

CABINET

22 NOVEMBER 2016

*PART 1 – PUBLIC DOCUMENT

AGENDA ITEM No.

7A

TITLE OF REPORT: ITEM REFERRED FROM FINANCE, AUDIT AND RISK COMMITTEE: 22 SEPTEMBER 2016 – UPDATED CONTRACT PROCUREMENT RULES

The following is an extract from the Draft Minutes of the Finance, Audit and Risk Committee meeting held on 22 September 2016.

32. UPDATED CONTRACT PROCUREMENT RULES

The Head of Finance, Performance and Asset Management presented a report seeking to revise the Contract Procurement Rules to incorporate the following process, legislative and policy changes:

- Ensuring that concession contracts complied with legislation;
- Requirement to consider social value in line with legislation;
- Inclusion of requirements in relation to the Go Local policy;
- Increased use of the Intend electronic tendering system; and
- That provisions around contract extensions more closely reflected the requirements of the Public Contracts Regulations 2015.

The Head of Finance, Performance and Asset Management advised that the major changes to the Rules were summarised in Section 7 of the report. He highlighted the changes relating to Concession contracts, the Social Value Act, “Go Local” Policy and enhanced use of the Council’s electronic tendering system (“InTend”).

The Head of Finance, Performance and Asset Management stated that the updated Rules were set out in Appendix A to the report. He commented that the submitted version would need some minor amendments to the glossary section, but that this would not affect the overall content of the Rules. The complete changes made since the last published version were set out in tabular form in Appendix B to the report.

In response to a Member’s question, the Head of Finance, Performance and Asset Management confirmed that the Rules would be thoroughly reviewed to reflect any Government legislation on procurement put in place following withdrawal from the European Union.

RECOMMENDED TO CABINET: That the proposed changes to the Contract Procurement Rules, as described in Section 7 of the report and as set out in Appendix A to the report, be recommended to Council for approval.

REASON FOR DECISION: To contribute towards effective organisational control, as part of the Council’s Financial Management and Procurement review processes.

The following is the report considered by the Finance, Audit & Risk Committee at its meeting held on 22 September 2016.

TITLE OF REPORT: UPDATED CONTRACT PROCUREMENT RULES

REPORT OF THE HEAD OF FINANCE, PERFORMANCE AND ASSET
MANAGEMENT

EXECUTIVE MEMBER: COUNCILLOR T. W. HONE.

1. SUMMARY

1.1 This report provides an update to the Contract Procurement Rules that seek to revise the rules to incorporate the following process, legislative and policy changes:

- Ensuring that concession contracts comply with legislation
- Requirement to consider social value in line with legislation
- Inclusion of requirements in relation to the Go Local policy
- Increased use of the Intend electronic tendering system
- That provisions around contract extensions more closely reflect the requirements of the Public Contracts Regulations 2015

1.2 To request that FAR Committee notes and recommends the proposed changes to Cabinet, and onwards to Council, for adoption.

2. RECOMMENDATIONS

2.1 That FAR Committee agrees the following proposed changes to Contract Procurement Rules as described in Section 7 of this report and forwards these rules to Cabinet for onward approval by Full Council.

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 are being presented to FAR Committee for consideration, prior to referral to Cabinet and Council.

5. FORWARD PLAN

5.1 There are no recommendations relating to the Forward Plan in this report.

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 and the Contract Solicitor. 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. They have also been agreed by the Senior Management Team.

- 6.2 The Rules were last reviewed by Cabinet at its meeting on 16th June 2015 and recommended to Council for approval of the current version of the Contract Procurement Rules on 16th July 2015.
- 6.3 At its meeting on 28th July 2015, Cabinet considered the impact of Public Services (Social Value) Act 2012, including how this would be incorporated in Contract and Procurement regulations. They agreed a number of recommendations to be incorporated in to the Contract Procurement Rules, covering both Social Value and Go Local. The recommendations were reviewed by the Overview and Scrutiny Committee, but were not considered by the FAR Committee.

