



ESPO MANAGEMENT COMMITTEE – 25TH MARCH 2011

AGENDA ITEM NO. 7

REVISION OF CONTRACT PROCEDURE RULES

**REPORT OF THE INTERIM DIRECTOR,
CONSORTIUM SECRETARY AND CONSORTIUM
TREASURER**

Purpose of Report

1. The purpose of this report is to recommend that ESPO's Contract Procedure Rules (CPRs) are updated in order to align with those of the Servicing Authority.

Background

2. Leicestershire County Council has recently undertaken a review of its own CPRs, which make provision for ESPO to act on the Council's behalf. This provides an opportunity to update ESPO's own CPRs to ensure alignment with those of the Servicing Authority.
3. The changes proposed may need to be subject to future review and revision to take account of any changes in the governance arrangements recommended by the Strategic Review.

Contract Procedure Rules

4. The approach, which has been adopted in updating ESPO's CPRs has been based on the following assumptions:
 - **Scope:** The rules should apply where ESPO is either acting alone or for a wider group of consortium members or for non-members. (Where ESPO is acting on behalf of just one of its members, that member's rules stipulating the delegations/responsibilities to/of ESPO should apply.)
 - **Balanced Approach:** The need to balance ESPO's operational efficiency with the need for appropriate 'checks and balances'.
 - **Authority:** For the sole purpose of these Rules, ESPO has been regarded as a department of the Servicing Authority, with the Director of ESPO a Council Chief Officer.

5. The proposed revisions are listed in the Appendix. These identify where the Director of ESPO should be considered as equivalent to a Chief Officer, and relevant levels for any further delegation below Director level.
6. In assuming the Director of ESPO to be equivalent to a Council Chief Officer, there has been no delegation from the Servicing Authority's Director of Corporate Resources and County Solicitor in a number of areas. For example, ESPO is required to gain the Director of Corporate Resources' approval for using the Negotiated Procedure or Competitive Dialogue Procedure, and for awarding contracts below EU Threshold, where not on the basis of the initial evaluation criteria. Also, ESPO is required to gain the County Solicitor's approval for conducting post tender negotiations where not on the basis of the guidance in the rules, and for the early termination of a contract where not provided for in the contract.
7. The proposed revisions to ESPO's CPRs will require the Management Committee to approve:
 - any contract award which is not in accordance with the initial award criteria, and above the relevant EU Threshold;
 - variations to contracts originally approved by the Management Committee, where the variation is considered significant;
 - contract extensions where originally approved by the Management Committee, and more than three months in duration.
8. The proposed changes to the CPRs address the most operationally significant rules. Work is also currently being undertaken to review and revise ESPO's Financial Regulations. These, together with a final version of ESPO's CPRs, will be submitted to the next meeting of the Management Committee.
9. Pending the outcome of the Review and any new Governance arrangements being put in place, the Servicing Authority and the Director of ESPO will review the forthcoming procurement exercises to identify any potentially significant contracts, where Management Committee approval will need to be sought at the outset of the procurement process.

Resources Implications

10. None.

Conclusion

11. The proposed revisions to the CPRs will align ESPO's practice with the approach of the Servicing Authority and achieve greater clarity about the Management Committee's role. These arrangements may be subject to further revision depending on any revised

governance arrangements which may be agreed following the Review of ESPO's Business Strategy.

Recommendation

12. Members are asked to:
 - (a) approve the key changes made to the Contract Procedure Rules for ESPO (see Appendix).
 - (b) note the interim arrangements which have been put in place for seeking approval of any significant procurement exercises pending any future revision of ESPO's governance arrangements.

Equal Opportunities Implications

13. ESPO must follow relevant laws and Council policies on equal opportunities. This includes making sure that contractors are appointed fairly.

Risk Assessment

14. The purpose of this paper is to support ESPO's approach to the management of risk. A separate report on this Agenda outlines ESPO's approach to the management of business risk at strategic and operational levels.

Background Papers

Leicestershire County Council Contract Procedure Rules (Part 4G of the Constitution)
1996 Scheme of Delegation to the ESPO Director and Standing Orders Relating to Contracts
1999 ESPO Consortium Agreement

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Appendix

Proposed Changes to the Contract Procedure Rules for ESPO