

Constitution Working Group

9 March 2011



Contract Procedure Rules - Annual Review

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Purpose of the Report

- 1 The purpose of this report is to approve the proposed amendments to the County Council's Contract Procedure Rules which will be incorporated within the Council's updated Constitution.

Background

- 2 Contract Procedure Rules (issued in accordance with section 135 of the 1972 Local Government Act) are intended to promote good procurement practice and public accountability, and to deter corruption. Compliance with the rules is the best defence against potential allegations that a contract has been let, or a purchase made, incorrectly or fraudulently.
- 3 Contract Procedure Rules are the link between the Corporate Strategy for Commissioning and Procurement and the Procurement Code of Practice. They are instrumental in ensuring a standardised approach to Commissioning and Procurement across the Council.
- 4 The Contract Procedure Rules are reviewed and updated annually as part of the review of the Constitution.

Consultation

- 5 To inform this year's review, feedback has been sought from the Council's Strategic Procurement Network (SPN), members of which raised a number of suggestions. Variations to the Contract Procedure Rules were studied to highlight areas where additions or amendments may be required.
- 6 Corporate Procurement reported to the SPN on 2nd February 2010 which endorsed the proposed changes. An update was also given to Resources Management Team on 1st February.
- 7 Following consultation with the SPN, the proposed changes were reviewed by Legal & Democratic Services, and have been approved as consistent with current procurement law and practice.
- 8 Details of the proposed changes to the Contract Procedure Rules are highlighted in Appendix 2.

Recommendations

- 9 It is recommended that Constitutional Working Group approve the changes made to the Contract Procedure Rules and incorporate these in the 2011 Constitution.

Appendix 1: Implications

Finance – The Contract Procedure Rules complement the Financial Procedure Rules and help to ensure that third-party spend is procured appropriately.

Staffing - None

Risk – Updating the Contract Procedure Rules mitigates risk by ensuring that the latest procurement legislation and guidance is being followed.

Equality and Diversity – Corporate Procurement are engaging with the Equality & Diversity team to ensure our procurement procedures are in line with the requirements of the Equality Act 2010 which come into force in April 2011. However none of the proposed changes in this year's Contract Procedure Rules have any direct equalities implications.

Accommodation - None

Crime and Disorder - None

Human Rights - None

Consultation – Consultation has been conducted via the Strategic Procurement Network as described in the report.

Procurement – The Contract Procedure Rules support an effective procurement process across the Council.

Disability Discrimination Act - None

Legal Implications – Legal and Democratic Services have been fully consulted, and have approved the proposed changes to the Contract Procedure Rules.

Appendix 2: Summary of Changes

1. BASIC PRINCIPLES

Brief mentions of EU treaty principles and the Medium Term Financial Plan have been added.

2. OFFICER RESPONSIBILITIES

Changes have been made to the rules in 2.1.2 instructing the Procurement Officer to check existing contracts before proceeding. These changes are intended to ensure there is no duplication of effort and avoid the commencement of a procurement process where existing arrangements can meet the requirement already.

Additional wording has been added to 2.1.3 to reflect the disciplinary role of Heads of Service.

The requirement for Chief Officers to keep a register of exemptions has been deleted. These records are kept centrally by Corporate Procurement and it is not necessary to insist on Chief Officers keeping a duplicate record.

The reference to stakeholder / member engagement under the duties of Chief Officers has been removed as this issue lies outside the remit of the Rules.

3. VARIATIONS AND EXEMPTIONS

Changes have been made to the wording of clause 3.2 (a) to remove confusion over patented products. This clause can now apply to non-patented products which are nonetheless of unique character.

Changes have been made to the wording of clause 3.2 (e) to allow the extension of a contract where the usual extension clause in our standard Terms and Conditions cannot for whatever reason be enacted.

Changes have been made to the wording of clause 3.2 (h) to allow for a wider range of arts and culture-related procurements to be covered.

An additional clause, 3.2 (j) has been added to cover situations which occasionally arise where specific EU or UK legislation prevents the normal rules being followed in particular cases.

