

Contracts Procedure Rules

1. Application and Exceptions

- 1.1 Except as expressly provided for herein, every contract made by or on behalf of the Council shall comply with these Contracts Procedure Rules (hereinafter referred to as the "Rules").
- 1.2 Every contract to which these Rules apply shall be in writing and shall, where appropriate, contain the terms and conditions given in Rule 16. Contracts estimated to be above £25,000 (or any other contract where the appropriate Senior Officer deems such a requirement to be appropriate) shall be in a form approved by the Solicitor to the Council.
- 1.3 These Rules shall not apply to contracts made by or on behalf of the Council in respect of the following:-
 - 1.3.1 The lending, borrowing or investing of money;
 - 1.3.2 The employment of an individual (see Officer Employment Procedure Rules);
or
 - 1.3.3 Land transactions.
- 1.4 No exception from the Rules shall be made otherwise than by direction of the appropriate Cabinet member (in the case of an executive function) or Council, committee or sub-committee as appropriate in other cases. Where the Council's approval to the contract is required, the Cabinet member, committee or sub-committee shall report to the Council any direction given in pursuance of this Rule.
- 1.5 These Rules shall be subject to the requirements of English and European law. In the event of conflict between the requirements of the Rules and the requirements of English and European law, the requirements of English and European law shall prevail.
- 1.6 These Rules must be read in conjunction with the Council's Financial Procedure Rules and such other rules and regulations as are relevant to the issuing of contracts, but in the event of any conflict these Rules shall prevail.
- 1.7 The Council may from time to time approve codes of practice for the purpose of providing detailed guidance on the implementation of these Rules. Such codes of practice shall be subordinate to these Rules and, in the event of any conflict, these Rules shall prevail.
- 1.8 In the event of doubt as to the interpretation of these Rules, guidance must be sought from the Solicitor to the Council.

2. Definitions and Interpretation

- 2.1 Within these Rules, unless otherwise specified or implied, the following words shall have the meanings given to them:-

A "**Senior Officer**" means:

- (a) the Chief Executive, a Strategic Director or Head of Service

“Contract” means any agreement between the Council and any person, firm, company or partnership for the supply of goods or materials, or the execution of any works or services.

“The Council” shall be deemed to include reference to the Cabinet or a committee or sub-committee of Suffolk Coastal District Council, or an officer or other person acting in accordance with delegated authority on behalf of Suffolk Coastal District Council.

“Cabinet member” means the councillor who is a member of the Cabinet and is responsible for the Council activity specific to the contract. In the event of dispute or absence, the Leader of the Council shall determine the Cabinet member(s) who shall be consulted.

2.2 Within these Rules, except where the context otherwise implies or allows, words importing any gender include any other gender, and words in the singular include the plural and vice versa.

2.3 Prices mentioned are exclusive of Value Added Tax.

3. Compliance with European Union Procurement Directives

3.1 Procurement contracts whose value is estimated to exceed prescribed value thresholds must be let in conformity with the relevant European procurement legislation.

3.2 Procurement contracts that would naturally form a single contract but which exceed the European value thresholds must not be dis-aggregated to avoid the need to comply with European procurement legislation.

3.3 In a case where the award of a contract is subject to European procurement legislation, the tender and selection procedure shall be conducted by the appropriate Senior Officer in consultation with the Solicitor to the Council.

4. Estimates

- 4.1 Before quotations or tenders are invited for any contract, an estimate of the probable contract value shall be prepared by the appropriate Senior Officer to determine the correct route to follow as laid down by these Rules.

