



# Contract procedure rules

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## Contents

1. Introduction	4
PART 1 – requirements when letting contracts	4
1 Definitions	4
2 Application and compliance with contract procedure rules	4
3 European Union requirements	5
4 Appointment of consultants	7
5 Contracts – delegation to officers	7
6 Invitation to tender	8
7 Tender shortlist	8
8 Standing approved lists	9
9 Exceptions to requirement to invite tenders	11
10 Framework agreements	12
11 Rights of third parties	12
12 Assignment	12
13 Liquidated damages	12
14 Security for performance	13
15 Cancellation for corruption	13
16 Collusive tendering certificate	14
17 Indemnities	14
18 Nominated sub-contractors and suppliers	14
19 European Standards	15
20 Certification of contracts	15
21 In-house providers	15
22 Statutory obligations	15
PART 2 – Procedural requirements which apply to every tender	15
23 Consultants – when acting as contract supervisor	15
24 Receipt and Custody of Tenders	16
25 Opening of Tenders	16
26 Late or Non-Compliant Tenders	17
27 Alterations to Tenders	17
28 Acceptance of Tenders	18

29	Standstill period on EU procurement award decisions	18
30	Contracts in writing	19
31	Register of contracts	20
2.	References	21
3.	Related documents	21
	Document control sheet	22

## 1. Introduction

At Colchester Borough Homes we have the following procedure rules to govern the way we will let contracts. These rules are approved by the Colchester Borough Homes Board and can only be changed with the Board's agreement.

## PART 1 – requirements when letting contracts

### 1 Definitions

- (1) In these contract procedure rules, "Officer" means the relevant member of the Directors Management Team (DMT) responsible for the letting of the contract or the duly authorised representative of the relevant member of the Directors Management Team.
- (2) In these contract procedure rules reference to "the Board" means the full Board of Colchester Borough Homes Limited or any committee of the Board or individual Board Member that the full Board has duly authorised to act for it in the matter under consideration.
- (3) In these contract procedure rules the reference to "Legal Services" means the Council's legal team under which Colchester Borough Homes have access via a service level agreement.

### 2 Application and compliance with contract procedure rules

- (1) Every contract made by Colchester Borough Homes on our own behalf will comply with these contract procedure rules, except as otherwise specified in this Rule.
- (2) Where a Colchester Borough Homes Officer is making a contract for Colchester Borough Council, the Officer will comply with the Colchester Borough Council Financial Regulations and contract procedure rules.
- (3) No exception from any of the following provisions of these contract procedure rules will be made otherwise than by direction of the Board or, where it is in the interests of Colchester Borough Homes to take immediate action, by a member of the Directors Management Team, after appropriate consultation with:
  - The Director of Business Improvement for contracts under £10,000 or
  - The Chair of the Board or the Chair of the Finance and Audit Committee.

This action will be reported to the next Board meeting.

- (4) Every exception to the provisions of these contract procedure rules made by a member of the Directors Management Team and the

circumstances whereby it is in our interests to take immediate action by which the exception shall have been justified, shall be reported to the next meeting of the Finance and Audit Committee.

- (5) These contract procedure rules shall have no application to contracts or agreements:
  - (a) entered into by Colchester Borough Homes for another Authority pursuant to instructions given by the Principal.
  - (b) comprising of internal contracts or agreements between internal service units of Colchester Borough Homes concerning the provision of services which have not been exposed to external competition.
- (6)
  - (a) Officers should seek advice from Legal Services in relation to letting any contract for less than £50,000, unless they consider it impractical to do so and have significant procurement expertise themselves.
  - (b) For contracts of £50,000 and over, Officers must seek advice from Legal Services in relation to the formation of the contract unless a standard form of contract is used or the Board has agreed that external advisors be employed.
  - (c) In relation to any contract where the Officer or contractor wishes to terminate a contract early, the Officer must seek legal advice from Legal Services or from an external services provider where the Directors Management Team member has agreed that external advisers should be employed.

### **3 European Union requirements**

- (1) These contract procedure rules shall be subject to any procedures which may apply by reason of the United Kingdom's membership of the European Union ("EU").
- (2) A contract or a series of similar contracts of the same type, the aggregation of which exceed the financial limits set in EU Directives shall be let in accordance with the requirements of EU Directives.

