



## **MANAGEMENT COMMITTEE – 28 FEBRUARY 2017**

### **PROPOSED CHANGES TO THE CONTRACT PROCEDURE RULES**

#### **REPORT OF THE DIRECTOR**

##### **Purpose of Report**

1. The purpose of this report is to:
  - a. report on the operation of the Contract Procedure Rules between 1<sup>st</sup> July 2015 and 30 June 2016.
  - b. seek approval of the proposed amendments to the Contract Procedure Rules from 1 March 2017.

##### **Background**

2. Rule 8 (Annual Reporting) of ESPO's Contract Procedure Rules stipulates that the Director of ESPO, in consultation with the County Solicitor, shall at least once in each financial year submit a report to the Management 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. Officers of Leicestershire County Council and ESPO work together on an annual basis to review the Contract Procedure Rules and agree on any draft revisions and amendments to be proposed for approval.

##### **Approved Exceptions to the Rules**

4. Between 1<sup>st</sup> July 2015 and 30<sup>th</sup> June 2016 six approved exceptions to the Contract Procedure Rules which were allowed for under Rule 5 have been recorded in the Exceptions Log maintained by the Director of ESPO. Details of the exceptions are set out at Appendix A of this report.
5. The reasons for the approved exceptions are that as part of the 2015 workplan (for the 2016 catalogue) various frameworks were renewed. Whilst the renewals resulted in awards for most of the requirements, in some cases it was not possible to make an award, so the requirement for these items was subject to competition a second time through RfQs.
6. Whilst the RfQs enabled awards to be made for some of these residual requirements, it was still not possible to award all of the requirements following the RfQs. This was due to:

- a. No bids received
- b. Non-compliant bid; it was a mandatory requirement of the RfQ that all items in the sub-lots had to be tendered for. Where suppliers were unable to bid against all items in a sub-lot, it was not possible to make an award
- c. Bids did not meet specification
- d. An incumbent supplier not bidding in some cases the alternatives offered by other suppliers would have resulted in a commercially unviable solution i.e. buying at a price exceeding the ESPO selling price (that is, sell at a loss).

Having subjected these requirements to competition on two separate occasions without being able to secure suitable sources of supply, an exception under Rule 5(b)(i) of ESPO's Contract Procedure Rules was sought to establish contracts by direct negotiation with fourteen suppliers for a total value of business of £82,500.

#### **Approved Contract Extensions where no provision in the Contract**

7. Between 1<sup>st</sup> July 2015 and 30<sup>th</sup> June 2016 there were no contract extensions approved where there was no provision in the Contract.

#### **Proposed Revisions to the Rules**

8. Since the comprehensive review of the Rules last year, with the exception of the inclusion of a new Rule regarding Counter Terrorism and Security (Rule 9A), only minor changes to the Rules are proposed to clarify their meaning.

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;
9. The revisions have been reviewed by the Deputy Director of ESPO, Head of Procurement and Compliance, Commercial Solicitor and Practice Manager Procurement and Compliance.
  10. A copy of the draft revised Contract Procedure Rules is set out at Appendix B to this report.
  11. Should the Management Committee approve the draft revised Contract Procedure Rules they will be published on ESPO's intranet and internet sites and communicated to all relevant managers and staff within ESPO, including via newsletters and other appropriate communication channels.

#### **Recommendations**

12. It is recommended that:

- a. the contents of this report on the operation of the Contract Procedure Rules between 1<sup>st</sup> July 2015 and 31<sup>st</sup> June 2016 be noted;
- b. the Management Committee approve the proposed amendments to the Contract Procedure Rules as set out in Appendix B to this report;

### **Equal and Human Rights Implications**

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

### **Background Papers**

14. None.

### **Officer to Contact**

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### **Appendices**

- Appendix A – ESPO Contract Procedure Rules Exceptions and Extensions July 2015 – June 2016
- Appendix B - Proposed amendments to ESPO Contract Procedure Rules from 1 March 2017
- Appendix C – draft revised ESPO Contract Procedure Rules from 1 March 2017

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