

**FAREHAM**  
BOROUGH COUNCIL

# **CONTRACT PROCEDURE RULES**

**December 2013**

# CONTRACT PROCEDURE RULES

## Compliance

- 1.1. Every Member of the Council and every officer and employee of the Council must comply with these Contract Procedure Rules.
- 1.2. Any other person who is engaged in the letting, management or supervision of a contract on behalf of the Council must comply with these Rules as if s/he were an officer of the Council.
- 1.3. These Rules apply to all procurement decisions, regardless of the source of funding, or the status of the contractor (i.e. they apply equally to selection of both main contractors and nominated sub-contractors or suppliers).
- 1.4. Every contract must be let in compliance with all applicable European and domestic legal requirements.
- 1.5. Failure to comply with these Rules is a breach of the Council's Disciplinary Code of Practice and will generally result in the application of the Council's disciplinary procedures.
- 1.6. These Rules are supplemented by and should be read in conjunction with the Council's Financial Regulations and the Procurement Thresholds and Sourcing Procedures.
- 1.7. A glossary of key types of contract referred to in these Rules is provided in [Appendix 2](#).

## Exemptions

- 2.1 The following contracts are exempt from the requirements of these Rules:
  - Orders to be placed through a framework agreement<sup>1</sup> access to which is available to this Council;
  - Orders placed through a central purchasing body within the meaning of the Public Contracts Regulations 2006;
  - Employment contracts;
  - Contracts for the disposal or acquisition of an interest in land;
  - Grants to external organisations.

## Contract Value

- 3.1 All monetary values referred to in these Rules are total contract values, not annual values, and exclude VAT unless otherwise stated. They cover expenditure contracts and income generating contracts.
- 3.2 Guidance on valuing a contract will be maintained as part of the Procurement Thresholds and Sourcing Procedures.

- 3.3 Contracts must be packaged appropriately to achieve maximum value for the Council. They should not be split in order to avoid quotation or tendering limits in these Rules or EU procurement thresholds, or packaged in a way to reduce the potential for fair and open competition.

#### Contracts valued below £20,000

- 4.1 These Rules shall not apply to contracts with an estimated value of less than £20,000. These contracts are governed by the Council's Financial Regulations.

#### Contracts with a value between £20,000 and £50,000

- 5.1 Where the estimated value of a contract is between £20,000 and £50,000 a minimum of three tenders must be invited for a works<sup>1</sup> contract and a minimum of three written quotations must be invited for a contract for goods<sup>1</sup> or services<sup>1</sup> or concessions<sup>1</sup>.

#### Contracts with a value in excess of £50,000 but not exceeding the EU public procurement thresholds

- 6.1 Where the estimated contract value exceeds £50,000 but does not exceed the relevant EU public procurement threshold (or does not fall within a category subject to the EU public procurement rules) a minimum of three tenders must be invited.

#### Transparency

- 7.1 All contract opportunities with an estimated value of £20,000 or more must be advertised on the Council's Business Portal (the South East Business Portal) to seek expressions of interest from suitably qualified suppliers.

#### Selection of Persons to be invited to tender or quote

- 8.1 Except where the estimated contract value exceeds the relevant EU public procurement threshold, tenders or quotations should be sought from an appropriate number of suitably qualified suppliers who have achieved a business accreditation standard recognised by the Council.
- 8.2 Suppliers will be considered as accredited to a recognised standard if they are accredited by EXOR for all contracts, Constructionline for works<sup>1</sup> contracts, by BiP Select Accredited for contracts for goods<sup>1</sup> or services<sup>1</sup> or accreditations with a similar status.

#### Contracts with a value in excess of the EU public procurement thresholds

- 9.1 Where the estimated contract value exceeds the relevant EU public procurement threshold any contract must be let in compliance with the relevant legal requirements, in particular the Public Contracts Regulations 2006 (as amended) and these Rules.

- 9.2 Where there is a conflict between legislation and these Rules the legislation will prevail.

#### Invitations to tender or submit quotations

- 10.1 An invitation to tender or submit a quotation shall include:
- A description of the works<sup>1</sup>, goods<sup>1</sup> or services<sup>1</sup> being procured.
  - A specification indicating whether variants are permissible.
  - The Council's terms and conditions of contract.
  - The evaluation criteria including any weightings.
  - The pricing mechanism and instructions for completing the tender sum.
  - Where there is a potential transfer of employees, the Council's view on whether TUPE will apply.
  - The form and content of method statements to be provided.
- 10.2 Invitations to tender or quote shall be sent electronically and tenders and quotations shall be received electronically unless the relevant Director agrees otherwise.