*The thresholds (net of VAT) applying from 1 January 2020 are:*

*Contracts for supplies estimated to cost not less than £189,330;*

*Contracts for Services estimated to cost not less than £189,330;*

*Contracts for public works estimated to cost not less than £4,733,252.*

*NB. Financial limits set by EU Directives are regularly reviewed.*

- (3) Prior to the commencement of each financial year, each Officer shall

notify the Director of Business Improvement of all contracts to be let in accordance with paragraph (2) of this contract procedure rule and which in the course of the financial year for Services and Supply Contracts the estimate value of the contract exceeds £615,278 and for all Works Contracts the estimate value of the contract exceeds £4,733,252 a prior information notice will be sent by the Director of Business Improvement to the Official Journal of the European Union (OJEU) on behalf of Colchester Borough Homes for these contracts.

- (4) Each contract falling within paragraph (2) of this contract procedure rule shall be let by means of the restricted procedure or if appropriate the negotiated procedure providing that the negotiated procedure is used in accordance with the EU Procurement Rules. Any alternative procedure must be agreed by the Board or the Finance and Audit Committee (as appropriate).
- (5) Each contract falling within paragraph (2) of this contract procedure rule shall be let on the basis of the most economically advantageous tender to Colchester Borough Homes having regard to price, quality, technical merit, aesthetic and functional characteristics, technical assistance, after sales service, delivery date, delivery period, period of completion and such other criteria as Colchester Borough Homes may have specified in the tender documents.
- (6) For each contract falling within paragraph (2) of this contract procedure rule the criteria for the selection of tenderers shall be only those set out in the relevant EU Directive, although Officers will be entitled to use existing and new Framework Agreements that have been let by Colchester Borough Homes or other relevant bodies in accordance with EU Regulations.
- (7) The Officer shall ensure contract award notices are submitted to the Official Journal of the European Union in accordance with the relevant EU Directive and that written reports and returns are submitted as required by the Directives.
- (8) The Officer shall notify the Director of Business Improvement of all contracts falling within paragraph (2) of this contract procedure rule that are let during the course of the year.
- (9) For each Works, Supplies and Service Contract that falls with EU Procurement Regulations the relevant Directors Management Team Member must keep the following information for each contract let in accordance with the EU Procurement Regulations:
  - (a) the name and address of Colchester Borough Homes;
  - (b) the work, service or supplies to be provided under the contract and the value of the consideration to be given under it;
  - (c) the names of the persons whose offers were evaluated in

accordance with regulations and where Colchester Borough Homes has used the restricted or negotiated procedure, the reasons why those persons were selected;

- (d) the names of the persons who were unsuccessful pursuant to regulations and the reasons why they were unsuccessful;
- (e) the name of the person to whom the contract was awarded and the reasons for having awarded the contract to them;
- (f) if known to Colchester Borough Homes the work, service or supplies under the contract which the person to whom the contract has been awarded intends to sub-contract to another person;
- (g) in the case of Colchester Borough Homes using the negotiated procedure which of the circumstances specified in regulations constituted grounds for using that procedure.

The relevant Directors Management Team Member shall supply a copy of the information specified in paragraphs (a) - (g) above to the Director of Business Improvement at the end of each financial year or upon request by HM Treasury or the European Commission.

#### **4 Appointment of consultants**

- (1) Where practical, the appointment of consultants shall be in accordance with these contract procedure rules.
- (2) It is recognised that for some types of consultancy the established practice of the particular trade or profession does not accord with these contract procedure rules.
- (3) In the event that the Officer considers that the established practice of the trade or profession makes it impractical to follow contract procedure rules and the estimated value of the proposed services does not exceed the relevant EU threshold, the Officer must set out in writing the reasons why contract procedure rules should not apply, which Contract Rule(s) should be set aside and gain the prior written agreement of the Director of Business Improvement for contracts under £10,000 or the Chair of the Finance and Audit Committee for contracts above £10,000.
- (4) For contracts with an expected value in excess of £10,000 the Officer must agree via Legal Services terms of any contract prior to the award of a contract unless using a standard form of contract.
- (5) Officers shall notify the Director of Business Improvement of the appointment of a consultant to ensure insurance requirements are met.

