

# **REDDITCH BOROUGH COUNCIL**

## **CONTRACT PROCEDURE RULES**

**(Previously Standing Order 46)**

Revised December 2011 (*further updates pending*)

**RBC APRIL 2011(Updated NOVEMBER 2011)**

## 1. Introduction – Purpose of the Contract Procedure Rules

Purchasing decisions and processes are important because the money involved is public money. The purpose of these Contract Procedure Rules is to provide a structure within which procurement decisions are made and implemented and which ensure that the Council:

- Furthers its corporate objectives
- Uses its resources efficiently
- Procures quality goods, services and works
- Safeguards its reputation from any implication of dishonesty or corruption.

Compliance with Contract Procedure Rules is essential to demonstrate honesty in the procurement process. It is also important to deliver value for money through competition and to avoid practices that may restrict, distort or prevent competition. The most important principles contained in the Rules are transparency, openness and fair competition.

These Contract Procedure Rules set out the **minimum** standards that should be applied to all Council procurement.

### 1.1 Statutory basis

The Council is required by Section 135 of the Local Government Act 1972 to make Standing Orders with respect to how the Council contracts for goods, services or works. The Contract Procedure Rules have to include provisions to ensure that there is competition for contracts and for regulating the way in which Quotations and Tenders are invited. They can make exemptions for contracts below European Unions (EU) Thresholds and can authorise the Council to grant exemptions where it is satisfied that there are special circumstances, which gives the option, if approved, not to compete a particular requirement to the full extent of these Contracts Procedure Rules but this is only with the agreement and approval of a Corporate Director or the Chief Executive as appropriate.

### 1.2 Annual Review

These Contract Procedure Rules are reviewed annually, usually in March/April. Any requests for changes at other times of the year should be made to the Monitoring Officer.

### 1.3 Application of the Rules

- (a) The Rules apply to any contract that results in payment being made by the Council as well as to any contract which results in an income being generated for the Council. They also apply to the disposal of surplus goods and to Concession Contracts. ( A Concession Contract is used where the Council wishes to engage a contractor to provide a service within the Council's area in return for which the contractor ("concessionaire") is given a right to charge the public for the services being provided).

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- (b) The Rules do not apply to grants which the Council may receive or make or to the sale or purchase of land or property.
- (c) The Rules should be read alongside the Council's Procurement Strategy, Procurement Guidance and Financial Regulations.
- (d) If you are buying higher value supplies, works or services, the Rules will be more strict than for lower value contracts. This is to ensure that the benefits of good procurement are not outweighed by the cost of procuring the supplies, works or services.
- (e) For any procurements for goods and services **which exceed the EU Procurement Thresholds, (currently £173,934 (200,000 Euros\*)** or works exceeding **£4,348,350 (5 million Euros\*)**) the Council has to follow full EU Public Procurement Directives which contain additional procedures. In these cases, you must consult with the Procurement Unit before beginning the procurement process.

**(Note: \*These thresholds are set in sterling and Euros and are not subject to currency fluctuations. They are effective for two years - 1<sup>st</sup> January 2012 to 31<sup>st</sup> December 2013.**

***Any subsequent update of the threshold figures, shall be notified to all interested parties and shall apply to these Contract Procedure Rules, as above and throughout below, without need for further Council approvals.)***

- (f) Directors Heads of Service and Service Managers are responsible for ensuring that there is compliance with any relevant legal requirements, that proper procedures are observed and that all relevant records are kept and maintained. Directors, Heads of Service and Service Managers are also responsible for ensuring that any external consultant or agent required to procure or supervise a contract on the Council's behalf complies with these Rules as if they were an Officer of the Council.

If you are in any doubt about whether the Rules apply, you must seek advice from the Procurement Unit, Internal Audit, Legal Services or the Head of Legal, Equalities and Democratic Services.

- (g) Failure to comply with the Rules may leave the Council open to the risk of legal challenge. It is also a disciplinary offence for Officers.

#### **1.4 Electronic procurement and purchasing**

- (a) Electronic procurement (e-procurement) systems are more cost efficient and should always be used when available. Please note however that the normal rules still apply (e.g. three quotations or whatever is appropriate to the amount being spent in total)
- (b) An approved Purchasing Card (e-purchasing) should always be used in preference to paper Purchase Orders wherever appropriate.

## 1.5 E Auctions

- (a) 'Reverse' auctions are where suppliers bid decreasing prices for a contract offered by a customer the process is conducted online using specialised software and is time limited. They are normally conducted by organisations such as the Office of Government Commerce and cover the whole public sector.
- (b) Redditch Borough Council would not attempt to organise or run such a specialised process unless it was in collaboration with other major public sector procurement organisations.
- (c) Sellers progressively reduce their prices in response to competitors' bids during the process and only the buyer can see who is offering each price. The specialised software is able to combine qualitative scores and pricing instantly to measure overall competitiveness of each bid.
- (d) The successful supplier is the one bidding lowest the auction when it closes
- (e) If properly implemented, they consistently deliver significant savings and improve quality. Other inherent benefits include:
  - The process is legally compliant;
  - It is transparent to all parties;
  - It provides suppliers with clear visibility of selection criteria;
  - Highly competitive pricing levels;
  - It supports high quality procurement execution; and
  - It has the potential to condition and shape the marketplace.