5. Tenders and Quotations: Exclusions

- 5.1 Nothing in these Rules shall require the invitation of tenders or quotations if, in the opinion of the appropriate Cabinet member or, in the case of contracts relating to non-executive functions (as defined in Part 3, Section A of the Constitution), the appropriate Senior Officer:

5.1.1 in the case of contracts for the supply of goods, services or materials:

5.1.1.1 the goods, services or materials are proprietary articles and are sold only at a fixed price and no reasonably satisfactory alternative is available;

5.1.1.2 the prices of goods, services or materials are wholly controlled by trade organisations or government order and no reasonably satisfactory alternative is available;

5.1.1.3 for other reasons, there would be no genuine competition;

5.1.2 the contract constitutes an extension of an existing contract the terms of which are the same as the existing contract, provided that the value or duration of the extension does not exceed that of the original contract by more than 50%;

5.1.3 the contract is required so urgently as not to permit the invitation of tenders (such an event to be reported to the next meeting of the Council);

5.1.4 the contract relates to repairs to existing proprietary machinery or plant where the work has previously been subject to tender in accordance with Rules 6 or 7;

5.1.5 tenders shall have been invited on behalf of any consortium, collaboration or similar body of which the Council is a member in accordance with any method adopted by such a body, provided that the delivery, opening and acceptance of such tenders shall comply with the provisions of these Rules, save where those provisions are inconsistent with any method by which tenders so obtained are dealt with;

5.1.6 the contract is to be performed in accordance with arrangements with another local authority or statutory undertaking; and

5.1.7 the procedure relating to the contract is controlled by legal requirements or the provisions of any agency agreement.

- 5.2 Nothing in these Rules shall require the invitation of competitive tenders if, in the opinion of the appropriate Cabinet member or Senior Officer:

- 5.2.1 the subject matter of the contract is supplied only at a fixed price or is obtainable only from one source and no reasonably satisfactory alternative is available;
- 5.2.2 the contract constitutes an extension of an existing contract (subject to Rule 5.1.2 above);
- 5.2.3 the contract is for work to be executed and the Council has approved an extension of an existing contract or a scheme of negotiated or serial tenders (subject to Rule 5.1.2 above);
- 5.2.4 the contract consists of urgent repairs of whatever nature to safeguard life or limb or is necessary to maintain effective services in the event of fire, subsidence, storm, flood or other emergency (in which circumstances the Cabinet member or Senior Officer concerned shall be empowered to obtain the necessary goods or services or to order the necessary works to be put in hand immediately and shall report to the next meeting of the Council if the expenditure is not otherwise provided for);
- 5.2.5 the subject matter of the contract is subject to commodity market trading and the Cabinet member or Senior Officer concerned is satisfied that it may thus be obtained at a lower price than may otherwise be obtained;
- 5.2.6 the contract is for the provision of insurance services;
- 5.2.7 the contract is with professional persons in which the personal skill of those persons is of primary importance;
- 5.2.8 the estimated expenditure or income under the contract is not more than **£25,000**.

6. Quotations: Contracts estimated not to exceed £50,000

- 6.1 No contract estimated to be between £10,000 and not greater than £25,000 shall be entered into without a minimum of one written quotation being previously invited.
- 6.2 No contract estimated to be greater than £25,000 and not greater than £50,000 shall be entered into without a minimum of three written quotations being previously invited.
- 6.3 In these Rules, "quotation" means a price for the performance of a proposed contract submitted in response to an invitation to do so by or on behalf of the Council and not in response to any form of public notice or advertising relating to the proposed contract.

7. Tenders: Contracts estimated to exceed £50,000

- 7.1 Except as expressly provided for herein, tenders shall be invited for all contracts estimated to exceed £50,000 in accordance with the Rules.
- 7.2 No contract estimated to exceed £50,000 but not £100,000 shall be entered into unless at least four tenders have been invited for that contract except that, if fewer than four persons have applied to be invited to tender or, in the opinion of the Cabinet member or Senior Officer concerned, there are fewer than four persons able

to tender for the contract, all such persons shall be invited to tender. Where an Approved List (see Rule 9.3) exists for an area of work, then contractors can only be invited to tender from that list to undertake any work covered by that list.

- 7.3 Contracts estimated to exceed £100,000 shall be dealt with by way of Selective Tendering in accordance with Rule 9.2 unless the Cabinet member or Senior Officer concerned considers that it would be in the interest of the Council to resort to Open Tendering in accordance with Rule 9.1.

8. Tendering Procedures

- 8.1 Public notices inviting tenders and invitations to tender shall state that the contract shall be awarded on the basis of one of the following:

8.1.1 the lowest price only; or

8.1.2 the most economically advantageous tender.