#### **5 Contracts – delegation to officers**

- (1) Unless otherwise directed by the Board, the Officer shall have authority

on behalf of Colchester Borough Homes to enter into any contract which does not exceed the value of £250,000 or does not form part of a series of contracts the total value or amount of which exceed £250,000, provided that such contract or contracts is/are in accordance with the existing practice of Colchester Borough Homes and the expenditure involved is authorised within Colchester Borough Homes' Financial Procedure Rules and provided also that where the contract or contracts is/are in respect of work, services and supplies for which a list is maintained under contract procedure rule 8, the contract shall, where practicable, be entered into with a person on that list.

## **6 Invitation to tender**

- (1) The provisions of this contract procedure rule apply to all contracts except those covered by the provisions of contract procedure rules 3(1), 6(1)-6(3), 8(1) - 8(7) and 9(1) - 9(6).
- (2) No contract which exceeds an estimated value or amount of £250,000 for works services or supplies, shall be made unless at least ten days' public notice has been given in one or more local newspapers circulating in the Borough of Colchester and if considered desirable by the Officer, in one or more newspapers or journals circulating among such persons as undertake such contracts, expressing the nature and purpose thereof, inviting tenders for its execution and stating the last date when tenders will be received.
- (3) For contracts of an estimated value or amount between £50,000 and £250,000, either public notice may be given as set out in paragraph (2) of this contract procedure rule or the Officer may invite not less than three contractors to tender and the Officer shall keep a written record of this..

[NB. For contracts of an estimated value of up to £50,000 refer to contract procedure rule 9(7).]

- (4) The Officer may send out electronic documents and receive electronic responses. The receipt of tenders must be in accordance with contract procedure rule 24.

## **7 Tender shortlist**

- (1) Where by virtue of a decision of the Board, invitation to tender for a contract is to include persons or bodies who reply to a Public Notice, then the Officer will not be required to have any shortlist approved by the Board, providing the Officer is complying with all other obligations under these contract procedure rules, best value and the EU Procurement Regulations and any other criteria which apply to the selection criteria.
- (2) Public notice shall be given as set out in contract procedure rule 6(2) inviting applications from persons or bodies who undertake such contracts to be placed on a list from which contractors selected by

Colchester Borough Homes will be invited to submit tenders for such work.

- (3) After the expiration of the period specified in the public notice, invitations to tender for the contract shall be sent to not less than three of the persons or bodies who applied for inclusion in the list, or if fewer than three persons or bodies have applied and are considered suitable, to all such persons.
- (4) Where the contract is within the works or services areas approved by Colchester Borough Homes as being suitable for execution by In-house Providers, such Providers shall in all cases be invited to tender for contracts for the provision of such works or services, unless the contract is let in accordance with the EU Procurement Regulations in which case the relevant Directors Management Team Member must follow the selection criteria set out in accordance with the EU Procurement regulations.

## **8 Standing approved lists**

- (1) This contract procedure rule shall have effect where contract procedure rule 3 does not apply and where the Board have determined that a list (the List) shall be kept of persons to be invited to tender for contracts for work, services or supplies of specified categories, values or amounts, or for the execution of specified categories of works.
- (2) The List shall be prepared by the relevant Officer and submitted for approval by Finance and Audit Committee annually. The List shall:
  - (a)

be compiled and maintained by the Officer having taken due consideration of each person or body's competence, financial position, integrity and organisational quality; and
  - (b)

contain the names of all persons or bodies who wish to be included on the approved list and who are approved by the Finance and Audit Committee or the relevant Directors Management Team member; and
  - (c)

indicate in respect of a person or body whose name is so included, the categories of contract and the estimated values or amounts in respect of those categories for which approval has been given.
- (3) At least four weeks before the list is first compiled, notices inviting applications for inclusion in it shall be published in one or more local newspapers circulating in the Borough of Colchester and in one or more

newspapers or journals circulating among such persons or bodies as undertake such contracts.

