

TITLE OF REPORT: UPDATED CONTRACT PROCUREMENT RULES

REPORT OF THE HEAD OF FINANCE, PERFORMANCE & ASSET MANAGEMENT
PORTFOLIO HOLDER: COUNCILLOR T.W. HONE

1. SUMMARY

- 1.1 This report provides an update to the Contract Procurement Rules that seek to revise procurement bandings to make them more appropriate to current financial considerations. They also provide an updated flowchart to guide the user to the relevant areas for each of the contract levels.
- 1.2 To request that Cabinet recommends the proposed changes to Council for adoption.

2. RECOMMENDATIONS

- 2.1 That Cabinet approves the proposed changes to Contract Procurement Rules, as described in Section 7 of this report.
- 2.2 That Cabinet refers these Rules (as included at Appendix A) to Full Council for approval.

3. REASON FOR RECOMMENDATIONS

- 3.1 That the Contract Procurement Rules are revised and updated periodically as part of the Council's Financial Management and Procurement review processes, contributing to effective organisational internal control. In addition, the review and adoption of the Council's Contract Procurement Rules is a key action in the Council's Procurement Strategy.

4. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS

- 4.1 This report and appendices were considered by FAR Committee on 13th June 2013.

5. FORWARD PLAN

- 5.1 This report does contain a recommendation on a key decision, and was first notified to the public in the Forward Plan in March 2013.

6. BACKGROUND

- 6.1 Contract Procurement Rules are reviewed on a periodic basis to ensure they remain relevant and appropriate to the Council's needs. This review has been conducted by the Contracts & Procurement Group and led by the Procurement Officer. Responsibility for the rules lies with the Head of Finance, Performance and Asset Management and the Corporate Legal Manager. Both officers have reviewed and agreed the proposed changes.

6.2 The Rules were last reviewed by Cabinet at its meeting on 25th January 2011 and recommended to Council for approval of the current version of the Contract Procurement Rules on 10th February 2011.

7. ISSUES

7.1 The revised Contract Procurement Rules are provided at Appendix A, with proposed alterations shown in track changes where possible, although Members should note some of the amendments are presentational and involve moving contents between sections.. In addition, a list of the main changes is provided at Appendix B. A summary of key changes within this new version are outlined below.

7.2 Requirements for Goods & Services Contract Value – these have been amended to new threshold requirements.

7.2.1 The introduction of new bandings for Procurement seeks to simplify the process for Goods & Services procurements under £100k. The new bandings are summarised below.

- Below £500 – no new requirements (purchasing cards or purchase orders used)
- £501 to £10,000 – two written quotations
- £10,001 to £100,000 – three written quotations
- £100,001 to EU threshold – Tender process to be followed
- Above EU – unchanged.

7.3 To further refine the rules for Works Contracts and their requirements:

7.3.1 The previous rules applied one set of rules for all Works Procurements below £200k, requiring three quotes to be obtained for each procurement. This revised set of rules provides a proportionate approach to procurements, as below.

- under £10,000 – one written estimate to be obtained
- £10,001 to £50,000 – minimum of three written quotations
- £50,001 to £250,000 – minimum of three written quotations, with pre-qualification carried out via Constructionline or similar.
- £250,001 to EU threshold – a minimum of three Competitive Tenders with pre qualification carried out via Constructionline or similar.

7.3.2 Even works contracts of relatively low complexity and risk tend to have significant values and, according to the previous rules, should be procured by formal tender. The Contracts & Procurement Group have identified that this requires considerable officer time for no extra benefit and so these revised rules allow quotation methods for works contracts up to a value of £250,000 (low risk works of short duration only). Some of the protections requested by the Shared Internal Audit Service (SIAS), such as recording of quotations and use of transparent procedures remain in place and this change has the overall effect of applying a more proportionate approach to low value works procurements.