#### Collaborative procurement

- 11.1 Where procurement is undertaken in collaboration with one or more other public authorities the Contract Procedure Rules of one of the other authorities may be used in place of these Rules.
- 11.2 An invitation to tender or to submit quotations may be made for supply to other authorities in addition to Fareham Borough Council on similar terms.

#### Budgetary Provision

- 12.1 No order shall be placed or quotation or tender invited unless there is sufficient budgetary provision.

#### Submission and Opening of Tenders and Quotations

- 13.1 All invitations to tender or submit a quotation must specify requirements for their submission. Such requirements shall include a time by which tenders or quotations must be received by the Council.

#### Tender opening and Award of Contracts

- 14.1 All tenders with an estimated value in excess of £50,000 must be opened by a Democratic Services Officer in the presence of a Corporate Procurement Officer. All contracts must be awarded by officers and members in accordance with the thresholds set out in [Appendix 1](#).

## Form and contents of contracts

- 15.1 For contracts with a value of £20,000 or more:
- a) where it is of a lower value and/or lower risk it will be signed under hand by a relevant authorised officer as per paragraph 15.5;
  - b) where it is of a higher value and/or higher risk it will be executed as a deed and sealed, thus giving the Council greater protection.
- 15.2 The question whether the contract should be a deed and sealed or simply signed under hand in accordance with Rule 15.1 above, should be decided at the start of the process when legal advice should also be sort as to the terms and conditions to be included.
- 15.3 The following types of contract must be entered into as a deed:
- a) Any contract which relates to the acquisition, disposal, or lease of land and property.
  - b) Any contract for works<sup>1</sup> of a value of £20,000 or more.
  - c) Any contracts for works<sup>1</sup> which relate to the structural alteration of a property irrespective of the value, on advice of legal services.
  - d) Any contract for goods<sup>1</sup> or services<sup>1</sup> of a value of £50,000 or more.
- 15.4 Contracts not listed in Rule 15.3 do not need to be entered into as a deed, unless there is an appropriate reason to do so.
- 15.5 Contracts to be signed under hand should be signed by an officer nominated with that level of responsibility as set out in [Appendix 1](#). No officer below the level of Head of Service can sign contracts on behalf of the Council.
- 15.6 Any contract to be entered into as a deed should be sealed. The officers authorised to attest the seal are identified in part 1 Chapter 13 of the constitution. In exceptional circumstances where the seal is not available the deed can be signed by 2 officers who are authorised to attest the seal.

## Maintenance of the Contract Register

- 16.1 The Council must maintain a Central Register of all contracts that it has entered into.
- 16.2 All original and signed copies of a contract, must be held centrally in a secure location for the term of the contract (including any agreed extension periods), plus the statutory limitation period (6 years for contracts under hand, 12 years for deeds) plus two years. They must be referenced back to the Central Register.

16.3 Heads of Service are responsible for ensuring that:

- summary details of any contract that has been entered into, that binds the Council to the terms and conditions of the contract, have been entered on the Central Register;
- the original signed/sealed copies of the contract and any subsequent signed variations, have been stored in the central secure location;
- an electronic copy of the contract and any subsequent variations to the contract that are entered into during its lifetime are stored in their service filing areas.

#### Conflicts of Interest, Bribery and Corruption

17.1 All officers involved with the award of contracts must comply with the Council's Anti-Fraud and Corruption Policy, Anti-Bribery Policy, Guidelines on Gifts and Hospitality and Guidelines on Registering Interests.

17.2 In addition the following rules apply:

- No gifts or hospitality, other than simple refreshments, shall be accepted by Officers or members from any bidders to any contract being let by the Council until the time that the contract has been awarded.
- No contract can be wholly awarded or managed by an officer or member who has other interests in the arrangement.

17.3 If it comes to the knowledge of a member or an officer of the Council that a contract in which s/he has a pecuniary interest has been or is proposed to be entered into by the Council, s/he shall immediately inform the Monitoring Officer (in the case of members) or their director (in the case of officers).

17.4 Each contract which the Council enters into shall include a provision which entitles the Council to terminate the contract and recover losses from the contractor resulting from such termination if the contractor or anyone acting on the contractor's behalf has committed or attempts to commit an offence under the Bribery Act 2010, the Local Government Act 1972 or any other relevant prevention of corruption legislation.

#### Waivers of Contract Procedure Rules

18.1 Where a contract has an estimated value of £50,000 or more, the Executive, relevant Executive Member or Committee as appropriate may agree to waive the provisions of these Rules provided that no such waiver shall permit a breach of any relevant domestic or European legislation.