A new requirement has been inserted for any Variations being sought by Corporate Procurement to be reviewed by Internal Audit. This is to ensure the robustness of the procedure as Corporate Procurement is otherwise being left to scrutinise itself with no other checks or balances in place.

4. RELEVANT CONTRACTS

A mention of grants has been added – these are outside the CPRs, but it was felt they should be mentioned.

5. STEPS PRIOR TO PURCHASE

This has been removed as it says nothing of note.

6. RISK ASSESSMENT

This section has been moved from Section 21 of the document to reflect the fact that a risk assessment should take place before issuing an ITT or RFQ.

This section has been completely re-worded to reflect the fact that a new risk assessment process for commissioning and procurement has been developed.

7. ADVERTISING

This section has been considerably reduced in length following legal advice. Legal and Democratic Services had concerns that the existing wording was ambiguous and could lead to difficulties. On their advice this has been reduced to a simple Rule requiring the Procurement Officer to comply with the minimum advertising requirements.

8. APPROVED LISTS AND FRAMEWORK AGREEMENTS

The section on Approved Lists has been considerably reduced in length following consultation with Legal and Democratic Services. We will be seeking further legal advice on the use of approved lists – once this is obtained, clear guidance will be placed in the Procurement Code of Practice.

The section on Framework Agreements has been reworded to improve clarity and make the process more robust, following advice from Legal and Democratic Services.

10. PRE-TENDER MARKET TESTING AND CONSULTATION

Now refers to “Market Testing” not “Market Research” to bring our wording in line with current terminology used across the public sector.

11. EVALUATION CRITERIA AND STANDARDS

This section has been re-worded and expanded slightly for clarity and to reflect the guidance contained in the Public Contract Regulations 2006 regarding the assessment of the economic advantage of a bid.

12. INVITATION TO TENDER / REQUEST FOR QUOTATION

This section has been significantly updated. The key change is that the Rules now mandate the electronic issuing of Requests for Quotations (RFQs). Previously we have advertised all tenders electronically, but for lower-value RFQs, the electronic method was only preferred, not mandatory. The updated rules make this mandatory.

14. SUBMISSION, RECEIPT AND OPENING OF TENDERS / QUOTATIONS

This section has been reworded and re-ordered. Significant rewording to 14.2 (Quotations) is necessary to reflect the fact that quotations must now be obtained electronically, as noted in Rule 12 (above).

15. CLARIFICATION PROCEDURES AND POST-TENDER NEGOTIATION

The Clarifications section has been slightly expanded to draw on guidance from the Office of Government Commerce. A separate section on Post-Tender Negotiation has been added as it was felt this was lacking.

16. EVALUATION, AWARD OF CONTRACT, AND DEBRIEFING OF ORGANISATIONS

This section has been re-ordered to include separate rules on Evaluation and Debriefing, which were previously dealt with in one paragraph. Some additional wording has been added for clarity, and a specific rule requiring that evaluation criteria are applied as detailed in the procurement documents has been added as this is a legal requirement.

17. CONTRACT DOCUMENTS

This section has been extended to distinguish between deeds and agreements. An additional sub-clause has been added to 17.2.1 to allow for low-value contracts to be awarded by the issuing of an award letter and purchase order. This is already standard practice for small RFQs, but is not reflected in the existing rules.

18. BONDS AND PARENT COMPANY GUARANTEES

This section is to be deleted in its entirety, on the advice of Legal and Democratic Services.

20. CONTRACT MANAGEMENT / MONITORING

Section 22 has been merged with this section.

21. RISK ASSESSMENT

This has been moved to Section 6 and re-worded significantly - see Section 6 (above) for details.

22. CONTRACT MONITORING, EVALUATION AND REVIEW

This section has been deleted and the content merged into Section 20.

22. REVIEW AND AMENDMENT OF CPRs

This section has been moved to become the final section as it appears to fit better in that position.

There has also been considerable re-wording throughout the document, other than that mentioned above, for purposes of clarity. These changes have not been specifically highlighted above where they do not affect the meaning or purpose of the rules.