



**Milton Keynes**  
Development Partnership

Procurement Rules

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## 1 Introduction

- 1.1 These Procedure Rules (the “Rules”) are part of the MKDP Governance framework and therefore apply to all contracts let by MKDP or on its behalf for the procurement of goods, works and services.
- 1.2 MKDP is a Limited Liability Partnership owned by MKC and is therefore obliged to make appropriate standing orders under s.135 of the Local Government Act 1972. This includes provision for securing competition for contracts and for regulating the manner in which tenders are invited.
- 1.3 The Rules seek to ensure procurement as administered by (or on behalf of) MKDP is fair, equitable and transparent.
- 1.4 The Rules must always be followed for every contract entered into or proposed to be entered into by MKDP unless overriding law (European or UK) requires something different.
- 1.5 Any dispute regarding the interpretation of these Rules shall be referred to the MKDP Chief Executive and Chief Financial Officer.
- 1.6 If the Rules are not followed and/or there is a failure to enter into a contract on behalf of MKDP in accordance with the Rules it will be a breach of the MKDP Code of Conduct and this could be a disciplinary offence. All Officers are responsible for reporting any suspected breach of these Rules to the MKDP Chief Executive and the Council’s Monitoring Officer.

## 2 Roles & Responsibilities

- 2.1 The MKDP structure provides for 3 categories of Responsibility:
  - (a) MKDP Board
  - (b) MKDP Chief Executive
  - (c) Officers and agents of MKDP
- 2.2 The MKDP Board is responsible for maintaining, reviewing and adopting Contract Procedure Rules every 2 years to provide a proper framework to govern the processes by which MKDP will procure supplies, services and works.
- 2.3 The MKDP Chief Executive is responsible for all contracts tendered and let. He/she should ensure sufficient oversight and governance is in place to satisfy themselves of compliance with these rules.
- 2.4 The MKDP Chief Executive must ensure that procurement is undertaken by authorised officers who can demonstrate knowledge and understanding of these Rules and skills appropriate to the task and in particular :
  - 2.4.1 ensure that staff, contractors and agents comply with these Rules;
  - 2.4.2 keep registers of contracts and arrange their safe keeping;
  - 2.4.3 maintain records of all waivers or exemptions of these Rules, and make

these available when required;

- 2.4.4 use appropriate industry standard contracts and clauses unless the Board has agreed otherwise
- 2.5 The MKDP Chief Executive shall ensure that relevant, authorised persons from MKC shall have full and free access to examine necessary documents, records, systems, officers and premises relating to procurements. For the avoidance of doubt this shall include the Council's auditors (internal and external) and such access shall be granted unsupervised. In this instance such persons shall be authorised by the MKC Chief Executive, S151 Officer or Monitoring Officer.
- 2.6 The Chief Financial Officer for MKDP has authority to waive the financial thresholds set out in section 5 following consultation with the Chief Executive and MKDP Chair.
- 2.7 Officers or agents of MKDP seeking to procure goods, works or services should:
  - 2.7.1 act only under proper authority granted under MKDP Scheme of Delegation or specific Board resolution
  - 2.7.2 keep the records of tender documentation and contracts for a period of 6 years from the expiry or termination of a contract; and
  - 2.7.3 take all necessary legal, financial and professional advice.
- 2.8 When any employee either of MKDP or of a service provider may be affected by any transfer arrangement, Officers must ensure that the Transfer of Undertaking (Protection of Employment) (TUPE) issues are considered and obtain HR and legal advice before proceeding with inviting Tenders or Quotations.
- 2.9 All contracts (both procurement and disposals) must:
  - 2.9.1 achieve Best Value (3.2) for money spent / received;
  - 2.9.2 be consistent with the highest standards of integrity;
  - 2.9.3 ensure fairness in allocating public contracts;
  - 2.9.4 comply with all legal requirements;
  - 2.9.5 publish and apply objective evaluation criteria;
  - 2.9.6 support MKDP's aims and policies.
  - 2.9.7 allow sufficient time for suppliers to prepare detailed and quality tenders and for any clarification to be managed effectively

### **3 Defining the need**

- 3.1 Before entering into a procurement process it is essential to define the need. This includes considering the following options:
  - 3.1.1 Not buying the supplies or services or having the works done at all;

