



CORPORATE GOVERNANCE COMMITTEE
23 SEPTEMBER 2016

**JOINT REPORT OF THE DIRECTOR OF CORPORATE
RESOURCES AND THE DIRECTOR OF LAW AND GOVERNANCE**

**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 October 2015 and 30 June 2016;
 - 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 Director of Law and Governance, 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 a 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 7 December 2016 for approval.

Approved Exceptions to the Rules

4. Between 1 October 2015 and 30 June 2016, 23 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.

5. Among the reasons for the 23 approved exceptions included:
- the urgency of the requirements;
 - the specialist nature of the requirements;
 - the limited nature of the supply markets.
6. When the previous annual report was submitted to this Committee on 17 November 2015, Members asked that data covering the same period in previous years be provided to enable them to make a comparison. As the annual reporting dates are slightly different, this data (provided in Table 1) has been normalised to take account of the different annual reporting periods:

Table 1: Comparison of Approved Exceptions to Contract Procedure Rules.

Period	Number of Approved Exceptions	Total Value of Approved Exceptions	No of Exceptions above relevant EU Threshold
1 July 2015 to 30 June 2016	23	£1.47m	None
1 July 2014 – 30 June 2015	29	£19.3m	1
1 July 2013 – 30 June 2014	27	£1.26m	1

7. From Table 1, it can be seen that in comparison to previous years there is a downward trend in the number of exceptions granted and that no exceptions were granted for contracts covered by the Public Contracts Regulations regime.

Approved Contract Extensions where no provision in the Contract

8. During the same reporting period 1 October 2015 to 30 June 2015, in compliance with Rule 30(g) and Rule 30(h) in the 2016 Contract Procedure Rules, there were 12 approved contract extensions where there was no provision within the original contract (see Appendix A). The total value of these extended contracts was £86m. The main reasons for extending these contracts included:
- The need to review, consult on, and reconfigure services before re-tendering of the services.
 - Continued delivery of critical services.
9. Two of the 12 contract extensions involved contracts whose value was above the EU threshold and fell within the *Light Touch Regime* category (The *Light Touch Regime* applies to Social and Other Specific Services with only a few of the detailed rules of the Public Contracts Regulations applying). The two contracts involved were:

- a. A framework agreement for Community Life Choices which was extended to facilitate the re-tender process (Total contract value £23.5m)
 - b. A framework agreement for Support Living which was also extended to facilitate the re-tender process (Total Contract Value £61.5m)
10. The procurement exercises for the above contracts are underway with the replacement contract for Community Life Choices framework agreement due to be awarded during September 2016, whilst the Supported Living framework agreement is due to be awarded early in the New Year.
 11. Again for comparison purposes with previous years, the relevant data (which also has been normalised) is provided in Table 2:

Table 2: Comparison of Approved Contract Extensions

Period	Number of Approved Extensions	Total Value of Contracts	No of Exceptions above relevant EU Threshold
1 July 2015 to 30 June 2016	12	£1.3m (£86m)*	2
1 July 2014 – 30 June 2015	9	£4.8m (£109m)*	4
1 July 2013 – 30 June 2014	7	£4.7m	5

* Includes value of contracts not caught by the full Public Contracts Regulations regime.

12. Comparison over the last 3 years shows a downward trend in the number of contract extensions for contracts without an extension provision for contracts covered by the Public Contracts Regulations.

Actions Taken to Further Increase Compliance

13. A Commissioning Toolkit (which includes a Procurement Toolkit and Contract Management Toolkit) has been developed to help ensure relevant staff have access to relevant up-to-date procurement guidance, tools and template documents in a single repository.
14. The use of electronic tendering (for procurement activity over £25k) to support compliance to the Rules by enforcing users to follow procedures as laid out in the system. Users also receive early notification of any contracts due to expire.
15. 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.
16. The Corporate Management Team continues to review, on a quarterly basis, approved exceptions as part of corporate performance monitoring.

Proposed Revisions to the Rules

17. Since the comprehensive review of the Rules last year, only minor changes to the Rules are proposed to clarify their meaning and to strengthen contract management activities.
18. The proposed revisions are to:
 - a. replace the designation of 'County Solicitor' with 'Director of Law and Governance' to reflect the change in role and responsibility;
 - b. include a reference to the requirements of the Counter Terrorism and Security Act 2015;
 - c. include a new rule on contract management requirements;
 - d. bring individual special educational needs placements within the scope of the rules in order to ensure that an appropriate decision-making process is followed for this contractual arrangement;
 - e. replace the phrase 'Appropriate Chief Officer' with the phrase 'appropriate Chief Officer' as this is not a defined term included in the glossary.
19. As a consequence the proposed revisions to the Rules have been drafted (see Appendix B). The revisions to the Rules are supported by the Director of Law and Governance and the Director of Corporate Resources and will be presented to the County Council on 7 December 2016 for approval (subject to this Committee's agreement).
20. Should the County Council approve the draft revised Contract Procedure Rules, on 7 December 2016, the new Rules will come into force on 1 January 2017 and 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.
21. In terms of procurement process to show that the Council is taking an even more rigorous approach towards tax compliance by its suppliers and potential suppliers, the Council is adopting in its entirety the Central Government's supplier suitability assessment questionnaire which includes questions on tax compliance where appropriate for contracts with a total value of £5 million or more. Where a potential supplier declares during the procurement process that it has had an Occasion Of Non Compliance ("OONC") the Council is permitted to exclude the supplier from the procurement process.

Recommendations

22. It is recommended that:

- a. The contents of this report on the operation of the Contract Procedure Rules between October 2015 and June 2016 be noted as well as the adoption of the Central Government supplier suitability questionnaire in full;
- 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.

Equal Opportunities Implications

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

Background Papers

24. The Constitution of Leicestershire County Council.

Circulation under the Local Issues Alert Procedure

25. None

Officers to Contact

Fiona Holbourn,
Head of Commissioning & Procurement Support,
Tel. 0116 305 6185,
E-mail: Fiona.Holbourn@leics.gov.uk

Arnold Lupunga,
eProcurement and Compliance Manager,
Tel. 0116 305 8556,
E-mail: Arnold.Lupunga@leics.gov.uk

Appendices

Appendix A - Contract Procedure Rules Exceptions & Contract Extensions
(October 2015- June 2016)

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

This page is intentionally left blank