## 1.6 Contract Values & Aggregation

- (a) The contract values contained in these Rules refer to the known or estimated monetary value of the contract over its full duration exclusive of VAT, including any extension options – **not the annual value**. Where the duration of a contract is indeterminate, the value of the contract should be arrived at by using the value per annum multiplied by 4 years.
- (b) No contract should be subdivided or intentionally split into smaller contracts so as to avoid complying with these Rules. Wherever possible, the Council should procure in the form of a single large value contract in preference to a series of smaller value contracts in order to obtain the maximum benefit in terms of the prices/costs obtained.
- (c) No contract should be entered into unless there is sufficient budget available to cover the estimated cost of the proposed contract.

## 1.7 Equality and Diversity

- (a) The Council provides a wide range of services to the community and business within the Borough. In some cases, these are provided directly by the Council. In other cases, these are provided on the Council's behalf by its contractors and partners.

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- (b) In providing its services, the Council has a statutory duty to ensure that public money is spent in a way that ensures Value For Money and does not lead to unfair discrimination and/or social exclusion.
- (c) The promotion of equality in procurement will help the Council to:
- Improve the overall value for money for the Council in terms of the supplies, works and services it purchase;
  - Improve the quality, responseiveness and appropriateness of its services;
  - Ensure that public money is not spent on practices which lead to unfair discrimination to sections of the Borough;
  - Deliver more responsive and flexible services in combatting social exclusion and building stronger and more cohesive communities;
  - Encourage the Council's suppliers and contractors to promote and practice the Council's policies on equality
- (d) Guidance for Officers and Suppliers/Contractors are available on the Intranet under 'Procurement'

### **1.8 Local Supplier policies**

- (a) Whilst current EU procurement directives make it illegal for Councils to favour local suppliers, there may be instances where a local supplier is more suitable to provide the materials or service.
- (b) As an example if all other factors are equal (price, quality, service etc), a local supplier may be chosen over a remote supplier as the reduced level of transport represents a positive environmental benefit.
- (c) As with all purchases, however, decisions must be made in accordance with the Council's Contract Procedure Rules and relevant EU procurement directives. Advice on these is available from the Corporate Procurement Unit.
- (d) Through its Best Value consultation processes, an authority can seek the input of local Small to Medium Enterprises (SME's) on the provision of services to find the value that can be added by those SME's to the services required. A dialogue with SME's is encouraged at this stage to help an authority to find the link between the services needed by the community and the services that can be supplied locally. Authorities can develop their market intelligence and appraisal skills to identify the capabilities of potential local SME suppliers and to design a business case for local SME's.
- (e) The Council may design its specification and award criteria according to the value that local SME's can add to the service required, for example, sustainability, quality, fuel efficiency, replacement cycles, benefits to local people, community safety, diversity, good workforce management.

### **1.9 Whistleblowing**

- (a) The Council is committed to ensuring that the culture and tone of the Council is one of honesty and opposition to all forms of wrongdoing.

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The Council's contractors can help to achieve this aim and are positively encouraged to raise any concerns that they may have in relation to possible wrongdoing by Council Officers or by work colleagues engaged in performing works or services for the Council.

(b) Wrongdoing could include:

- fraudulent or corrupt behaviour;
- breaches of agreed procedures and practices;
- discrimination on the grounds of race, religion, disability, age, gender or sexual orientation; or
- endangering others or their own health and safety.
- unlawful behaviour
- unsafe working practices
- harassment or victimisation.

(c) The Council's standard Conditions of Contract provide further information on the Council's Whistleblowing Policy and procedures and require all contractors to make their staff aware of the policy and procedures.

#### 1.10 Who can carry out procurement on the Council's behalf?

- (a) Compulsory Procurement Training for Officers – No Officer will be allowed to be involved in procurement on behalf of the Council unless they have undergone this training
- (b) Officers who are Authorised signatories (within their individual specified limits)
- (c) Consultants where duly authorised by the Council but they still must operate with the Councils Contracts Procedure Rules
- (d) Another public authority where they are acting as the lead Authority in a collaborative procurement
- (e) Public Sector Buying Consortia.

## 2. Summary of Procurement Stages

- Identify the **need** for the supplies, works or services, **establish the approximate value** of the proposed contract and draw up the **Specification**. Challenge the perceived need for what is to be purchased (e.g. could the existing equipment be refurbished, could it be provided as a shared service)
- Consider the **options** set out in the Procurement Strategy;
- Estimate the **value** of the proposed contract and **Invite quotations/tenders** in accordance with the relevant part of the Rules;
- **Receive quotations/tenders** in accordance with the relevant part of the Rules;
- **Evaluate quotations/tenders** in accordance with the relevant part of the Rules;
- **Award** the contract and ensure that all contract documents are **signed**;
- **Monitor and manage** the contract.