7. ISSUES

- 7.1 The revised Contract Procurement Rules (“procurement rules”) are provided at Appendix A, with the changes referenced below highlighted. In addition, a list of the changes is provided at Appendix B. The following paragraphs provide details of the key changes.
- 7.2 A concession contract is where the council outsources works or services to a provider that has the right to commercially exploit those works or services in order to make a return. The council’s contract for running the leisure centres is a concession contract as it allows the provider to keep income from the amounts paid by users of the facilities. New regulations on concession contracts have been introduced in 2016. Given the complexity of this legislation, the procurement rules require that advice is sought from legal and contracts. So this change aids compliance with legislation.
- 7.3 The Public Services (Social Value) Act imposes an active duty on the council to consider the economic, environmental and social benefits that can be achieved through commissioning. It does so by requiring consideration of the following:
- a) How to improve, through procurement, the social, economic and environmental well-being of the area served by that contracting authority; and
 - b) How to undertake a procurement process with a view to securing that improvement.

In line with the act, the changes to the contract rules require that Social Value is considered for contracts over the EU procurement limit. The contract rules also include a provision for considering social value for contracts over £50,000. The procurement rules do not state how Social Value should be considered as this is likely to be unique to each contract. Separate guidance is provided on what to consider.

- 7.4 The “go local” policy necessitates that any officer seeking to acquire goods or services with a value below £50,000, to first attempt to locate those goods, services or works from a supplier located within the NHDC geographical area. The method of acquisition would be in accordance with the current contract rules. The policy does not need to be applied if there is no suitable supplier or local prices are significantly higher than the wider market. The overarching principle of this policy would be that, for appropriate procurement, NHDC **will aim to use** local suppliers for the provision of goods, services and works, having full regard for the principles of “best consideration”. The changes to the procurement rules adds in the requirement for “go local” to be applied for contracts under £50,000.

- 7.5 The current procurement rules require that the electronic tendering system (InTend) is used for service procurements above £50,000 (£250,000 for works). This report proposes that this limit is changed to service procurements over £10,000 (£50,000 for works). Experience from those that use InTend is that it is a good way to ensure that the correct process is followed, it ensures that contract documentation is kept securely in one place and aids consistent communication with bidders. The documentation requirements are very similar between contracts above £10,000 and £50,000 and so it seems logical to use the same approach. Training and ongoing support will be provided to all relevant contract managers to ensure they know how to use the InTend system. More contracts going through the InTend system will also make it easier to report on contracting, saving time on reporting activities and also giving the potential for additional reporting.

8. LEGAL IMPLICATIONS

- 8.1 The terms of reference of Finance Audit and Risk Committee include “to maintain an overview of the council’s constitution in respect of Contract Procurement Rules...”.
- 8.2 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 or reference.
- 8.3 The Council must comply with the Public Contracts Regulations 2015 for all procurements above the EU thresholds. Below these thresholds, the procedures to adopt are largely for the authority to decide; the 2015 Regulations introduced some limited controls on procurements below threshold as well as authority for the Cabinet Offices to introduce statutory guidance for below threshold procurements Since the Regulations came into force statutory guidance has already been issued and the indications are that more will follow.
- 8.4 The overriding principles of transparency, non-discrimination, mutual recognition and equal treatment apply to all procurements, where there is evidence of cross-border interest, irrespective of their value. 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 exercise.

9. FINANCIAL IMPLICATIONS

- 9.1 These are procedural matters that have no direct financial impact upon the Council’s revenue or capital budgets.

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 within specified parameters as laid out in the Social Value Act. Social Value is one of several factors to be considered when purchasing goods and services, or entering into a works contract.

13. HUMAN RESOURCE IMPLICATIONS

13.1 The process changes in relation to the use of the Intend e-tendering system have been reviewed by the Contract and Procurement Group and the Senior Management Team. It is not expected that this will lead to significant extra work during the tendering process, and will be more than off-set by the advantage of having the process fully recorded in case of queries at a later stage.

14. APPENDICES

14.1 Appendix A – Draft amended Contract Procurement Rules.

14.2 Appendix B - Summary of Changes.

15. CONTACT OFFICERS

Ian Couper, Head of Finance, Performance & Asset Management, Tel, 474243, email ian.couper@north-herts.gov.uk

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

Gavin Ramtohal, Contracts and Procurement Solicitor, Tel 474578, email gavin.Ramtohal@north-herts.gov.uk

Rachel Cooper, Payments and Reconciliations Manager, Tel 474606, email rachel.cooper@north-herts.gov.uk

Kerry Shorrocks, Corporate Human Resources Manager, Tel 474224, email kerry.shorrocks@north-herts.gov.uk

16. BACKGROUND PAPERS

16.1 None.