- (4) The list shall be reviewed at intervals not exceeding two years unless the person or bodies who have been included on the approved list have been Part 4 – Section L - Page 8 of 22 Issue Date: October 2018 included by virtue of a Framework Agreement awarded in accordance with Contract Procedure Rule 10 in which in case the review will be carried out in accordance with the Framework Agreement ( if applicable).
- (5) At least four weeks before each review referred to at (4) of this Contract Procedure Rule, each person or body whose name appears on the list shall be asked whether the name is to remain thereon and notices inviting applications for inclusion on the list shall be published in the manner set out in paragraph (3) of this Contract Procedure Rule.
- (6) Where by virtue of a decision of the Board or Officer (as appropriate) the invitation to tender for a contract shall be limited to persons or bodies whose names appear on the List, an invitation to tender for that contract shall be sent to at least three of those persons or bodies whose names appear on the List as being approved for a contract of that value, amount or category or if there are fewer than three such persons or bodies, to all such persons or bodies.
- (7) If there are more than three such persons or bodies, the persons or bodies to whom invitations are sent shall be selected in the manner determined by the Board or Officer (as appropriate) either generally or in relation to a particular contract or category of contracts.
- (8) The list shall include In-house Providers in respect of all work, services or supplies areas approved by the Council as being suitable for execution by such providers, which shall in all appropriate cases be invited to tender for contracts for the provision of such work, services or supplies.
- (9) Subject to Contract Procedure Rules 3 and 8(10) the Officer will not be required to maintain a list under Contract Procedure Rule 8 if the Officer uses an external organisation to maintain a list of suitable persons who can be invited to tender on behalf of Colchester Borough Homes. Provided that the use of such external organisation has been previously agreed with the Finance and Audit Committee. The list maintained by the external organisation pursuant to this Contract Procedure Rule shall include In-house Providers or shall be deemed to include In-house Providers in order to comply with Contract Procedure Rule 8 (8).
- (10) When Colchester Borough Homes, acting for another authority, is to invite selective tenders for the supply of work, services or supplies, the persons or bodies to be invited to tender shall be selected from the Standing Approved List maintained by the other authority.

## **9 Exceptions to requirement to invite tenders**

- (1) Unless contract procedure rule 3 applies nothing in these contract procedure rules shall require tenders to be invited in respect of contracts falling within the following categories.
- (2) In the case of contracts for the work, services or supplies:-
  - (a) the work, services or supplies are proprietary articles or are sold only at a fixed price and no reasonably satisfactory alternative is available; or
  - (b) the prices of the work, services or supplies are wholly controlled by trade organisations or Government Order and no reasonably satisfactory alternative is available.
- (3) The work, services and supplies provided consist of repairs to or the supply of parts of existing proprietary machinery or plant.
- (4) In the case of specialised work, services or supplies or where effective competition is for any reason prevented and, with the consent of the appropriate officer or where appropriate (depending on the relevant financial threshold) the Board, the Officer may obtain estimates from one or more persons or bodies and upon satisfaction therewith and, with the consent of the appropriate officer or where appropriate (depending on the relevant financial threshold) the Board, may make the contract with such person or body.
- (5) With the prior consent of the Board or Officer (as appropriate) any existing contract entered in accordance with these contract procedure rules can be extended (here meaning where there is not an existing contractual right to extend the term) provided that it is established that the contract needs to be extended for justifiable operational reasons and that this does not cause the relevant EU Procurement threshold to be exceeded having due regard to the aggregation rules referred to in contract procedure rule 3.
- (6) Tenders shall have been invited on behalf of any consortium, collaboration or similar body and/or procurement arrangement of which Colchester Borough Homes is a member, in accordance with a method of letting contracts adopted by such body. Provided that where tenders are so invited as aforesaid by an Officer of Colchester Borough Homes, the delivery, opening and acceptance of tenders shall comply with the provisions of these contract procedure rules, save where those provisions are inconsistent with any method by which tenders so obtained on its behalf are dealt with unless the Board has agreed that their tender procedures shall prevail.
- (7) For a contract with an estimated expenditure of up to £50,000 and it is not considered by the Officer to be reasonably practicable or in Colchester Borough Homes' interests to invite tenders, the Officer must

seek the following quotations for the contract unless it is impracticable to do so:

£0 - £1,000	Where practical two quotations that must be recorded
£1,001 - £5,000	two written quotations
£5,001 - £50,000	a minimum of three written quotations or tenders

In all of the above instances the Officer should use the List of approved contractors and suppliers where practical.

## **10 Framework agreements**

- (1) Where Colchester Borough Homes has either entered into a Framework Agreement itself or is procuring via an external Framework Agreement the Officer may place orders or seek tenders under a Framework Agreement by reference to a price list or other document in order to obtain best value in terms of quality and price and must ensure that there is reasonable competition under the Framework Agreement in order to ensure that Colchester Borough Homes obtains best value.
- (2) Any order or tender placed or sought under a Framework Agreement must comply with the requirements contained in contract procedure rules 15, 16, 24, 26 and 30.
- (3) Any call off arrangement made under the terms of any Framework Agreement which exceeds the sum of £50,000 shall be opened in accordance with contract procedure rule 26 and reference to tenders shall be construed accordingly.

