



CORPORATE GOVERNANCE COMMITTEE
22 SEPTEMBER 2017

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 July 2016 and 30 June 2017;
 - 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 6 December 2017 for approval.

Approved Exceptions to the Rules

4. Between 1 July 2016 and 30 June 2017, 22 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. Reasons for the 22 approved exceptions included:
 - a. the specialist nature of the requirements;
 - b. the limited nature of the supply markets.
6. A comparative table of approved exceptions has been provided in Table 1 below.

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 2016 to 30 June 2017	22	£2.5m	1
1 July 2015 to 30 June 2016	25	£1.7m	None
1 July 2014 to 30 June 2015	29	£19.3m	1
1 July 2013 to 30 June 2014	27	£1.26m	1

7. From Table 1, it can be seen that in comparison to the previous years there is a downward trend in the number of exceptions granted. The one contract which was awarded above the Public Contracts Regulations 2015 (PCR) threshold relates to a short term contract for the supply of public health requirements which could only be obtained from a single supplier due to regulatory restrictions.

Approved Contract Extensions where no provision in the Contract

8. During the same reporting period 1 July 2016 to 30 June 2017, in compliance with Rule 30(g) and Rule 30(h) there were 10 approved contract extensions where there was no provision within the original contract (see Appendix A). The total value of these extended contracts was £135.2m, which is mainly due to the 2 contracts referenced in paragraphs 9 and 10 below. The main reasons for extending these contracts included:
 - a. The need to review, consult on, and reconfigure services before re-tendering of the services.
 - b. Continued delivery of critical services.
9. Two of the 10 contract extensions involved contracts whose value was above the EU threshold. One of the contracts 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 2015 applying).
10. The two contracts involved were:

- a. A framework agreement for Domiciliary Care which was extended as a transitional arrangement to ensure full coverage of domiciliary care services across Leicestershire following the late withdrawal of one provider under the *Help to Live at Home* Tender (Total contract value £134m). This necessitated contingency arrangements being put in place to ensure that care was delivered to everyone who needed it.
- b. A contract for insurance brokerage services which was extended to facilitate the re-procurement of insurance cover for academies prior to the re-procurement of the brokerage services (Total contract value £468k)

11. Again for comparison purposes with previous years, the relevant data is provided in Table 2:

Table 2: Comparison of Approved Contract Extensions

Reporting Period	Number of Approved Extensions	Total Value of Contracts	No of Exceptions above relevant EU Threshold
1 July 2016 to 30 June 2017	10	£135.2m	2
1 July 2015 to 30 June 2016	14	£1.8m (£87m)*	3
1 July 2014 to 30 June 2015	9	£4.8m (£109m)*	4
1 July 2013 to 30 June 2014	7	£4.7m	5

* Includes value of contracts not caught by the full Public Contracts Regulations 2015 regime.

Comparison over the last few years shows a downward trend in the number of contract extensions (for contracts without an extension provision) falling above the relevant EU threshold.

Actions Taken to Further Increase Compliance

12. Following the inclusion of Rules to govern the conduct of contract management activities, the Council has taken steps to improve compliance by conducting a forensic review exercise to discover all contracts held, updating the contracts register and developing an action plan to improve data management and contract management practices across the whole authority.
13. The use of electronic tendering (for procurement activity over £25k) continues 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.
14. The Corporate Management Team continues to review, on a quarterly basis, approved exceptions as part of corporate performance monitoring.

Proposed Revisions to the Rules

15. Only minor changes to the Rules are proposed to clarify their meaning and to clarify the treatment of concession contracts.
16. The proposed revisions are to:
- a. include a new rule on the treatment of Concession Contracts and a revised definition of concession contracts to align with the Concession Contracts Regulations 2016 (CCR);
 - b. introduce a requirement for consultation with the Commercial Specialist whenever exceptions to the Rules are considered to ensure robustness in decision-making process;
17. 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 6 December 2017 for approval (subject to this Committee's agreement).
18. Should the County Council approve the draft revised Contract Procedure Rules, on 6 December 2017, 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.
19. **Forthcoming changes to the procurement thresholds**

As part of procurement regulation, the PCR and CCR sets out the rules for procurement exercises whose monetary value exceeds a certain amount and which are presumed to be of cross-border interest. The minimum monetary value at which the PCR or CCR applies is reviewed every two years; the new thresholds are due to be published in December 2017 and will take effect on 1st January 2018. The current thresholds applicable to the Council's procurement exercises are set out in the table 3 below:

Table 3: Minimum Financial thresholds

The Public Contracts Regulations	Minimum Threshold Value
Supplies & Services contracts	£164,176
Works contracts	£4,104,394
Light Touch Regime for Services	£589,148
The Concession Contracts Regulations	
Concession Contracts	£4,104,394

Recommendations

20. It is recommended that:

- a. The contents of this report on the operation of the Contract Procedure Rules between 1 July 2016 and 30 June 2017 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 £164,176 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 2018.

Equality and Human Rights Implications

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

Background Papers

22. The Constitution of Leicestershire County Council.

Circulation under the Local Issues Alert Procedure

23. None

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Appendices

Appendix A - Contract Procedure Rules Exceptions & Contract Extensions
(July 2016- June 2017)

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

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