

Contracts Procedure Rules

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Contracts Procedure Rules-Carterton Town Council

1. The policy of Carterton Town Council, and the objective of these rules, is to ensure that all works, goods and services:

- (a) Are obtained with probity
- (b) Are appropriate for the purpose for which they are obtained
- (c) Offer the most advantageous balance of quality and price
- (d) Are consistent with the policies of the Council

Definitions

2. Contract means a legally binding agreement under which the Council receives the benefit of, or incurs the liability for:

- (a) The payment of money
- (b) The performance of services
- (c) The execution of work
- (d) The supply of goods or materials
- (e) The transfer of an interest in land

3. For the purposes of these Contracts Procedure Rules, Executive means the full Council.

4. Appropriate Officer means the Town Clerk to act on the Council's behalf in connection with a contract, or his/her nominee.

5. Professional Service means a service, normally charged at an hourly fee, requiring specialist expertise or qualifications.

6. All processes will be in accordance with Council's Financial Procedure Rules.

Delegation of Duties

7. The Town Clerk may delegate his/her duties under these Rules to another officer.

Compliance with Procedures

8. The procedures for inviting tenders and entering into contracts set out in these Rules form Financial Procedure Rules of Carterton Town Council and must be complied with for all contracts. Variation of, or exemption from, these procedures can be authorised only by the Executive on the consideration of a report from the Town Clerk, which includes reasons for the proposed variation or exemption.

Value Added Tax

9. All amounts quoted in these Rules refer to values excluding Value Added Tax

Types of Contract

10. To facilitate up-dating and amendment of these Rules, contracts for the supply of goods or materials or for the execution of works are classified by total contract value as

follows:

Type Estimated Contract Value

A Under £5,000

B From £5,000 to £10,000

C From £10,000 to £50,000

D From £50,000 to £100,000

E From £100,000 to £139,893

F Over £139,893 for goods and services covered by Article 7 of the EU Procurement Directive 2004/18/EEC.

G Over £3,497,313 for works covered by Article 7 of the EU Procurement Directive 2004/18/EEC.

EU Requirements

11. All contracts and tendering procedures will comply with English Law and where appropriate the requirements of European Union Directives on public contract procurement.

Forms of Contract

12. All contracts of Types A shall be by official order or requisition from an approved list of contractors.

13. All Contracts of Types B, C, D, E, F, or G shall be in writing, and executed in accordance with (a) below;

(a) all contracts of Types B, C, D, E, F and G shall be under the common seal of the Council and attested by either the Chairman or Vice Chairman of the Council and the Town Clerk

Packaging of Contracts

14. No contract may be divided into smaller components for the purpose of avoiding the requirements of these Rules.

Exemptions from Tendering

15. It is obligatory to invite tenders except where:

(a) The contract is of type A. (but it is obligatory to obtain at least three quotations for Type B); or

(b) The Council has approved an alternative type of competitive exercise; or

(c) The subject matter of the contract can be arranged only through a single contractor; or

(d) The contract can be arranged through a consortium, the majority of whose members are local authorities; or

(e) The contract is a 'framework' contract that has been negotiated regionally / nationally on behalf of all local authorities; or

(f) Effective competition is prevented by government control; or

(g) The contract is an extension of a contract in progress and the extension does not exceed 10% of the total value of the existing contract; or

(h) The contract is an up-grading of an existing service or supply; or

(i) The contract concerns, wholly or mainly, repairs to or the supply of parts for

existing machinery, plant or equipment; or

(j) The Town Clerk with the agreement of two Members of the Council, one of whom is the Chairman, or in his/her absence, the Deputy Chairman deems that the circumstances require such urgent action that the use of the tender process would be unreasonable. Any such action must be reported to the Council; or

(k) There is any other reason expressly approved by the Council on consideration of a report from the Town Clerk.

Where exemptions from tendering are claimed under any of these provisions the reasons must be documented with evidence to support the exemption retained on file. Exemptions may be subject to scrutiny by Internal Audit and External Audit.

Tendering: Public Notice

16. At least 10 days' public notice of the intention to enter into a contract will be given in one or more local newspapers and the Council's website.

17. The notice will state:

(a) The nature and purpose of the proposed contract; or

(b) That applications are invited for inclusion on a Standing List (see Section below); and

(c) The closing date for applications; and

(d) The address to which applications should be sent.

Alternatives to Public Notice: Standing Lists

18. A Standing List is a list of suppliers or contractors, approved for a period of up to three years, for the provision of supplies of goods, services or works. Quotations or tenders may be obtained from those included on a Standing List without the need for further public notice or further approval from the council. A Standing List must be compiled in accordance with the procedures in the following paragraphs.

19. Standing Lists of people or organisations that undertake particular types and values of contract may be maintained.

20. The Town Clerk may maintain Standing Lists in respect of contracts of Types A without the need for formal Council approval. In all other circumstances, the Council must approve Standing Lists.

