

Lewes District Council – Contract Procedure Rules

Waiver by Accountable Officer

CONTRACT:

Appointment of Marshall Regen and Nairne Ltd for business case consultancy work for Stage 2 of the Newhaven Towns Fund bid.

BACKGROUND:

LDC is the accountable body for Newhaven's bid to the Towns Fund. The Stage 1 Town Investment Plan was submitted to Government on 29 January 2021 and is seeking £24.7m of funding for 7 Strategic Programmes. Subject to assessment, a Town Deal will be offered. This will require LDC to prepare detailed business cases for each of the 7 Strategic Programmes and have these signed off within a maximum of 12 months. This is a significant piece of work and timescales are accelerated by the need for some projects to commence delivery in 2021/22.

REASON FOR WAIVER (include relevant section of 2.4 CPRs for ref):

As a general principle, waivers should only be authorised where there are objectively demonstrable grounds for doing so.

Given the timescales for the funding and the amount of work required it is considered that there is a case for urgency. Equally, the consultants have previously undertaken work on Newhaven funding bids with considerable success (eg. Future High Streets Fund) and provided some initial business case analysis for Stage 1 of the Towns Fund bid. To appoint a different consultant now would likely cost more due to the need to re-start financial modelling and build a detailed understanding of the 7 Strategic Programmes.

[Usually will be 2.4.1 e) i and Section 9 of regulation 32 below]

[CPR 2.4.1.b: The Accountable Officer has power to waive any requirements within these Rules in cases of urgency, after consultation with the *Leader of the Council*. Any necessary resulting action must be reported to the next meeting of the *Cabinet*.]

CONTRACT VALUE: Up to £80,000 + VAT (this will depend on how many of the Strategic Programmes are approved by Government).

CONTRACT LENGTH: Up to 12 months – again depending on how many business cases need to be produced

AUTHORITY FOR THE CONTRACT:

I confirm that:

- 1) In accordance with section 3 of the CPRs, sufficient budget approval has been obtained;
- 2) In accordance with section 15.1 of the CPRs, a successful financial check has been carried out on the proposed supplierⁱ (details attached); and
- 3) I authorise the Designated Officer (Peter Sharp) to proceed with the contract award.

Signed



Ian Fitzpatrick
Accountable Officer
Deputy Chief Executive and Director of Regeneration & Planning

NOTES:

***Designated Officer.** The Officer designated by the Chief Officer to deal with the procurement in question. The Chief Officer for EBC and LDC is the Chief Executive, Deputy Chief Executive, the Directors, the Senior Heads, the Monitoring Officer and the Chief Finance Officer. For EHL these are the Executive Officers ie the Chief Executive or Managing Director and the Services Directors (Director of Finance and Corporate Services and Director of Operations).

****The Accountable Officer** for EBC and LDC is the Chief Executive or Senior Head of Service responsible for the Particular Project. For EHL this means the Chief Executive or Managing Director as appointed by the Board of EHL.

*****Cabinet** means for EBC/LDC the Cabinet of the Council. For EHL this is (1) the Board of Directors appointed in accordance with the Articles and Memorandum of Association or (2) a Committee, where the matter relates to a function delegated to that Committee in both cases after considering a report from one or more of the Executives.

******Leader of the Council** For EBC and LDC this is the Leader of the Council as appointed under their respective Constitutions. For EHL this shall be the Chairman of the Board.

*******Officer** Any member of staff employed by EBC/LDC/EHL; any person seconded or made available to EBC/LDC/EHL; any agent or consultant acting for EBC/LDC/EHL; and in the case of EHL, any director of the company.

REGULATION 32:

- (1) In the specific cases and circumstances laid down in this regulation, contracting authorities may award public contracts by a negotiated procedure without prior publication.

General grounds

- (2) The negotiated procedure without prior publication may be used for public works contracts, public supply contracts and public service contracts in any of the following cases:
 - (a) where no tenders, no suitable tenders, no requests to participate or no suitable requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not substantially altered and that a report is sent to the Commission where it so requests;
 - (b) where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons:
 - i. the aim of the procurement is the creation or acquisition of a unique work of art or artistic performance,
 - ii. competition is absent for technical reasons,
 - iii. the protection of exclusive rights, including intellectual property rights,but only, in the case of paragraphs (ii) and (iii), where no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement;
 - (c) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with.
- (3) For the purposes of paragraph (2)(a)—
 - (a) a tender shall be considered not to be suitable where it is irrelevant to the contract, being manifestly incapable, without substantial changes, of meeting the contracting authority's needs and requirements as specified in the procurement documents;
 - (b) a request to participate shall be considered not to be suitable where the economic operator concerned—
 - i. is to be or may be excluded under regulation 57, or
 - ii. does not meet the selection criteria.
- (4) For the purposes of paragraph (2)(c), the circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority.

Additional grounds relevant to public supply contracts

- (5) The negotiated procedure without prior publication may be used for public supply contracts-
 - (a) where the products involved are manufactured purely for the purpose of research, experimentation, study or development, but contracts awarded in reliance on this subparagraph shall not include quantity production to establish commercial viability or to recover research and development costs;
 - (b) for additional deliveries by the original supplier which are intended either as a partial replacement of supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting authority to acquire supplies having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance;
 - (c) for supplies quoted and purchased on a commodity market;
 - (d) for the purchase of supplies or services on particularly advantageous terms, from either a supplier which is definitively winding up its business activities, or the liquidator in an insolvency procedure, an arrangement with creditors, or a similar procedure under national laws or regulations.
- (6) In the case of paragraph (5)(b), the duration of the contract, as well as that of recurrent contracts, shall not, save in exceptional circumstances, exceed 3 years.

Additional ground relevant to public service contracts that follow a design contest

- (7) The negotiated procedure without prior publication may be used for public service contracts where the contract concerned—
- (a) follows a design contest organised in accordance with this Part, and
 - (b) is to be awarded, under the rules provided for in the design contest, to—
 - i. the winner of the design contest, or
 - ii. one of the winners of the design contest.
- (8) Where paragraph (7)(b)(ii) applies, all winners must be invited to participate in the negotiation.

Additional ground relevant to new works or services which repeat similar ones

- (9) The negotiated procedure without prior publication may be used for new works and services consisting of the repetition of similar works or services entrusted to the economic operator to which the same contracting authority awarded an original contract, provided that such works or services are in conformity with a basic project for which the original contract was awarded following a procedure in accordance with regulation 26(1) and (2).
- (10) The basic project shall indicate the extent of possible additional works or services and the conditions under which they will be awarded.
- (11) As soon as the first project is put up for tender, the possible use of this procedure shall be disclosed and the total estimated cost of subsequent works or services shall be taken into consideration by the contracting authority when it applies regulation 5.
- (12) This procedure may be used only during the 3 years following the conclusion of the original contract.

ⁱ **15.1 CPRs**

In the case of contracts to be awarded which either have an estimated value in excess of £100,000, or where the Accountable Officer considers that the failure of the contractor to perform would result in a high risk to the Organisation, the Accountable Officer must request that the Chief Finance Officer carry out a financial status check on all applicants.