



**CONTRACT STANDING ORDERS AND PROCUREMENT PROTOCOLS**

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# CONTRACT STANDING ORDERS

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## CONTRACT STANDING ORDERS

### Introduction and standards

This policy explains how Ryde Town Council follow procurement practices for all procurement processes of goods, services, works and contract management. Procurement can also involve Public/Private Partnership (PPP) or joint commissioning with another public sector organisation.

### Standards expected of all public services

Honesty      Impartiality      Openness      Accountability      Accuracy      Fairness  
Integrity      Transparency      Objectivity      Reliability

### These should be carried out –

- In the spirit of, as well as to the letter of, the law
- In the public interest
- To high ethical standards
- Achieving value for money

The highest standards of probity are required of all Council officers and members involved in the procurement, award, and management of any Council contract. Similarly the Council will endeavour to be fair and open in its dealings with all suppliers and prospective suppliers, and all members and officers shall uphold these principles.

## 1. BASIC REQUIREMENTS

### 1.1 Key Principles and Responsibilities

- 1.1.1 All procurement activity must be in connection with the Council's lawful functions and within the bounds of its statutory powers.
- 1.1.2 All procurement shall be in accordance with all relevant legislation and, when applicable, the European Union Procurement Directives.
- 1.1.3 All procurement activity shall be conducted with integrity and fairness throughout. It shall also be conducted with sufficient openness to engender public confidence in the procurement processes generally and meet the requirements of the Freedom of Information and Equality Acts, Data protection, Health and safety, Environmental Sustainability, Employment rights, Anti-corruption Law and the UK Bribery Act.
- 1.1.4 Those awarding contracts shall have a duty to ensure and demonstrate that the best value for money is obtained, having regard to an appropriate and realistic balance between price, quality, social value, and other considerations which can differ with the requirements of each contract specification.
- 1.1.5 Unless there are sufficient and explicitly stated reasons to the contrary, a reasonable show of competition shall be sought as part of all contract-letting processes.

- 1.1.6 No contract shall be awarded unless there is delegated authority to award the contract and there are adequate budget funds available.
- 1.1.7 The Town Clerk is responsible for ensuring compliance with these procurement regulations and for ensuring that staff employed by the Council, and Council Committees who are given such delegated responsibility have the necessary skills and knowledge appropriate to the task. Staff have a responsibility to familiarise themselves with these rules and undertake any necessary training.
- 1.1.8 Most contracts can be let by the Clerk (subject to relevant delegated authority) without formal reference to members. Only where a contract has a whole life value of over **£10,000** or be deemed to be of particularly high risk, sensitivity value or other substantial effect on the Council's objectives or its reputation, shall the Full Council (or where appropriate the delegated committee) be called upon to take procurement decisions.

## **1.2 Conduct**

- 1.2.1 Members and staff must ensure that when involved in making any procurement decisions, they always act in the best interest of the Council and the community it serves.
- 1.2.2 It is important to be impartial. The Council has a policy on registering disclosable pecuniary interests, and all members and staff are required to comply with these.

## **1.3 Financial values**

- 1.3.1 Unless otherwise stated, any financial values or thresholds stated in this policy refer to the projected value of a contract for its whole duration, not the annual value. For contracts that have an extension option, then the contract value shall be calculated based on the original contract period plus the possible extension period. For any contracts that are for an unspecified period, a 'default' duration of four years shall be assumed for the purposes of calculating the financial value.
- 1.3.2 No attempt must be made to break down one large purchase into several smaller purchases, solely with the aim of trying to circumvent the financial thresholds specified in this policy. Moreover, it is the aggregated expenditure by the Council as a whole on like or similar goods and services, rather than that of individual budget holders, that shall have effect – this being particularly important as regards compliance with the EU Procurement Directives.
- 1.3.3 All values stated throughout this policy exclude VAT.
- 1.3.4 The list of all staff having approved delegated authority limits shall be maintained by the Clerk to the Council. The Clerk will be responsible for ensuring that the Full Council are provided with the necessary details to enable the list to be kept fully up to date.