- 3.1.2 Provision of the supplies, services or works internally by MKDP;
  - 3.1.3 Providing the supplies, or services in partnership with an existing partner / contractor where that contract permits;
  - 3.1.4 By commissioning jointly with the Council or public body;
  - 3.1.5 Shared service delivery with the Council or public body; and/or
  - 3.1.6 Procuring a third-party service provider to provide the ongoing supplies, services or works
- 3.2 Competition is presumed to provide evidence of Best Value where a set of works to be procured may be reasonably packaged as a contract for which there is an existing or primed marketplace. Where such works are not put to the market evidence must be obtained to demonstrate Best Value.
- 3.3 The Officer responsible for each procurement should consider the cost effectiveness of the size / duration of contracts. Economies of scale need to be evidenced and compared to the potential efficiency of several smaller contracts.
- 3.4 Where procurement is intended to take place:
- 3.4.1 The size, scope and specification of the supplies, services or works required must be decided in advance of the procurement process, including the terms for payments and financial measures.
  - 3.4.2 The duration of the contract must be defined, that will provide the most economically advantageous outcome for MKDP and not to avoid or delay the requirement to conduct a subsequent future procurement process.
  - 3.4.3 The estimated total cost must be established at the start of the procurement process. The estimated total cost is the whole contract value aggregated over the term of the contract period (ie not just annual spend).
- 3.5 Approval to commence a procurement process for contracts must be completed in accordance with the Scheme of Delegation.

#### **4 Pre-tender market research and consultation**

- 4.1 The Officer responsible for the procurement must ensure that sufficient time is programmed to allow effective market research, development of fit for purpose specification and the proper completion of tender / quote processes.
- 4.2 Potential suppliers may be consulted prior to an issue of the invitation to tender but only in general terms and about the nature, level and standard of the supply, contract packaging and other relevant matters, provided this does not prejudice any potential tenderer.
- 4.3 Technical advice must not be sought or accepted on the preparation of an Invitation to Tender or Quotation from anyone who may have a commercial interest in them, if this may prejudice the equal treatment of all potential Candidates or distort

competition

## **5 Quotation or Tender Procedures**

- 5.1 Verbal quotes are sufficient for Procurements less than £500.
- 5.2 Three (3) telephone quotations shall be obtained and the details kept for 24 months for Procurements of between £501 and £5,000.
- 5.3 A minimum of three (3) written quotations shall be acceptable where the Estimated Total Cost is between £5,001 and the relevant EU and UK Regulations for supplies and services and for works (ie £189,330 and £4,733,252m respectively as at 1<sup>st</sup> January 2016).
- 5.4 For procurements where the total estimated cost exceeds the relevant EU and UK Regulations the Officer will:
- 5.4.1 undertake a process to invite at least four (4) formal competitive tenders;
  - 5.4.2 advertise the tendering process, and
  - 5.4.3 be in a form consistent with these Rules.
- 5.5 Where the advance Total Estimated Cost approaches (ie within 10%) of the relevant EU / UK Regulations requiring tenders (ie £189,330 supplies and services and £4,733,252 works) the Chief Executive shall determine whether CPR 5.3 or 5.4 shall be applied.
- 5.6 Where quotations originally estimated less than EU thresholds but prices are quoted exceed EU thresholds procurement shall be stopped and 5.4 shall be applied.

## **6 Framework Agreements**

- 6.1 The term of a Framework Agreement must not exceed four years and while an agreement maybe entered into with one provider, where an agreement is concluded with several organisations, there must be at least three in number.
- 6.2 A Framework Agreement must ensure that MKDP Board have approved the procurement and contract with appropriate legal advice and details set out clearly for both the overarching agreement and any subsequent contract derived from the framework.
- 6.3 Contracts based on Framework Agreements may be awarded by either:
- 6.3.1 applying the terms laid down in the Framework Agreement (where such terms are sufficiently precise to cover the particular call-off) without reopening competition; or
  - 6.3.2 where the terms laid down in the Framework Agreement are not precise enough or complete for the particular call-off, by holding a mini competition in accordance with the following procedure:

- inviting the organisations within the Framework Agreement that are capable of executing the subject of the contract to submit written Tenders;
- fixing a time limit which is sufficiently long to allow Tenders for each specific Contract to be submitted and considered;
- taking into account factors such as the complexity of the subject of the contract;
- awarding each contract on the basis of the award criteria set out in the specifications of the Framework Agreement.