## **11 Rights of third parties**

- (1) There shall be inserted in every written contract a clause that excludes the rights of third parties under the Contracts (Rights of Third Parties) Act 1999, unless the Officer considers it inappropriate to do so.

## **12 Assignment**

- (1) There shall be inserted in every written contract for work, services or supplies a clause which prohibits the contractor from assigning the contract without the written consent of Colchester Borough Homes.

## **13 Liquidated damages**

- (1) Every contract that is estimated to exceed £250,000 in value or amount for work, services or supplies by a particular date or series of dates, may provide for liquidated damages to be paid by the contractor in case the terms of the contract are not duly performed. The amount, if any, to be specified in each such contract shall be determined by the Officer in consultation with the Director of Business Improvement.

## **14 Security for performance**

- (1) Where a contract is estimated to exceed £1m in value or amount and is for work, services or supplies by a particular date or series of dates, the Officer shall consult with the Director of Business Improvement on whether Colchester Borough Homes should require security for its due performance and, if so, the nature and amount of the security to be given which must be specified in the conditions of tender.
- (2) In the event of security being required, Colchester Borough Homes shall require and take a Bond or other sufficient security for the due performance of the contract and in such cases, no works shall be started until a satisfactory Bond or other security has been provided, provided that the Officer, after consultation with the Director of Business Improvement, may agree that in exceptional circumstances, such works may be commenced prior to the Bond or sufficient security being provided, subject to the contractor first agreeing in writing that no payments under the contract will be made by Colchester Borough Homes until such Bond or security has been provided by the contractor.
- (3) Where a tender specification requires the provision of a Bond or other sufficient security for due performance of the contract and the successful tenderer is another local authority or public body, following acceptance of the tender, the Officer after consultation with the Director of Business Improvement, may decide that no such security is necessary.
- (4) In any other case, the Officer may require security for due performance of the contract if the Officer so considers it necessary.

## **15 Cancellation for corruption**

- (1) There shall be inserted in every written contract of a value in excess of £50,000, a clause empowering Colchester Borough Homes to rescind the contract and to recover from the contractor the amount of any loss resulting from such cancellation:
  - (a) if the contractor shall 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 obtaining or execution of the contract or any other contract with Colchester Borough Homes or for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with Colchester Borough Homes; or
  - (b) if the like acts shall have been done by any person employed by the contractor or acting on the contractor's behalf (whether with or without the knowledge of the contractor); or
  - (c) if in relation to any contract with Colchester Borough Homes, the contractor or any person employed by the contractor or acting on

the contractor's behalf shall have committed any offence under the Bribery Act 2010, or shall have given any fee or reward, the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

## **16 Collusive tendering certificate**

- (1) In every tender submitted to Colchester Borough Homes the tenderer shall certify that the tender sum has not been fixed or the amount adjusted by or under or in accordance with any agreement or arrangement with any other person.
- (2) In every tender submitted to Colchester Borough Homes, the tenderer shall certify that none of the following acts have been done and undertakes not to do any of the following acts at any time prior to the formal acceptance of the tender:
  - (a) communicating to a person other than the person calling for the tender the amount or approximate amount of the proposed tender, except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain insurance premium quotations required for the preparation of the tender;
  - (b) entering into any agreement or arrangement with any other person that the tenderer shall refrain from tendering or as to the amount of any tender to be submitted;
  - (c) offering or paying or giving or agreeing to pay or give any sum of money or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other tender or proposed tender for the said work any act or thing of the sort described above.

## **17 Indemnities**

- (1) The Officer must ensure that any external party who procures works services and supplies on behalf of Colchester Borough Homes indemnifies Colchester Borough Homes against any liability arising directly or indirectly from the procurement process.

## **18 Nominated sub-contractors and suppliers**

- (1) The Officer may nominate a sub-contractor to a main contractor provided that it complies with the EU Procurement Regulations and these contract procedure rules and does not cause the amount of the main contract to increase unless it is approved by the Officer in accordance with paragraph (3) of this contract procedure rule.
- (2) The Officer must consider whether any sub-contractor should provide direct warranties to Colchester Borough Homes for the due performance of the works supplies services as appropriate.