## 1.4 Exceptions to the rules

1.4.1 This policy does not apply to:

- Contracts of Employment
- Contracts that relate solely to the purchase or acquisition of land and property

1.4.2 In addition, exemptions from the full provisions of this policy as regards seeking competition may apply in the following circumstances:

- i. **Genuine emergencies** – Critical preventative or remedial work where there is a real and imminent risk to the safety of people or property arising from a hitherto unforeseen ‘catastrophic’ event or incident such as fire, bombing, flooding, major landslide, etc.
- ii. **Urgency not of the Council’s own making** – The urgency must have been reasonably unforeseeable (e.g. existing supplier going into liquidation, urgently imposed statutory changes, etc.) and genuinely be a case of ‘time is of the essence’. However, urgency arising through problems of the Council’s own making (whatever the cause and regardless of whether it involved previous delays or shortage of resources, etc.) shall not in itself justify exemption.
- iii. **Collaborative / Joint Purchasing** – Where another authority/public body is acting as ‘lead buyer’ and provided that the person(s) awarding the contract can demonstrate the arrangements comply with the requirements of all applicable legislation including, if necessary, the EU Procurement Directives. This includes any recognised wider public sector agreements including, for example, Office of Government Commerce (OGC) contracts, etc.
- iv. **Sole source of supply** - Where suitable goods or service are genuinely only available from one supplier (e.g. if patent, copyright, or other exclusive design rights exist). Similarly, for any highly specialised/niche services where, for all practical purposes, no realistic alternative source of supply exists.
- v. **Reasons of compatibility** - If compatibility with existing goods, equipment or services is essential (e.g. spare parts/components for existing equipment) or where additional units are being purchased to match existing equipment and there is an overwhelming case for matching the existing items on the grounds of functionality, aesthetics, etc.
- vi. **Partnering** – Where a formal partnering arrangement and/or established **framework agreement** already exists as the result of an earlier competitive selection and award process.
- vii. **Grant or match funding** – To secure grant or match funding within a restrictive time frame.

1.4.3 In the event of a contract being awarded under any of the circumstances stated above a waiver report will be provided to the council or relevant committee for approval at the

earliest opportunity.

## **1.5 Other considerations**

1.5.1 Where they exist, corporate contracts and framework agreements shall be used. The Clerk to the Council shall be responsible for maintaining and distributing details of such contracts, as necessary.

1.5.2 Any procurement activity shall accord with other relevant Council policies, technical standards, or requirements as necessary e.g. ICT hardware and software compatibility policy, in-house printing protocol, etc.

1.5.3 Consultants acting as an agent on behalf of the Council are required to operate in accordance with this policy. It is the responsibility of the Clerk to the Council or delegated officer engaging the consultant to ensure such compliance. Furthermore, the selection and engagement of consultants is a procurement activity, and therefore subject to this policy.

## **2. ESTABLISHING AND MANAGING CONTRACTS**

### **2.1 Openness and forward planning**

- 2.1.1 The clerk to the council shall maintain an up-to-date contract database of all the councils' current contracts and timeframes which must be reported on a quarterly basis to the Finance Committee and on an annual basis to the Full Council.
- 2.1.2 The council shall maintain an approved contractors list for the value up to £10,000 across the range of supplies, services, and minor works. This list must be reviewed every 3 years and any major changes within that time must be reported to full council for approval.

### **2.2 Pre-procurement considerations**

- 2.2.1 Realistic consideration (proportionate to the risk, complexity, and value of the purchase) should be given to possible alternative options. For example, this might include a fundamental revision of the need for standardisation of the specification; reuse or recycling of equipment; internal provision of the service; collaboration with other purchasers; etc.
- 2.2.2 The involvement of elected members in procurement decisions is generally most effective at the earlier rather than later stages of the procurement cycle – particularly in terms of helping to scope the requirement, developing an outline business case, and determining the procurement approach. For example, members can often bring valuable insight and perspectives to issues such as how well a proposed requirement meets the Council's strategic objectives and its current priorities ("strategic fit"), or whether a wide enough range of possible supply options (including innovation and/or collaboration with other organisations etc.) is being explored.
- 2.2.3 General market research or consultation can be undertaken with potential suppliers before the issuing of an Invitation to Tender (e.g. regarding the nature or extent of supply, contract 'packaging', etc.) provided this does not prejudice any potential tenderers. No technical advice on the preparation of an Invitation to Tender or similar shall be accepted from anyone who may have a commercial interest in this if it might prejudice the equal treatment of all potential suppliers or distort competition in any way.

