

**CONTRACT PROCEDURE RULES**

**1. Introduction and Interpretation**

1.1 These Rules constitute the Council's standing orders on contracts for the purpose of section 135 of the Local Government Act 1972.

1.2 The following words within the Rules shall be interpreted as follows:

1.2.1 "Approved Electronic System" means the North East Procurement Organisation procurement portal or any other electronic system approved in writing by the Strategic Director, Corporate Services and Governance.

1.2.2 "Contract" means a contract for the provision of works, goods or services for consideration to the Council by a Third Party unless a particular Rule makes it clear that a different meaning is intended;

1.2.3 "Regulations" means the Public Contracts Regulations 2015 (Statutory Instrument 2015 No. 102) and any subsequent amendments thereto;

1.2.4 "EU Treaty" means the Treaty on the Functioning of the European Union

1.2.5 "EU Threshold" means the thresholds prescribed in Regulation 8 of the Regulations;

1.2.6 "In-house Services" means services or works which can be delivered to the Council by an existing directly employed workforce or Associated Company.

1.2.7 "Associated Company" means any company or limited liability partnership to which the Council may directly award contracts pursuant to the exemptions from the scope of the Regulations set out at Regulation 12 of the Regulations or any corresponding provision of any successor legislation.

1.2.8 "Third Party" means any economic operator, a contractor, service provider, supplier, consultant, firm, company (excluding an Associated Company) partnership or a sole trader external to the Council.

1.2.9 "Local Contractor" means any Third Party whose principal place of business is in the borough of Gateshead or with premises in the borough of Gateshead in respect of which business rates are paid to the council

- 1.3 These Rules apply to all procurement for the provision of works, goods or services by or from a Third Party. For the avoidance of doubt, these Rules do not apply to the commissioning of In-house Services, although any subcontracting arrangements are subject to these Rules
- 1.4 All procurement activity and Contracts must comply with:
- 1.4.1 all applicable statutory provisions, including but not limited to the duty to secure best value under the Local Government Act 1989;
  - 1.4.2 where applicable, the Public Contracts Regulations 2015;
  - 1.4.3 the EU Treaty (including the general Treaty principles of equal treatment, non-discrimination, mutual recognition, proportionality and transparency);
  - 1.4.4 the Council's Constitution including the Codes of Conduct and Scheme of Delegation
  - 1.4.5 any Council Procurement Protocols or Guidance proposed by the Service Director, Corporate Commissioning and Procurement and approved by the Strategic Director, Corporate Services and Governance.

and where there is a conflict between any of the above, in order of precedence as listed.

## **2. Exceptions to these Rules**

- 2.1 Every Contract will comply with these Rules, unless:
- 2.1.1 the Cabinet authorises an exception, or
  - 2.1.2 the matter is so urgent that it is not feasible to comply, in which case the officer concerned will report the reasons to the next meeting of the Cabinet, and the reasons for it, will be recorded in the minutes of the Cabinet.
- 2.2 Rules 3 to 11 do not apply to a contract entered into by a school operating a delegated budget under the School Standards and Framework Act 1998. Schools must refer to the School Manual of Financial Procedures for Rules relating to procurement and contracting with a Third Party.

### 3. **Procurement Principles**

3.1 Subject to Rule 2 and to the exceptions at Rule 5.2.6 and 5.2.7, no Contract exceeding £250,000 in value shall be let without prior approval of the cabinet, such approval to be in the form of either:

3.1.1 an authorisation to invite or negotiate tenders in accordance with Rule 6 or to conduct some other procurement process in accordance with these rules and to award the Contract to the economic operator submitting the most economically advantageous tender as determined by the Service Director Corporate Commissioning and Procurement in accordance with the stated terms of the tender or other process and, where applicable, the Regulations; or

3.1.2 an authorisation subsequent to the conduct of a tendering process or other procurement process in accordance with these Rules to award the Contract to the economic operator that has submitted the most economically advantageous tender in accordance with the stated terms of the tender or other process and, where applicable, the Regulations.

