

REPORT OF THE CORPORATE GOVERNANCE COMMITTEE

A. 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. A review of the Constitution therefore takes place on an annual basis normally reporting to the Council in September each year.
3. On this occasion, part of the review has been delayed to enable revision to take into account legislation currently before Parliament and particularly the Localism Bill. However, it has nevertheless been possible to proceed with a review of the Contract Procedure Rules.
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 Revision of the Rules

5. Between August 2010 and July 2011, 71 comments were received and logged on the operation of the Rules from officers across the Council. The nature of these comments has ranged from amendments required to accommodate changing legislation and policy (for example, the new Bribery Act), to minor formatting corrections (for example, ensuring that defined terms are suitably capitalised).
6. Of the 71 comments, 34 have been drafted into proposed revisions to the Rules, supported by the Head of Procurement, Head of Legal Services, Head of Democratic Services, Head of Audit, Head of Strategic Finance and ESPO. Many of the remaining 37 comments are to be taken account of

through amendments and additions to Procurement Guidance (available through the Corporate Information System).

7. The recommended changes to the Rules are set out in Appendix A to this report.
8. The most significant proposed revision is to restrict the potential for post tender negotiation (where the value of the contract is between £100,000 and the EU threshold) to the best tenderer, where currently the rules allow for negotiation with, "all those whose Tender is within 5% of the most competitive Tender or, if there is no such Tender, the Tenderer submitting the second most competitive Tender." The reason for doing this is to mitigate the risk of a legal challenge as a result of a tenderer being put in a stronger position than warranted by their original tender following negotiation.
9. Once approved, the revised Contract Procedure Rules will be published on the Council's intranet and internet sites and communicated to all relevant managers and staff within the Council, including via newsletters and presentations.
10. The Corporate Governance Committee considered this matter at its meeting on 5 September 2011 and its recommendations are contained in the motion which appears below.

(Motion to be moved:-

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

5 September 2011

E D Snartt
Chairman

Background Papers

Joint report of the Director of Corporate Resources and County Solicitor to the meeting of the Corporate Governance Committee on 5 September 2011 on Proposed Changes to the Contract Procedure Rules.