## 2.1 Need, Specification & Budget

- (a) As a minimum, you must clearly and carefully specify the supplies, works or services to be supplied, the programme for their delivery and the terms for payment together with all other relevant terms and conditions. Specifications should be output or performance based, for example it is not acceptable to specify brand names without adding the words “or equivalent”. However wherever possible the Specification should be generic without using ‘brand’ names.
- (b) This means that you must decide in advance of the competitive process the size, scope and specification for the supplies, works or services required. If you are buying with other organisations, the scope must be agreed with all the other buying partners first.
- (c) When preparing the Specification for a contract, it is important to ensure that consideration is given to what performance information will be required from the supplier in order to measure whether the supplier is meeting the service levels and targets specified in the contract.
- (d) In addition, it may be necessary for the supplier to provide performance information to enable the Council to meet statutory requirements, such as the need to provide information to the Audit Commission each year for the National Performance Indicators.
- (e) The Specification should set out not only what is required but also the frequency and timescales within which performance information is required. In the Quotation or Tender response, tenderers should be invited to demonstrate how they will ensure that the performance data they supply is of adequate quality, such as information about quality processes and procedures used and quality standards achieved.
- (f) The criteria for evaluating Quotations or Tenders (the Scoring Matrix), including any weighting, must be submitted in writing to the Procurement Unit in advance of Quotations or Tenders being invited.
- (g) If in doubt, or it is a high risk or complex contract process you must check with the Procurement Unit and/or Finance and/or Legal Services.
- (h) You must ensure that the required budget is in place before inviting quotations/tenders
- (i) You must also allow sufficient time in your procurement timetable for any Executive Committee or Council approvals that may be required and for contractors to respond to and answer any supplementary questions.

## 2.2 Procurement Options

- (a) You must always consider the Council’s Procurement Strategy and Procurement Guidance, together with any other applicable Council policies when you buy.
- (b) Once the need has been determined, you must determine the way in which the supplies, works or services will be procured. This means assessing all the options, particularly when the need is for the provision of services.

- (c) Under the Council's Procurement Strategy, you must consider the following options for the delivery of supplies, works or services:
- challenge the need
  - is there an existing external compliant contract/framework that you could utilise that would offer savings and efficiencies for the Council
  - could the requirement be delivered in collaboration with other authorities in Worcestershire?
- (d) You must consider whether a "call-off" or "Framework" contract is available for the supplies, works or services you wish to procure as you could get better value for the Council by using an existing Framework agreement (known as 'piggy'backing').
- (e) If there isn't a Framework Agreement already in place then you **must** consider whether it would be better value to set one up. This is likely to be of use where you are going to need to buy the same or similar things again in the future. Guidance on how to set up a framework is contained in the Procurement Guidance. You must also liaise with the Procurement Unit.
- (f) If, following consideration of the options, a joint procurement or other form of collaborative procurement is to be used with another public authority, the conduct of the procurement should be on terms no less rigorous than the requirements of these Rules.

### 2.3 Contract Estimated Values and Inviting Quotations/Tenders

- (a) Before any prospective contractors can be invited to submit a Quotation or Tender for the supply of supplies, works or services, the relevant Officer must identify the purpose, scope and type of the proposed contract and estimate, on the basis of all relevant, available information, the approximate total value of the proposed contract. The estimated value and the calculations forming part of the estimate must be recorded in the relevant working papers.
- (b) There is no authority for any Officer to proceed any further with the procurement process unless the estimated value of the contract has been approved by the Council or is already within budgets approved and allocated by the Council.
- (c) All Quotations and Tenders must be invited on the basis that the Council will not be bound to accept any Quotation or Tender.

#### **Low value Procurements -** **For contracts up to the value of £4,999**

- (d) You must undertake competitive enquiries and record and retain details of your final selection criteria on file, unless you buy from an existing Corporate Contract (see current list at Appendix A).

#### **Intermediate value Procurements -** **For contract values between £5,000 and £49,999**

- (e) You must obtain at least three written quotations from suppliers before a purchase order is issued, specifying the supplies, works or services to be provided and setting out all terms and conditions, including price and terms of payment. E-mailed quotations are acceptable, but copies must be retained on the relevant file.

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- (f) If fewer than three quotations are received, you **must** seek additional quotations or obtain an exemption from the Rules in accordance with Rule 4.1 (Form of Exemption) of these Contracts Procedure Rules.

**High value Procurements / Contracts -  
For contract values between £50,000 and £173,000**

- (g) A full and formal Tender process must be conducted. The standard documents to be used, including the relevant Terms and Conditions are available on the Intranet.
- (h) The minimum number of Tenders to be invited will depend upon the type of contract to be let. The Procurement Unit will provide advice on this.

**Advice from the Procurement Unit must be sought before engaging in any procurement above the EU thresholds.**

**For contract values above the EU thresholds**

- (i) The values above which the procurement procedures are governed by EU Directives are currently (as from **1st January 2012**):

For goods, services or works (including goods and consultancy services)	<b>£173,934 (€200,000)</b>
For works	<b>£4,348,350 (€5million)</b>

**N.B. These thresholds are amended approximately every 2 years and Officers should check current thresholds with the Procurement Unit.**

- (j) If your contract has a value above these thresholds, you must procure in accordance with the Public Contracts Regulations 2006 or subsequent relevant Regulations. Your contract must therefore be tendered under the Open, Restricted, Competitive Dialogue (for particularly complex contracts) or, in exceptional circumstances, the Negotiated Procedure.
- (k) For each contract above the EU thresholds, a Contract Notice must be published in the Supplement to the Official Journal of the European Union (OJEU). Other advertisements published in relation to any contract above the EU thresholds:
- Must not appear in any form before a Contract Notice is transmitted to OJEU; and
  - Must not contain any information above that contained in the Contract Notice in OJEU.
- (l) The procedure to be followed must be determined prior to advertising and must be one of the following:
- **Open procedure** – all interested contractors submit a Tender in response to an advertisement. The Tender is open to anyone who expresses an interest;

