legal, financial and other professional advice appropriate to the individual procurement exercise;
  - c) declare any personal interest in a contract where any failure to do so could be deemed to be either corrupt practice or maladministration;
  - d) thoroughly appraise the purchasing need and carry out proper risk assessments in doing so;
  - e) ensure a written contract or proper council order electronic or otherwise has been completed before goods are supplied, services delivered or works begin;
  - f) maintain proper records;
  - g) assess each contract after its completion to see how well it has fulfilled the original requirement and achieved VFM.
- 1.5 Failure to comply with any part of these Rules may constitute misconduct and lead to formal disciplinary action.

## **2 Exceptions to the Contract Procedure Rules**

- 2.1 Subject to statutory requirements tenders and quotations need not be invited in accordance with these rules in the following cases:
- a) contracts of employment, which are covered by HR policy and procedure notes;
  - b) service agreements with voluntary organisations where this is provided through a service level agreement and is non-contractual;
  - c) partnership working arrangements with other public sector organisations where a service is being provided by the council in collaboration with another 'not for profit' body which could not otherwise be provided at all;
  - d) in the case of extreme urgency which has been brought about by circumstances outside the council's control i.e. Major Fire, Severe Weather;
  - e) the purchase of a named or proprietary product required to be compatible with an existing installation where this forms part of the contract or will otherwise infringe the guarantee;
  - f) a known and sustained lack of alternative suppliers in a poor or undeveloped market place with an approved waiver.

### **3 Contracting for works, goods & services**

- 3.1 For the purpose of these Rules, a 'contract' is taken to mean, a contractual commitment between the council and any person or third party organisation. This includes all agreements covered by legislation or relevant European Union (EU) Directives. A legal contract can arise from verbal, electronic or written orders and agreements and can be made for:
- a) the supply of goods and materials, the provision of services and the execution of works;
  - b) the sale of goods or services and the disposal of assets.
- 3.2 Partnerships with private sector companies are subject to these Rules. The general arrangements and principles to be observed in respect of entering into and managing partnership and partnering arrangements are set out in Part E of the Financial Regulations.
- 3.3 Spend on goods, materials, works or services of a similar kind and/or related purpose must be aggregated across the whole organisation and regarded as a single contract proposal. This is because the council is regarded in law as a single corporate entity (the 'Contracting Authority') for contracting purposes and may otherwise be placed in breach of UK legislation and EU Public Procurement Directives (This excludes schools who have powers to enter into contracts in their own right). It may be possible, in some circumstances, to exempt a particular contract from this requirement where it would be impractical and uneconomic to do so. However, such exemptions must be agreed in advance by the *Chief Finance Officer* (CFO) and his/her discretion will be limited at all times by all relevant statutory and EU requirements.

### **4 Record keeping**

- 4.1 All contracts entered into by the council must be properly documented and recorded by the initiating Directorate. This should be done in electronic format by use of the council's electronic tendering system (SCMS). In most instances, full records of all contract documentation, quotations, estimates, tenders and any other correspondence pertinent to the award or acceptance of a contract must be kept by the initiating Directorate for the duration of the contract and a minimum of six years after the contract has been concluded in accordance with statutory requirements. All records relating to contracts executed under council seal must be kept for the duration of the contract and a minimum of twelve years after the contract has been concluded. All records must be made available for audit and inspection purposes as necessary. It is the responsibility of Directors to ensure that all contracts are properly entered into, administered and controlled to safeguard the council's interests, secure value for money and minimise the risk of theft, fraud and corruption.

4.2 It is the responsibility of the CFO to maintain a central register of all contracts entered into by the council. Where a contract has not been awarded using the SCMS system, full details of that contract must be passed to the Head of Procurement for inclusion in the council's Contract Register where the aggregate value of the contract exceeds £5,000. It is the responsibility of Directors to ensure this is done in timely and complete manner following the award of a contract.

## 5 Key Decision

5.1 The Executive scheme of delegation requires that all Key Decisions are reserved to the Executive unless specifically delegated to an Executive Member or an officer or where the Leader and Chief Executive are acting in case of urgency. In the context of procurement a Key Decision is one where the aggregate contract value is £500,000 or more.

5.2 In order to facilitate the procurement process the Executive has specifically delegated to the CFO in consultation with the *Monitoring Officer* (MO), the authority to approve procurements with values in excess of £500,000 where they are 'Routine' as defined by the Corporate Procurement Guidance Manual.

5.3 In all other cases, unless urgency provisions apply, the Executive's prior approval will be needed before commencement of the procurement process. It is recommended that the approval sought includes a specific delegation to the Commissioning Officer to award the contract at the conclusion of the procurement process.

5.4 This requirement may be waived in 'exceptional' circumstances as decided by the CFO and MO in consultation with the Leader.

5.5 This rule applies to all framework contracts as well as the use of approved lists. Where the procurement is deemed to be an exception to the procurement rules (Para 2.1) if the value is £500,000, or more this rule must be applied. Where a decision has already been made by Executive i.e. the Capital Programme further approval is not required however a copy of the Executive report should be sent to the *Corporate Procurement Team* (CPT) for audit purposes.

