



CORPORATE GOVERNANCE COMMITTEE - 24 OCTOBER 2018

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

PROPOSED CHANGES TO THE CONTRACT PROCEDURE RULES

Purpose of the Report

1. The purpose of this report is to:
 - a. report on the operation of the Contract Procedure Rules between 1 July 2017 and 30 June 2018;
 - b. 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 to set out any proposed revisions to the 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 5 December 2018 for approval.

Approved Exceptions to the Rules

4. Between 1 July 2017 and 30 June 2018 eighteen (18) approved exceptions, which are allowed for under Rule 6 of the Contract Procedure Rules, 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 attached to this report.
5. The reasons for the 18 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 over the last 4 years is provided in Table 1 below.

Table 1: Comparison of Approved Exceptions			
Period	Number of Approved Exceptions	Total Value of Approved Exceptions	No. of Exceptions above relevant EU Threshold
1 July 2017 to 30 June 2018	18	£1.2m	None
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

7. From Table 1, it can be seen that in comparison to the previous year there has been a downward trend in the number of exceptions granted and there were no approved exceptions above the Public Contract Regulations (PCR) 2015 threshold.

Approved Contract Extensions and Modifications where no provision in the Contract

8. During the same reporting period, 1 July 2017 to 30 June 2018, in compliance with Rule 30(c), Rule 30(g) and Rule 30(h) there were seven (7) approvals for contracts either where there was no provision within the original contract for an extension or where the proposed contract variation required such approval (see Appendix A attached). The main reasons for these contract extensions and variations included:
- a. the need to review, consult on and, reconfigure services before re-tendering of that service;
 - b. continued delivery of critical services.
9. Three (3) of the seven (7) contract extensions/variations involved contracts whose value was above the relevant EU threshold.
10. The three contracts involved were:
- a. a framework agreement for Domiciliary Care, which falls under the Light Touch Regime (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), was extended as a transitional arrangement to ensure continuity of service during contract

mobilisation of the lead provider arrangements. The value of the approved contract extension was £6.27m;

- b. a contract for Signposting and Community Support Service (SCSS), which also falls under the Light Touch Regime, was extended to enable continuity of existing levels of service provision and to facilitate access to food, fuel, furniture and white goods to the benefit of the community. The value of the approved extension was £213k;
- c. the previously agreed variation to the Whetstone contract to allow for the contractor to undertake bulk haulage of waste from Loughborough and Kibworth waste transfer station was extended whilst a procurement exercise was underway. The value of this approved extension was £200k.

11. A comparative table of approved contract extensions and modifications over the last 4 years is provided in Table 2 below.

Table 2: Comparison of Approved Contract Extensions and Modifications			
Reporting Period	Number of Approved Extensions/Modifications	Total Value of Contracts (including value of approved extensions/modifications)	No of Extensions above relevant EU Threshold
1 July 2017 to 30 June 2018	7	£156.3m	3
1 July 2016 to 30 June 2017	10	£135.2m	2
1 July 2015 to 30 June 2016	14	£87m	3
1 July 2014 to 30 June 2015	9	£4.8m (£109m)*	4

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

12. Comparison over the last few years from 2015/16 to 2017/18 shows a downward trend in the number of contract extensions (without an extension provision) or contract variations being approved.
13. The Corporate Management Team continues to review, on a quarterly basis, approved exceptions as part of corporate performance monitoring.

Proposed Revisions to the Rules

14. Changes to the Rules are proposed for the following reasons:
 - a. to clarify their meaning further;
 - b. to reference the Council's Strategic Plan 2018-2022;
 - c. to take account of the General Data Protection Regulations (GDPR) that came into force on 25 May 2018;
 - d. to take account of the Council's Supplier Code of Conduct (2018);
 - e. to take account of the Council's Social Value Policy (2018);
 - f. to ensure that the most favourable terms and conditions are negotiated for the Council, when contracts are being extended.

15. The proposed revisions are:
 - a. to clarify, under Rule 1, that the sale of Council assets are not covered by these rules but are instead covered by Rule 25 (Purchasing and income collections) and Rule 26 (Inventories and assets) of the Financial Procedure Rules (Part 4F of the Constitution);
 - b. to clarify, under Rule 1, that where a decision is taken under these rules that involves a key decision this must be taken by the Executive (i.e. the Cabinet). Key decisions are defined in Rule 8 of the Executive Procedure Rules (Part 4D of the Constitution);
 - c. to change Rule 5 (b) so that Social Value is embedded in any contract equal to or over £50,000, subject to approval of this policy by Cabinet at its meeting on 16 October 2018;
 - d. to add a new bullet point (c) to Rule 9 to take account of the Council's Supplier Code of Conduct (2018);
 - e. to add a new bullet point (f) to Rule 25 to take account of GDPR requirements;
 - f. to change Rule 25A (c) (v) so that the relevant Commercial Specialist is engaged in contract extensions to ensure that the most favourable terms and conditions are negotiated prior to a contract extension being awarded.

16. The proposed revisions to the Rules have been drafted and these are set out in Appendix B attached to this report. 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 5 December 2018 for approval, (subject to this Committee's agreement).

17. Should the County Council approve the draft revised Contract Procedure Rules the new Rules will come into force on 1 January 2019 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.

Equality and Human Rights Implications

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

Recommendations

19. It is recommended that:

- a. the contents of this report on the operation of the Contract Procedure Rules between 1 July 2017 and 30 June 2018 be noted;
- b. the County Council be recommended to approve the proposed amendments to the Contract Procedure Rules, as set out in Appendix B attached to this report.

Background Papers

The Constitution of Leicestershire County Council.

Circulation under the Local Issues Alert Procedure

None

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Appendices

Appendix A - Contract Procedure Rules Approved Exceptions & Contract Extensions (July 2017- June 2018)

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

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