## **7 Legal Advice**

- 7.1 Officers shall obtain legal advice for all contracts if it involves all or any of the following:
- 7.1.1 significant change(s) to a previous service, or provision of a new service for MKDP;
  - 7.1.2 the potential transfer of employees to a contractor;
  - 7.1.3 the use or development of MKDP land or premises
- 7.2 Officers shall obtain legal advice, for termination of contracts or expiry of contracts which could potentially trigger a potential transfer of a third-party employee or asset.
- 7.3 If any officer is asked to issue a certificate under the Local Authorities (Contracts) Regulations 1997 they must immediately report the situation to the MKDP Chief Executive who will secure appropriate legal advice before acting.

## **8 Tendering Procedure**

- 8.1 Tenders can be administered by MKC Strategic Procurement Team using the Council's E-Tendering system or as agreed by the MKDP Chief Executive.
- 8.2 No tender will be accepted if the tenderer can be identified prior to the tender deadline.
- 8.3 No tender or quotation received after the latest time specified for receipt shall be accepted.
- 8.4 Every tender shall be addressed to the Chief Finance Officer and held securely until the time appointed for its opening.
- 8.5 All Invitations to Tender shall include the following:
- 8.5.1 A specification that describes MKDP's requirements in sufficient detail to enable the submission of competitive offers.
  - 8.5.2 A requirement for tenderers to declare that the Tender content, price or any other figure or particulars concerning the Tender have not been disclosed by

the tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose).

- 8.5.3 A requirement for tenderers to complete fully and sign all Tender documents including a form of Tender and certificates relating to canvassing and non-collusion.
  - 8.5.4 Notification that Tenders are submitted to MKDP on the basis that they are compiled at the tenderer's expense.
  - 8.5.5 A description of the Award Procedure and, unless defined in a prior advertisement, a definition of the Award Criteria in objective terms and in descending order of importance.
  - 8.5.6 Notification that no Tender will be considered unless it is enclosed in a sealed envelope or container which bears the word 'Tender' followed by the subject to which it relates, but no other name or mark indicating the sender.
  - 8.5.7 The method by which any arithmetical errors discovered in the submitted Tenders are to be dealt with. In particular, whether the overall price prevails over the rates in the Tender or vice versa.
- 8.6 The Invitation to Tender or Quotation must state that MKDP is not bound to accept any Quotation or Tender.
- 8.7 All Candidates invited to Tender or submit a Quotation must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.

## **9 Advertising Requirements**

- 9.1 Where a contract has to be advertised under the Rules then all tenders shall be properly advertised to increase competition, giving at least 14 days public notice. Where the Estimated Total Cost exceeds the EU Threshold then the contract shall be advertised in accordance with the relevant Regulations.

## **10 Selection Criteria, Publication and Award of Contracts**

- 10.1 The proper adherence to these Rules allows that the contract may be awarded without additional approval so long as the officer is acting in accordance with the Scheme of Delegation. Intent to award shall be transparently reported by MKDP giving sufficient notice to permit objection / questions.
- 10.2 Where an award is challenged it shall be referred to the MKDP Board.
- 10.3 For procurements that are tendered the most economically advantageous tender (MEAT) shall be selected.
- 10.4 The Officer shall determine the appropriate award criteria in advance of the publication of the contract notice / advert. Appropriate details of award criteria shall be notified to those tenderers participating in the procurement process, in advance of their tender or quotation submission.



