

B. PROPOSED CHANGES TO THE CONTRACT PROCEDURE RULES

Introduction

1. This report concerns a review of the operation of the Contract Procedure Rules and recommended revisions to those rules.

Background

2. Article 15 of the County Council's Constitution gives the Chief Executive a duty to monitor and review the operation of the Constitution to ensure the aims and principles of the Constitution are given full effect.
3. Rule 8 (Annual Reporting) of the Constitution'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 any departures from or 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.
4. The Constitution requires that changes to these Rules must be approved by the Council after consideration of recommendations of the Corporate Governance Committee.

Proposed Revisions to the Rules

5. 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.
6. 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.
4. The proposed revisions to the Rules have been drafted and these are set out in Appendix A attached to this report. The revisions to the Rules are supported by the Director of Law and Governance and the Director of Corporate Resources. The Corporate Governance Committee considered this matter at its meeting on 1st November 2019 and its recommendation is set out in the motion which appears below.
5. 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

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

(Motion to be moved:-

That the proposed amendments to the Contract Procedure Rules, set out in Appendix B to the report of the Corporate Governance Committee, be approved.)

1st November 2019

**T. Barkley
Chairman**

Background Papers

Joint report of the Director of Corporate Resources and Director of Law and Governance to the meeting of the Corporate Governance Committee on 1st November 2019 - Proposed Changes to the Contract Procedure Rules.

Appendix

Appendix B - Proposed amendments to the Contract Procedure Rule