- (3) Where the tender exceeds the prime cost sum in a main contract previously approved by the Board, the Officer shall submit a report to the Finance and Audit Committee who shall determine whether or not to instruct the Officer to nominate the tenderer to the main contractor.

## **19 European Standards**

- (1) Where the Officer gives reference to a British Standard or a specific named product he/she must state the British Standard or specific named product and then the words 'or equivalent' unless the Officer can demonstrate that there is no equivalent.

## **20 Certification of contracts**

- (1) No Officer shall enter into a contract that is required to be certified in accordance with the Local Government (Contracts) Act 1997. Any request for certification shall be referred to Colchester Borough Council's Monitoring Officer who will decide if such certification is appropriate and if appropriate, will arrange for the certification to be given in accordance with the Act.

## **21 In-house providers**

- (1) For the purposes of these contract procedure rules, an In-house Provider seeking to obtain a contract from Colchester Borough Homes in competition with external tenderers shall be treated in similar manner to any other potential contractor and references herein to "tenderers" and "contractors" shall be construed accordingly.

## **22 Statutory obligations**

- (1) The Officer shall ensure that every contract awarded complies with all Colchester Borough Homes' and Colchester Borough Council's statutory obligations and if in doubt the Officer must seek advice from Legal Services or an external adviser (see contract procedure rules 2(6) (a-b). The Officer must also ensure that all contracts let by Colchester Borough Homes contain suitable provisions in relation to compliance with statutory obligations.

## **PART 2 – Procedural requirements which apply to every tender**

### **23 Consultants – when acting as contract supervisor**

- (1) It shall be a condition of the engagement of any consultant (not being an officer of Colchester Borough Homes) who is to be responsible to Colchester Borough Homes for the supervision of a contract on its behalf, that in relation to that contract that person shall:
  - (a) comply with the requirements of these contract procedure rules in

the same way as the Officer, subject to the modification that the procedure to be followed in inviting and opening tenders shall be approved in advance by the Officer; and

- (b) at any time during the performance of the contract, produce to the Officer on request, the records maintained in accordance with these requirements; and
- (c) on completion of the contract, transmit such records to the Officer.

## **24 Receipt and Custody of Tenders**

- (1) All tenders in relation to works, goods or services will only be accepted if submitted and received by Colchester Borough Homes electronically via the Council's Delta Portal (or such other comparable system as shall be approved by the Director of Business Improvement from time to time). In circumstances when it is established that the tender documents are too large by the Director of Business Improvement the following procedure shall apply:
  - (a) If due to the nature of works documentation, if tenders cannot be submitted electronically, tenderers must be informed that their tender will only be considered if they are:
    - (b) sent in a plain sealed envelope or parcel with a label on which is printed the word "Tender" followed by the subject to which it relates and then the words "Closing date 12 noon on ....." followed by the closing date; and
    - (c) the sealed envelope or parcel does not contain any name or mark indicating the sender, provided that a postage stamp, postal franking mark or customs declaration (or similar) shall not be regarded as being such a name or mark ; and
    - (d) such envelope or parcel shall be addressed to and remain in the custody of The Director of Business Improvement, Colchester Borough Homes, Rowan House, 33 Sheepen Road, Colchester, CO3 3WG until the time appointed for their opening.
- (2) Every tender received by the Officer shall be numbered and marked with the date and time of receipt and a copy provided to the Director of Business Improvement.

## **25 Opening of Tenders**

- (1) All tenders received both electronically or hard copies for any contract following an invitation to tender pursuant to these Contract Procedure Rules shall be opened at the same time.

- (2) Tenders for contracts of an estimated value not exceeding £250,000 shall be opened in the presence of at least two officers designated for the purpose by the Director of Business Improvement.
- (3) Tenders for contracts of an estimated value in excess of £250,000 but not exceeding £500,000 shall be opened in the presence of a member of the Directors Management Team and the Chief Executive of Colchester Borough Homes.
- (4) Tenders for contracts of an estimated value in excess of £500,000 shall be opened as under paragraph (3) of this Contract Procedure Rule though in addition the relevant Chair of the Finance and Audit Committee shall be given not less than 48 hours' notice by the Officer of the time and place appointed for the opening of tenders and may attend or appoint another Board Member to be in attendance.