## 6 Financial limits

6.1. The financial limits prescribed by these Rules are:

**Table 1**

<u>Value</u>	<u>Competition Requirement</u>
Up to & including £5,000	Value for Money (VFM)
>£5,000 & ≤ £139,000 or EU threshold	Written Quotation
Over £139,000 or EU Threshold	Invitation to Tender

- 6.2 These limits shall apply to the estimated value for the execution of works, the supply of goods and materials and the provision of services. The 'estimated value' is the total value of the contract over the full period of the contract. If the contract is made up of different elements (eg the purchase of goods along with the supply of a service) the value for each element of the contract should be combined to give a total value. Contracts for related works, goods and services must not be artificially divided into separate contracts for the purposes of avoiding any part of these Regulations.
- 6.3 All purchasing must be done through corporate contract arrangements where a corporate contract exists for the relevant purchase or supply or via existing frameworks (e.g, Buying Solutions) where they exist. It is the responsibility of the purchasing officer to check whether a suitable contract exists or not. There is a presumption that all procurement activity will ensure the council achieves best VFM and that contracts will be placed with the persons or companies who will offer best VFM in the execution of the contract.
- 6.4 All EU notices and awards must be placed through the CPT who are responsible for completing all Government and EU returns on behalf of the council.

## 7 **Competition requirements in the purchasing process**

- 7.1 Table 1 above sets out the competition requirement to be observed according to the relevant financial limits and the following paragraphs set out the process to be followed.

## 8 ***Procurements Over £5,000 & ≤ £139,000 or EU Threshold (Written Quotations)***

- 8.1 Three written quotes must be obtained and documented in accordance with the requirements for proper record keeping set out in paragraphs 4.1 & 4.2 of these rules. *These quotes should be obtained based on a clear specification for goods, works and services.*
- 8.2 A contracts will normally be awarded to the person or company providing the lowest cost quote. However, contracts may also be awarded on an objective assessment of the Most Economically Advantageous Tender (MEAT). Where a quotation other than the lowest cost quote or MEAT received is preferred, reasons for preferring to award the contract otherwise must be documented and a request to waive these Rules must be made in advance of the award of contract following the procedures set out at Paragraph 36 of these regulations. Similarly, if it has not been possible to obtain 3 quotes, an award of contract can be made subject to a test of reasonableness (Paragraph 10). In such circumstances, a request to waive these Rules along with all supporting evidence must be made in advance.



**9 Procurements Over £139,000 or the EU threshold (Invitation to Tender)**

- 9.1 Where the estimated value of a proposed contract exceeds £139,000 or is greater than the EU tender threshold (whichever is the lesser amount at the time of tender) at least 3 formal competitive tenders must be invited and received and the tendering process conducted according to the council's detailed procedure rules (Corporate Procurement Guidance Manual) for tendering and the relevant EU Directives. Where a commissioning officer believes the procurement may fall under Part B of European Procurement Directives advice should be sought from the CPT.
- 9.2 All EU notices and awards must be placed through the CPT who complete all Government and EU returns on behalf of the council. All tenders and awards must also be otherwise documented in accordance with paragraphs 4.1 & 4.2 of these rules. A contract will normally be awarded to the person or company providing the best value for money tender evaluated on the basis of Most Economically Advantageous Tender (MEAT) received. Decisions to award contracts on the basis of MEAT must be made using standard evaluation criteria determined by the commissioning officer in consultation with the CPT in advance of the tendering exercise and tenders invited on that basis.
- 9.3 Aggregate weightings between quality and cost must not exceed a maximum 60:40 split respectively for the purposes of evaluation unless a waiver has been given for alternative weightings in advance of the contract being tendered. Where a tender other than the most economically advantageous *or lowest cost* to the council is preferred, the award of the contract must be reported to the CFO for decision clearly setting out the reasons why this is required.
- 9.4 If it has not been possible to obtain 3 tenders and no framework exists, an award of contract can be made subject to a test of reasonableness being made (paragraph 10). In such circumstances, provided the award is based upon a MEAT evaluation, a request to waive these Rules along with all supporting evidence must be made in advance.

**10 Test of Reasonableness**

- 10.1 The 'tests' *that should be considered* in determining whether an award of contract is 'reasonable' *may* include consideration of:
- a) total value of the contract;
  - b) whether a preferred bid is within a +5% variation from the lowest bid received;
  - c) whether there is sufficient budget provision to meet the full costs of the contract;

- d) the preferred bid scores at least 5% higher in any system of evaluation that includes non-cost criteria;
- e) urgency;
- f) service dependency;
- g) restricted market place and/or specialist supply.

