

Update of the Contract Procedure Rules 2009

SUMMARY

- 1.1 The Contract Procedure Rules were last updated in June 2009. Changes to procurement legislation and the organisational changes in the Council have made change necessary. Additionally a number of rules have been simplified to aid compliance whilst maintaining the required level of control.

RECOMMENDATION

- 2.1 To give approval for these amendments being tabled for approval by Council at the meeting to be held on the 22 May 2013.

REASONS FOR RECOMMENDATION

- 3.1 Changes to contract procedures rules have to be approved by the Audit and Accounts Committee prior to submission to full Council.

SUPPORTING INFORMATION

- 4.1 The proposed changes to the Contract Procedure rules are detailed in Appendix Two. This also shows the reason for the change. The key changes are summarised below.
- 4.1.1 The removal of the requirement to approve individual Officers to procure Goods, Services and works valued over £5000 and instead identify those job roles which include a required to procure.
- 4.1.2 The removal of the requirement for Departments to appoint 'Procurement advisors' This is replaced by Directorates having representation on the Strategic Procurement Board. Procurement advice and Guidance is provided by the Central Procurement Unit. This change confirms current practice.

- 4.1.3 Changes to competition requirements.
It is recommended that all requirements between £30,000 and the EU threshold be advertised openly with at least four organisations invited to tender. Currently the requirement for contracts valued £30,000 to 75,000 is to invite at least three organisations.
It is proposed to remove the rule allowing direct invitation, rather than open advertisement to selected organisations to bid for contracts of a specialist nature.
- 4.1.4 Alternatives to tendering
References to Approved list have been removed. Changes to the EU Procurement regulations mean that opportunities to use approved lists are very limited.
- 4.1.5 Framework Agreements.
It is recommended to remove the requirement for Cabinet approval to be sought prior to the use of a framework agreement. Framework agreements are often used to meet urgent requirements, it is therefore proposed that the Head of Procurement approve the use of these agreements having first established that the use is compliant and offers value for money.
- 4.1.6 Acceptance of a tender other than the lowest price.
It is recommended to remove this rule and replace with the requirement that the most economically advantageous tender is selected unless a waiver is authorised. Procurement legislation is clear that published selection and award criteria must be adhered to. Failure to comply with this could lead to a legal challenge being upheld.
- 4.1.7 Contract Signing and Sealing
It is recommended that the requirement to have two signatures on the contract be amended to one. The signing stage is at the end of a process which includes a number of checks and signatures.

OTHER OPTIONS CONSIDERED

- 5.1 Not applicable

This report has been approved by the following officers:

Legal officer Financial officer Human Resources officer Estates/Property officer Service Director(s) Other(s)	Chief Officer Group M Marples
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For more information contact: Background papers: List of appendices:	Ray Poxon 01332 64 3271 e-mail ray.poxon@derby.gov.uk None Appendix 1 – Implications Appendix 2 – Contract Procedure rules 2009 – Proposed amendments
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Appendix 1

IMPLICATIONS

Financial and Value for Money

- 1.1 Adherence to up to date and compliant Contract procedure rules will allow officers to demonstrate value for money in procurement activities and will reduce the risk of costly legal challenges.

Legal

- 2.1 The amendments have taken account of changes to the EU Procurement regulations.

Personnel

- 3.1 The Central Procurement unit will undertake training to ensure officers are aware of the changes to the rules.

Equalities Impact

- 4.1 None

Health and Safety

- 5.1 None.

Environmental Sustainability

- 6.1 None

Property and Asset Management

7.1 None.

Risk Management

- 8.1 The Contract Procedure rules allow the Council to demonstrate its duty to:
- comply with best practice and procurement law
 - protect members and Officers of the Council from allegations of acting unlawfully
 - ensure that any risks associated with entering into contracts are mitigated.

