

CORPORATE GOVERNANCE COMMITTEE
17 NOVEMBER 2015

**JOINT REPORT OF THE DIRECTOR OF CORPORATE
RESOURCES AND THE COUNTY SOLICITOR**

**PROPOSED CHANGES TO THE
CONTRACT PROCEDURE RULES**

Purpose of Report

1. The purpose of this report is to:
 - a. report on the operation of the Contract Procedure Rules between 1 July 2014 and 30 September 2015;
 - b. bring to the Committee's attention actions being taken to continue to ensure compliance with the Contract Procedure Rules;
 - c. propose that recommendations to the County Council are made to revise the Contract Procedure Rules.

Background

2. Rule 8 (Annual Reporting) of the Council's Contract Procedure Rules stipulates that the Director of Corporate Resources, in consultation with the County Solicitor, shall at least once in each financial year submit a report to the Corporate Governance Committee in relation to the operation of these Rules. This includes (amongst other things) details of the approved exceptions to these Rules and approved extensions to contract where this has not been provided for in the contract, and proposed revisions to these Rules and/or changes required to accommodate the requirements of UK and EU procurement law, as may be necessary from time to time.
3. Following consideration by the Committee, the proposed revisions to the Contract Procedure Rules will be submitted to the County Council at its meeting on 2 December 2015 for approval.

Approved Exceptions to the Rules

4. Between 1 July 2014 and 30 September 2015, 33 approved exceptions, which are allowed for under Rule 6 have been recorded in the Exceptions Logs maintained by the Commissioning Support Unit and Chief Officers. These have been consolidated and are detailed in Appendix A of this report. In the previous annual report to this Committee for the period 1 July 2013 to

30 June 2014 there were 27 exceptions with a combined total value of £1.26m.

5. The aggregate value of the 33 approved exceptions is £19.8m. This is because two contracts, one in Children's Education Services and another in Public Health had a combined total value of £17.9m. The Public Health contract involved the transfer of commissioning responsibilities for 0-5 children's public health services (Health Visiting) from NHS England to Leicestershire County Council from October 1st 2015. The Children's Education Services involved a contract for the provision of 16-19 Careers Information, Advice and Guidance. The two contracts fell within 'Part B' (Non-priority) services category and therefore were not subject to the full regime of the Public Contracts Regulations 2006 (now replaced by the Public Contracts Regulations 2015). The two contracts were approved by Cabinet.
6. Among the reasons for the 33 approved exceptions included:
 - a. the implementation of short-term contracts pending a service review to facilitate the Council's transformational change;
 - b. the specialist nature of the requirements;
 - c. the limited nature of the supply markets;
 - d. the urgency of the requirements.
7. With the exception of the two contracts referred to in paragraph 5 above, all but one of the exceptions was below the relevant EU threshold (£172,514 for service and supplies contracts, and £4,322,012 in the case of works contracts). The one approved exception over the Public Contracts Regulations 2006 threshold for services was for a *Software Maintenance and Support Contract* (Total value £355,686) a proprietary software available from a single contractor. The Council is in the process of procuring a new call-logging software along with the associated maintenance and support.

Approved Contract Extensions where no provision in the Contract

8. During the same reporting period, in compliance with Rule 31(iii) and (iv), there were 11 approved contract extensions where there was no provision within the original contract (see Appendix A). The total value of these extended contracts was £4.8m. The main reasons for extending these contracts included:
 - a. unforeseen delays in the award of replacement contracts;
 - b. reviewing, consultation, and reconfiguring services before re-tendering of the services.
9. Four of the 11 contract extensions involved contracts whose value was above the EU threshold and fell within the priority services category ('Part A' services). The four contracts involved were:

- a. A service contract for the collection and recycling/disposal of gypsum Waste which was extended to facilitate the re-tender process.
 - b. A service contract for mail services which was extended to take account of the delay in the award of a replacement framework agreement by the Crown Commercial Services.
 - c. A service contract for the provision of self-service kiosks in Council managed libraries which was extended to take account of the Council's transformation programme so that a new service delivery model could be developed.
 - d. A supplies contract for the supply, support and maintenance of a (Children's) Social Care System.
10. A framework agreement for *Domiciliary Care and Support Services* with a total contract value of £105m (covering Adults and Children's social care) had to be formally extended. Whilst Cabinet had approved an extension period prior to tendering and it was tendered on this basis, the eventual contract document did not reflect the extension options.

Actions Taken to Further Increase Compliance

- 11. The implementation of electronic tendering is supporting compliance with the Rules by forcing users to follow procedures as laid out in the system. Since its implementation, over 80% of the Council's contracting activity above the advertising threshold of £20,000 has been conducted electronically.
- 12. A procurement toolkit is under development to help ensure relevant staff have easy access to relevant procurement guidance, tools and template documents in a single repository.
- 13. The use of departmental Exceptions Logs to record exception/extension approvals given by each Chief Officer continues to give visibility of approved exceptions to the Rules, particularly lower value/risk contracts.
- 14. Following an audit report concerning the application of the Rules, communication was sent out to all Chief Officers and staff involved in procurement reminding them of the correct application of the Rules.
- 15. The Corporate Management Team continues to review, on a quarterly basis, approved exceptions as part of corporate performance monitoring.

Proposed Revisions to the Rules

- 16. In February 2015, the UK government transposed the new EU procurement directive into UK law. The Public Contracts Regulations 2015 introduced substantial changes to the practice of public procurement. For this reason a comprehensive review of the Council's Contract Procedure Rules was undertaken to ensure that the Council's Rules align with the new regulations. The revisions to the Rules (see Appendix B) are supported by the County Solicitor and the Chief Financial Officer (i.e. the Assistant Director of Corporate Resources (Strategic Finance and Property) and will be presented

to the County Council for approval on 2 December 2015 for approval (subject to this Committee's agreement).

17. The new Public Contracts Regulations aim to:

- (a) facilitate participation of small and medium-sized enterprises (SMEs) in public procurement;
- (b) enable procurers/commissioners to make better use of procurement in support of community goals;
- (c) clarify the procurement rules.

18. Should the County Council approve the draft revised Contract Procedure Rules, on 2 December 2015 they will be published on the Council's internet and intranet sites and communicated to all relevant managers and staff within the Council, including via newsletters and presentations.

Recommendations

19. It is recommended that:

- a. The contents of this report on the operation of the Contract Procedure Rules between July 2014 and September 2015 be noted;
- b. The County Council be recommended to approve the proposed amendments to the Contract Procedure Rules, as set out in Appendix B to this report;
- c. The Director of Corporate Resources be granted delegated authority to revise the value threshold currently stated as £172,514 contained within Rule 6 (Exceptions), Rule 11 (Procurement exercise process), Rule 19 (Irregular Tenders), Rule 20 (Receipt and opening of tenders), and Rule 32 (Early termination), in the proposed Contract Procedure Rules to align with the new EU thresholds coming into force in January 2016.

Equality and Human Rights Implications

20. The Rules ensure that all suppliers and potential suppliers receive equal treatment when bidding for contracts.

Background Papers

21. The Constitution of Leicestershire County Council.

Circulation under the Local Issues Alert Procedure

22. None

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Appendices

Appendix A - Contract Procedure Rules Exceptions & Contract Extensions
(July 2014- September 2015)

Appendix B - Proposed Amendments to Part 4 G - Contract Procedure Rules