

REVIEW OF CONTRACT PROCEDURE RULES

SUMMARY

1. The report gives a summary of;
 - ❖ How the current Contract Procedure Rules have been reviewed
 - ❖ The main aims of the review
 - ❖ The main changes proposed
 - ❖ How staff will be made aware of and trained on the new rules
- 1.2 A copy of the latest draft of the revised Rules can be viewed on CMiS

RECOMMENDATIONS

- 2.1 To recommend to Council at the Annual Meeting in May 2009 that the revised Contract Procedure Rules ("The Rules") be adopted.
- 2.2 To authorise the Chief Legal Officer in consultation with the Head of Procurement to make minor amendments and additions to the revised Rules prior to adoption by full Council.

SUPPORTING INFORMATION

- 3.1 Under the Council's Constitution this Committee has power to review the adequacy of Contract Procedure Rules and make recommendation for changes to Council. At its meeting on 12 December 2007 the Committee received a report on the proposal to set up a team to carry out such a review.

Review Team

- 3.2 The makeup of the review team is set out in Appendix 2. The intention was to keep the numbers relatively small but to try and have a representative from each Department and a mix of officers from those who have to work with the Rules on the one hand and those who police them on the other.

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Background papers:	CIPFA & Local Government Task Force Guidance "Contract Procedure Rules"
List of appendices:	Appendix 1 – Implications
	Appendix 2 – Review Team Membership.
	Appendix 3 – New Areas
	Appendix 4 – Current & proposed Thresholds

Main Aims

- 3.3 The main aims of the review were to not only update them (new areas are listed in Appendix 3) but to make them clearer. This was one of the main issues raised by Departmental focus groups whose feedback was passed on to the Review Team before it started its detailed work.
- 3.4 The Review Team has also striven to hit an appropriate balance between probity on the one hand and a system that is workable on the other.

Compliance

- 3.5 In addition, in light of results of internal audit investigations into contract matters and the general concern of the Audit & Accounts Committee regarding non-compliance with CPR's, the opportunity has also been taken, to emphasise that compliance with the new Rules will be a requirement not a discretion (*see Rule 1*).

Guidance & Accessibility

- 3.6 However, it has become apparent to the review team that non compliance is often due to the fact that some officers only occasionally procure goods, services or works and are therefore unfamiliar with the Rules, where to find them or how to apply them.
- 3.7 This problem has been tackled by including within the Rules “**LINKS**” to practical advice in other Council documents and helpful precedents and by stressing the role of the Procurement Unit in providing assistance (*see Rule 2*).
- 3.8 It is also proposed to;
- ◆ include a step by step checklist of the new Rules in Appendix 1
 - ◆ produce a complementary guide to the Rules in a more descriptive format with flowcharts
 - ◆ put the new Rules and complementary guide on the Council website
 - ◆ run training courses.

Training

- 3.9 Once the new CPR have been approved by the Audit & Accounts Committee it is proposed to run extensive training sessions on the new Rules to ensure officers involved in the procurement process are fully conversant with them before they come into force at the Annual Meeting.

Format

- 3.10 The original intention of the review team, while updating the Rules, was to keep the format similar to the present ones. Though this has been done to a fair degree we have been strongly influenced by the format and content of the CIPFA and Local Government Task Force Guidance “Contract Procedure Rules”.
- 3.11 We have also had regard to the new Rules recently produced by Leicester City Council, after a fundamental review following a critical District Auditors report, and to a lesser extent Birmingham City Council's Rules.

Major Changes

3.12 There are four major proposed changes to the Rules;

- ◆ the number of “exemptions” have been reduced (*Rule 5*)
- ◆ the thresholds for the respective competition requirements have been increased (see Appendix 4 to this report and Rule 8)
- ◆ the concept of Approved Procuring Officers has been introduced (*Rule 9*)
the responsibility of Directors is clarified and extended (*Rule 10*).

Approved Procuring Officers

3.13 This is a concept borrowed from Leicester City Council. It is proposed that no officer other than an “Approved Procuring Officer” will be able to procure any goods, services or works for the Council of £5,000 or over (see *Rule 9.2*).

3.14 Each Department will in its Departmental Scheme of Delegation have to list all Approved Procuring Officers, the type of contract they can procure and the financial extent of their Authority (see *Rules 1.2 and 9.1*).

3.15 All Approved Procuring Officers will have to be trained on these Rules (see *Rule 10.1*).

Directors’ Responsibility

3.16 Directors will have a general responsibility to “take all reasonable measures to ensure procurement in their Department complies with the Rules” (*Rule 10*) and specific requirements to;

- ◆ ensure appropriate training is given to various staff in their Department involved in procurement (*Rule 10.1*)
- ◆ to appoint a senior officer to be the Departmental Procurement Adviser to provide practical advice and guidance, liaise with the Procurement Unit, raise significant procurement issues at Departmental meetings and ensure the list of Approved Procurement Officers in the Delegation Scheme is up to date (*Rule 10.7*)
- ◆ ensuring a Departmental “Contract Register” of all contracts over £30,000 is set up and kept up to date. (*Rule 10.3*)
- ◆ ensuring proper arrangements are in place for the receipt, custody and opening of quotes and tenders under £30,000 are in place, (*Rule 10.4*)
- ◆ ensure that “Tender Receipt Officers”, are appointed and trained to deal with the receipt, custody and opening of tenders of between £30,000 and £75,000 (*Rule 10.5*)
- ◆ to review the Contract Register and Tender Receipt Registers at Departmental Management Teams once a year (*Rule 10.6*)
- ◆ to consider once a year at a Divisional Management Meeting contracts over £75,000 that need letting (*Rule 10.6*).