## **11 The tender process**

11.1 Detailed procedure notes on tendering processes are set out in the Corporate Procurement Guidance Manual which forms supplementary guidance to these rules. It is important to note that in any tendering exercise:

- a) contractors are expected to comply with all reasonable requests for information concerning their financial and technical ability to execute the contract;
- b) contractors are expected to respect the integrity of the tendering process and the principles of open competition;
- c) an Invitation to Tender (ITT) must include a specification that clearly describes the council's requirements as well as the purpose and objectives of the contract. The specification must be in sufficient detail to avoid any uncertainty, ambiguity or risk of misinterpretation by bidders;
- d) tenderers must provide the council with a satisfactory written statement of their Health & Safety policy in accordance with the provisions of Section 2(3) of the Health & safety at Work Act 1974, together with a written undertaking to comply with the provisions of the Act;
- e) tenderers must provide the council with a satisfactory written statement of their Sustainable and Diversity/Equality procurement policies which must meet or exceed the Council's requirements;
- f) tenderers shall have regard to the council's duty to eliminate discrimination and to provide equality of opportunity and include an appropriate undertaking in terms agreed with the council;
- g) notice is given that the council will require that the contractor complies with the Construction (Design & Management) Regulations 2006 where applicable.

## **12 Selective tendering and the use of approved contractor lists**

12.1 For certain categories of contract (principally construction, engineering works and significant service supplies) the council may maintain standing lists of approved persons or companies willing and able to provide quotations or more usually tenders. The council may also sanction the use of an ad-hoc list compiled

from those persons or companies replying to a public notice. The use of these kinds of lists can be an effective and efficient way of managing the tendering process by targeting suitable suppliers at an early stage in the tendering process rather than going out to general advert in the first instance. The Rules pertaining to the compilation, use and management of such lists are that:

- a) the relevant Director in consultation with the relevant Executive Member must approve the list and having done so they must designate a 'Responsible Officer' to administer it and keep it under regular local review;
- b) all such lists must be registered with the CPT and shall be made available for public inspection upon reasonable notice being given in writing to the CFO or his/her nominated representative;
- c) in compiling select lists public notice must be given:
  - i in at least one local newspaper;
  - ii in at least one newspaper or relevant professional journal;
  - iii through the SCMS system;
  - iv to all, or a selected number of persons named in a standing or ad hoc list;
  - v in accordance with the requirements of EU Directives where applicable.
- d) the public notice must:
  - i specify details of the proposed contract;
  - ii invite persons interested to apply for permission to tender;
  - iii specify a time limit for the return of expressions of interest.
- e) no application to be included in an approved list may be agreed until all necessary financial and technical references have been obtained and evaluated and the relevant Finance Manager has certified the financial viability of the persons or company making the application. The council may require other matters to be brought into account such as environmental or equality issues in which case the appropriate assurances and evidence must be received in advance of the application being approved;
- f) the Responsible Officer must maintain records of the performance of all persons and companies on the select list who are invited to tender for contracts. A supplier may be excluded from the list if they fail to submit satisfactory tenders, fail to execute contracts satisfactorily or no longer meet the criteria for entry onto the list (i.e. financial viability, technical competence, etc);

- g) where approved lists are used as a matter of routine by any part of the council a system of rotation should be applied wherever possible to ensure fairness of opportunity and demonstrate VFM in the selection of suppliers invited to bid and the final award of contract.

12.2 After the expiry of the period specified in the public notice, invitations to tender for the contact shall be sent to at least 3 suppliers *in compliance with standard procurement best practice*, who applied for permission to tender. Where fewer than 3 suppliers have applied or are considered suitable, the procedures for seeking a waiver from these Rules must be observed.

### 13 **Tendering**

13.1 If approved lists are not to be used tendering must be undertaken in accordance with the detailed procedures set out in the Corporate Procurement Guidance Manual which provides supplementary guidance to these rules.

### 14 **Standards and award criteria**

14.1 The commissioning officer shall ascertain which relevant British, European or International Standards may apply to the contract and must include reference to those standards necessary to properly describe the required quality. The commissioning officer shall define the award criteria to be used, which is most appropriate to the procurement. Award criteria must ensure VFM for the council and must as a minimum be based on consideration of:

- a) 'Most Economically Advantageous Tender' (MEAT) or 'lowest cost' where payment is to be made by the council, or;
- b) '*best price*' if payment is to be received by the council.

14.2 When a MEAT approach is used, it must be further defined by reference to sub-criteria. Sub-criteria may only include relevant considerations such as: price, nature of supply (ethical purchasing considerations), quality of service, quality of goods, running costs (including whole life costs), technical merit, previous experience, delivery date, cost effectiveness, relevant environmental considerations, aesthetics and functional characteristics, safety, after sales services, technical support and any other relevant matters.

14.3 Award criteria may not include:

- a) non-commercial considerations;
- b) matters which would result in any discrimination against suppliers from the European Economic Area or signatories to the Government Procurement Agreement.