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- **Restricted procedure** – expressions of interest are sought from interested contractors in response to an advertisement. A number of contractors are selected from those expressing an interest and are invited to submit a Tender. All those who express an interest will be required to complete a Pre-Qualification Questionnaire (PQQ). The PQQs will be evaluated and a shortlist of suitable persons will then be invited to Tender;
  - **Competitive Dialogue Procedure** – interested contractors are invited to complete a PQQ and a Tender, both of which must be submitted before the deadline;
  - **Negotiated procedure** - expressions of interest are sought from interested contractors in response to an advertisement. A number of contractors are selected from those expressing an interest and are invited to negotiate;
  - **Framework agreement** – Tenders are invited from contractors in accordance with the relevant Framework agreement.
- (m) The minimum number of Tenders to be invited will depend upon the type of contract to be let. The Procurement Unit will provide advice on this.
- (n) Invitations to submit Quotations or Tenders must state that no Quotation or Tender will be accepted unless contained in a plain, sealed envelope, bearing the word “Quotation” or “Tender” followed by the subject to which it relates. Every envelope must bear no name or mark indicating the person, company or firm submitting the Quotation or Tender. The envelope or package in which the Quotation or Tender is submitted must not be capable of being sealed more than once.
- (o) Every Quotation shall be addressed to the relevant Head of Service and every Tender shall be addressed to the Head of Legal, Equalities & Democratic Services. Every Quotation or Tender shall remain in the relevant Officer’s custody until the appointed time for their opening.

### Some useful definitions

- (p) A **public supply contract** is a contract for:
- The purchase of ‘goods’ (does not include land or the product of an activity); or
  - The hire of ‘goods’ with or without the siting or installation of those goods.
- (q) A **public works contract** is a contract for the carrying out of a ‘work’ or ‘works’ under which the Council engages a person to procure a work ‘by any means’. (see below for definition)
- (r) A “**work**” is defined as including:
- Building and civil engineering work;
  - Construction of office blocks, hospitals or other buildings;
  - Civil engineering, construction of roads, bridges and railways;
  - Installation of work (e.g heating and electrical equipment);
  - Completion of work such as tiling and papering;
  - Maintenance of buildings.

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- (s) The following activities may also be regarded as a **works contract**:
- A contract where the Council engages a contractor to act as agent for the Council in letting contracts;
  - An agreement where a developer constructs a building on its own land (according to the Council's needs) and undertakes to transfer the land and structure to the Council upon completion or at a later date.
- (t) A **public services contract** is one under which the Council engages a person to provide services. The Public Contracts Regulations divide services into two categories: "Part A Services" and "Part B Services".
- (u) Part A Services are listed in Part A of Schedule I to the Regulations. Contracts for Part A Services are subject to the Regulations, including tendering procedure rules, specifications, pre-qualification etc.
- (v) Part B Services are subject only to limited provisions, including rules on technical specifications, contract award notices and the submission of statistical reports. Part B Services are all those services set out in Part B of Schedule I to the Regulations. In addition, they include all those services that fall outside Part A.
- (w) Where a contract involves both Part A and Part B services, the contract classification is determined by the service that forms the greatest proportion of the total value of the contract.

**Contract Notices must only be placed by the Council's Procurement Unit.**

- (x) Minimum timescales relating to tender procedures governed by the EU Directives are shown in the Guidance and these must always be followed.

## 2.4 Receiving and Opening Quotations and Tenders

### Quotations – Opening of Quotations between £5,000 and £49,999

- (a) All Quotations for a contract shall be opened in the presence of the relevant Head of Service (or in the case of absence another Head of Service) and at least one other Officer by arrangement and all pages containing price or cost details must be initialled and endorsed with the date and time of opening by both Officers and listed in the "Quotations Received" register maintained by the relevant Service Team.
- (b) The register must record the following particulars:
- (i) a description of the goods, materials, works or services concerned;
  - (ii) the date and time when the Quotations were opened;
  - (iii) the name of the person, company or firm submitting the Quotation and the amount of the Quotation;
  - (iv) the names and signatures of all persons present at the opening of the Quotations;

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**Confidentiality / Collusion**

- (c) No Officer present at the opening of a Quotation shall discuss or communicate the amount of a Quotation to any person other than relevant Council Officers or Members
- (d) Where three Quotations are not received owing to a lack of suitable potential suppliers / providers, or for any other reason, then the relevant Officer shall, in consultation with their Director, certify the reason for not obtaining three Quotations in the Quotations Register and then consider those Quotations which have been received.

**Tenders - Opening of Tenders between £50,000 and £173,934 (€200,000) – Current EU Procurement Threshold**

- (e) All Tenders for a contract shall be opened at a predetermined time in an area clear of other distractions. Tenders shall be opened by the Democratic Services Manager, or his nominee, in the presence of representative(s) of the Procurement Unit and/or the relevant Head of Service or other appropriate Officer of the Council designated by him/her.
- (f) The Democratic Services Manager will maintain a register of Tenders received and record in the register the following :
  - (i) the last date and time for the receipt of Tenders;
  - (ii) the date and time when the Tender was actually received;
  - (iii) the name of the Tenderer and the amount of the Tender;
  - (iv) the date and time when upon the Tenders were opened;
  - (v) the signature of the Officer to whom the Tenders were handed after opening;
  - (vi) the names of all persons present at the opening of the Tenders;
  - (vii) any nil responses by a Tenderer;
  - (viii) in respect of 'Schedule of Rates' contracts, any rates left blank in the Tender Schedule should be noted at the time of opening by the Member or Officer present entering their initials in place of any blank response; and
  - (ix) in respect of any Tender, any figure left blank in the Tender documents should be noted at the time of opening by the Member or Officer present entering their initials in place of any blank response.
- (g) All persons required by (e) above to be present at the opening of Tenders shall immediately sign against the relevant particulars in the register as evidence of such Tenders having been opened by them or in their presence. Tender documents should be initialled and dated by the Officers immediately after they are opened.

