



CORPORATE GOVERNANCE COMMITTEE – 1 NOVEMBER 2019

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 2018 and 30 June 2019;
 - 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 in December 2019 for approval.

Approved Exceptions to the Rules

4. Between 1 July 2018 and 30 June 2019 thirteen 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 thirteen 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 5 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 2018 to 30 June 2019	13	£1.8m	3
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, however, there were 3 approved exceptions above the Public Contract Regulations (PCR) 2015 threshold which is an increase on previous years.

Approved Contract Extensions and Modifications where no provision in the Contract

8. During the same reporting period, 1 July 2018 to 30 June 2019, in compliance with Rule 30(c), Rule 30(g) and Rule 30(h) there were seven 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 the re-tendering of that service;
 - b. continued delivery of critical services.
9. Two of the contract extensions/variations involved contracts whose value was above the relevant EU threshold.

10. The contracts involved were:
- a. Provision of Small Works and Minor Buildings Adaptations for Adult Social Care;
 - b. Domiciliary Care Framework (including call off contracts).
11. A comparative table of approved contract extensions and modifications over the last 5 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 2018 to 30 June 2019	7	£132.5m	2
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 2014/15 to 2018/19 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 strengthen the approval process for spend through frameworks.

15. The proposed revisions are:

- a. Strengthen Rule 1 around the requirement for decisions to be taken to the executive before any procurement.
- b. Addition to Rule 4 to define the meaning Direct Employee in Schedule 1, to ensure the rules are considered for temporary labour contracts.
- c. Change wording for Rule 5 to align with the Councils Social Value Policy.
- d. Addition of approval process to Rule 5 to ensure if Social Value is not considered in line with the Policy approval is sought from the appropriate Commercial Specialist.
- e. Amendment to Rule 5(d) to ensure an increased and more appropriate compliant usage of Corporate Contracts.
- f. Addition to Rule 6 (a) (vi) to strengthen the process around exceptions over £25,000.
- g. Amendment to Rule 6 (iv) (ee) to strengthen the process around exceptions to residential placement contracts to ensure the appropriate Commercial Specialist is given justification and evidence.
- h. Amendment to Rule 10 (b) (iii) to cover works contracts, as a result of feasibility, which could be awarded separately via a competitive procedure to a builder.
- i. Amendment to Rule 11 to ensure the table references the correct Rules.
- j. Amend Rule 11 (e) to strengthen the process around the use of frameworks to ensure the Commercial Specialists are able to support in ensuring value for money and compliant use of the frameworks.
- k. Rule 11 include definition of Corporate Contracts in Schedule 1 for clarity,
- l. Amendment to Rule 11 to ensure approval has to be sought to continue with a procurement between the value of £25,000 and £50,000 without 3 written quotes.
- m. Amend Rule 11 to state that electronic – tendering should be used not may be used, to increase transparency and compliance.
- n. Amend Rule 14 (c) (ii) to align with Rule 12.
- o. Amend Rule 14 (g) to increase compliance of not releasing OJEU related information before the OJEU is posted, and not containing more information than is posted in the OJEU.
- p. Amend Rule 15 to further strengthen the rule to the use of electronic tendering and confidentiality agreements.
- q. Addition to Rule 17 to ensure compliance with Reg 26(4) of the Public Contract Regulations.
- r. Addition to Rule 18 (b) to ensure Terms and Conditions are visible to all parties in the Tender Process.
- s. Amend Rule 24 (c) from within reasonable time to 30 calendar days to improve compliance.
- t. Amend Rule 24 (d) to improve compliance with Reg 84 of the Public Contract Regulations.
- u. Amend Rule 24 (e) to clarify the inclusion of Frameworks and Framework Call Offs.

- v. Addition to Rule 25 to allow the Council to implement the use of Electronic Signatures to modernise the Councils approach to getting contracts and placement agreements authorised.
 - w. Amend Rule 25 (f) from “consider” to “comply” with regards to GDPR.
 - x. Addition to Rule 25 to ensure the inclusion of Right to Audit Clauses within Contracts.
 - y. Replace wording in Rule 25A from Contract Management System to Contracts Register as it is known to all Officers.
 - z. Addition to Rule 28 (c) to ensure Commercial Specialists are consulted in the use of Direct Awards on Frameworks over OJEU to improve compliance and ensure value for money is being obtained.
 - aa. Addition to Rule 28 (e) to ensure all Officers add Framework Call Offs to the Contracts Register within 30 days in compliance with the Public Contract Regulations.
 - bb. Amend Rule 30 (e) to allow delegated authorities to be applied to Contract Extensions where the provision was allowed for in the initial procurement.
 - cc. Add to Rule 35 Commercial Specialist to in the case of ESPO an Officer with delegated authorities, this will allow for the request of contracts & relevant information from consultants, freelancers etc.
 - dd. Add definition of Direct Employee in line with Rule 4.
 - ee. Add to Schedule 1 33 under Procurement Exercise – vis a Framework Agreement/ Dynamic Purchasing System.
 - ff. Update Schedule 1 7 Contract to add for the avoidance of doubt Contracts shall include Framework Agreements and Call Offs from Frameworks.
 - gg. Delete from Schedule 1 23 “2006 and” to bring the rules up to date
 - hh. Add definition of Contracts Register for clarification.
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 in December 2019 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 2020 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 2018 and 30 June 2019 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 2018- June 2019)
- Appendix B - Proposed Amendments to Part 4 G - Contract Procedure Rules