## 15 **Submission of Tenders**

- 15.1 Tenders should, where possible, be submitted through the SCMS system. Written submissions may be accepted subject to prior agreement with the CPT. In these instances:
- a) the date and time by which tenders are to be received has been properly observed;
  - b) where made in writing they have been submitted in plain sealed envelopes marked 'tender' and indicating the proposed contract and without bearing any name or mark indicating the sender;
  - c) all council requirements regarding information relating to health & safety and race relations/equalities considerations are met;
  - d) all council requirements that the contractor complies with the Construction (Design & Management) Regulations 1994 where applicable are met.
- 15.2 All tenders will be stored within the SCMS system until the time and date specified for their opening when the nominated openers including an *Executive* Member will release them.
- 15.3 Where there is a written submission tenders must be kept in the custody of the MO or his/her nominated representative until the time and date specified for their opening. No tender received after the time and date specified in the invitation to tender (ITT) shall be accepted or considered unless there is clear evidence of it having been posted by first class post at least the day before tenders were due to be returned, and/or clear evidence of it having been delivered at the address required no later than the time and date specified subsequent to its receipt. Even if 'late' tenders of this kind are acceptable on those conditions, they cannot be accepted if any other tender has already been opened.

## 16 **E-auctions**

- 16.1 Where a tender is to be carried out by way of a collaborative e-auction process the following procedures will apply;
- a) approval for this approach must be sought in advance of the auction from the relevant Chief Officer and Head of Procurement;
  - b) the auction must be provided through a recognised managed service provider approved by the Head of Procurement;
  - c) the process for selecting bidders must be agreed in advance with the Head of Procurement;

- d) the tender evaluation process must be agreed in advance with the Head of Procurement;
- e) the time limit for the auction must be set in advance, clearly notified and be appropriate to the nature of the auction;
- f) a minimum of two council Officers must be in attendance at the managed service providers viewing room to ensure the process is conducted fairly and in accordance with regulations. One of the Officers must be an independent observer and have had no involvement with the exercise. They should not leave the room during the auction.
- g) prior to start of the auction Officers attending must satisfy themselves that the correct quality weightings (If applicable) have been loaded into the software and that the software is working correctly;
- h) the final scoring of all the bidders needs to be documented and counter signed by each officer immediately after the close of the auction;
- i) the e-auction summary report which is normally produced by the e-auction provider (within a week of the auction) must be cross referenced to the officers own records and both must be kept on file;
- j) a signed copy of both these records must be passed to Head of Procurement and copied to the Monitoring Officer;
- k) if the lowest price bidder is not successful approval for the award of a contract must be sought in line with these regulations.

16.2 The application of these procedures exempts the tender from the opening rules set out at paragraph 15.3 of these rules. It does not exclude compliance with any other financial and EU regulations as set out elsewhere in these procurement rules.

16.3 The lead partner will arrange for award notices to be sent to the successful bidder (and OJEU following the 'standstill period') and brief the losing suppliers. A copy of the award notice must be kept on file and the Alcatel 'standstill period' (10 days) must be observed.

16.4 The council must ensure that a discrete contract complying with the council's standard terms and conditions is put in place with each successful bidder.

## 17 **Opening & receipt of tenders**

17.1 Tenders must be opened through the use of the secure electronic 'safe' within the SCMS or at one time only in the presence of the appropriate Executive Member and the MO or his/her nominated representative. All written tenders must be entered in a register maintained for that purpose immediately upon opening in the presence of the Member and Monitoring Officer, who are required

to initial every entry to register. The register shall be open to inspection by any Member of the council, the Chief Executive, Directors, the CFO and the CIA. Details of all tenders received must be reported to the relevant Director or his/her nominated representative.

## **18 Confidentiality of Council Information**

- 18.1 Where any activity is or may be carried out by the council in-house, officers and Members may not communicate to any existing or potential external contractor any information regarding the in-house operation that may be commercially damaging to it save as may be required by law. Equally, officers and Members are prohibited from disclosing of any information to an in-house contractor that may unduly advantage it in any competitive tendering exercise.

## **19 Tender Evaluation**

- 19.1 Tenders must be evaluated against the criteria established in the ITT. Where tenders are evaluated on a MEAT basis, clear criteria and weighting arrangements should be recorded. The form of quality evaluation must be appropriate and proportionate to the scale, complexity and risk of the contract. Quality evaluation shall be carried out by a panel that includes officers with the relevant knowledge and experience of the type of contract. Detailed information on the tender process is set out in the Corporate Procurement Guidance Manual, which forms supplementary guidance to these rules.

## **20 Clarification of tenders**

- 20.1 Any request for clarification of a tender must be dealt with following the procedures set out in the Corporate Procurement Guidance Manual. It may not be used to negotiate or re-negotiate contract terms once a preferred bidder has been selected. Commissioning Officers are required to take all necessary legal and/or other relevant professional advice if they are in any way unsure of what may or may not constitute 'clarification' under EU Regulations.

## **21 Acceptance of tenders**

- 21.1 Provided the winning tender is the most economically advantageous to the council within the financial provision (budget) made for it, *meets the contract specification and the key decision rules at Paragraph 5* it may be accepted by the Commissioning Officer. Where a tender is not the most economically advantageous if payment is to be made by the council, or the highest tender if payment is to be received by the council the award of the contract must be passed to the CFO for decision clearly setting out the reasons why this is required.

Once approved, all awards of contract must be recorded in the delegated decision log for the relevant Directorate.