**Confidentiality / Collusion**

- (h) No Member or Officer present at the opening of a Tender shall discuss a Tender or communicate the amount of a Tender to any person other than relevant Officers, Members, the Executive Committee or the Council.

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## Opening of Tenders over the EU Thresholds

- (j) In addition to the procedure specified for Tenders up to the EU Thresholds all EU related Tenders will be opened by the Chair or, in his/her absence, Vice-Chair or other Member of the Overview and Scrutiny Committee.

## Late Tenders

- (k) Any Tender submitted or received after the specified closing date and time (deadline) shall be promptly returned to the Tenderer by the Head of Legal, Equalities and Democratic Services or an appropriate Officer of the Council nominated by him/her.
- (l) The Tender may be opened to ascertain the name and address of the Tenderer. BUT NO DETAILS of the Tender shall be discussed internally or externally.

## 2.5 Evaluating Quotations/Tenders

### Quotations

- (a) Where written quotations are invited for purchases between **£5,000 and £49,999** then the supplier or contractor submitting the lowest priced compliant quotations must awarded the contract.

### Tenders

- (b) For contracts valued over **£50,000** and for all contracts governed by EU Directives, a more complex tender evaluation procedure based on the identification of the 'Most Economically Advantageous Tender' ("MEAT") should be used. However, there are some situations where MEAT will not be an appropriate method of evaluation (e.g. where the only distinguishing factor will be that of price). In all cases, an appropriate method of evaluation must be used.
- (c) Care and consideration should be taken to ensure that the weighting method employed does not distort the scoring method in a way that the results are not aligned with the objectives of the procurement exercise. Consult the Procurement unit if in any doubt.
- (d) The evaluation of tenders involves the objective scoring of bids by a panel of stakeholders/officers and/or independent experts using criteria which must:
  - (i) Be predetermined and listed in the Invitation to Tender ("ITT") documentation in order of importance;
  - (ii) Be based on an offer made against either a performance or output based specification of the goods or services required
  - (iii) Be strictly observed at all times throughout the tender process;
  - (iv) Reflect the principles of Value for Money;
  - (v) Include price;

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- (vi) Consider whole-life costing, particularly in the case of capital equipment where the full cost of maintenance, decommissioning and disposal should be taken into account;
  - (vii) Be capable of objective assessment;
  - (viii) Be weighted according to their respective importance;
  - (ix) Include, where applicable, the quality of the tenderer's proposals to accept a transfer of staff under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE); and
  - (x) Avoid discrimination or perceived discrimination in accordance with the Council's policies.
- (e) Where this evaluation methodology is used, any resulting contract **must** be awarded to the Tenderer who submits the most economically advantageous tender (i.e. the tender that achieves the highest score in the objective assessment). This protects the Council from any 'challenges' which could potentially result in prosecution or fines.

## 2.6 Award of Contract and Execution of Contract Documents

### Contract Award

- (a) For all contracts under the EU Directive Thresholds, the relevant Officer must award the contract to the most economically advantageous complaint Quotation or Tender.
- (b) For all contracts tendered over the EU Directive Thresholds, a mandatory 10 day 'standstill period' must be observed between the decision to award the contract and the completion of the contract documents (the Council actually requires a 15 day 'standstill' period). Once the decision to award a contract has been made, each tendere must be notified in wiring of the outcome of the tender process. The Procurement Unit can provide you with template letters for this process.
- (c) This notification must include:
  - (i) details of the contract award criteria;
  - (ii) where practicable, the score the tenderer obtained against those award criteria;
  - (iii) where practicable, the score the winning tenderer obtained; and
  - (iv) the name of the winning tenderer.
- (d) There must be a minimum of 15 calendar days between the despatch of this notification and the conclusion of the contract documents. Special rules apply where a tenderer requests a de-brief on the tender process. Even if a tenderer asks for a de-brief outside the standstill period, we are still obliged to provide this.
- (e) All contracts awarded under EU Directives must be announced by means of a Contract Award Notice in OJEU transmitted no later than 48 calendar days after the date of the contract award.

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**Final Contract Award Notices which need to be placed in the Official Journal of the European Union (OJEU) must only be placed by the Council's Procurement Unit.**

### **Execution of Contract Documents**

- (f) It is important to contract only under the Council's relevant Conditions of Contract, unless you receive permission not to do so from the Head of Legal, Equalities & Democratic Services. Officers must use an appropriate model form of contract approved by the Procurement Unit and the Head of Legal, Equalities & Democratic Services, which are available on the Intranet.
- (g) Your Purchase Order **must** contain the standard form of terms and conditions of contract between the Council and the supplier. A quotation and a purchase order will create a legally binding document. The Purchase Order is used to formalise the terms of the contract.
- (h) For all contracts for services where the services are of an unusual or complex nature, the Head of Legal, Equalities & Democratic Services must be consulted to produce a suitable set of conditions for the contract before inviting tenders.