## 2.3 Seeking competition

- 2.3.1 Formal competitive tenders shall be invited for any procurement with an estimated total value of **more than £75,000** (Reference is to be made to **clause 1.3.1** of these CSO's when determining the total value). Tendering opportunities shall be advertised on the Council's website and Contracts Finder in accordance with the Public Contracts Regulations 2015, and as appropriate, in the local press and/or relevant trade journal(s)
- 2.3.2 Where applicable, the further requirements of the EU Procurement Directives and Public Contracts Regulations 2015 must be complied with, including advertising in the supplement to the Official Journal of the European Union (FTS) and Contracts Finder. This potentially affects all contracts above **£181,302** in the case of goods and services, or above **£4,551,413** in the case of works contracts (**1 January 2018 thresholds**). There are additional thresholds for the requirement to advertise in Contracts Finder and the publication of Prior Information Notices. Regular guidance should be sought on the application of the EU Procurement Directives and the Public Contracts Regulations 2015; the values of the relevant thresholds; and the compilation and submitting of FTS notices.
- 2.3.3 For contracts with an estimated value **between £5,001 and £24,999** at least three written quotations from bona fide suppliers should be sought. Requests for Quotations (RFQ's) can either be invited from known suppliers to the Council, or when there are no known suppliers or a wider competition is deemed appropriate then the RFQ can be advertised. Each contractor responding to the advertisement shall be supplied with the RFQ documentation. For contracts with a value from **£25,000 up to £75,000**, the RFQ will be advertised on **Contracts Finder** in accordance with the requirements of the Public Contracts Regulations 2015 and in addition to any other advertising medium used. Each contractor responding to the advertisement shall be supplied with the RFQ documentation. This will be in addition to RFQ's being invited from known suppliers. At least three written quotations should be obtained.

RFQ's involve less formality than the tendering process. However, as with an Invitation to Tender, any Request for Quotation must communicate clearly to the potential suppliers what is required (the specification).

- 2.3.4 For contracts **up to £5,000**, no formal competition is strictly required. However, it is essential to demonstrate best value is achieved and it will often be appropriate to obtain more than one quotation to do this. The Council shall develop an **Approved List of Contractors** for this purpose across a range of supplies, services, and minor works. This list must be reviewed every three years for approval by Full Council and reported on an annual basis to the Council's Finance Committee for noting. Any major changes during the three-year period must be reported to Full Council for approval.



These requirements are summarised in the following table:

<b>Estimated Total Value</b> (i.e. for full duration of contract including any extension options)	<b>Competition Requirements</b>	<b>Advertising Requirements</b>
Up to <b>£5,000</b>	No formal competition required, although requests for quotations can be sought to demonstrate best value	No advert required
<b>£5,001 - £24,999</b>	Obtain at least three written quotations using the RFQ process.	Advertise RFQ in accordance with clause 2.3.3
<b>£25,000 - £75,000</b>	Obtain at least three written quotations using RFQ process.	Advertise RFQ on the <b>Contracts Finder</b> website in accordance with clause 2.3.3 and as appropriate in any additional advertising medium.
<b>£75,001</b> and above	Invitations to Tender	Advertise on the <b>Council</b> and <b>Contracts Finder</b> websites, the <b>local press</b> and at least one <b>industry publication</b>
<b>£4,551,413</b> and above (Works contracts) or <b>£181,302</b> and above (Goods and Services contracts)  <b>(1 January 2018 thresholds)</b>	Invitations to Tender processed in accordance with the requirements of the EU Procurement Directives and Public Contracts Regulations 2015.	Advertise on the <b>Council</b> and <b>Contracts Finder</b> web sites, the <b>Official Journal of the European Union (FTS)</b> and at least <b>two industry publications</b>

## 2.4 Choosing the procurement procedure

- 2.4.1 The Public Contracts Directive provides for six basic award procedures to choose from. One of these procedures will be used for all contracts whose total value equals or exceeds the EU Procurement thresholds detailed in the table above. The choices are: **Open, Restricted, Competitive Dialogue, Competitive Procedure with Negotiation, Innovations Partnership Procedure, and Negotiated Procedure without Prior Notification**. The selection of the most appropriate one will be determined by the Clerk to the Council, delegated officer, or delegated project team, and shall depend on circumstances as follows:
- 2.4.2 In **Open Procedures**, any interested economic operator may submit a tender in response to a contract notice. The tender shall be accompanied by the information for qualitative selection that is requested by the contracting authority.
- 2.4.3 In **Restricted Procedures**, any economic operator may submit a request to participate in response to a call for competition by providing the information for qualitative selection that is requested by the contracting authority. Only those economic operators invited to do so by the contracting authority following its assessment of the information provided may submit a tender.
- 2.4.4 In **Competitive Dialogues**, any economic operator may submit a request to participate in response to a contract notice by providing the information for qualitative selection that is requested by the contracting authority. Only those economic operators invited by the contracting authority following the assessment of the information provided may participate in the dialogue.
- 2.4.5 The **Competitive Procedure with Negotiation**, any economic operator may submit a request to participate in response to a call for competition by providing the information for qualitative selection that is requested by the contracting authority.
- 2.4.6 The **Innovation Partnership Procedure**, any economic operator may submit a request to participate in response to a contract notice by providing the information for qualitative selection that is requested by the contracting authority. The contracting authority may decide to set up the innovation partnership with one partner or with several partners conducting separate research and development activities.
- 2.4.7 In certain narrowly defined circumstances the contracting authority may also award a contract using the **Negotiated Procedure Without Prior Publication**. Here the contracting authority would approach one or more suppliers seeking to negotiate the terms of the contract. One of the permitted circumstances is where, for technical or artistic reasons or because of the protection of exclusive rights, a particular supplier can only carry out the contract.
- 2.4.8 Contracting authorities have a free choice between the open and restricted procedures. **The competitive dialogue procedure and the competitive procedure with negotiation are available where certain criteria are met, including where the contract is complex or cannot be purchased 'off the shelf'**. The **negotiated procedure without prior publication** may only be used in the limited circumstances described in the Public Contracts Directive.