- 21.2 The approval of the relevant Executive Member and the CFO must be given if a tender received as part of a capital scheme results in the scheme or project exceeding the approved financial appraisal by 10% or £50,000 (whichever is the lower) and this can not be accommodated within the original financial appraisal.

## 22 **Post-tender negotiations**

- 22.1 Where a formal post tender negotiation process is required (rather than the routine clarification of minor issues with tenderers) this may only be carried out, in accordance with what is permissible under UK Regulations and the EU Public Procurement Directives, in the following circumstances:
- a) sole supplier, or the receipt of only one tender;
  - b) when tendered prices vary significantly from the council's estimate for the contract;
  - c) when tenders cannot readily be evaluated and compared without discussion with the tenderers ;
  - d) if matters such as the availability of spares or the quality of the after sales service are important considerations, where tenderers differ significantly in their offers in those matters.

## 23 **Rules for negotiations**

- 23.1 Where negotiations are to be carried out with tenderers the following Rules must be observed:
- a) the Commissioning Officer must ensure that negotiations are conducted by staff with the relevant technical and professional expertise;
  - b) the relevant Chief Officer and the MO or their nominated representatives should be invited to attend any negotiation;
  - c) prices and negotiated conditions shall be regarded as strictly confidential;
  - d) negotiations shall take place at pre-determined times and places on council premises unless there are good reasons for holding negotiations elsewhere;
  - e) a comprehensive written record of all negotiations shall be made, signed by all Officers of the council present and retained by the Commissioning Officer;
  - f) all documentation relating to negotiations shall be placed in sealed envelopes when transferred from one service to another in order to maintain confidentiality;



- g) where meetings are to be held with more than one contractor this shall be indicated to contractors and meetings shall be held separately and in confidence;
- h) details of the outcome of all negotiations must be submitted to the CFO and the MO for approval.

## 24 **Form of Contract**

24.1 Contractual commitments can only be made by individuals who are formally authorised to do so in the relevant directorate schemes of delegation. This condition applies equally to commitments created verbally as well as in writing. All contracts made for, or on behalf of the council, must be evidenced in writing in an approved format irrespective of the value or type of supply and the form of contract involved. This will normally be done at the time the contract is made but may in special circumstances be written confirmation of an earlier verbal contract. Verbal contracts should be avoided wherever possible. Every contract shall be made by;

- a) the issue of an official order authorised by the appropriate officer for the purchase or supply of goods, services and works up to a total value of £30,000;
- b) the preparation of formal written contracts for the purchase or supply of goods, services and works over a total value of £30,000 unless the MO certifies that, owing to the nature of the proposed contract, the interest of the council will be adequately protected by the issue of an official order;
- c) and, the form of every contract shall be approved by the MO in consultation with the relevant Director and the CPT. Where specific conditions apply (ie civil engineering) then industry standard contracts will apply such as those determined by the Institute of Civil Engineers (ICE) for example.

24.2 When entering into contracts, the Commissioning Officer must ensure that any terms and conditions to be imposed can not be held against the best interests of the council, for example by entering into agreements which binds the council into unduly long term commitments (in particular long term rental or Hire Purchase agreements). The MO must approve all contracts. The advice and guidance of the CFO should be sought if officers or Members are at all uncertain as to whether contract terms and conditions could be prejudicial to the financial interests of the council. Guarantees or advantageous terms and conditions must not be offered as part of any contract without the approval of the CFO.

24.3 If an in-house provider is successful the appropriate Director shall enter into a Service Level Agreement (SLA) with the contractor, incorporating any terms and conditions upon which the tender or quotation was based and subject to the form of Service Level

Agreement being approved by the Chief Finance Officer and Monitoring Officer. When an in-house provider proposes to sub-let all or part of a contract then the sub-letting process shall be subject to the tendering procedures as laid down in these Rules.

## 25 **Contract Conditions**

- 25.1 Every contract that amounts to £139,000 (or above the EU tender threshold, whichever is the lesser amount) or more for the supply of goods, services or works, shall;
- a) adhere to the Council's standard terms and conditions *including appropriate payment schedules*. (These can be obtained from the CPT).
  - b) specify the goods, materials or services to be supplied and the work to be executed or the hardware, software, support or maintenance to be provided; the price to be paid together with a statement as to the amounts of any discount(s) or other deduction(s); the periods within which the contract is to be performed and such other conditions and terms as may be agreed between the parties, and;
  - c) for all significant contracts valued in excess of £150,000, be executed under the common seal of the council and be attested by the MO of any other nominated officer(s) and must be signed by at least two officers of the council;
- 25.2 In a contract for the execution of works, which is valued in excess of £139,000, the contract shall provide for the payment of liquidated damages by the contractor where they have failed to complete the contract within the time specified. The council will specify that a contract performance bond will be required if the value or amount of the contract exceeds £139,000 in addition to the retention of a proportion of the contract sum until the work has been satisfactorily completed and maintained. Such bonds may only be released on the practical completion of the works.
- 25.3 Financial appraisals must be completed in respect of all third parties submitting bids for contracts in excess of £139,000. It is the responsibility of the commissioning officer in consultation with the relevant Finance Manager(s) to ensure this is done to a standard required by the Finance Manager.
- 25.4 In appropriate cases where a contract for the supply of goods and services or the purchase of goods or provision of information technology amounts to £139,000 (or above the EU tender threshold, whichever is the lesser amount) or more in value, a clause shall be inserted to ensure that should the contractor fail to deliver the goods or services or any portion thereof within the time or times specified in the contract, the council, without prejudice to any other remedy for breach of contract, reserve the right to either:

- a) determine the contract either *completely in default* or to the extent of the portion they have failed to deliver, and/or;
  - b) to purchase other goods, or services or provision of information technology of the same or similar description to make good the default, or in the event of the contract being wholly determined, to procure any additional goods or services required from any other party without any obligation in respect of the original contract.
- 25.5 In a contract for the supply of goods and services, or provision of information technology which amounts to £139,000 or more in value the council will require a contractor to give sufficient security for the due performance of the contract. Such security or bond shall be released upon the completion of the contract. If the Commissioning Officer considers it to be appropriate then a bond may be required if the contract value is less than £139,000. The Commissioning Officer must seek prior consent from the Monitoring Officer if the value of the proposed contract exceeds the financial limits of the security or bond is not intended to be required.
- 25.6 There shall be inserted in every contract a clause empowering the council to *rescind* the contract and to recover from the contractor the amount of any loss resulting from such cancellation. "If the contractor shall have offered or given, or agreed to give, to any person any gift or consideration of any kind as an inducement or reward for doing or refraining to do, or for having done or refrained to do, any action in relation to the obtaining or execution of the contract or any other contract with the council or for showing or refraining to show favour or disfavour to any person in relation to the contract or any other contract with the council, or if the like acts shall have been done by any person employed by him or acting on his behalf (whether with or without the knowledge of the contractor) or if in relation to any contract with the council the contractor or any person being employed by him or acting on his behalf shall have committed an offence under the Prevention of Corruption Acts 1889 to 1916 or shall have given any fee or reward the receipt of which is an offence under Section 117 (2) of the Local Government Act 1972." As a minimum, suppliers are expected to have ISO 14001 or be able to demonstrate they are working towards this.
- 25.7 Every contract must contain a clause requiring the contractor to permit authorised representatives of the council to enter upon a construction site and/or site of operation of the work at any reasonable time and have free and unfettered access to each and every part of the area covered by the contract work of affected thereby.
- 25.8 Where an appropriate British Standard Specification or British Standard Code of Practice issued by the British Standards Institute or other recognised standard laid down by a regulatory

body for the industry concerned 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 of the standards required by the appropriate British Standard Specification or Code of Practice or the relevant regulatory body. In case of contracts to be awarded under EU directives and UK regulations the equivalent EN or ISO standards will apply.

- 25.9 In every formal contract or Service Level Agreement there shall be inserted a clause prohibiting the contractor from :
- a) assigning or sub-letting the contract, or any part of it, except with the prior consent of the Head of Paid Service, (*Chief Executive*) and the Chief Finance Officer;
  - b) sub-contracting, except with the written consent of the council. If the tenderer at the time of tendering states his desire to sub-let any proportions of the work not usually done by him, consent may be given provided that the sub-contractor is a person approved for the purpose by the Commissioning Officer. The principal contractor remains responsible however, for all work done by the sub-contractor and for it being carried out under the same conditions as it executed by themselves.
- 25.10 There will be a clause in every contract to require compliance with these Regulations. All contractors shall keep proper time sheets showing the time worked by all persons engaged in and about the carrying out of any contract they have with the council. These time sheets must be produced whenever required for audit and inspection at the council. Contractors shall be responsible for the observances of this clause by all sub-contractors engaged in and about the carrying out of any such contract.
- 25.11 Where a sub-contractor or supplier is to be nominated to a main contractor the following provisions will have effect:
- a) tenders for the nomination shall be invited in accordance with the provisions of these Rules unless the appropriate Director is of the opinion in respect of any particular nomination where the estimated value does not amount to £139,000 or more that it is not reasonably practical to obtain competitive quotes;
  - b) the terms if the invitation shall require an undertaking by the tenderer that if they are selected, they will be willing to enter into a contract with the main contractor on terms which indemnify the main contractor against his own obligations under the main contract in relation to the works or goods or services included in the sub-contract;
  - c) the Commissioning Officer for the main contract, or his/her authorised representative, shall nominate to the main contractor a person whose tender is in his opinion the most suitable.

- d) the list of tenders and quotations received in accordance with these Rules must be retained by the Commissioning Officer concerned and shall be available for inspection by Executive Members, the Chief Executive, the Monitoring Officer, the CFO and the CIA.

25.12 All contracts shall include a clause requiring that regular contract reviews take place either quarterly, bi-annually or annually.

## 26 **De-briefing unsuccessful bidders**

26.1 The Commissioning Officer shall as part of good practice offer to debrief all those tenderers who submitted a bid about the characteristics and relative advantages of the successful bid. This might normally include ;

- a) how the award criteria were applied;
- b) the prices or range of prices submitted, but not in either case correlated to the tenderers; and
- c) the names of their competitors and whether there were three or more competitors taking part in the tendering exercise.