- 8.2 In the case of Rule 8.1.2, the criteria that will be used to determine which tender is the “most economically advantageous” must be stated in the tender documents or in the contract notice in descending order of importance.

- 8.3 Invitations to tender shall include all those matters that those invited to tender shall take into account in preparing their tender including (where relevant):

- Conditions to be observed when tendering (see Rule 8.4)
- Contract Terms and Conditions (see Rule 16)
- Specification
- Bills of Quantities
- Drawings

- 8.4 Those invited to tender shall be advised of the following conditions to be observed when tendering:

8.4.1 The Council does not bind itself to accept the lowest or any tender.

8.4.2 No tender shall be considered unless enclosed in a plain envelope or package which shall be securely sealed and bear the word “Tender” followed by the subject to which the tender relates. The envelope or package must not bear any name or mark indicating the identity of the person or firm submitting the tender. Envelopes sent to prospective tenderers should state the name of the tender, the date and time by which the tender is to be received and the return address.

8.4.3 For contracts estimated to be greater than £50,000 the tender envelope shall be addressed impersonally to the Head of Legal and Democratic Services at the Council's principal address or, in the case of contracts of less than £50,000 or sub-contracts to which Rule 9.5 (Nominated Sub-Contractors and Nominated Suppliers) applies, to the appropriate Head of Service.

- 8.5 Nothing in these Rules shall require tenders or quotations to be sought from any contractor who has failed to satisfy the minimum requirements of economic viability, technical competence, health and safety or standards of quality established in relation to the execution of those works or the supply of those goods and services.

9. Special Tendering Procedures

9.1 Open Tendering

9.1.1 Public notice shall be given in appropriate newspapers or journals expressing the nature and purpose of the contract, and inviting persons interested in carrying out the contract to apply to the Senior Officer concerned for a copy of the tender documentation. The notice shall state the last day and time by which tenders must be received.

9.2 Selective Tendering

9.2.1 Public notice shall be given by the Senior Officer concerned in appropriate newspapers or journals circulating among such persons as undertake such contracts setting out particulars of the contract into which the Council wish to enter and inviting persons to apply within such period, not being less than ten days, as may be specified for permission to tender. A copy of the notice may also be sent to persons whose names appear in a list maintained under Rule 9.3 as being approved for the contract in question.

9.2.2 After the expiration of the period specified in the public notice, an invitation to tender for the contract shall be sent to such number, being not less than four of the persons who applied for permission to tender, as shall be determined and selected in the manner determined by the Cabinet member or Senior Officer concerned, or, if fewer than four persons have applied and are considered suitable, to all such persons.

9.2.3 Where any person has applied for permission to tender but is not invited to tender, the appropriate Senior Officer shall notify that person of the decision not to invite him to tender.

9.3 Approved Lists of Selected Tenderers

9.3.1 This Rule shall have effect where the Council has determined that lists shall be kept of persons to be invited to tender for contracts for the supply of goods or services of specified categories of works.

9.3.2 Where an Approved List exists for an area of work, then contractors can only be selected from that list to undertake any work covered by that list.

9.3.3 The said lists shall be completed and maintained by the appropriate Senior Officer and shall contain the names of all persons who wish to be included in it and are approved by the appropriate Cabinet member (in the case of an executive function as defined in Part 3, Section A of the Constitution) or Council, committee or sub-committee as appropriate in other cases.

9.3.4 At least four weeks before the lists are first compiled notices inviting applications for inclusion in the lists shall be published by the appropriate Senior Officer in appropriate newspapers or journals circulating among such persons as undertake contracts of the specified values or amounts or categories.

- 9.3.5 The lists shall be reviewed at intervals not exceeding three years and may be amended as required from time to time between such reviews by the appropriate Cabinet member or Senior Officer. At least four weeks before any review each person whose name appears in the lists shall be asked whether he / she wishes his / her name to remain therein and notices inviting applications for inclusion in the lists shall be published in the manner provided in Rule 9.3.4 above.
- 9.3.6 Invitations to tender for contracts to which this Rule applies shall be sent by the appropriate Senior Officer to not less than four of the persons on the approved list selected in the manner determined by him / her after consultation with the relevant Cabinet member or, if fewer than four persons are considered suitable, to each of such persons.