- 10.5 The Officer shall ensure that the evaluation criteria properly include the evaluation of Social Benefits and Quality factors to differentiate between bids. Such factors shall be clearly explained within all documentation. Specifically:
- 10.5.1 proposed use of frameworks shall set out the cost:benefits in comparison to open competition
  - 10.5.2 the cost:benefits of larger contracts (ie economies of scale) shall set out the data in comparison to procurement via multiple SME supported procurements
  - 10.5.3 issues that ensure the fair and legal local economic factors to be considered shall be set out
- 10.6 The MKDP Board shall set annually the minimum price proportion of MEAT criteria.
- 10.7 The lead Officer shall assess the risks within each bid and shall then maintain a Risk Register entry for the successful bid to assist Contract Management.
- 10.8 The lead Officer may permit a Tenderer to correct an error or omission that, in the opinion of the lead Officer is an obvious error. All such corrections shall be formally recorded and be reported to the Chief Executive.
- 10.9 Only authorised officers (as defined by the MKDP Chief Executive) with the requisite delegated authority may award a contract. Any contract exceeding the budget provided must submit a decision to award as set out in 10.9.1 and 10.9.2 as below:
- 10.9.1 If exceeding the budget by less than 10% the decision to award
    - (a) shall be submitted to the MKDP Chief Executive and approval shall only be given if the relevant officers have identified compensating savings / funding.
    - (b) shall be submitted to the MKDP Board with comment from the MKDP Finance Officer if compensating savings have not been identified
  - 10.9.2 If exceeding the budget by more than 10% the decision to award
    - (a) shall require approval of the MKDP Board, and
    - (b) shall require the funding of such overspend to be clearly identified
- 10.10 All Contracts awarded must be reported to the MKDP Board.

## **11 Notification of Unsuccessful Tenderers**

- 11.1 Following contract award all unsuccessful tenderers will be notified by the lead Officer in writing.

## **12 Contracts Register**

- 12.1 The MKDP Chief Executive will maintain and publish a register of all approved and current contracts and framework agreements awarded in excess of £5,000.

## 13 Contents of Contracts

13.1 All Contracts above £5,000 shall be in writing and shall document:

- (a) A technical description of the goods, works and services to be supplied including delivery specifications, in sufficient detail to demonstrate that the required quality has or has not been achieved.
- (b) The requirement for compliance with the appropriate European specification or where no European specification exists, the appropriate British technical specification.
- (c) The price to be paid or the rates at which the price is to be calculated, any milestones for payments, a statement of discounts or other deductions and if prices are not fixed an appropriate price fluctuation clause by reference to a published index if the term exceeds 12 months.
- (d) The timescales within which the outputs / outcomes are to be completed.

13.2 For all Contracts over EU Threshold value, for Services and Supplies and £250K for works contracts, Officers will include remedies for non performance as follows, unless it is agreed with the MKDP Board that they are not appropriate: -

- (a) Liquidated damages, other financial deductions, claw back and termination. This shall include liquidated damages, or other financial deductions, to be paid by or made to any supplier in respect of any delay in performing or completing such work or services.
- (b) Liquidated damages (and all other non-performance remedies) will be recovered robustly and recorded as a debt owed to MKDP.
- (c) The write off of any non-performance remedy including liquidated damages above £500 must be authorised as set out in MKDP Financial Regulations.

13.3 All Contracts will contain an appropriate clause that provides protection and the right to terminate the contract in the event of a supplier offering any inducement, committing fraud or committing an offence under the relevant theft, false accounting, money laundering or bribery acts

13.4 In the event of any request to sub-contract or assign contract, in part or in whole, the Officer shall seek appropriate legal guidance and submit the decision to the Chief Executive.

13.5 All contracts shall contain clauses that MKDP may terminate on the grounds of:

- (a) Insolvency of contractor, and / or parent company
- (b) Contractor (and / or Parent company) applying for voluntary arrangement with its creditors;
- (c) allegation of offences under the Prevention of Corruption Acts
- (d) Collusive tendering / bidding

(e) Breach of contract conditions

## 14 Variations and Extensions

14.1 As well as complying with any statutory restrictions and compliance with these Rules, lead Officers may only authorise an extension to an existing contract if each of the following conditions are met: -

14.1.1 an extension for the particular period is provided for within the terms and conditions of the contract

14.1.2 there has been satisfactory performance by the supplier; and

14.1.3 in accordance with the limits of delegated authority

14.2 Subject to any statutory restrictions and compliance with these Rules, the lead Officer may, with the approval of the Chief Executive, authorise any other variation to an existing contract, and if relevant a consequent change in price, determined in accordance with the contract terms where the Estimated Total Cost does not vary in excess of £50,000 or 15% of the original annual contract value.