- 2.4.9 Contracting authorities using the **restricted procedure, competitive dialogue procedure and the competitive procedure with negotiation** must aim to select several suppliers sufficient to ensure genuine competition. Provided there are sufficient suitable candidates, the Public Contracts Directive requires a **minimum of five for the restricted procedure, and three for competitive dialogue and competitive procedure with negotiation.**

## **2.5 Determining tender award / evaluation criteria**

- 2.5.1 The various qualitative award criteria must be appropriate to the contract in question and reasonably expected to provide a best value outcome. These qualitative factors can include moderate recognition of what are often termed 'Corporate Social Responsibility' issues. In other words, considering how well each supplier is in accord with the Council's own policies, objectives, and values in relation to, for example, care for the environment; promoting equalities & diversity; supporting fair trade; well-being of the local community; etc. Reference should also be made to the Public Contracts Regulations 2015, and EU Public Procurement Directive for further information on qualitative award criteria that may be used.
- 2.5.2 As far as possible, pricing factors should cover all identifiable elements that make up the 'whole-life cost'. Where price is not a fixed sum, but instead comprises a schedule of prices or rates with no firm commitment as to quantities then a best endeavours or notional bill of quantities shall be incorporated into the Invitation to Tender/evaluation process to facilitate satisfactory total price comparisons between tenderers.
- 2.5.3 The award criteria (though not necessarily the actual weightings to be applied to each criterion in the evaluation model) should be stated to prospective tenderers in the Invitation to Tender (ITT) documentation. Subsequently, evidence of each tenderer's suitability to supply shall be judged against these criteria - usually by small panel of suitably knowledgeable officers (typically up to 3) convened as required.

## **2.6 Preparation of invitation to tender**

- 2.6.1 Every effort shall be made to produce clear and straightforward Invitation to Tender documentation. Whenever practical, specification details should focus on successful outcomes rather than being unnecessarily prescriptive as to the precise method of achieving those outcomes, as potentially this can encourage innovation from tenderers and avail particular market expertise. Similarly, variant bids (i.e. allowing tenderers to suggest possible variations or alternative ways in which they might satisfy the potential contract) should be an allowable option and duly considered in the pursuit of best value.

## **2.7 Receipt and opening of tenders**

- 2.7.1 A reasonable length of time must be allowed for tenderers to compile and submit their bids, having regard to the complexity of the tender and, when appropriate, any mandatory timescales under the EU Procurement Directives and Public Contracts Regulations 2015. The Invitation to Tender must clearly state the latest date and time

that tender bids can be received by. Any tenders received after the closing date shall not be considered unless there is clear evidence that it was posted at least the day before the closing date and any delay in delivery was wholly outside the control of the tenderer.

- 2.7.2 All tenders submitted must be in official tender envelopes and are to be posted or delivered to the Ryde Town Council Offices, where they will be held in a secure locked box until the designated tender closing date. The Clerk to the Council and the authorised project officer or Council member will then open all the tenders received and record the value of each tender bid in a register maintained for that purpose. No assessment or recording of any of the qualitative information shall be practical at this stage.
- 2.7.3 The tenders shall then be passed to the lead project manager or authorised person responsible for the tender, who shall arrange the evaluation of the tenders.

