

Report of the Monitoring Officer

Contract Procedure Rules

Summary

1. This report invites Members to make recommendations to Council in relation to constitutional changes regarding the Contract Procedure Rules.

Background

2. The Contract Procedure Rules are one of the key controls which the Council has in place to ensure that procurement activity within the council is effective and lawful. The Rules aim to ensure that:
 - The Council secures the best possible value for money
 - The Authority acts fairly in giving interested parties an opportunity to tender on equal terms
 - UK and European legislative requirements are met
 - There are proper safeguards in place to protect both the council and its employees
 - Procurement decisions are made in accordance with the wider requirements of the Council's Constitution and Council policy.

Analysis

3. A draft of the new Rules appears as an Annex to this report. These new Rules, while having significant similarities with the current Rules, represent a substantial redrafting exercise. There has been substantial rewording and reordering to aid clarity. In addition there have been changes of substance. Of these the most significant are:

- Various rules have been updated to reflect the fact that the Council now uses an electronic contract management system, YORtender.
- New overarching principles have been included with which all procurement procedures and every contract must comply (Rule 1).
- The respective responsibilities of Authorised Officers managing procurements and Chief Officers are clearly defined (Rule 2).
- More detail on decision making processes has been included and reference made to the lowering of the financial threshold for decisions made by Officers (Rule 7).
- Rules relating to lists of approved lists which suppliers could apply to join and from which tenderers could be selected have been removed and replaced by more detailed rules on framework agreements. Under these arrangements contractors are selected following a full procurement process and orders are made in accordance with terms established through that process. The new Rules give more details of when orders can be made directly and when there may be a need for a further mini-competition process. (Rule 8).
- Financial thresholds (where quotations or written tenders must be invited) have been altered to between £5,000 and £100,000 and over £100,000 respectively. Under the existing Rules the upper limit for quotations is £139,000. (Rule 9)
- Where procurements have a value in excess of £100,000, the number of potential providers who should be invited to submit tenders has been increased from three to four. (Rule 9)
- The criteria for awarding contracts has been altered to reflect changes proposed by the new Public Procurement Directive. This represents a move away from allowing higher

value contracts to be awarded on the basis of price alone and puts a greater emphasis on whole life costs. The option to award on the basis of (whole life) costs and quality remains (Rule 11).

- Detailed rules on the content of contract documents have been removed and replaced with a requirement that contracts must be approved by Legal Services. Lower value contracts may though be entered where appropriate using a purchase order and the Council's standard terms and conditions. (Rule 20)
- New rules detailing when contract extensions and variations are permitted have been included (Rule 21).
- Officers will be required to consult with Legal Services before terminating a contract. Termination must be authorised by the relevant Chief Officer through a Delegated Decision. (Rule 22)
- More detail has been included on when the Rules can be waived and the process to be followed (Rule 28).

Council Plan

4. The Contract Procedure Rules are an essential element of the Council's control arrangements for ensuring effective procurement. Proper procurement supports the Council in delivering all its priorities.

Implications

5. Section 135 of the Local Government Act 1972 permits and requires in some cases the Council to adopt standing orders for contracts and these must include provision for securing competition. Public procurement must also be carried out in accordance with Regulations which implement EU procurement directives. The new Rules are compliant with the current regulations and with new Public Procurement Directives approved in 2014 which will be implemented in the UK later this year.

6. There are no specific Financial, Human Resources, Equalities, Crime and Disorder, ICT or Property implications

Risk Management

7. There are no specific risk management issues associated with the report. However, having strong procedures for contracting mitigates risks including those of non compliance with the law, fraud and failure to obtain value for money.

Recommendations

8. Members are asked to recommend to Council that the Contract Procedure Rules set out in the Annex to the report be adopted and included within the Council's Constitution.

Reason: So that the Council has controls in place to ensure that procurement activity is effective and lawful.

Contact Details

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**Report
Approved**

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Specialist Implications Officers: Not applicable

Wards Affected: Not applicable

All

For further information please contact the author of the report

Background Papers: None

Annexes

Draft Contract Procedure Rules