3.2 All Contracts exceeding £25,000 in value will be procured in accordance with directions of the Service Director, Corporate Commissioning and Procurement who shall be instructed at the earliest opportunity, unless the Strategic Director, Corporate Services and Governance authorises an exception.

3.3 Regard must be had to the potential consolidation of Contracts for works, supplies or services of a similar nature which are likely to be carried out in connection with a particular projects or services in order to achieve the best value for money.

### 4. **Restrictions on Contracts for Work That Can Be Carried out In House and for Services of a Professional or Technical Nature**

4.1 Unless cabinet authorises an exception in writing:

4.1.1 No Contract for In-house Services (save for services comprising or relating to construction) may be entered into or offered for tender unless the Service Director responsible for the delivery of that In-House Service has first been offered the opportunity to negotiate to perform the services and either

4.1.1.1 the Strategic or Service Director responsible for the In-House Service agrees that the Contract should be entered into or offered; or

4.1.1.3 agreement cannot be reached on a reasonable price or timescale for the performance of the services by the Associated Company or in-house team.

4.1.2 No Contract for services of a professional or technical nature shall be entered into without prior consultation with and approval of the Strategic Director with responsibility for the relevant Service as set out in Article 13 of this constitution and the relevant Strategic Director shall determine the scope of the services to be obtained (including the content of any service specification) and shall ensure the provision of such professional or technical support as is necessary to enable the Contract to be entered into:

## **5. Procurement Requirements**

5.1 Subject to Rule 2, no Contract may be made, unless:

5.1.1 tenders have been invited or negotiated in accordance with Rule 6; or

5.1.2 Cabinet has decided that the works, supplies or services in question should be procured through a partnership arrangement, provided that the Strategic Directors of Corporate Services and Governance and Corporate Resources are satisfied with the procedures for procurement and with the terms of the contract; or

5.1.3 the works, supplies or services, in question are to be purchased through a framework or other arrangement entered into by the Council; or

5.1.4 the works, supplies or services, in question are to be purchased through any other bona fide framework arrangement set up by a local authority, a government department or other public body or central purchasing body and the use of the framework arrangement has been approved by the Service Director, Corporate Commissioning and Procurement.

5.2 Subject to the requirements of the Regulations, the requirements under Rule 5.1 do not apply to a Contract:

5.2.1 below £25,000 in value provided that value for money can be demonstrated and consideration has been given whether to obtain competitive quotations using the Approved Electronic System, from at least four contractors or if this is not possible, from all capable contractors. Consideration should be given to whether or not Local Contractors can fulfil the requirement of the council. If it is considered that Local Contractors can fulfil the requirements, then at least two Local Contractors should be invited to submit a quotation;

5.2.2 between £25,000 and the relevant EU Threshold provided that the Contract is let using the Approved Electronic System in accordance with a procedure approved by the Service Director, Corporate Commissioning and Procurement and in accordance with the principles of the EU Treaty;

