

Report considered by the Finance, Audit and Risk Committee on 5 December 2019

TITLE OF REPORT: UPDATED CONTRACT PROCUREMENT RULES FOR 2019/20

REPORT OF THE LEGAL COMMERCIAL TEAM MANAGER

EXECUTIVE MEMBER: MARTIN STEARS-HANDSCOMB

COUNCIL PRIORITY: RESPONSIVE AND EFFICIENT

1. EXECUTIVE SUMMARY

1.1 This report sets out the proposed changes to the Contract Procurement Rules for review and referral that, in summary, seeks to make the following changes:

- An update to section 2.4 to streamline the reporting process for non compliance with the Rules;
- A new section 3.10 which requires commissioning officers to consider how the principles of locality and environmental protection can be incorporated in procurements.
- An update to Table A on page 238 to emphasise the requirement to discuss the principles of locality and environmental protection for each procurement;
- A further update to Table A to require mandatory CreditSafe alerts for all OJEU procurements;
- A new section 17.2 to provide guidance on dealing with supplier viability and financial risk;
- An update to section 29 to give Service Directors authority to extend contracts by up to 24 months to a maximum value of £200,000;

2. RECOMMENDATIONS

2.1 That Committee considers the proposed changes and recommends their adoption to Full Council.

3. REASONS FOR RECOMMENDATIONS

3.1 That the Contract Procurement Rules are part of the Constitution (under Section 20) and are revised and updated periodically as part of the Council's governance 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.

3.2 To reflect the Council's new focus on the principles of locality and environmental protection.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The option of not updating the Contract Procurement Rules would prevent the Council from making improvements to the Rules and incorporating changes that reflect new priorities for the Council. Not updating the Rules also increases the risk of the Council not adhering to the latest procurement legislation and best practise and inconsistencies with the remainder of the Constitution. The Contract Procurement Rules are, in any event, reviewed annually.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1 This report and appendices are being presented to FAR Committee for consideration, prior to referral to Council.

6. FORWARD PLAN

- 6.1 This report does not contain a recommendation on a key decision and has not been referred to in the Forward Plan.

7. BACKGROUND

- 7.1 The Contract Procurement Rules are reviewed on an annual basis to ensure they remain relevant and appropriate to the Council's needs. This review has been conducted by the Contracts & Procurement Group, led by the Legal Commercial Team Manager, Procurement Officer and Service Director - Legal and Community. The Service Director – Resources has reviewed and agreed the proposed changes.
- 7.2 Full Council approved the current version of the Contract Procurement Rules on 17th January 2019.¹

8. RELEVANT CONSIDERATIONS

- 8.1. The revised Contract Procurement Rules are provided at Appendix A, with all proposed changes shown as tracked changes. A summary of key changes within this new version are outlined below. There are also very minor changes to the Rules such as references to “legal and community” changing to “legal”

Compliance with the Rules:

- 8.2. The current version of the Rules requires non compliance to be reported to the Monitoring Officer and the Senior Management Team. In order to streamline this process, it is proposed that non compliance is reported to the Monitoring Officer and the Monitoring Officer may consult with the Service Director: Resources if appropriate. Given that non compliance may lead to disciplinary action, reporting only to statutory officers would maintain confidentiality.

Principles of Locality:

- 8.3. The proposed new section 3.10 reflects the Council's new focus on community engagement and environmental protection and also builds on the existing requirements to consider how the Council can promote social value in procurements. The ambition is to boost and coordinate local spending for the benefit of the community.

¹ <https://democracy.north-herts.gov.uk/ieListDocuments.aspx?CId=136&MId=2011&Ver=4>

Supplier viability and Financial risk

- 8.4. Table A on page 238 has been updated to require mandatory CreditSafe alerts to all procurements above OJEU thresholds. This will ensure the Council receives automatic email notification of any changes to a company's financial risk profile. Also, a new section 17.2 provides guidance on, and a process for, awarding contracts where financial and viability checks raise significant concerns regarding the financial health of a successful bidder. There is separate detailed guidance for Officers on how to carry out financial health assessments when evaluating bids for a contract, which includes use of CreditSafe reports. Financial assessment and evaluations are carried out by qualified finance staff.

Extension of contracts up to 24 months;

- 8.5. Currently, Service Directors are authorised to extend contracts by up to a period of 12 months up to a contract value of £100k. Consultation with Contracts Procurement Group found that this time frame was far too restrictive and short to facilitate a sufficient number of contract extensions. This report seeks an increase from 12 to 24 months, up to a contract value of £200k. The relevant Executive Member shall be authorised to extend contracts for a period over 24 months or over 200k as applicable with the approval of the Service Director: Resources following consultation with the Finance & IT Executive Member. In all cases, an extension must be the best value option. Further safeguards have been added to the rules, namely that Service Directors must ensure that all extensions comply with the law and consider whether any extension would have a detrimental impact on the Council's strategies and plans.

9. LEGAL IMPLICATIONS

- 9.1 Under section 10.1.5 (g) of the Finance Audit and Risk Committee's terms of reference it has remit "*to maintain an overview of the council's constitution in respect of Contract Procurement Rules consider any major changes and make recommendations to Council for approval*".
- 9.2 Full Council adopts and changes the Constitution and documents such as the Contract Procurement Rules that are part of the Constitution.
- 9.3 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 Office to introduce statutory guidance for below threshold procurements.
- 9.4 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.
- 9.5 Section 135 of the Local Government Act 1972 confirms that Councils must make standing orders with respect to the making of contracts. Section 37 of the Local Government Act 2000 confirms that a Council's constitution must contain its standing orders.

10. FINANCIAL IMPLICATIONS

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

11. RISK IMPLICATIONS

- 11.1 Adoption of the proposed amendments will contribute to the Council's internal control environment and the management of risk.
- 11.2 Although the proposed new section 17.2 may assist contract managers with decision-making in relation to considering financial risk and contractor viability, there will always be a degree of financial risk with any contract award. It must be noted that a contractor's financial health may deteriorate after contract award for a variety of reasons and no contractor will achieve a perfect financial credit score. There will be situations where there is a decision to take on risk around contractor viability e.g. because all tenderers had a similar risk, the contract price or quality differentials make the risk worth it or applying the 'go-local' policy. The risks involved were considered by Finance, Audit and Risk Committee in a report in September 2016 (see background papers).

12. EQUALITIES IMPLICATIONS

- 12.1 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their 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.
- 12.3 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.

13. SOCIAL VALUE IMPLICATIONS

- 13.1 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.

14. HUMAN RESOURCE IMPLICATIONS

- 14.1 There are no implications, other than confirming that relevant managers will receive training on the updated procurement rules, and the Procurement Officer shall provide updates at relevant team meetings during 2020.

15. APPENDICES

- 15.1 Appendix A – Draft amended Contract Procurement Rules.

16. CONTACT OFFICERS

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17. BACKGROUND PAPERS

- 17.1 Ongoing Financial and Operational Viability of Contractors- report to Finance, Audit and Risk Committee, 22nd September 2016.