

ESPO FINANCE AND AUDIT SUBCOMMITTEE – 30 OCTOBER 2024

CONTRACT PROCEDURE RULES UPDATE

REPORT OF THE DIRECTOR OF ESPO

Purpose of the Report

1. The purpose of this report is to seek approval for the submission of the revised ESPO Contract Procedure Rules (CPRs) to the ESPO Management Committee for approval at its meeting on 13 November 2024.

Background

2. ESPO's current CPRs have been in place since 1 October 2021 and need revising at this stage as the introduction of the Procurement Act 2023 has been delayed until 24 February 2025.

Body of the Report

3. Rule 8 in the CPRs, which sets out the requirements for Annual Reporting of ESPO's CPR stipulates that the Director of ESPO, in consultation with the Director of Law and Governance, shall at least once in each financial year submit a report to ESPO's Finance and Audit Subcommittee in relation to the operation of the Contract Procedure Rules.
4. Officers of Leicestershire County Council and ESPO work together on an annual basis to review the Contract Procedure Rules and agree on any draft changes to be proposed for approval.
5. The most recent version of the CPRs that was approved on 15 September 2021 and has been in place since 1 October 2021. No amendments were proposed to the Contract Procedure Rules in 2022 and 2023.
6. Leicestershire County Council has made amendments to its Contract Procedure Rules, which were approved by the County Council's Corporate Governance Committee on 26 January 2024.

Proposed Amendments to ESPO Contract Procedure Rules

7. Amendments to ESPO's Contract Procedure Rules have now been proposed to align with the Leicestershire County Council rules referred to at paragraph 6 above, and the amended Rules are highlighted in Appendices A and B.
8. These revisions have been reviewed and are supported by ESPO's Director, Assistant Director: Procurement and Commercial and ESPO's Commercial Solicitor.
9. A copy of the proposed Contract Procedure Rules effective from 13 November 2024 is set out at Appendix C to this Report.
10. Should the Management Committee at its meeting on 13 November 2024 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.
11. The Public Contracts Regulations 2015 have governed public procurement in the UK to date. However, these regulations will be replaced by the Procurement Act 2023, which will take effect on 24 February 2025 and will introduce new rules for public procurement. This means that procurements commenced on or after 24 February 2025, will be regulated solely by the Procurement Act 2023. Procurements that were commenced before this date will continue to be governed by the Public Contracts Regulations 2015 until all contracts awarded under these regulations have ceased to exist, including any modifications to these contracts.
12. Accordingly, the amended Contract Procedure Rules will apply to and govern procurements commenced under previous legislation, The Public Contracts Regulations 2015.
13. A new set of Contract Procedure Rules is currently being drafted which will govern procurements commencing on or after 24 February 2025 as required by the Procurement Act 2023. The approval of these Rules, as set out in the Constitution, is the responsibility of the Management Committee. However, the Management Committee does not meet until 19 March 2025, which is after the date when the new terms of the Procurement Act 2023 come into force. As such, the Management Committee at its meeting on 13 November 2025, will be asked to consider delegating authority to the Finance and Audit Subcommittee to approve such changes as are required to be made to the CPRs before 24 February 2025 in compliance with the Procurement Act 2023. It is expected that this will occur at the next meeting of the Finance and Audit Subcommittee on 12 February 2025.
14. Therefore, moving forward, there will be two sets of Contract Procedure Rules operating alongside each other: one governing those procurements initiated before 24 February 2025, the go-live date of the Procurement Act 2023, and the other covering procurements that commence on and after this date.

Resources Implications

15. There are no resource implications arising from this report.

Recommendation

16. It is recommended that the Subcommittee approves the proposed amendments to the Contract Procedure Rules, detailed at Appendices A, B and C of the report, for submission to the ESPO Management Committee for approval at its meeting on 13 November 2024.

Equality and Human Rights Implications

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

Background Papers

18. None.

Appendices

Appendix A- Table of proposed amendments to ESPO Contract Procedure Rules from 13 November 2024

Appendix B - Copy of the proposed Contract Procedure Rules highlighting amendments compared with the version of 1 October 2021

Appendix C- Clean Version of the Contract Procedure Rules

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