### **Signature of Contracts**

- (i) Every contract under the EU threshold must be written in a form approved by the HLEDS and may be signed by a Director or Head of Service. (Standard form contracts approved by HLEDS, covering goods, services and works are available on the Intranet).
- (j) Every contract over the EU thresholds must be drawn up in consultation with and approved by the HLEDS and must be signed by the Chief Executive or the HLEDS.
- (k) A copy of every contract over £49,999 shall be forwarded to Legal Services.
- (l) Contracts let by Official Orders must include the Council's standard Terms and Conditions.

## **2.7 Contract Management and Monitoring**

- (a) It is essential to good contract management that a realistic set of Key Performance Indicators (KPIs) is built into the Specification upon which the contract is to be let. This allows Officers to hold regular meetings with contractors throughout the life of the contract to monitor and manage the supplier/contractor against the KPIs to ensure that they consistently deliver what the Council has contracted for in terms of quality, cost and benefit. Letting the contract is just the first step.
- (b) All Quotation or Tender documentation must be retained by the relevant Service Team for the duration of the contract, including any maintenance period and a further period of six years (if the contract was signed) or twelve years (if the contract was sealed).

### 3. Specific types of contracts and procedures

#### 3.1 Contracts

##### Framework Agreements

- (a) These are agreements with suppliers for the provision of supplies, works or services on agreed terms for a specific period for estimated quantities against which orders may be placed if and when required during the contract period. They offer benefits of bulk-buying, improved service and reduced administration costs over the period of the agreement.
- (b) A framework agreement may allow you to hold a “mini-competition” with all the suppliers in the framework, other features and benefits include:
- It removes the requirement to go out for Quotations - less time consuming.
  - Because no business is guaranteed to any contractor/supplier as a result of being appointed to the Framework Agreement it keeps cost and quality of service higher on the contractor/suppliers agenda as they want to win as large a share of possible of the business the Council has to place.
  - It Increases contractor/supplier capacity
  - It can be utilised to assist small businesses or start up businesses.
- (c) Corporate Framework agreements for goods, services or works should be used where they exist for procurements up to the EU thresholds

##### Concession contracts

- (d) A Concession Contract is used where the Council wishes to engage a contractor to provide a service within the Council’s area in return for which the contractor (“concessionaire”) is given a right to charge the public for the services being provided.
- (e) The EU procurement rules do not apply to public works concessions where the estimated value is below the relevant EU threshold. Where the concessionaire intends to sub-contract the performance of the services, the concessionaire may fall within the scope of the EU procurement rules. In all cases where the concessionaire is procuring supplies and/or services as part of the concession contract, the procurement should be carried out in accordance with these Rules.

Advice from the Procurement Unit must be sought before engaging in any procurement relating to a concession contract.

#### 3.2 Procedures

##### Restricted Procedure

- (f) This is the procedure most utilised by the Council under which a selection is made utilising a Pre Qualification Questionnaire (PQQ) of those who respond to the advertisement and only they are invited to submit a tender for the contract.



This allows the Council to avoid having to deal with an overwhelmingly large number of tenders;

### Open Procedure

- (g) Under which all those interested may respond to the advertisement in the OJEU by tendering for the contract. This Procedure should not be used without seeking advice from the Corporate Procurement Unit or the Legal Department as it can consume vast amounts of Officer time and effort as the potential levels of response can be huge as there is no PQQ (or filter) mechanism

### Competitive Dialogue Procedure

- (h) Under EU Directives, the Competitive Dialogue Procedure may be used for contracts valued at or above the EU thresholds in certain circumstances where:
- The Council wishes to award a particularly complex contract and believes that the use of the Open or Restricted procedures will not allow the award of that contract; or
  - The contract is for a service and the precise nature of the service required cannot be clearly specified or accurately priced (e.g. bespoke software application, insurance services, artistic services)

This is a complex potentially costly process with high risk and advice from the Procurement Unit and Legal Services must be sought before engaging in any Competitive Dialogue Procedure.

### Negotiated Procedure

- (i) This procedure should not now be used, except in very specific circumstances, for the procurement of particularly complex projects.

If in doubt, you must contact the Procurement Unit, Legal Services or the Head of Legal, Equalities & Democratic Services.

## 4. Exemptions and other issues

### 4.1 Exemptions

- (a) Any exemptions from these Rules must be obtained **in advance** using a completed 'Form of Waiver' in accordance with the following procedure. **Waivers can only be signed by a Corporate Director or the Chief Executive.**
- (b) The Contract Procedure Rules may be waived in the following circumstances:
- (i) Where the supply is proposed under special arrangements negotiated by the Office of Government Commerce (OGC) or OGC Buying Solutions (OGCbs) in which event the special arrangements must be complied with;
  - (ii) The timescale for procurement of the supplies, works or services genuinely precludes competitive tendering. Failure to plan the procurement properly is not a justification for inviting a single quotation or tender;
  - (iii) Specialist expertise is required that is only available from one source;