9.4 Serial and Single Tenders

9.4.1 Rule 7 shall not apply where:

9.4.1.1 the proposed contract for the execution of the work forms part of a serial programme the terms having been negotiated with the contractor on the basis of the rates and prices contained in an initial contract awarded competitively following an invitation to tender in accordance with Rule 7; or

9.4.1.2 the Council considers it desirable in the best interest of the Council that a tender be invited for the execution of work from a contractor selected by it or negotiated with a contractor already engaged by the Council (where negotiations are based on a previous similar contract, the contract must have been won by competitive tender not more than eighteen months previously by one of the methods described in Rule 7 above).

9.5 Nominated Sub-Contractors and Nominated Suppliers

9.5.1 Rules 7.2 and 7.3 and the value bands referred to therein shall apply to nominated sub-contractors and suppliers as if the word "contractor" was replaced by the words "nominated sub-contractor or supplier" and the word "contract" was replaced by the word "sub-contract".

9.5.2 The appropriate Senior Officer is authorised to nominate to the main contractor the sub-contractor or supplier whose tender, obtained in accordance with any one of the above-mentioned Rules is, in his / her opinion, the most satisfactory.

9.5.3 The appropriate Senior Officer must notify contractors of any decision relating to the withholding of approval for sub-contractors or the nomination of sub-contractors.

10. Receipt and Custody of Tenders

10.1 Upon receipt, all tender envelopes shall be endorsed with the date and time of receipt and shall remain in the secure custody of the Head of Legal and Democratic Services or the appropriate Senior Officer until opened in accordance with Rule 11 (Opening Tenders) below.

11. Opening Tenders

- 11.1 No tender shall be opened until after the date and time appointed for the receipt of tenders for the proposed contract or sub-contract. All tenders for the same contract or sub-contract shall be opened at one time. Immediately upon the opening of tenders, the date and time of opening, the names of tenderers and, where practicable, the amounts of the tender shall be recorded on a list, which list shall be signed by the officers present at the opening. Tender lists shall be retained (in the case of tenders received by the Head of Legal and Democratic Services) by the Head of Legal and Democratic Services or (in the case of tenders received by the Senior Officer) by the appropriate Senior Officer.
- 11.2 Tenders received by the Head of Legal and Democratic Services shall be opened in the presence of the Head of Legal and Democratic Services and the appropriate Senior Officer or an officer authorised by and representing each of them.
- 11.3 Tenders received by an appropriate Senior Officer shall be opened in the presence of that Senior Officer, or an officer authorised by and representing him / her, and another authorised officer from the same department as the appropriate Senior Officer.

12. Late Tenders

- 12.1 Any tender submitted in competition received after the specified time shall be returned promptly to the tenderer by the Head of Legal and Democratic Services or the appropriate Senior Officer. The tender may be opened to ascertain the name and address of the tenderer, but no details of the tender shall be disclosed.

13. Mathematical Errors

- 13.1 Where examination of tenders reveals errors or discrepancies that would affect the tender figure(s) in an otherwise successful tender, the tenderer must be given details of such errors and afforded an opportunity of confirming or withdrawing his / her offer. If the tenderer withdraws, the priced tender document of the second lowest should be examined and if necessary this tenderer be given similar opportunity.
- 13.2 If the lowest tenderer is unable or unwilling to stand by his / her offer and it is not in the Council's best interest to approach the second tenderer, then the Senior Officer concerned shall be allowed to ask all the tenderers included in the original approved list to re-tender on the same specification.

14. Acceptance of Tenders

- 14.1 The arrangements in this Rule shall be subject to:
- 14.1.1 these Rules having been complied with; and
- 14.1.2 the appropriate Senior Officer for contracts estimated to exceed £50,000 and the Solicitor to the Council being satisfied that the tender is acceptable in all respects.
- 14.2 For contracts where payment is to be made by the Council, and subject to Rule 14.5, if the lowest or most economically advantageous tender is shown to be satisfactory and is not more than the approved estimate, it may forthwith be accepted in writing

by the appropriate Senior Officer provided that tenders for contracts estimated to exceed £100,000 may only be accepted by the appropriate Senior Officer following consultation with appropriate Cabinet member (in the case of an executive function) or the chairman or vice-chairman of the relevant committee or sub-committee in other cases.