## **26 Late or Non-Compliant Tenders**

- (1) Records of any non-compliant tenders and of the date and time of receipt of any late tenders must be kept by the Officer.
- (2) Tenders received late may only be considered if the other tenders have not yet been opened and:
  - (a) failure to comply is the Council's fault; or
  - (b) it is clear that the tender was sent in such a way that in the normal course of events it would have arrived on time
- (3) It shall be the responsibility of the tenderer to ensure that the tender is received by Colchester Borough Homes by the specified time and the marking of the tender envelope with the date and time of receipt by an officer of Colchester Borough Homes in the presence of the tenderer shall be conclusive proof. The Officer shall ensure that every tenderer is aware of this requirement.
- (4) All tenders received after the specified time shall be so marked in the register of tenders maintained by the Director of Business Improvement and shall be promptly returned to the tenderer unopened (except to the extent necessary to ascertain the tenderer's name) by the Officer and no details of such tender shall be disclosed. Provided that this Procedure Rule will not relate to any external arrangement entered into by Colchester Borough Homes in accordance with contract procedure rule 8(6).

## **27 Alterations to Tenders**

- (1) Persons or bodies tendering shall not be allowed to alter their tender after the specified time for the receipt of tenders, except as provided in paragraphs (2) and (3) of this contract procedure rule.

- (2) If errors are found in tenders, a tenderer shall be given details of such errors and afforded an opportunity of confirming or withdrawing the offer.
- (3) In cases where a priced Bill of Quantities or other priced document is submitted with the tender and arithmetical errors are found in such document, a tenderer shall be given details of such errors and afforded an opportunity of adjusting the rates and prices inserted therein in accordance with the provisions of the form of contract.

## **28 Acceptance of Tenders**

- (1) If a decision to accept a tender by the Board or the Officer requires the agreement of Colchester Borough Council, then the tender shall not be formally accepted until that agreement has been received.
- (2) Subject to the following paragraphs of this contract procedure rule, tenders shall be accepted by the Officer in respect of those matters for which authority to enter in a contract has been delegated to the Officer.
- (3) For contracts having an estimated value in excess of £50,000 formal notification of the acceptance of a tender shall be given in writing by the Director of Business Improvement or by an Officer duly authorised by the Director of Business Improvement.
- (4) Except where contract procedure rule 3 applies the Board shall not accept or recommend the acceptance of a tender other than the lowest tender, if payment is to be made by Colchester Borough Homes, or the highest tender if payment is to be received by Colchester Borough Homes, unless it has considered a written report from the Officer.
- (5) Where the Officer acting under the contract procedure rules accepts a tender in the circumstances described in paragraph (4) of this contract procedure rule, the Officer shall advise the Director of Business Improvement of the proposed course of action and forthwith record in writing the reasons for so doing and such record shall be available for inspection.

## **29 Standstill period on EU procurement award decisions**

- (1) There is a requirement for a "standstill" period between the notification of an award decision in a public procurement covered by EU Directives and the conclusion of a contract with a supplier or suppliers.
- (2) For any procurements that are covered by the full regime of EU directives, a minimum of ten (10) calendar days mandatory standstill period is required between communication of the notification of award decision and contract conclusion, with day one (1) being the day after the award decision is issued, by e-mail, and in writing to all tenderers. This rule does not apply to procurements where there is only one regular tender received.

- (3) The notification by Colchester Borough Homes of the award decision, based on the most economically advantageous tender, should contain:
  - (a) the award criteria;
  - (b) the score the tenderer obtained against those award criteria;
  - (c) the score the winning tenderer obtained;
  - (d) the name of the winning tenderer.
- (4) The requirement to debrief in this manner highlights the need for a robust and fair evaluation matrix as well as a transparent and auditable evaluation process. Consequently officers will need to have all the elements of the debriefing process in place prior to the notification, as a rapid response is likely to be required to any request by an unsuccessful bidder. Officers should seek appropriate advice regarding any potential Freedom of Information Act implications prior to disclosing any details.
- (5) If an unsuccessful bidder requests further information by the end of the second working day of the standstill period, Colchester Borough Homes must provide additional information as part of the debriefing process. The additional debriefing will include:
  - (a) the reasons why the tenderer was unsuccessful and;
  - (b) if the tenderer submitted an admissible tender, the characteristics and relative advantages of the successful tender.
- (6) Colchester Borough Homes is required to provide such additional information at least 3 working days before the end of the standstill period. This will require Colchester Borough Homes to take into account the effect of UK public holidays. If a supplier misses the two working day deadline, the normal debriefing requirements which the directive indicates would apply (purchaser must debrief promptly and in any case 15 days from a written request).
- (7) If Colchester Borough Homes enters into any arrangement with a third party in accordance with contract procedure rule 9 (6) the Officer must ensure that the external party complies with this contract procedure rule 29.