26.2 The Commissioning Officer may inform an unsuccessful tenderer of the name of the successful tenderer, but only after the successful tenderer has been notified in writing of their success and has accepted the award of contract in writing.

## 27 **Officers & Members interest in contracts**

27.1 *Members or Officers who have any direct or indirect pecuniary interest in any contract or proposed contract (In accordance with the Local Government Act 1972 Section 117 ) shall declare their interest, and have that recorded in a book kept for that purpose and will not be allowed any involvement in relation to the procurement or management of the contracts.*

## 28 **Ordering and paying**

28.1 The general arrangements relating to ordering and paying for goods, services and the execution of works are detailed in Part D of the Financial Regulations. In addition to the procedures set out there the following Rules must be observed:

- a) payments to contractors in respect of all works must be authorised by a certificate signed by a duly authorised officer. The certificate must show the total amount of the contract, the value of the work executed to the certificate date, the amounts already paid and the amount now certified;
- b) officers authorising payments must supply the Chief Finance Officer with a certificate of all necessary

information for the maintenance of the corporate contract register;

- c) VAT authenticated receipts must be obtained by the authorising officer in support of the payment of VAT on the certificate. Receipts should be retained with the officer copy of the payment certificate and retained for a period of six years and must be made available for inspection by HM Revenue and Customs on request.

28.2 If it becomes necessary to vary the value of a contract by more than 2% and this *results in additional costs* of more than £50,000 on the original value of the contract this must be reported to the Chief Finance Officer and Executive Member.

## 29 **Framework Agreements & Call - Off Contracts**

29.1 Call-off contracts and framework arrangements provide an efficient and effective means of procuring supplies and services that are required on a regular basis over a period of time. The benefits of using frameworks are;

- a) they reduce timescales;
- b) the suppliers are pre-approved (of a suitable quality and are financially stable);
- c) the contract complies with the relevant EU regulations;
- d) some of the frameworks have pre-negotiated rates with the suppliers;

29.2 Frameworks are formal agreements that set out the terms, prices and specifications agreed with the supplier. A framework arrangement is not in itself a contract, however, each order raised under it, once accepted by the supplier becomes an individual contract bound by the agreed terms. All contracts entered into under terms and conditions of a general framework agreement must comply with the contract conditions set out in these regulations.

29.3 Detailed guidance on how to establish a framework arrangement or 'call off' contract can be obtained from the Corporate Procurement Team.

## 30 **Competition & Frameworks**

30.1 When a framework is used a 'mini-competition' must be undertaken between all the Suppliers on the Framework who are capable of fulfilling the requirement to ensure compliance with EU Legislation. A 'mini-competition' process ensures that VFM is achieved and that the supplier is appointed through a fair and transparent process unless the framework has been procured on

a Call-Off basis. Where the contract is below the EU threshold a mini-competition should still be undertaken unless a waiver to this rule has been agreed.

**31 Additional rules for construction & property related procurement**

- 31.1 The use of the 2-stage tendering process as set out in 'Constructing Excellence' can be used in relation to major construction projects. Procurement of the construction team members must comply fully with the procedures set out in these rules. Full details of this scheme are set out in the Corporate Procurement Guidance Manual.
- 31.2 All other construction projects will be carried out in accordance with the best practice principles set out in the OGC 'Achieving Excellence in Construction' initiative unless there are demonstrable whole life cost benefits to not doing so. Because recognised standard forms of contract are available from the professional organisations, all contracts for building or engineering work must be arranged in the form of one of the following standard agreements:
- a) The ICE Conditions of Contract where still relevant;
  - b) The Standard Forms of Building Contract issued by the Joint Contracts Tribunal;
  - c) The IEE General Conditions of Contract;
  - d) NEC3 Engineering and Construction Contracts;
  - e) PPC2000 Project Partnering Contract.
- 31.3 Contracts for building or engineering works which exceed £50,000 must:
- a) be evidenced by a formal document signed/sealed by or on behalf of both parties;
  - b) provide for liquidated damages, if the contract provides for the completion of works by a particular date.
- 31.4 Where the Commissioning Officer and/or the CFO considers that the council requires security for the due completion of a contract for building or engineering works, the nature and amount of security to be given by the successful tenderer must be specified in the conditions of tender.
- 31.5 Where ICE conditions apply, the tender and associated documents constitute sufficient evidence of a contract until a formal document is prepared, provided that the Contractor signs the standard form of tender containing the following words, or words of similar effect:

*'Unless and until a formal agreement is prepared and executed this tender, together with your written acceptance thereof, shall constitute a binding contract between us'.*

- 31.6 A contract not falling within the above rules must be evidenced by a written quotation or tender from, and signed by, or on behalf of, the contractor, together with an official order signed by an officer who is authorised to do so. In such a case no letter or acceptance of a tender or quotation may be sent to the contractor unless it is accompanied by an official order. All contracts must specify that, where an appropriate British, European or International standard is current at the date of tender, goods and materials used in the execution of the contract conform to that standard.
- 31.7 Contracts involving building or engineering works must include a clause or clauses prohibiting the contractor from:
- a) transferring or assigning directly or indirectly to any person *or organisation* all or any part of the contract without written permission of the council.
  - b) sub-letting any part of the work except to the extent permitted in the contract or in writing by the Commissioning Officer.