- 5.2.3 for goods purchased in a public market or at auction;
  - 5.2.4 for a work of art or museum specimen;
  - 5.2.5 for goods, works or services which are obtainable only from one contractor;
  - 5.2.6 for the placement of individuals in private residential or nursing homes where the Strategic Director, Care, Wellbeing and Learning considers such a Contract to be in the best interests of an individual provided the cost of the placement is within existing budgetary provision, and has been let in accordance with the Regulations;
  - 5.2.7 for social care or educational services (including but not limited to domiciliary care, and day care services) to be provided to an individual or a household where the Strategic Director, Care, Wellbeing and Learning considers such a Contract to be in the best interests of an individual provided the cost of the Contract is within existing budgetary provision, and has been let in accordance with the Regulations where applicable;
  - 5.2.8 with OFSTED for the inspection of a school;
  - 5.2.9 with Care Quality Commission under section 85 (1) of the Health and Social Care Act 2008:
  - 5.2.10 with Driver and Vehicle Licensing Agency and/or Driver and Vehicle Standards Agency with regard to Council owned or operated vehicles;
  - 5.2.11 for the execution of mandatory works by statutory undertakers, where the statutory undertaker is the only body which can perform the works. (e.g. Northumbria Water specifically for water and sewerage infrastructure works, Northern Powergrid specifically for electricity infrastructure works, Network Rail specifically for works affecting the railway infrastructure etc.);
  - 5.2.12 which forms part of a serial programme, in respect of which tender may be invited from a contractor which won the Contract for an earlier phase of the work provided that the combined value does not exceed the EU Threshold;
  - 5.2.13 which may be awarded in accordance with Regulation 12 of the Regulations
- 5.3 Any exemptions under Rule 5.2.1 to 5.2.13 must be recorded in writing, detailing the reasons for the application of the exemption and signed by a Strategic Director/ Service Director.
- 5.4 No member of the Council will enter either orally or in writing into any Contract on the Council's behalf.

## 6. **Invitations to Tender and Negotiated Tenders**

6.1 Where a Contract is to be procured by a tender, the Cabinet, or the Service Director, Corporate Commissioning and Procurement through this delegation, will adopt one of the following procedures:

6.1.1 Tenders may be invited by the Service Director, Corporate Commissioning and Procurement via the Approved Electronic System in accordance with the Regulations and giving at least seven days' notice. An advertisement may also be published in one or more local newspapers, a specialist, trade or professional journal if deemed necessary.

6.1.2 If the Contract value is below the relevant EU Threshold as set out in Regulation 5 of the Regulations, tenders may be invited by the Service Director, Corporate Commissioning and Procurement (without advertisement) from a reasonable number of capable contractors. Consideration should be given as to whether or not local contractors can fulfil the requirements of the Contract. If it is considered that Local Contractors can fulfil the Contract requirements, then at least two Local Contractors should be invited to tender.

6.1.3 Where an approved list of contractors or dynamic purchasing system is maintained by the Council for contracts under the EU Threshold, it will be managed by the Service Director Corporate Commissioning and Procurement and, tenders or quotations may be invited from all the contractors on the list, or from those of them selected by the Cabinet or by an officer using a method approved by the Cabinet. The approved list will be reviewed at least once every five years, and where necessary an advertisement inviting inclusion in the list will be published via the Approved Electronic System and on Contracts Finder. A similar advertisement may also be published in one or more local newspapers and/or specialist, trade or professional journals.

6.1.4 Where the Contract forms part of a serial programme, a tender may be invited from a contractor who won the contract for an earlier phase of the work provided the combined value does not exceed the relevant EU Threshold.

6.1.5 A tender may be invited from a contractor already engaged by the Council, if that is in the Council's interests provided that the combined value does not exceed the relevant EU Threshold.

6.2 The invitation to tender will specify that all tenders must be submitted electronically through the Approved Electronic System unless it is not appropriate in the circumstances to do so in which case the invitation to tender shall specify clearly the alternative submission method to use

## **7. Opening of Tenders**

- 7.1 All electronic tenders shall be held securely and unopened until after the time limit set for submitting them has expired.
- 7.2 All electronic tenders and all envelopes containing tenders for the same contract shall as far as possible be opened at the same time.
- 7.3 Any tender received after the deadline for the receipt of tenders cannot be considered, unless the other tenders have not yet been opened and the Strategic Director, Corporate Services and Governance is satisfied that:
  - 7.3.1 in the case of an electronic tender, the tender could not have been submitted by the deadline for reasons outside the tenderer's control; or
  - 7.3.2 in the case of a paper-based tender, the tender was posted in sufficient time for it to have been received by the deadline in the ordinary course of post.