- 14.3 For contracts where payment is to be received by the Council, and subject to Rule 14.5, if the highest or most economically advantageous tender is shown to be satisfactory and is not less than the approved estimate, it may forthwith be accepted in writing by the appropriate Senior Officer.
- 14.4 If the tender relates to a contract award which is the subject of a Decision Notice, that contract shall not be awarded until the Council's call-in procedure has been fully complied with. Any such Decision Notice shall make it clear that the award will be subject to the Council's decision-making process and on terms to protect the Council's interests.
- 14.5 Any tender which does not meet the requirements of Rules 14.1, 14.2 or 14.3 shall not be accepted by the relevant Cabinet member until he / she has considered a report from the Senior Officer concerned (in the case of an executive function) or the matter has been the subject of report to the Council, committee or sub-committee as appropriate in other cases.
- 14.6 The appropriate Senior Officer, in consultation with the Head of Finance and the Solicitor to the Council, shall be authorised to negotiate any subsequent variation in the terms of a tender where it is in the financial or legal interests of the Council to do so.
- 14.7 Once the contract has been awarded, the appropriate Senior Officer shall send a list of prices tendered to all unsuccessful tenderers.

15. Engagement of Consultants

- 15.1 For the purpose of this Rule, "**consultant**" means any person, firm, company or partnership not currently employed by the Council having a specialism or expertise which is not readily available from amongst those employed by the Council and who is appointed in any advisory capacity to act for the Council as if he / she were a Senior Officer of the Council.
- 15.2 Consultants shall only be appointed if the process of tendering as prescribed for contracts in Rules 6 and 7 (Quotations and Tenders) has been followed, except:
 - 15.2.1 where the nature of the work is deemed by the appropriate Cabinet member or Senior Officer to be so specialised as to preclude quotations or tenders being received from more than one source; and
 - 15.2.2 where the advice or work of a consultant is in the opinion of the appropriate Cabinet member or Senior Officer required as a matter of urgency.
- 15.3 It shall be a condition of the engagement of the services of any consultant who is to be responsible to the Council for the supervision of a contract on its behalf, that in relation to that contract, he / she shall by formal agreement in writing:

- 15.3.1 comply with these Rules and the Council's Financial Procedure Rules as though he /she were a duly appointed Officer of the Council and copies of the said Rules shall be provided to the consultant by the appointing Senior Officer;
- 15.3.2 produce to the appropriate Senior Officer or the External or Internal Auditor on request, all the records maintained by him / her in relation to the contract;
- 15.3.3 on completion of a contract, transmit all such records to the appropriate Senior Officer concerned as are required to be returned by that Senior Officer; and
- 15.3.4 provide to the appropriate Senior Officer evidence of continuing professional indemnity insurance to the extent of the value of his / her current workload.

16. Contract Terms and Conditions

- 16.1 Every contract shall, where appropriate, contain the terms and conditions given in this Rule.
- 16.2 Subject matter: the goods, materials, services or the work to be supplied provided or executed (including as appendices any necessary technical specifications, plans or drawings).
- 16.3 Price: the payments to be made under the contract with a statement of any discounts or other deductions.
- 16.4 Time: the time or times within which the contract is to be performed.
- 16.5 Assignment: the contractor shall be prohibited from sub-letting or assigning the contract or any part of the contract without the prior written consent of the relevant Senior Officer. Such consent will not be unreasonably withheld, but shall be on terms the Council considers reasonable in the circumstances.
- 16.6 Substitution: the contractor shall be prohibited from substituting any goods or materials specified within the contract for any others without the prior written consent of the relevant Senior Officer. Such consent will not be unreasonably withheld but shall be on terms the Council considers reasonable in the circumstances.
- 16.7 Liquidated Damages: in every contract which provides for its performance by a specified date or series of dates, there shall be included, except as agreed by the appropriate Senior Officer a suitable provision for liquidated damages to be paid by the contractor in the event of any failure on the part of the contractor to perform and carry out his / her obligations under the contract within the time or times allowed for that purpose.
- 16.8 Surety: except where otherwise agreed by the appropriate Senior Officer, the contractor shall provide sufficient financial security in the form of Performance Bond, parent / ultimate holding company guarantee or deposit (to be approved by the appropriate Senior Officer and the Head of Finance) collateral to the contract. The surety shall be released upon the request of the contractor following satisfactory completion of all of the contractor's obligations under the contract.