18.2 Where a contract has an estimated value of less than £50,000, a waiver of the provisions of these Rules may be agreed by the Director of Finance and Resources in consultation with the Monitoring Officer.

## Emergencies

- 19.1 In an unforeseen situation where a Director considers that it would not be in the Council's interests to apply the provisions of these Rules the Chief Executive Officer or in his absence another Director may authorise such a course of action in respect of a procurement which would protect the Council's interests in relation to that emergency. Any action taken under this provision must be reported to the next meeting of the Executive or appropriate Committee. Nothing in this provision authorises the breach of any legal requirements.

## Officers' and Members' Powers in Relation to Contracts

	Covers	Additional Rules	Executive Portfolio Holder	Member of CXMT	Head of Service
<b>Award Contract</b>	Choose supplier with whom orders can be placed (in accordance with procurement rules). Select the winning tender from a procurement exercise.	<b>Tenders over £150,000 must be awarded by the Executive or appropriate Committee.</b>  <b>All tenders awarded for £50,000 or more must be included in the 6 monthly reports to the Executive.</b>	<b>£150,000</b>	<b>£50,000</b>	<b>£20,000</b>
<b>Sign Contract</b>	Sign under hand a contract awarded under a request for quotes, tenders or sealed bids process. Sign up to an agreement which ties the council into expenditure (e.g. maintenance agreement). Sign up to an agreement which ties the council into a set of terms and conditions (e.g. grant agreement, IT facility agreement).	<b>All contracts for £50,000 or more must be executed as a deed.</b>  <b>In addition works<sup>1</sup> contracts over £20,000 should be executed as a deed and any which involve a structural alteration to a property.</b>  <b>All contracts involving the acquisition, disposal or lease of land and property should be executed as a deed.</b>	Not permitted	<b>£50,000</b>	<b>£20,000</b>
<b>Attest Seal on a Deed</b>	Signing the seal affixed to a document or deed. Execute a deed if the seal is not available	<b>This authority is set out in Part 1 Chapter 13.8 of the Constitution.</b> As at August 2011 this permits the following persons to attest the seal: Chief Executive Officer; the Solicitor to the Council; the Director of Finance and Resources; the Director of Regulatory and Democratic Services.  In exceptional circumstances where the seal is not available the deed can be signed by 2 of the officers who are authorised to attest the seal.			

Notes

1. These limits relate to expenditure or Income, excluding VAT.
2. The limits relate to the Contract Value defined as the whole life costs of the works<sup>1</sup>, goods and services being procured. It is NOT the annual value.
3. The authorisation rules in relation to approving orders or signing invoices are laid out in Financial Regulation 4.
4. A manual signature must be provided for all post holders who are nominated to be able to sign an agreement.



## Glossary of Key Types of Contract

### Concessions

These contracts relate to arrangements where the contractor bears the risk of being rewarded for the works, goods and services which it provides rather than involving an obligation on the Council to pay the contractor for them. It could involve a right for the Council to receive income in relation to or generated by the provision of the works, goods and services provided by the contractor.

***For example: Agreement to allow car washing franchise to operate from our car parks, agreement to allow an ice cream seller to operate on our land.***

### Framework Agreement

A Framework Agreement is an agreement between one or more contracting authorities and one or more potential suppliers for the supply of goods, services or works which the procuring authority can avail themselves of by issuing a purchase order. The maximum duration for a Framework Agreement is four (4) years (except for certain specified areas of activity). Framework Agreements may be structured as single supplier or multi-supplier agreements.

A Framework Agreement does not guarantee that contracting authorities will place any specific £value or volume of business with the awarded framework suppliers. However, where operational demand exists framework suppliers will be used.

Framework Agreements are commonly used in the case of repetitive purchases where the authority knows it will have a requirement but does not know the precise quantity or quantities which it will require. It therefore is designed to choose suppliers who, when the time comes, will be able to meet the Council's needs.

Framework Agreements may be set up by Central Purchasing Bodies (e.g. Government Procurement Service (GPS), Pro5 procurement organisations, regional buying consortiums) to allow other contracting authorities to benefit from using them.

### Goods / Supplies

These contracts relate to the purchase, hire, siting or installation of goods, but not their maintenance.

***For example: equipment, clothing, vehicles & spare parts, office stationery, consumables, gas.***

### Services

These contracts relate to the provision by a person or other entity to provide services.

***For example: consultancy agreements, provision of maintenance services, provision of professional services, cleaning services.***

### Works

These contracts relate to construction, demolition, building and civil engineering work and completion work such as joinery, plastering and decoration. It includes major repairs or complete refurbishment.

***For example: building a sports pavilion, resurfacing a road, repairing a roof, installing a heating system.***