## **2.8 Evaluation and award of contract**

- 2.8.1 All compliant tenders shall be checked for basic arithmetic accuracy. If any arithmetical errors are found they must be notified to the tenderer who shall be given the opportunity to confirm (urgently and in writing) what the correct price is or withdraw the tender bid altogether. No amendments to the billed rates shall be allowed. Common sense shall prevail as to the nature of any such errors and that they do not undermine the basic integrity of the tendering process.
- 2.8.2 All tenders shall be evaluated against the designated award criteria set out in each specification.
- 2.8.3 The appropriate delegated person, normally the Clerk to the Council is empowered to award contracts without formal reference to elected members for contracts up to a value of £10,000, provided this policy has been fully complied with. However, if the contract up to this value is considered to be of a particularly important or sensitive nature, the approval of the Full Council, or delegated Council Committee, to award the contract shall be obtained. In addition, the requirements of Clause 1.1.10 must also be met for contracts whose whole life value lies between £5,001 and £10,000.
- 2.8.4 The authority to request quotations, invite tenders and award contracts is summarised in the following table:

<b>Summary of delegated authority for procurement</b>
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Person	Request for Quotations (Values up to £10,000)	Request for Quotations (Values between £10,001 and £75,000)	Invite tenders (Values above £75,000)	Award contracts (subject to necessary budget available)
Clerk to the Council.	No Restriction, but subject to clause 1.1.10	By authority of the Full Council, or Delegated Council Committee.	By authority of the Full Council, or Delegated Council Committee.	No restriction for Quotes up to <b>£10,000</b> in value, unless of a strategically important or politically sensitive nature, but also subject to clause 1.1.10  By authority of the Full Council or Delegated Council Committee for all contracts of value above <b>£10,000</b>
Delegated Officer authorised by the Full Council, or delegated Council Committee, and under the direction of the Clerk to the Council.	No Restriction, but under the direction of the Clerk to the Council.	By authority of the Full Council, or Delegated Council Committee, and under the direction of the Clerk to the Council.	By authority of the Full Council, or Delegated Council Committee, and under the direction of the Clerk to the Council.	No restriction for Quotes up to <b>£10,000</b> in value, unless of a strategically important or politically sensitive nature, but also subject to clause 1.1.10  By authority of the Full Council or Delegated Council Committee for all contracts of value above <b>£10,000.</b>  Both of the above under the direction of the Clerk to the Council.

2.8.5 Performance bonds shall not be required as a matter of course, as in many instances they can drive up costs unnecessarily and out of proportion to the real exposure to risk of a failing supplier. However, they shall be considered if there are genuine concerns about the stability of a particular supplier. In such instances, the bond must be in place before the commencement of work by the supplier.

2.8.6 Suppliers and contractors are required to have appropriate public liability insurance cover (and professional indemnity insurance where deemed necessary) that provides a realistic level of protection to the Council and is proportionate to the value/risks involved. (Note: Typically, a “standard” public liability cover level of £10 million for any one single incident shall be sought, although alternative levels may be considered acceptable in relation to the adjudged risks)

## 2.9 Debriefing of unsuccessful tenderers

2.9.1 If requested, unsuccessful tenderers shall be given constructive feedback on why their bid was unsuccessful. This must not betray any commercially confidential information provided by other tenderers, whilst the requirements of the Freedom of Information Act shall be properly considered.

2.9.2 The full requirements of the EU Procurement Directives and Public Procurement Regulations 2015 must be followed when procuring goods, services, or works that require these procedures to be followed.

## **2.10 Contract documentation**

2.10.1 In many instances, a straightforward acceptance letter (and/or purchase order) by the Council of a supplier's tender shall be sufficient to form the binding contract. However, a pre-requisite for this is that the Invitation to Tender document itself is well-structured in the first place (including the inclusion of the Council's chosen terms and conditions) and that good records are kept of all salient correspondence with the supplier concerning the agreement itself, such that there can be no doubt about the rights and obligations of both parties to the contract.

2.10.2 Contract documentation should normally be subject to approval by the Council's legal representatives, particularly where it is of high risk or strategically sensitive. The formal sealing of contracts shall not be deemed necessary except on Legal advice.

2.10.3 All contracts shall provide for contractors' obligations in relation to Human Rights, Freedom of Information, Data Protection, and other statutory obligations as required.

2.10.4 The delegated person or committee awarding the contract shall complete a Contracts Register Form (Annex 1) for collation by the Clerk to the Council within two weeks of award of contract so that the Council's Contracts Register can be updated. Where required, a mandatory Contract Award Notice (including those for Part B Services) shall be published in the FTS within the statutory 48-day period from award of contract.

2.10.5 The Council's Contracts Register should contain details of the procurement exercise to trap key information about the contract (e.g. the goods and services and or works, values, date started, expiry date, procurement category etc)(See also Annex 1).

## **2.11 Variations and extensions**

2.11.1 Reasonable variations to the contract can be agreed with the supplier during the lifetime of the contract provided they comply with the spirit of these Contract Standing Orders and be within the delegated authority limits of the relevant delegated officer(s) or Council Committees.

2.11.2 Options to extend a contract must have been stated in principle in the original Invitation to Tender.