

Special Advisory Group

7 December 2015

Report title	Contract Procedure Rules Update	
Cabinet member with lead responsibility	Councillor Andrew Johnson Resources	
Key decision	No	
In forward plan	No	
Wards affected	All	
Accountable director	Mark Taylor, Director of Finance	
Originating service	Procurement	
Accountable employee(s)	Andy Moran	Head of Procurement
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Report to be/has been considered by	Strategic Executive Board	20 October 2015

Recommendation(s) for action or decision:

The Advisory Group is recommended to:

1. Agree that the Contract Procedure Rules, in Appendix 1, and any associated drafting amendments be recommended to Full Council on 16 December 2015 for approval and inclusion in the Council's Constitution.

1.0 Purpose

- 1.1 The purpose of this report is to provide details of the proposed updated Contract Procedure Rules which form part of the Council's Constitution.

2.0 Background

- 2.1 As a result of the implementation of new European Public Procurement Directives and associated UK Public Contracts Regulations 2015 the Council's Contract Procedure Rules required updating to ensure the Council's procurement activity complies with the relevant legislation.
- 2.2 The new Public Contract Regulations were enacted at short notice in February 2015 and the procurement team operating procedures were adjusted to ensure continued compliance.
- 2.3 A new Procurement Strategy (2015 to 2018) has been produced and these updated Contract Procedure Rules will provide the framework for the implementation of this strategy.

3.0 Main Changes in the Update

- 3.1 Procurement processes – tables have been included which set out how each type of procurement process should be undertaken based on value. In summary;
- Less than £250 use Procurement card
 - Up to £10,000 is a Request for quotation, minimum of one quote
 - Up to £50,000 is a Request for quotation, minimum of three quotes
 - Over £50,000 is a single stage Invitation to tender, open competition
- 3.2 The tables include the requirements for the available procurement routes, advertising, evaluation, approvals and authority for contract signing.
- 3.3 Cabinet (Resources) Panel approvals – two changes have been proposed as to when contracts are reported to the Cabinet (Resources) Panel for approval;
- a) the value at which contracts are required to be approved has been revised to the threshold of the Official Journal of European Union (OJEU) for Supplies and Services, currently £172,514 (the previous value was £100,000).
 - b) approval should be gained in advance of commencing a procurement process by requesting delegated authority to award the contract when the evaluation is complete.
- 3.4 These changes will improve the decision making process by making all contracts above the threshold visible to Councillors in advance and provide the opportunity for input at an early stage and any suggestions and concerns can be addressed during the pre-procurement stage.

- 3.5 Where the contract is complex or high value the Cabinet (Resources) Panel may, by exception, request that a further report is provided setting out the results of the evaluation prior to the contract being awarded.
- 3.6 Pre-qualification questionnaires (PQQs) – the use of PQQs will not be allowed unless this is required by legislation, i.e. where either Competitive Dialogue or Competitive Procedure with Negotiation is used. Use of a PQQ will require approval from the Head of Procurement.
- 3.7 Exemptions – Exemptions from compliance with the Contract Procedure Rules can be approved by the Head of Procurement and Chief Accountant. A list of the valid reasons is set out in the Contract Procedure Rules. A new non-compliance process has been included in which breaches of the Contract Procedure Rules will be recorded and reported. If the value of the Exemption is greater than the OJEU threshold for supplies and services then approval must be sought from the Cabinet (Resources) Panel.
- 3.8 Contract Management – an electronic copy of each contract will be required to be included on the Contracts Register. For each contract an individual will be identified as the Contract Manager who will have responsibility for the management of the contract.
- 3.9 Social Care Contracts - It is recognised that either because of service user choice or the nature of the market for specialist placements that for some types of social care contracts that competitive procurement processes cannot be undertaken. Specific exclusions have been included with checks to ensure value for money is obtained.
- 3.10 Finance Leases (excluding land and property) - Where a contract requires the Council to enter into a finance or lease agreement then advice should be sought from the relevant Finance Business Partner in advance. Approval is required by the Chief Accountant before entering into the agreement.
- 3.11 Disposal of Assets (excluding Land and Property) – for disposals less than £10,000 the process must be agreed by the Strategic Director or Director. For disposals over £10,000 the chosen process must be agreed by the Director of Finance.
- 3.12 Concessions and Revenue Earning Contracts - approval of the commercial arrangements and contract terms and conditions must be obtained from the Director of Finance and from Legal Services. Where the potential value of the concession or revenue is greater than £200,000 then approval is required from Cabinet (Resources) Panel prior to entering into the agreement.
- 3.13 Land and Property Transactions - for all land and property transactions or proposals the advice of Corporate Landlord team must be sought. The decision making responsibilities have been categorised into Strategic Director: Place, Cabinet Member for City Assets in consultation with the Strategic Director: Place and Cabinet (Resources) Panel depending on the level of risk.
- 3.14 Social Value – the evaluation criteria for all contracts must consider;
 - a) how the contract might improve social, economic and environmental well-being.