7.4 The rules have been updated to reflect increased use of the e-tendering system for procurements.

7.4.1 By requiring that all contract notices for procurements over £50k are published via the e-tendering system, the Council can ensure that requirements for transparency, openness and fairness in advertising opportunities are met and contracts can be co-

ordinated appropriately. The e-tendering system will then post the notice either to Contracts Finder (at <https://online.contractsfinder.businesslink.gov.uk/>), or the OJEU, (<http://simap.europa.eu>) , depending on the value. The opportunity will also be advertised on the Council's website.

- 7.4.2 By using the e-tendering system for OJEU procurements, the manual tender opening process is no longer required, as the system meets all the control procedures automatically without the need for manual recording of receipts.
- 7.5 Financial thresholds at which variations to a contract can be approved, and by whom, have also been revised (section 26.6 and 26.7).
- 7.6 The rules have also been updated to reflect the particular requirements relating to the procurement of Consultants and for Land and Property disposals.
- 7.7 The EU thresholds have been replaced with a link to the cabinet office website, which is updated annually with any changes. This replaces the need to update the rules each time the thresholds change. Currently the EU Threshold for Works Contracts is five million Euros (£4.35 million) and for Goods and Services it is 200k Euros (£174k).
- 7.8 This set of revisions retain the ability to invite the Portfolio Holder to attend Tender openings for contracts, although the threshold is now £100k, instead of £50k.

8. LEGAL IMPLICATIONS

- 8.1 Full Council adopts and changes the Constitution and documents such as the Contract Procurement Rules that are appended to the Constitution. Under its terms of reference Cabinet may, by recommendation, advise the Council in the formulation of those policies within the Council's terms of reference.
- 8.2 The Council must comply with the Public Contracts Regulations 2006 for all procurements above the EU threshold. Below that threshold the procedures to adopt are for the authority to decide. The overriding EU principles of transparency, non-discrimination and equal treatment apply to procurements for which there is evidence of interest from other EU Member States. Having a robust set of Contract Procurement Rules should ensure compliance with these obligations and reduce the risk of successful legal challenge to a procurement.

9. FINANCIAL IMPLICATIONS

- 9.1 These are procedural matters that have no direct financial impact upon the Council's revenue or capital budgets. The changes seek to make the rules more straightforward to apply and allow officers to take a more proportionate approach.

10. RISK IMPLICATIONS

- 10.1 Adoption of the proposed amendments will contribute to the Council's internal control environment and the management of risk.

11. EQUALITIES IMPLICATIONS

- 11.1 The Equality Act 2010 came into force on the 1st October 2010, a major piece of legislation. The Act also created a new Public Sector Equality Duty, which came into force on the 5th April 2011. There is a General duty that public bodies must meet, underpinned by more specific duties which are designed to help meet them.

- 11.2 In line with the Public Sector Equality Duty, public bodies must, in the exercise of its functions, give **due regard** to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 11.3 The Contract Procurement Rules in themselves do not generate equalities implications, however their application when considering specific procurements of goods and services, or works, must take full account of this legislation.

12. SOCIAL VALUE IMPLICATIONS

- 12.1 As the recommendations made in this report do not, in themselves, constitute a public service contract, the measurement of 'social value' as required by the Public Services (Social Value) Act 2012 need not be applied. However, the application of the Contract Procurement Rules must take full account of this requirement when procuring a public service contract.

13. HUMAN RESOURCE IMPLICATIONS

- 13.1 These are procedural matters that have no direct adverse impact upon either the Council's staff resources or equality issues.

14. APPENDICES

- 14.1 Appendix A1 – draft amended Contract Procurement Rules (track changes version).
- 14.2 Appendix A2 – draft amended Contract Procurement Rules (clean copy).
- 14.3 Appendix B - Summary of Changes.

[NOTE: the above appendices have been circulated under separate cover.]

15. CONTACT OFFICERS

Andy Cavanagh, Head of Finance, Performance & Asset Management, Tel, 474243, email Andrew.cavanagh@north-herts.gov.uk

Anthony Roche, Acting Corporate Legal Manager, Tel 474588, email anthony.roche@north-herts.gov.uk

Tracey Sargent, Shared Procurement Officer, Tel 474284, email tracey.sargent@north-herts.gov.uk

16. BACKGROUND PAPERS

None.