21. The Council will not normally approve a Standing List unless:

(a) The procedural steps set out in paragraphs 16 and 17 above (Public Notice) have been followed, and

(b) Checks have confirmed that the contractors' technical and financial ability to fulfil contracts of the appropriate type and level is adequate.

22. Contractors may be invited to tender from a Standing List that has previously been approved.

23. Standing Lists will be reviewed at intervals not exceeding three years.

24. Public Notice under paragraphs 16 and 17 must be given when:

- (a) An approved Standing List does not exist, or is no longer current, and there is no intention to compile one; or
- (b) A Standing List, which did not previously exist, is being compiled.

Alternatives to Public Notice: Select Lists

25. A Select List is a list of suppliers, service providers or contractors compiled for a specific contract for the provision of supplies of goods, services or works for which Public Notice is not appropriate, e.g. a computer system, banking service etc.

26. In these circumstances the Town Clerk may compile a Select List from his or her professional knowledge of appropriate suppliers from whom tenders may be sought.

27. For contracts of Type A, a Select List may be used without approval.

28. For contracts of Type B, where tenders are being obtained, and for Types C, D, E, F, and G the Council must approve the Select List. The Council will not normally approve a Select List unless a satisfactory explanation of reasons for the use of a Select List has been given.

Invitations to Tender

29. Invitations to tender may be sent to persons or organisations on an approved Standing List or Select List and/or to those responding to Public Notice.

30. After the closing date for applications, the Town Clerk is authorised to invite tenders in the minimum number stated for each type of contract. For Contracts Types B, C, D, E and F this authorisation is subject to the approval of the Council.

- (a) Type A – from Select List
- (b) Type B – minimum of three quotations or tenders
- (c) Type C – minimum of five tenders
- (d) Types D, E, F and G – minimum of six tenders
- (e) For professional and consultancy services, a minimum of three people or organisations known to specialise in the relevant type of work will be invited to tender.

31. If fewer than the minimum number of applications has been received the Town Clerk should either:

- (a) Invite all applicants to tender; or
- (b) Re-advertise the Public Notice in line with paragraphs 16 and 17 above.

32. The Town Clerk must disqualify any tender which fails to comply with these Rules, and notify the person submitting the tender of the reason for disqualification.

33. Every invitation to tender will state:

- (a) The nature and purpose of the contract.
- (b) The closing date and time for receipt of tenders, i.e. 12 noon.
- (c) That no tender will be opened if it is received after the specified closing date and time.
- (d) That the tender must be submitted in a plain sealed envelope, supplied by the Council. The envelope provided should be addressed to the Town Clerk and

bear the words "Tender – Do Not Open".

(e) Any other information as the Town Clerk may consider necessary for the purpose of evaluating the tender.

34. The tender envelope should bear the subject to which it relates and the closing date and time for receipt of tenders. There should be nothing on the envelope to identify the tenderer.

Invitations to Tender for Professional and Consultancy Services

35. In addition to the requirements set out in paragraphs 29 to 34 above, invitations to tender for professional and consultancy services shall require the tenderer to submit full details of:

- (a) The name of the person who will be the lead contact in respect of the contract;
- (b) The names, professional qualifications and experience of the persons employed by the tenderer who shall be engaged on a day to day basis in the contract;
- (c) Full particulars of the pricing structure to be applied to the contract, including daily, hourly or fixed rate fees and any limits to be applied to expenses;
- (d) Particulars (if any) of other local authorities or organisations for whom work of a similar nature has been undertaken.

Receipt of Tenders

36. All tenders received shall be entered in the register referred to in paragraphs 39 to 41 below, and shall be held in the secure custody of the Town Clerk until the date and time appointed for their opening.

Opening of Tenders

37. All tenders will be opened at the same time in the presence of:

- (a) Types B, C, D, E, F and G - The Town Clerk at a full Council meeting.

Acceptance of Tenders

38. Provided that the procedural requirements for the value of the contract as set out in paragraphs 1 to 36 above have been fulfilled, the Town Clerk may accept without further approval a tender that is within the approved budget, and that either:

- (a) Is the lowest if payment is to be made; or
- (b) Is the highest if payment is to be received; or
- (c) Has been selected in accordance with previously approved criteria

Register of Tenders

39. The Town Clerk will maintain a register to include every contract of Types A, B, C, D, E, F and G.

40. The register will record details of:

- (a) All tenders invited;
- (b) All tenders opened;
- (c) All tenders received after the specified time and therefore returned to the

- tenderer;
- (d) The amount of each tender;
- (e) The persons present at the tender opening.