- b) the accessibility to Small and Medium size Enterprises (SME).
- c) the Shared Values and Principles included in Wolverhampton Voluntary Sector Council Compact Funding, Commissioning and Procurement Code of Practice where the contract may be suitable for voluntary, community or social enterprise organisations to deliver.
- d) consider the Council's policies including information governance, business continuity, equality and diversity, and safeguarding.

4.0 Future Development

- 4.1 To support the Corporate Plan target to 'increase the percentage of spend with suppliers whose address includes a WV postcode' an online quotation system will be implemented for low value contracts, i.e. less than £50,000, and a dedicated 'buy.wolverhampton.gov.uk' website created. This will be implemented during the remainder of 2015/16.
- 4.2 The aim is for the system to be operated by service teams with advice from Procurement. The effort required to advertise an opportunity will be similar to the current usual practice of obtaining quotes by email and will improve management information and audit trails.

5.0 Financial implications

- 5.1 The Contract Procedure Rules are required so that the Council can demonstrate that its procurement processes deliver value for money and that it is proactively discharging its fiduciary duties in relation to public procurement.
[GE/24112015/J]

6.0 Legal implications

- 6.1 The Contract Procedure Rules are made under the provisions of section 135 of the Local Government Act 1972 and govern the making of contracts for and on behalf of the Council.
- 6.2 The Contract Procedure Rules form part of the Council's Constitution. [RB/25112015/Z]

7.0 Equalities implications

- 7.1 A part of the Contract Procedure Rules is to complete a 'Starting a Procurement' form. This form includes the requirement to confirm that equalities implications have been considered. The following has been included on the form:

"Has an equality analysis been completed for the work so far? (It is likely that the analysis will need to be updated at key stages in the process, e.g. following consultation.) We should make a proportionate effort to ensure consultation is representative of relevant protected characteristics. Where this is not possible through general consultation, additional specific engagement may be appropriate (e.g. a discussion with a representative group)."

8.0 Environmental implications

- 8.1 The Contract Procedure Rules state that specifications and pricing models should include the whole life cost of the works, services or goods being procured including where appropriate any externalities which can be factored into the evaluation.
- 8.2 In accordance with the Public Services (Social Value Act) 2012 the compilation of specifications should also include consideration of how the procurement of a contract can secure additional value in relation to improvements in economic, social and environmental wellbeing. This is also included in the 'Starting a Procurement' form.

9.0 Human resources implications

- 9.1 The Contract Procedure Rules require that the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) regulations need to be considered, if a staff transfer is envisaged and advice should be sought from Legal Services and HR team. The requirement as to whether staffing issues have been considered is also included on the 'Starting a Procurement' form.
- 9.2 The Contract Procedure Rules include the requirement that for the engagement of temporary staff the HR business case process is followed.

10.0 Corporate landlord implications

- 10.1 The Contract Procedure Rules include the process for land and property transactions.
- 10.2 The requirement as to whether Corporate Landlord related issues have been considered is also included on the 'Starting a Procurement' form.

11.0 Schedule of background papers

- 11.1 Procurement Strategy 2105 to 2018