- 16.9 Warning Notices: where the appropriate Senior Officer shall so require, a provision for a process of the issuing of warning notices, which allow the Council to advise the contractor of any defects in the quality or quantity of provision prior to the issue of claims for default penalties. The nature and wording of these warning notices will be appropriate to the contract, but will be intended to reflect the scale and severity of the failures by the contractor to meet the requirements of the contract.
- 16.10 Anti-corruption: the Council shall be entitled to terminate the contract forthwith and to recover from the contractor the amount of any loss resulting from such termination:-
- 16.10.1 if the contractor shall, in the opinion of the Council, 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 forbearing to do, or for having done or forborne to do any action in relation to the contract or any other contract, whether with the Council or with anyone else; or
 - 16.10.2 if the contractor shall have shown or forborne to show favour or disfavour to any person in relation to the contract or any other contract with the Council or with anyone else; or
 - 16.10.3 if the like acts shall have been done by any person employed by the contractor or acting on his / her behalf (whether with or without the knowledge of the contractor); or
 - 16.10.4 if in relation to any contract, whether with the Council or with anyone else, the contractor or any person employed by him / her or acting on his / her behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 (or any amendments of them); or
 - 16.10.5 if in relation to any contract, whether with the Council or with anyone else, the contractor or any person employed by him / her or acting on his / her behalf shall have given any fee or reward, or solicited or accepted any form of money, or taken any reward, collection or charge for performing the contract, other than bona fide charges previously approved in writing by the Council.
- 16.11 Default in Performance: should the contractor default in the terms of the contract the Council, without prejudice to any remedy for breach of contract, shall be at liberty to:-
- 16.11.1 determine the contract either wholly or to the extent of any such default and the Council shall be at liberty to purchase other goods or secure other services or works as the case may be of the same or similar description to make good such default; or
 - 16.11.2 in the event of the contract being wholly determined, every contract shall provide that the amount by which the cost of purchasing other goods or so securing the services or so executing the works exceeds the amount which would have been payable to the contractor in respect of the goods or services or works as the case may be shall be recoverable from the contractor, together with any consequential costs of retendering the contract.

- 16.12 Rights of Third Parties: notwithstanding any other provision of the contract, nothing in the contract shall confer or purport to confer any right to enforce any of its terms on any person who is not a party to it.
- 16.13 Contract completion: no payments that may otherwise become due under the contract shall be made unless and until it has been signed and / or sealed by both parties.
- 16.14 Freedom of Information: the contractor shall assist the Council at no additional charge in meeting any requests for information made to it in connection with the Freedom of Information Act 2000 or any other similar guidelines, code of practice, or legislation which arise in connection with the contract. The Contractor shall supply the Council with any such information within five working days of request or such longer period as may be agreed by the Council.
- 16.15 Such other conditions and stipulations (including provisions with regard to the initial deduction from payments to be made to the contractor of a specified percentage to be held as retention money, the subsequent release of amounts so deducted, the contractor's responsibility for the maintenance of any works to be carried out under the contract whether during a specified defects liability period or otherwise, insurances to be provided and maintained by the contractor and the circumstances in which the contract shall be determinable) as may in any particular case be necessary or desirable.

17. Electronic Quotations and Tenders

- 17.1 As an alternative to the submission of hard copy quotations or tenders, and subject to the prior approval of the Solicitor to the Council and Senior Officer concerned, quotations or tenders may be submitted electronically via a secure electronic tendering software system. Where an electronic tendering system is used, those providing quotations or tenders will be instructed as to how quotations or tenders should be submitted, how they will be opened, and how late tenders will be dealt with.