### **30 Contracts in writing**

- (1) With the exception of contracts entered into by Colchester Borough Homes for another Authority pursuant to instructions given by the Principal, every contract which exceeds £50,000 in value shall be in writing and shall specify:
  - (a) the work, services and supplies, matters or things to be executed, furnished, had or done; and

- (b) the price to be paid with a statement of discounts and other deductions; and
- (c) the time or times within which the contract is to be performed.

Where the Officer is not required to enter a formal contract in writing the Officer shall be required to keep a written record of all the agreed terms and conditions relating to the work, services and supplies procured.

- (2) Every contract in writing shall be signed as a deed on behalf of Colchester Borough Homes or sealed as a deed by Colchester Borough Homes as follows:
  - (a) contracts up to a value of £100,000 shall be signed by the Officer;
  - (b) contracts of a value in excess of £100,000 but not exceeding £500,000 shall at the discretion of the Director of Business Improvement either be signed by the Officer and the Chief Executive or be sealed by Colchester Borough Homes;
  - (c) contracts of a value in excess of £500,000 shall be sealed by Colchester Borough Homes;
  - (d) contracts for the purchase and/or disposal of land and/or buildings where approval has been obtained by the Officer in accordance with Colchester Borough Homes' Constitution will be signed by the Chief Executive or Board Member as directed by the Board notwithstanding any other provisions contained in these contract procedure rules.
- (3) The Officer shall ensure that a copy of the completed contract documentation is provided to the Director of Business Improvement for secure storage.

### **31 Register of contracts**

- (1) The Director of Business Improvement shall ensure that a register of all contracts entered into by Colchester Borough Homes (including consultants) is maintained and shall specify from time to time exactly what details need to be provided.
- (2) Each member of the Directors Management Team shall ensure that details of every contract entered into by them or their service area (as appropriate) shall be provided to the Director of Business Improvement for inclusion in the register

### **32 Matters of Urgency**

- (1) Nothing in these Contract Procedure Rules shall preclude the operation of Council Procedure Rule 18 and Cabinet Procedure Rule 22 in relation to matters of urgency.

## **2. References**

Official Journal of the European Union (OJEU)

## **3. Related documents**

- Standing Financial Instructions
- Dealing with Fraud Policy
- Bribery Prevention, Gifts and Hospitality Policy
- Memorandum & Articles of Association
- Strategic Scheme of Delegation
- Operational Scheme of Delegation
- Code of Governance
- Finance & Audit Committee terms of reference
- Appointments & Remuneration Committee terms of reference
- Business Development Panel terms of reference
- Board Member code of conduct
- Register of Members' interests
- Register of contracts
- CBH/CBC Management Agreement
- Colchester Borough Council Financial Regulations
- Colchester Borough Council contract procedure rules
- Colchester Borough Council Scheme of Delegation.

### Document control sheet

<b>Title</b>	CBH Contract procedure rules – December 2020					
<b>File location</b>	<a href="https://colchbh.sharepoint.com/sites/fnc/corpdoc/PolDevLib/CBH%20Contract%20procedure%20rules.docx">https://colchbh.sharepoint.com/sites/fnc/corpdoc/PolDevLib/CBH Contract procedure rules.docx</a>					
<b>Consultation</b>	Finance & Audit Committee – December 2020					
<b>Approved</b>	Board 09/12/2020					
<b>Next review</b>	09/12/2021					
<b>Circulation method</b>	SharePoint					
<b>Equality Impact Assessment</b>	<b>Required</b>	No	<b>Latest</b>	[Latest EqIA (Full)]	<b>Review due</b>	[EqIA Review Due (Full)]

### Document amendment history

<b>Version</b>	<b>Type</b>	<b>Date</b>	<b>Changes</b>
1.0	New	July 2014	To reflect changes to CBC documents as well as the requirements of the Management Agreement and Memorandum & Articles of Association.
2.0	Minor Revisions	April 2016	To reflect changes to CBC Document in relation to EU Legislation
2.1	Minor Revision	June 2017	To increased Delegated Limits in Section 5 as agreed by Board
2.2	Minor Revision	Dec 2020	To reflect changes to CBC document and update roles.