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- (iv) The task is essential to complete a project and arises as a consequence of a recently completed assignment and engaging different consultants for the new task would be inappropriate;
  - (v) There is clear benefit to be gained from maintaining continuity with an earlier project. However, in such cases the benefits of such continuity must outweigh any potential financial advantage to be gained by competitive tendering;
  - (vi) There is a recognised purchasing consortium in place (e.g. OGC Buying Solutions, Eastern Shires Purchasing Organisation (“ESPO”), Yorkshire Purchasing Organisation (“YPO”)) whereby members of the consortium may utilise the consortium’s purchasing arrangements in order to procure supplies and/or services. The Council must be a member of the relevant consortium or otherwise eligible to access the consortium’s purchasing arrangements for this exemption to be applicable and only the goods and/or services that are the subject matter of the consortium arrangements may be procured. Where the goods and/or services are outside the scope of the consortium arrangements, you must use another method of procurement in accordance with these Rules.
  - (vii) the contract is for the purchase of goods/materials which are sold only at fixed prices or where prices are controlled by a trade organisation and there would therefore be no genuine competition.
- (c) The limited application of the single tender rules should not be used to avoid competition, for administrative convenience or to award further work to a contractor originally appointed through a competitive procedure.
- (d) Where it is approved that the Contract Procedure Rules should be waived in relation to a particular procurement, a copy of the signed Form of Waiver must be sent electronically to be added to the Contracts Register which is held and maintained by the Corporate Procurement Unit or the “Quotations Received” register maintained by the relevant Service Team (according to the relevant value of the procurement)

N.B. The Form of Waiver is set out in Appendix B to these Rules and can be downloaded from the Intranet (see under ‘Contracts Home’)

Exemptions **cannot** be given for procurement within the EU Directives.

## 4.2 Other issues

### Conflicts of Interest

- (a) Any interest an Officer has which may affect the award of a contract under these Rules must be declared. Every Officer entitled to buy supplies, services or works on behalf of the Council must declare their interest in writing to the Audit Services Manager and update their declaration as soon as any interest changes arise.

Contracts procured under EU Directives must not be extended or varied without consulting the Procurement Unit.

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## Consultants

### Procurement of consultancy services

- (b) It is important to ensure when engaging any Consultants or Consultancies that the Council retains the Intellectual Property Rights (IPR) to the product of their work for the Council. There may be a commercial value that the Council can exploit or the Council may at some future date wish to utilise the product of the Consultants work as the basis of a further study/piece of work, in this instance. If the Council retain the IPR they can use any Consultancy they wish
- (c) There may be instances where use of these Rules would be inappropriate (e.g in the case of engaging a barrister or other consultant where the quality of performance or the interpersonal skills of the contractor are more important than the price). In such cases, consultants will be engaged according to the following:
- i) Low value: at the discretion of the Head of Service;
  - ii) Intermediate value : subject to consideration and selection by the Head of Service in consultation with the relevant Director;
  - iii) High value : subject to consideration and selection by a panel comprising the Head of Service, relevant Director and at least three elected Members

### Procurement by consultants on the Council's behalf.

- (d) Any consultant who is to be responsible for supervising any stage of the procurement process on behalf of the Council will:
- (i) Comply in all respects with these Rules and the Council's Financial Regulations;
  - (ii) Hold, where appropriate, an adequate level of Professional Indemnity insurance to cover any potential loss that may arise;
  - (iii) Produce all records maintained by him relating to the contract to the appropriate Head of Service or his representative whenever requested during the life of the contract; and
  - (iv) Pass all relevant records to the Head of Service on completion of the contract.

### Information to be provided to consultants

- (e) Information has to be relevant and specific to the work they will be required to do and would include;
- i) A comprehensive brief of the outcomes/results sought
  - ii) A time frame within which the work is to be completed
  - iii) Payment schedules.

### Parent company guarantees and bonds

- (f) Any Officer procuring a contract for supplies, works or services which is over £1 Million must consult the Head of Financial, Revenues and Benefits Services and the Head of Legal, Equalities & Democratic Services to determine whether a bond, parent company guarantee or other form of security is required.

### Subcontractors

- (g) The use of Subcontractors by Suppliers or Main Contractors to the Council must be approved by the Officer letting or responsible for managing the contract. It is not an automatic right.

### Collusion / Corruption

- (h) In all their dealings, Officers of the Council shall preserve the highest standards of honesty, integrity, impartiality and objectivity and shall comply with the Employee Code of Conduct.
- (i) Council Officers and Members must not benefit personally from dealings with current or prospective contractors or suppliers.
- (j) Hospitality, gifts, prizes or commission offered by contractors or suppliers should not normally be accepted. Minor promotional gifts distributed as part of a contract or supplier's general advertising may be retained for use within the Council.

If in any doubt, please seek further advice from the Monitoring Officer or from Internal Audit.

### Anti-collusion certificates

- (k) For contracts let over £50,000 all Bidders will be required to sign and return a Certificate of Non-Collusion with their Tender submission - the format and content as per the following;

#### **ANTI COLLUSION / BONA FIDE TENDER CERTIFICATE**

"I declare that this is a bona fide Tender, intended to be competitive, and that I have not fixed or adjusted the amount of the tender by or under or in accordance with any agreement or arrangement with any other person. I also declare that I have not and I undertake that I will not before the award of any contract for the work:

- (a) disclose the tender price or any other figures or other information in connection with the tender to any other party (including any other company or part of a company forming part of a group of companies of which I am a part) nor to any sub-contractor (whether nominated or domestic) nor supplier (whether nominated or domestic) or any other person to whom such disclosure could have the effect of preventing or restricting full competition in this tendering exercise.