Appendix 2

Contract Procedure Rules 2009 – Proposed Amendments

Section or Rule	Existing	Proposed Amendment	Reason
ALL	Post and Organisation Titles	To replace with current titles. For example Chief Legal Officer becomes Director of Legal and Democratic Services.	To reflect current posts and organisational structure
Compliance, purpose and Scope of the Rules			
1.2 and 9.1	Only Officers 'Approved' under their Departmental Scheme of Delegation can procure goods, services or works of £5000 or over.	Each Directorate's Scheme of Delegation should identify those job roles which are required and authorised to procure goods, services or works of £5000 or over.	Awareness of Procurement processes will be built into to job specifications and guidance and training will be provided to these post holders.
2.4 and 10.7	One Departmental Procurement advisor must be appointed in each Department to assist others on Procurement issues	Each Directorate will have at least one representative on the Strategic Procurement Board (SPB). SPB members will act as a link to disseminate procurement strategy to Directorates, manage risks and resolve issues which may impact on the successful delivery of procurement and commissioning projects.	The Strategic Procurement Board is established. Procurement advice to Directorates is available from the Central Procurement unit.
4.2	Schools: applicability of these rules to schools.	Clarification added that: <ul style="list-style-type: none"> these rules do not apply to Academies all publically funded schools are subject to EU and UK procurement legislation. 	There is no reference to Academies in the current rules.
Competition requirements			
8	£30,000 to £75,000 Tender by public notice or Invite expressions of interest and select at least 3 organisations to bid or If the contract is of a specialist nature, invite to tender at least 4 organisations by direct invitation.	Amend thresholds to read £30,000 to EU threshold. Invite to at least Four organisations to Tender after public notice asking for expressions of interest.	The standardisation of process for values between £30,000 and the EU threshold removes unnecessary complexity. The requirement to invite an additional supplier will increase competition and should contribute to cost reduction. Use of electronic tendering

	Over £75,000 to EU Threshold Tender by public notice or Invite expressions of interest and select at least 4 organisations to bid	Remove the clause allowing direct invitation to four organisations i.e. no public notice for items of a specialist nature.	systems means that additional workload is minimal. The removal of the opportunity to draw up select tender lists for specialist items will ensure that additional opportunities are advertised therefore giving the opportunity to innovative organisations and local businesses to meet our requirements.
Officers', Directors', and Agents' roles and responsibilities			
9.1	Officers Each Departments scheme of delegation must clearly identify Officers who are entitled to procure goods, services or works of £5000 or over (Approved Procuring Officers).	Each Directorate's Scheme of Delegation should identify those job roles which are required and authorised to procure goods, services or works of £5000 or over. Budget holders and Managers of post holders in identified job roles should ensure that the post holder follows Procurement guidance available on iDerby and / or seeks advice and guidance from the Central Procurement unit prior to commencing Procurement processes and that they are aware of their obligations under these rules.	By focussing on roles rather than individuals the scheme of delegation will remain valid for longer. The Procurement unit can ensure that training is provided for all identified posts. The Central Procurement unit will provide advice, guidance and training for Officers in order to achieve value for money outcomes that comply with legislation.
Contracts Register			
10.3 and 35.2 And 43	A departmental contracts register is maintained for all contracts over £30,000	A central contracts register will be maintained by the Central Procurement unit for contracts valued £30,000 and above. Officers undertaking Procurements must ensure that award details are forwarded to the Central Procurement team.	An accurate contracts register is required in order to meet obligations of 'Open data' and acts as an aid to effective contract management.
10.5 and 28.2	For tenders valued between £30,000 and £75,000 Departments should appoint Officers (Tender Receipt	All tenders valued over £30,000 should be received and opened in accordance with tender opening procedures by the	The Business support hub are independent of the procurement process and have the facilities to store

	Officials) independent of the procurement process to receive, safeguard and register tenders received by the department.	Business Support Hub.	and open tenders in accordance with the rules.
Management Review			
10.6	The DMT at least once a year should: Plan for letting and re-letting of contracts over £75,000 value. Review the designation of Approved Procuring Officers	Addition of the requirement to provide this information to the central Procurement unit. Review the designation of job the roles required to undertake procurements in the scheme of delegation.	With advance notice the Procurement unit can aggregate demand across the Council, facilitate collaboration with other authorities and plan workload to ensure that Procurements maximise value for money.
Alternatives to Tendering			
12 and 14	An Approved list is listed as an alternative to tendering	Reference to Approved lists to be removed from these rules including Appendix 3	Approved lists are no longer compliant with EU procurement regulations. Establishment of a tendered framework agreement will provide a compliant and cost effective solution.
New		Dynamic Purchasing system (DPS) A replacement section 14 covers the use of DPS. The new section 14.3 states that the Head of procurement should approve the use of DPS and the Central Procurement unit should advise during the tender process to establish the	The use of Dynamic Purchasing systems are referenced for the first time. These are approved for use under the EU regulations and allow new providers to be added to contracts during the contract life. It is essential that a DPS is established correctly. The Head of Procurement should therefore be involved at an early stage of development.
15.5	Framework agreements Cabinet Approval to a framework agreement must	The Head of procurement should agree the development of a framework agreement with	Cabinet will approve the contract award for Contracts valued over