## **32 Additional rules for IT&T related procurement**

- 32.1 All ITT related procurement must be made in consultation with ITT. This is to ensure all hardware and software procurements comply with the council's corporate IT strategy and can be supported by the ITT environment and technology infrastructure.

## **33 Special contract arrangements**

- 33.1 Proper consideration must be given by officers engaged in procuring goods and services at the council with the requirements of the 'Special Contracts Arrangement' (SCA) introduced by the Secretary of State for Employment in November 1994. The SCA was developed to assist eligible employers of severely disabled people compete for government contracts. The scheme applies to all government departments and their agencies including local authorities and NHS Trusts, but applies only to contracts below the threshold of the EC rules. It does not apply to prison workshops. Full details of the scheme can be found at [www.ogc.gov.uk](http://www.ogc.gov.uk).
- 33.2 There is a general presumption that the council will comply with the SCA at all times and will positively discriminate in favour of placing contracts with eligible suppliers where it would not be anti-competitive to do so and there would be no financial dis-benefit to the council.



## 34 **Supplier Eligibility**

- 34.1 All suppliers registered under SCA, such as Yorkcraft, must be non-profit distributing companies that have at least 50% of the workforce registered as severely disabled. Each company's disabled employees must make a genuine contribution to the business and are not there simply for therapeutic activities. In addition all disabled staff are paid an equivalent wage to those who are non-disabled.
- 34.2 The supplier list is maintained by Jobcentreplus (Disability & Rehabilitation Division) and is usually circulated twice a year to all government departments.
- 34.3 When submitting tenders to Government departments/agencies SCA registered suppliers are advised to quote their SCA registration number on all correspondence. The SCA registration number takes the format UK[XXXX], where X represents 4 digits. Yorkcraft's registration number for example is UK0011.

## 35 **Guidance to Government buyers**

- 35.1 The scheme sets out to encourage public sector buyers such as the council to increase business with SCA registered suppliers whilst ensuring that commercial firms are treated fairly. When awarding contracts covered by the SCA scheme, the council is required:
- a) to award contracts for the supply of good or services to the supplier who offers the most economically advantageous tender;
  - b) to award contracts to an SCA registered supplier if its tender is no more economically advantageous than the most economically advantageous trade tender;
  - c) if an SCA registered supplier's tender is unacceptable on price alone (eg quality, volume and delivery are acceptable), the supplier should be given an opportunity to submit a revised offer (an 'offer back') for all or part of the contract;
  - d) if on 'offer back' the registered supplier is able to match the best offer its revised tender should be accepted;
  - e) not to use 'offer back' as a means of subsequent negotiation with trade suppliers in order to reduce tender prices further;
  - f) to maintain records of the use and outcome of the SCA scheme, the value of contracts awarded to SCA suppliers and the value of contracts awarded through 'offer back'.
- 35.2 In doing so however, the council is not required to:
- a) transfer existing customer contracts from satisfactory trade suppliers where the maintenance of suitable commercial

manufacturing capacity is necessary for strategic reasons, even if the registered supplier is able to match the trade supplier's tender;

- b) split contracts where to do so would result in an increase in the overall cost of meeting their requirement.

## 36 Breaches and waivers

36.1 **Breaches** - of Contract Procedure Rules are extremely serious matters and will be fully investigated and reported on following referral or discovery. All Directors are responsible for reporting all known or discovered breaches of these Rules to the CFO as soon as they become aware of it in practice. *Any Director can be called to Audit & Governance Committee to explain any breach.*

36.2 **Waivers** - If it is known that any given circumstance will make it difficult or problematic to comply with these Rules then request to waive the regulations may be made. The process to be followed is:

- a) Completed waiver document sent to relevant Chief Officer (and copy to CPT) *who is accountable for the decision*. If approved;
- b) Completed waiver form sent by the *Chief Officer* to CFO or nominated officer to ensure compliance with these rules. If approved;
- c) Completed waiver form sent to MO or nominated officer to ensure legal compliance;
- d) Outcome of process logged in Waiver Register maintained by CPT;
- e) Once all three stages have been completed if the waiver has been approved the Commissioning Officer can then proceed with the variation to these rules.

36.3 Commissioning Officers are required to seek waivers in advance of entering into any contract except in the case of an emergency *or as a result of an emergency* where there is danger to the safety of persons or serious risk of loss or damage to the council's assets or interests, or the interests of another party, the Commissioning Officer may place such contracts as necessary by means that are reasonable under the circumstances.

36.4 All requests for waivers from these Rules must be advised in writing using the standard pro-forma request form and risk assessment available from the CPT or through the council's Intranet site.