

CORPORATE GOVERNANCE COMMITTEE
23 SEPTEMBER 2014

JOINT REPORT OF THE DIRECTOR OF CORPORATE RESOURCES
AND THE COUNTY SOLICITOR

PROPOSED CHANGES TO THE CONTRACT
PROCEDURE RULES

Purpose of Report

1. The purpose of this report is to:
 - (a) report on the operation of the Contract Procedure Rules between 1 July 2013 and 30 June 2014;
 - (b) bring to the Committee's attention actions being taken to continue to ensure compliance with the Contract Procedure Rules;
 - (c) 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 County Solicitor, 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 contract where this has not been provided for in the contract, and proposed revisions to these Rules and/or changes required to accommodate the requirements of United Kingdom (UK) and European Union (EU) procurement law, as may be necessary from time to time.
3. Following consideration by the Committee, the proposed revisions to the Contract Procedures Rules will be submitted to County Council at its meeting on 3 December 2014 for approval.

Approved Exceptions to the Rules

4. Between 1 July 2013 and 30 June 2014, 27 approved exceptions, which are allowed for under Rule 6, have been recorded in the Exceptions Logs maintained by Commercial and Procurement Services and Chief Officers. These have been consolidated and are detailed in Appendix A to this report

(attached). In the previous annual report to this Committee for the period 1 July 2012 to 30 June 2013 there were 34 exceptions with a total contract value of £2.47m.

5. The aggregate value of these 27 exceptions (£1.26m) represents less than 1% of the Council's annual procurement expenditure of £350m. All but one of these 36 exceptions was below the EU threshold of £173,934, over which the Public Contracts Regulations 2006 must be complied with. The Regulations set out strict rules for conducting procurement exercises.
6. Among the reasons for these approved exceptions included:
 - a. the implementation of short-term contracts pending a service review to facilitate the Authority's transformational change;
 - b. the specialist nature of the service;
 - c. the limited nature of the market;
 - d. the urgency of the requirements.
7. The one approved exception over the Public Contracts Regulations 2006 threshold of £173,934 was for 'Treatment of Wood Waste' (Total Value £270,000). Due to guidance issued by the Environment Agency in June 2013 it became necessary to place an urgent order for the treatment of waste wood. Soon after putting this interim measure in place, the Council commenced an EU compliant procurement process in November 2013 to let a contract which complied with the Environment Agency guidelines.

Approved Contract Extensions where no provision in the Contract

8. During the same 12 month period, in compliance with Rule 31(iii) and (iv), there were seven approved contract extensions where there was no provision within the original contract (see Appendix A). The total value of these seven extended contracts was £4.70m. Five of these extensions involved contracts whose value was above the EU threshold of £173,934. The combined value of these contracts was £4.50m, four of the contracts (£3.13m) fall within the non-priority services category (Part B services) which are not caught by the full regime of EU procurement rules. The main reasons for extending these contracts included:
 - a. reviewing, consultation and reconfiguring services before re-tendering of the services;
 - b. reviewing of services to align with new legislation (e.g. The Care Act 2014) and integration of social and health care services (via the Better Care Fund).
9. The one contract falling within the priority services category (Part A services) involved a bus services contract jointly funded by Leicestershire County Council and Leicester City Council. The reason for this extension was to allow for the

service review to be completed and recommendations from the review to be incorporated into the new bus service contract.

Actions Taken to Further Increase Compliance

10. In order to continue to maximise compliance with the Rules, the Council is introducing electronic tendering which provides a benefit of ensuring that the tendering process is more consistent, efficient, transparent and compliant. E-tendering will enable straightforward enforcement of processes and workflows. The tender procedures and policies will be configured into the electronic tendering system so that all procuring officers can only operate within the County Council's approved processes.
11. The use of Departmental Contract Procedure Exceptions Logs to record exception/extension approvals given by each Chief Officer continues to give visibility of approved exceptions to the Rules, particularly lower value/risk contracts.
12. The Corporate Management Team also reviews, on a quarterly basis, approved exceptions and their number as part of corporate performance monitoring.
13. During the reporting year two former employees of the Council were found guilty in Leicester Crown Court of offences of fraud. To prevent re-occurrence, action was taken to improve compliance with the Rules by creating a 'procurement hub' in the service area affected and also security to the affected site was improved.

Use of Local Suppliers

14. Last year a revision made to the Rules was to consider the benefits of including a local supplier in an invitation to quote, where appropriate for contracts valued between £1k and £20k. The Council's supply base currently includes 2,912 local suppliers. Further, the Council has made an undertaking to work with local Small to Medium Enterprises (SMEs) under the Federation of Small Businesses pledge.

Proposed Revisions to the Rules

15. In February 2014, the EU parliament passed a new set of procurement directives to be enacted into law by member states within 2 years. It is expected that the EU Directive 2014/24 on public procurement when passed into UK law will introduce substantial changes to the practice of public procurement. For this reason a comprehensive review of the Council's Contract Procedure Rules will be conducted after the new law is passed.
16. In the meantime, a few minor changes to the operation of the Contract Procedure Rules are being recommended to clarify their meaning and to facilitate the use of an e-tendering system. These minor revisions to the Rules (see Appendix B) are supported by the County Solicitor and the Chief Financial Officer (i.e. the Assistant Director of Corporate Resources (Strategic Finance

and Property) and will be presented to the County Council for approval on 3 December 2014 (subject to this Committee's agreement).

17. Should the County Council approve the draft revised Contract Procedure Rules on 3 December 2014, they will be published on the Council's intranet and internet sites (the revision highlighted on the home page) and communicated to all relevant managers and staff within the Council, including via newsletters and presentations.

Recommendations

18. It is recommended that:

- (a) The contents of this report on the operation of the Contract Procedure Rules between July 2013 and June 2014 be noted;
- (b) The County Council be recommended to approve the proposed amendments to the Contract Procedure Rules, as set out in Appendix B to this report;
- (c) the proposal to conduct a substantial review of the Rules in early 2015 be noted.

Equal Opportunities Implications

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

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 Exceptions & Requested Contract Extensions (2013-14).
- Appendix B - Proposed Amendments to the Contract Procedure Rules.