	be obtained before it can be used.	the Directorate as the best procurement solution for the Council.	£75,000 under Rule 17.6.
15.9	Framework Agreements procured by other local authorities, public bodies or purchasing consortiums, for example the East Midlands centre of excellence or Office of Government Commerce (OGC) may be used if Cabinet has approved their use on being satisfied that the Council can lawfully use them and that it is in the Council's interest to do so.	Framework Agreements procured by other local authorities, public bodies or purchasing consortia, for example Government Procurement Service (GPS), Members of the Pro 5 local government procurement consortia or East Midlands Property Alliance / Scape,, may be used if the Head of Procurement has approved their use on being satisfied that the Council can lawfully use them and that it is in the Council's interest to do so	The titles of the public buying organisations (Consortia) have been updated to reflect changes. That the Head of Procurement should approve the use of framework agreements reflects the fact that the use of a framework provides a cost effective means to obtain goods and services quickly when time is of the essence.
Contract Value, Funding and Cabinet approval			
17.4	An approved Procuring Officer must not place an order or start a formal process for letting a contract unless he/she is satisfied that expenditure for it has been included in an approved capital or revenue budget.	A Procuring Officer must not place an order or start a formal process for letting a contract unless he/she is satisfied that expenditure for it has been included in an approved capital or revenue budget and an expenditure approval form has been completed and approved.	The requirement to complete an expenditure approval form ensures that procurement exercises are only undertaken for projects that are budgeted.
21	Award Criteria	This section has been updated to include reference to Selection criteria.	The distinction between selection and award criteria was introduced as part of the last revision of the EU Procurement regulations.
Contract award funding and other than the lowest tender			
36	Acceptance of tender other than the lowest	Acceptance of Tender Other Than the Most Economically Advantageous (MEAT)	DCC Contracts are awarded against MEAT criteria which are published at the tender stage.
36.1	For contracts between £30,000 and £75,000, no Tender other than the lowest must be accepted, even if it is judged to be the most economically advantageous on the stated award criteria,	For contracts over £30,000 Tenders must be accepted on the basis of the "most economically advantageous" tender. The winning bidder will be determined by using the criteria and process	The Procurement regulations dictate adherence to the selection and award criteria published in the tender documentation. The award must be made based on these criteria

36.2	<p>unless;</p> <ul style="list-style-type: none"> ◆ its Tender price is within £5,000 or 5% (whichever is the greatest) of the lowest Tender or ◆ a waiver has been given under Rule 6 <p>For contracts over £75,000 no Tender other than the lowest must be accepted, even if it is judged to be the most economically advantageous on the stated award criteria, unless;</p> <ul style="list-style-type: none"> ◆ its Tender prices are within 10% of the lowest Tender or ◆ a waiver has been given under Rule 6 	<p>communicated to bidders in the tender documentation unless:</p> <ul style="list-style-type: none"> ◆ a waiver has been given under Rule 6 <p>Replaced by the above</p>	<p>which will a combination of Price and Quality.</p>
38	Informing tenderers of Contract Award	This section has been amended to reflect changes to the EU Procurement regulations.	Mandatory changes to the feedback process have been introduced in the EU Procurement regulations
Signing of contracts			
41.1	<p>Contracts must be signed as follows:</p> <p>Value £30,000 to £75,000 Any two officers authorised under the scheme of delegation.</p> <p>Above £75,000 Any two of the following: Strategic Director of Resources Chief Legal officer Principal Solicitor (3) Project Lawyer</p>	<p>Value £30,000 to £75,000 Any (one) officer authorised under the scheme of delegation.</p> <p>Above £75,000 By any of the following Officers:-</p> <ul style="list-style-type: none"> ◆ Strategic Director of Resources ◆ Director of Legal & Democratic Services ◆ Head of Legal (General) ◆ Head of Legal (Child & Adult Care) 	<p>The signing process comes at the end of a process which includes a number of procurement, finance and legal checks. The requirement for two signatures is therefore unnecessary at this stage.</p>
Sealing of Contracts			

42.2	As in 41 above there is a requirement for two signatures to approve the sealing of a contract.	<p>Contracts under seal must be signed by any one of the following;</p> <ul style="list-style-type: none"> ◆ Strategic Director of Resources ◆ Director of Legal & Democratic Services ◆ Head of Legal (General) ◆ Head of Legal (Child & Adult Care) 	As above.
49	Consultants	The Approval process prior to appointing consultant services has been added to this section.	This process including the Use of Consultants control forms is already established.