Other Changes

3.17 The new Rules also propose some less dramatic changes such as;

- ◆ the reporting of all approved urgent waivers to the next Cabinet (*Rule 6.6*)

- ◆ the annual reporting of all waivers to the Audit & Accounts Committee (*Rule 6.7*)
- ◆ emphasising the need to ensure that funding is available (*Rule 17.4*) and all necessary approvals (e.g. Cabinet) have been obtained (*Rules 17.6*) for contracts.

Timetable

- 3.18 Consultation on the new draft Rules is still ongoing and some minor variations and additions may still need to be made hence the need for the second recommendation (para 2.2).
- 3.19 However, by the end of February it is anticipated that the new Rules will be finalised and training will be provided from then on up until the Annual Meeting in May when it is hoped the new Rules will be formally adopted and come into effect.

IMPLICATIONS

Financial

- 1.1 The new Rules should ensure greater financial probity and better value for money

Legal

- 2.1 Under Section 135 Local Government Act 1972 a Local Authority must make “Standing Orders with respect to – contracts for the supply of goods and materials or the execution of works which shall include provision for securing competition and regulating the manner in which tenders are invited” but may exempt contracts below a specified price or where it is satisfied an exemption “is justified by special circumstances.”

Personnel

- 3.1 None directly arising.

Equalities Impact

- 4.1 Organisations bidding for contracts over £30,000 will usually be required to complete a pre qualification questionnaire which will include equality questions.

Corporate Themes and Priorities

- 5.1 It is an objective of the Council’s Procurement Strategy that the Contract Procedure Rules are reviewed.

APPENDIX 2

REVIEW GROUP MEMBERSHIP

Dawn Moran	(Head of Procurement)
Stuart Leslie	(Chief Legal Officer)
Chris Edwards	(Assistant Director Property Services)
Adrian Manifold	(Audit Manager)
Keith Howkins	(Acting Head of Finance)
Andrew Morgan	(Landscape & Development Officer, Environmental Services)

MEMBERS/OFFICERS INVITED LIMITED NUMBER OF MEETINGS

- ◆ Councillor Yvonne Williams
- ◆ Karen Doe (Children & Young People's Department)
- ◆ Carolyn Wright (Acting Assistant Director Corporate Finance)
- ◆ Clare Wasteney (Project Lawyer)
- ◆ Laura Halom (Procurement Officer)

APPENDIX 3

NEW AREAS

◆ Compliance	-	Rule 1
◆ Corporate Contracts	-	Rule 13
◆ Framework Agreements	-	Rule 15
◆ Soft Market Testing	-	Rule 18
◆ E – Tenders	-	Rule 29
◆ Information Technology	-	Rule 50
◆ Outsourcing/Service Contracts (TUPE)	-	Rule 51
◆ Finance/Operating Leases	-	Rule 53
◆ Avoidance of Corruption	-	Rule 54 - 56

APPENDIX 4

CURRENT & PROPOSED LEVEL THRESHOLDS

CURRENT TENDER THRESHOLDS

Below £1,000	No requirements
£ 1,000 up to £ 5,000	3 + quotes “where practical” (oral if urgent but confirm in writing).
£ 5,000 up to £20,000	*At least 3 written quotes but “in cases of urgency or other good reason” can obtain fewer & just record reason in writing on file.
£20,000 up to £50,000	<p>*At least 3 firms from relevant approved list or “construction line” chosen in accordance with CPR 16.</p> <p>*Direct invite to at least 3 firms.</p>
Over £50,000	<p>*At least 4 firms from relevant approved list/construction line chosen in accordance with CPR 16.</p> <p>*Where no approved list or construction line not available or appropriate (in consultation with Chief Legal Officer) then either:</p> <ul style="list-style-type: none">-Public notice inviting direct tenders-Public notice asking for expressions of interest then at least 4 firms invited to tender.-For contracts of “Specialist Nature” Tenders can be sought direct from at least 4 firms following consultation with Chief Legal Officer and relevant Cabinet Member.

PROPOSED TENDER THRESHOLDS

TOTAL VALUE	AWARD PROCEDURE
Below £5,000	<p>* Must use existing relevant Corporate Contract if there is one and if not get at least one oral quote and then place an official order.</p> <p>* <i>Good practice to get three quotes)</i></p>
From £ 5,000 up to £30,000	<p>* Must, before placing an order, get at least three written quotes (using standard form quotation on Derbynet or other form of quotation by the Head of Procurement)</p> <p>* Directors may waive this requirement but must inform the Head of Procurement in writing of their reasons.</p>
From £30,000 up to £75,000	<p>* Must tender by one of the following methods:-</p> <p>(a) Public notice inviting tenders. (<i>“Open Procedure”</i>; see Rule 19).</p> <p>(b) Invite to at least 3 organisations to tender after public notice asking for expressions of interest, or maximum number who pre-qualify if less than 3. (<i>“Restricted Procedure”</i>; see Rule 19).</p> <p>* The Head of Procurement may however allow tenders to be invited direct from at least 3 organisations if satisfied that the goods, services or works can only be delivered by a limited number of specialist organisations.</p>
Over £75,000	<p>* Must tender by one of the following methods:-</p> <p>(a) Public notice inviting tenders (<i>“Open Procedure”</i>; see Rule 19).</p> <p>(b) Invite to tender to at least 4 organisations after public notice asking for</p>

	<p>expressions of interest or maximum number who have pre-qualified if less than 4. <i>("Restricted Procedure"; see Rule 19)</i></p> <p><i>NB. Need to obtain waiver under Rule 5 to invite organisations to tender direct even for a specialist area.</i></p>
<p>Above EU Threshold (Approximately £140,000 Services and goods & £3.5m for works</p>	<p>In accordance with EU requirements and in consultation with the Head of Procurement. (See Rule 16).</p>