41. For each contract, the persons present at the tender opening will sign the register.

Contracts: Forms and Conditions

42. An appropriate form of industry specific contract should be used where appropriate. Otherwise every contract will state:

- (a) Full details of the nature and purpose of the contract
- (b) The price to be paid including a statement of deductions or discounts to be Applied;
- (c) The period of the contract
- (d) That if the contractor fails to perform the contract, the Council can Cancel all or part of the contract. Recover from the contractor any additional costs in completing the contract. Take appropriate legal action against the contractor.
- (e) That the Council can cancel the contract and recover any resulting losses if the contractor or his/her employees, with or without his/her knowledge
 - (i) Does anything improper to influence the Council to give him/her the contract
 - (ii) Commits an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972
- (f) That the contractor will pay liquidated damages estimated by the Appropriate Officer if the contractor fails to meet the terms of the contract
- (g) That the responsibilities under the contract may not be assigned or transferred by the contractor without the written permission of the Town Clerk

43. In addition, every contract will include in its conditions:

- (a) The Council's requirements in respect of relevant Council policies
- (b) A surety or performance bond to be provided on Types C, D, E, F, and G contracts,
- (c) That the Town Clerk will be allowed reasonable access to the Contractors' records relating to the contract
- (d) Such additional conditions as the Town Clerk or the council think fit.

44. All contracts shall satisfy any relevant Council requirements for Health and Safety arrangements and monitoring by the contractor and by any sub-contractors to be employed. Any contract condition set out above that is not relevant or applicable may only be excluded from a contract with the approval of the Town Clerk.

Approval for the Award of Contracts

45. Contracts of Types D, E and F shall not be awarded without the prior approval of the Town Clerk in relation to the financial suitability of the contractor to undertake the contract.

46. Contracts which are likely to involve the provision of services or the execution of work shall not be awarded without the prior approval of the Town Clerk in relation to the Contractor's Health and Safety Policy (covering General Policy Organisation and arrangements) as required by Section 2(3)(f) of the Health and Safety at Work Act 1974 and any risk assessment procedures and Codes of Safe Working Practices issued to employees.

47. Contracts of Types B, C, D, E, F and G shall not be finalised without appropriate legal advice.

48. These are minimum requirements and it may be appropriate to consult with the above officers on contracts not covered above or with other officers of the Council regarding issues about which they have expertise.

Award of Contracts: Mandatory Standstill Period

49. The standstill rules apply only to contracts subject to European procurement legislation (Contracts F or G).

50. The standstill rules require a mandatory period of a minimum of 10 days between communicating the award decision to all tenderers and actually concluding the contract (ie, confirming the award and thus, proceeding with the purchase). They also allow for an additional de-briefing to be requested by unsuccessful suppliers and apply strict deadlines to both the supplier's request and the purchaser's response.

51. The 10 day period includes weekends and should be extended as necessary if Day 10 falls on a Saturday or Sunday, or if the standstill period falls around a public holiday(s).

52. The following must be provided by purchasers when notifying the award decision to unsuccessful suppliers:-

- the award criteria
- the name of the winning tenderer
- the characteristics and relative advantages of the successful tender to that of the unsuccessful tender (ie that of the supplier being notified). This is a legal requirement of the standstill rules, however, the actual content of the notification is at the discretion of the purchaser.

53. If the submissions were scored, then the notification should include the winning tenderer's total score against the predefined criteria, as well as the total score of the unsuccessful tenderer. In certain cases, it may be prudent to provide descriptive detail of how the unsuccessful submission fared in relation to the winning bid. If all information which can reasonably be provided has already been given in the notification, then it is acceptable to treat the notification itself as the 'additional de-brief'. In this case, it can be qualified with wording such as "This constitutes the de-briefing that is required under legislation".

Records

54. Contract documentation and records must be kept in accordance with procedures issued by the Town Clerk.

Variations to Contract

55. Variations to contracts must be by a written Variation Order.

56. The council must approve variations to the contract.

Urgent Variations to Contract

57. A variation is deemed urgent where:

- Immediate action is necessary to protect public safety or to avoid unacceptable disruption or inconvenience to the public, or
- The costs of delaying work until council approval can be obtained are likely to exceed the additional costs involved in proceeding.

58. The Town Clerk together with the Chairman and an Urgency Committee may approve urgent variations.

Retentions

59. Unless otherwise approved by the Council of Types C, D, E, F and G will include a retention of 10% of the contract value for a period of 12 months, to ensure that all work carried out is complete and of an appropriate standard.

Payments to Contractors

60. Payments to contractors will be made in accordance with the Council's financial rules

61. In every case before a final certificate of payment is made the Council may examine the agreed final account, together with such documents as he/she may consider necessary.

62. Where contracts are supervised and managed by persons other than the Council's own officers, the agreement will state that the contract manager must abide by these regulations as if he were an officer of the Council.

Claims from Contractors

63. Claims from contractors in respect of matters not clearly within the terms of any existing contract shall be referred to the Town Clerk for consideration of the authority's legal liability before negotiations are undertaken or a settlement is reached.