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- (b) enter into any agreement or arrangement with any person that they shall refrain from tendering, that they shall withdraw any tender once offered or vary the amount of any tender to be submitted;
- (c) otherwise collude with any person with the intent of preventing or restricting full competition;
- (d) pay, give or offer to pay or give any sum of money or other valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender for the work any act or thing of the sort described at (a), (b) or (c) above.

I further declare that I have no knowledge either of the sum quoted or of any other particulars of any other tender for this contract by any other party.

I further declare that the principles described above have been, or will be, brought to the attention of all sub-contractors, suppliers and associated companies providing services or materials connected with the tender and any contract entered into with such sub-contractors, suppliers or associated companies will be made on the basis of compliance with the above principles by all parties.

I acknowledge that any breach of the foregoing provisions shall lead automatically to this tender being disqualified and may lead to criminal or civil proceedings.

The company/organisation acknowledges that the Council shall treat any tender received in confidence but reserves the right to make the same available to any person in compliance with it's statutory duty including Trading Standards Departments, the Office of Fair Trading, and/or any other statutory regulatory authority either having jurisdiction over the works or who may now or at any time in the future have statutory power to require disclosure of this tender.

I am authorised by the Tenderer to sign this Certificate, and to submit the accompanying bid, on behalf of the Tenderer.

Each person whose signature appears on the accompanying tender has been authorised by the Tenderer to determine the terms of, and to sign, the tender, on behalf of the Tenderer".

- (l) Amongst other advantages this will help to discourage collusion and ultimately give the Council the legal right to terminate contracts where collusion is proven post any contract award

### **Register of contracts**

- (m) Originals of all contracts let must be lodged with Legal Services and electronic copies with the Corporate Procurement Unit.



## Appendix 'A'

### CORPORATE CONTRACTS

Goods or Services Provided	Supplier/Contractor	Date Let	Date of Expiry
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## Appendix 'B'

## REDDITCH BOROUGH COUNCIL

## Contract ref (if any):

## PRO-FORMA REQUEST FOR THE WAIVER OF TENDERING/QUOTATION PROCEDURES

In accordance with the Redditch Borough Council (RBC) Contracts Procedure Rules (formerly SO46) tendering/quotation procedures may be waived when the goods, services or works are required urgently or other special circumstances as described in Schedule A (below) are applicable and may only be actioned on the written authority of a Corporate Director or the Chief Executive Officer.

## THIS FORM CANNOT BE USED TO AVOID EU PROCUREMENT REGULATIONS

## SECTION A - TO BE COMPLETED BY THE PERSON MAKING THE REQUEST:

*Directorate / Service:*

*Item of Goods, Services or Works:*

*Estimated / Actual Cost (including delivery, maintenance, training, etc. if applicable):*

*Please indicate in the space provided below why you do not consider that it is appropriate to follow the Council's procurement process for the goods, services or works and identify which exemption within the Rules you believe applies;*

*If it is essential that the goods, services or works be purchased from the Supplier nominated above rather than as the result of competitive tendering or any existing approved source please give reasons: (Refer to Schedule A stating the reason which best describes your course of action):*

Signed .....

Designation .....

Date.....

IN SIGNING THIS FORM I DECLARE THAT I DO NOT HAVE A FINANCIAL OR OTHER INTEREST IN THE COMPANY INVOLVED IN THE SUPPLY OF THE GOODS, SERVICES OR WORKS LISTED ABOVE.

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**SECTION B - TO BE COMPLETED BY THE APPROVING OFFICER**

REQUEST \*ACCEPTABLE / UNACCEPTABLE (\*delete as appropriate)

COMMENTS (if any)

.....

.....

.....

Signed .....

Designation .....

Date .....

**IF ACCEPTABLE PLEASE FORWARD IMMEDIATELY TO REQUISITIONER FOR ACTION****IF UNACCEPTABLE PLEASE RETURN TO THE ORIGINATOR OF THIS REQUEST WITH COMMENTS AS APPROPRIATE.****N.B. In Both cases a copy MUST be sent to the Corporate Procurement Unit****SCHEDULE A**

Formal tendering/quotation procedures may only be waived by Directors or the Chief Executive where:

- 1) the supply is proposed under special arrangements negotiated by the OGC/OGCs in which event the said special arrangements must be complied with;
- 2) the timescale genuinely precludes competitive tendering. Failure to plan the work properly is not a justification for a single tender;
- 3) specialist expertise is required and such expertise is available from only one source;
- 4) the task is essential to complete a project, arises as a consequence of a recently completed assignment and engaging different consultants for the new task would be inappropriate;
- 5) there is clear benefit to be gained from maintaining continuity with an earlier project . However, in such cases the benefits of such continuity must outweigh any potential financial advantage to be gained by competitive tendering;
- 6) it is proposed to procure goods, services or works from an existing pre-tendered Public Sector Consortia contract arrangement let by a Public Sector Consortia such as Eastern Shires Purchasing Organisation (ESPO), or any other PRO5 Consortia OGC, NHS Purchasing & Supplies Organisation;
- 7) The contract is for the purchase of supplies, works or services which are sold only at fixed prices or where prices are controlled by a trade organization and there would be no genuine competition.
- 8) The limited application of the single tender rules should not be used to avoid competition or for administrative convenience or to award further work to a consultant originally appointed through a competitive procedure.

End.

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