## **8. Evaluation of Tenders**

- 8.1 All tenders that are subject to the Regulations must be evaluated in accordance with the provisions of the Regulations and all tenders and quotations must aim to secure a Contract that is the most economically advantageous to the Council. The Service Director, Corporate Commissioning and Procurement will manage all tender evaluation processes.
- 8.2 Award criteria must be clearly set out in the invitation to tender or equivalent documentation together with the weighted scoring methodology.
- 8.3 A tender for a contract other than the most economically advantageous, may not be accepted without a record of the decision and the reason for it being made in the minutes of the next meeting of the Cabinet.
- 8.4 All other tenders for Contracts up to £250,000 in value may be accepted by a manager in consultation with the service Director, Corporate Commissioning and Procurement.

## **9. Alterations**

- 9.1 Where a tenderer identifies an error in its tender after submission but before the closing date for receipt of tenders, it may submit a revised tender. In such a case only the latest tender submitted will be evaluated.
- 9.2 Where an examination of competitive tenders reveals an error or discrepancy which would affect the sum payable by or to the Council, in a tender which might otherwise be accepted, the tenderer must be given the opportunity of confirming or withdrawing its tender. Where the Strategic Director, Corporate Services and Governance is satisfied that the error or discrepancy is an arithmetical error, the tenderer may be given the opportunity to correct it.

## 10. **Form and Content of Contracts**

- 10.1 No Contract above £25,000 in value shall be entered into unless the form and content has first been approved by the Strategic Director, Corporate Services and Governance or on his/her behalf pursuant to a written delegated authority and must be executed on behalf of the Council by the Strategic Director, Corporate Services and Governance or on his/her behalf pursuant to a written delegated authority.
- 10.2 Every such Contract will specify the work to be carried out, or the goods or services to be provided, the price to be paid (including any discounts), and the timetable for performing the contract.
- 10.3 Where a Strategic Director considers that the Council should require security for the performance of a contract above £100,000 in value, he/she will, after consulting the Strategic Director, Corporate Resources and the Strategic Director, Corporate Services and Governance, specify in the conditions of tender the nature and amount of the security (whether a bond or otherwise).

## 11. **Non-Commercial Matters**

- 11.1 When dealing with any aspect of contracting the Cabinet, any committee or other body of the Council, or manager acting under delegated powers, must not take account of matters defined as 'non-commercial' by Section 17 of the Local Government Act 1988 as amended by the Equality Act 2010 and the Public Services (Social Value) Act 2012  
<http://www.legislation.gov.uk/ukpga/1988/9/section/17>.

## 12. **Termination of Contracts**

- 12.1 No Contract shall be terminated early without prior consultation with the Strategic Director, Corporate Services and Governance and Strategic Director, Corporate Resources to understand the legal and financial impact of the termination.

## 13. **Invitation and Opening of offers for the purchase of Council Land or Buildings**

- 13.1 Where Council land or buildings are to be sold by sealed offer the invitation must state that offers are to be submitted to the Chief Executive by the appointed time in the plain envelope provided, marked 'Offer' followed by the appropriate reference, and without any mark revealing the sender's or bidder's identity. Alternatively electronic tenders may be received via the approved electronic portal.
- 13.2 All electronic tenders and all envelopes containing offers will be held by the Chief Executive until they are opened.

- 13.3 All electronic tenders and all envelopes containing offers for the same property received by the appointed time will be opened together by a representative of the Strategic Director, Corporate Services and Governance and a representative of the Chief Executive.
- 13.4 Any tender containing an offer received after the appointed time will be opened in accordance with Rule 7.3 and the circumstances will be reported to the Cabinet.
14. **Common Seal of the Council**
- 14.1 The Common Seal will be affixed to those documents which as a matter of law or in the opinion of the Strategic Director, Corporate Services and Governance should be executed as a deed. The affixing of the Common Seal will be attested by the Mayor or Deputy Mayor and by the Chief Executive, or Strategic Director, Corporate Services and Governance or on his/her behalf pursuant to a written delegated authority.