14.3 All extensions and variations to an existing contract must be checked to confirm that they represent Best Value and they are not being instigated solely to avoid or delay the requirement to conduct procurement.

14.4 All extensions and variations to a contract awarded under the EU Procurement Regulations must be authorised by the MKDP Board. All extensions below EU regulations may be authorised by MKDP Chief Executive and shall be reported to MKDP Board.

14.5 All extensions and variations must be documented and signed by an authorised signatory on behalf of MKDP and counter-signed by the supplier.

## 15 Disclosures of interest

15.1 Staff must give immediate written notice to the Chief Executive (or the MKDP Chair if it is the Chief Executive) where it comes to their knowledge that they have a potential conflict of interest with any MKDP or MKC contract.

15.2 The Chief Executive shall maintain a register of interests and will remind staff annually to record such interests but must highlight potential conflicts of interest immediately they become aware of them. Failure to do so may result in disciplinary proceedings and/or criminal prosecution.

15.3 Members of MKDP Board must declare any personal or prejudicial interest in any letting or management of contracts, and must then ensure their actions do not bring the MKDP into disrepute.

15.4 Persons working on behalf of MKDP or invited representatives of bodies other than

MKDP (including community representatives) who fulfil a role that may give them influence over any aspect of MKDP's procurement process or access to associated commercially sensitive information must disclose in writing to the Chief Executive any direct or indirect interests that may conflict in any way with the interests of MKDP or the nature of the role or work to which they have been appointed by MKDP. Failure to do so may result in a termination of the relevant agreement or appropriate action against the individual concerned.

- 15.5 Where potential conflict of interest is identified, the Chief Executive shall liaise with the MKDP Chair and legal advisor to agree and formally record the action to be taken.
- 15.6 No gifts or hospitality should be accepted from any bidders to any contract being let by MKDP. Acceptance of gifts or hospitality may be a disciplinary offence. Every officer (whether of MKDP or MKC or agent) managing a procurement, letting a contract or managing a contract for MKDP must inform the Chief Executive of any offers of gifts or hospitality. Reference should be made to MKDP's policy on Gifts and Hospitality in place at such time.

## **16 Prevention of Corruption**

- 16.1 The Officer must comply with any MKDP Code of Conduct for Employees and must not invite or accept any gift or reward in respect of the award or performance of any contract. It will be for the officer to prove that anything received was not received corruptly. High standards of conduct are obligatory. Proven corrupt behaviour will lead to dismissal and is also a criminal offence which may lead to prosecution.
- 16.2 An officer or member of MKDP must disclose any offer made by an existing or bidding supplier to the Chair of MKDP Board.
- 16.3 The Chief Executive shall maintain a record of such offers.

## **17 Exemption**

- 17.1 In exceptional circumstances it may not be possible to comply with these Rules. Variation from these rules is permitted where:

### **17.1.1 Written report**

A written report will be prepared by the relevant lead Officer and submitted to the Chief Executive specifying the special circumstances justifying the exemption.

Without limitation, special circumstances are where there is:

- (a) An unforeseen and real risk of harm to individuals ; or
- (b) Excessive and significant damage to MKDP's services, finances or reputation has occurred or could potentially occur.

For the avoidance of any doubt the failure to properly plan timescales to comply with Rules and / or EU Procurement Regulations is not special circumstances.

The written report will detail the specific provisions within the Rules, from which exemption is sought, reasons for seeking the exemption and how relevant risks arising from those variations will be mitigated and managed.

#### 17.1.2 Approval

Approval to waive Rules will only be granted by the Chief Executive for Waivers up to £25k and Board Approval for waivers over £25k. In the absence of the Chief Executive the MKDP Chair can authorise waivers up to £25k.

The Chief Executive will consult appropriate legal advice and ensure their views are included within the written report.

#### 17.1.3 Reports

A formal report will be prepared for submission to the next possible MKDP Board. That report will set out the specific rationale for waiving the Rules and will also append a summary of the previous instances where Rules were waived. A record of all waivers will be maintained centrally and be made available to any internal or external request.