

CONSTITUTION SUB-COMMITTEE – 7 MARCH 2022

POLICY AND RESOURCES COMMITTEE – 14 MARCH 2022

PART I – NOT DELEGATED

5. AMENDMENTS TO CONTRACT PROCEDURE RULES (CED/DoF)

1 Summary

- 1.1 The report details proposed amendments to the Council's Contract Procedure Rules.
- 1.2 The Council's Contract Procedure Rules became outdated once the UK formally left the European Union. Whilst amending the language in the Contract Procedure Rules to reflect the UK leaving, a review of the rules was undertaken.
- 1.3 Although the UK has now left the EU, the same processes and procedures remain in place with the overriding principal that Procurement in the Public Sector is required to achieve best value through remaining Open, Fair and Transparent in how it awards Contracts. The amendments to the Contract Procedure Rules still reflect this.
- 1.4 It should be noted that the Government is currently undertaking a review of Public Sector Procurement and the intention is for changes to be undertaken in 2024. It is likely the CPR will need to be updated again at that time, but it was felt that this was too long to wait for the update and amendments are required at this time.
- 1.5 The Consultation for these changes has been conducted across both Three Rivers and Watford Council's as both councils use the same rules as this makes it easier for those working in the shared services.
- 1.6 It should be noted that there is no amendment to the Scheme of Delegation as a consequence of these amendments. The authority to enter into Contracts or award has not changed. The amendments only concern Part 4 – Rules of Procedure – Contract Procedure Rules and not the Scheme of Delegations.

2 Details

- 2.1 The details of the proposed amendments to the Contract Procedure Rules incorporated (version 10.1) are summarised within this section. The full Contract Procedure Rules document is attached as Appendix 1. The key amendments are as follows:
 - 2.1.1 EU and Brexit - The removal of references to the European Union following Brexit including references to the Official Journal to the European Union. These now reference the UK Procurement Regulations.
 - 2.1.2 Shared Rules - The rules have been updated to ensure that titles, roles, processes, meetings are relevant within both councils. E.g. Group Head of Democracy & Governance (Watford) - Solicitor to the Council (Three Rivers).
 - 2.1.3 Framework Agreements - Further guidance is provided around the use of Framework Agreements and a statement permitting Direct Awards through appropriate Framework Agreements is acceptable (but the Council prefers competition to deliver value).

- 2.1.4 Procurement Route - Guidance around the preferred procurement route as “Open” has been removed stating that the most appropriate procurement route should be found. This applies to the use of Standard Questionnaires and the Contract form used (these will be determined by the appropriate procurement route). To support this, the rules now outline that a Procurement Strategy should be written supporting the business case for procurement’s in excess of £100k.
- 2.1.5 Specification & Evaluation Criteria - The Contract Procedure Rules now state the importance of Social Value and Sustainable options when making purchasing decisions, setting contract specification and managing contracts. This is to remind officers of this consideration and to consider this in the evaluation model. This now ties the rules in with the council’s Sustainability Action Plan. It is proposed that these elements are further captured when the council’s Procurement Strategies are updated.
- 2.1.6 Avoiding Challenges - Further guidance has been provided to ensure evaluators document their findings and that full contract and evaluation documentation is published when advertising above UK Threshold Requirements.
- 2.1.7 Opening Tenders - Guidance has been provided stating that the electronic procurement module records the receipt and time and opening process. Council’s do not necessarily have to operate a formal opening process, unless for some reason, a paper return process is operated (or tenders come back through third parties – such as Consultants operating on behalf of the Council).
- 2.1.8 Thresholds - There is a planned amendment to the Procurement Thresholds.

Please see full proposed table.

Thresholds excl. VAT	Minimum requirements
Less than £10,000	A minimum of one written quotation is provided. The Council would expect that Officers will seek more than one quote, where appropriate, to demonstrate value for money to the Council through a combination of cost and quality.
Greater than £10,000 up to £24,999	Three written quotations are sought from suitable organisations. The requirement does not need to be advertised.
Greater than £25,000 – UK Procurement Threshold	Public advertisement of the requirement and invite Tenders from at least three and usually no more than six bidders. If an appropriate framework agreement is used, there is no need to advertise. However a mini competition should be held in the majority of cases. Any Direct Awards must be supported by a statement as to why competition has not been sought through the framework and demonstrating value for money to the Council.
Above UK Procurement Threshold	Advertise and follow PCR2015 procedures and invite Tenders from at least five and usually no more than seven bidders. Alternatively, competition is sought through an appropriate framework agreement.

The following table provides the current Council Thresholds:

Thresholds excl. VAT	Minimum requirements
Less than £5000	One written quotation demonstrating value for money through a combination of cost and quality. More than one quote is preferred and should be sought where appropriate.
Greater than £5,000 up to £50,000	Advertise the requirement and invite at least three, and usually no more than six, written quotations or tenders demonstrating value for money through a combination of cost and quality
Greater than £50,000 – UK Procurement Threshold	Advertise the requirement and, except where the Open procedure is used, invite Tenders from at least three and usually no more than six bidders.
Above UK Procurement Threshold	Advertise and follow EU Procedures and, except where the Open procedure is used, invite Tenders from at least five and usually no more than six bidders.

- 2.1.9 The level of the lowest threshold is a key element of the proposed changes as officers would like more flexibility for lower spends. There was a consistent message from Service Heads across both council's that £5k was too low and that there was a desire to increase this to £10k. This was confirmed in the Strategic Leadership Group. The purpose of this increase is to allow the council to expedite certain requirements and to be flexible in delivering services.
- 2.1.10 For spend under £25k but over £10k, a new threshold has been introduced requiring competition and three written quotes. There is no longer a need to advertise up to £25k. This is in accordance with the Government Transparency Code – 2014.
- 2.1.11 The rules require all procurements to be advertised in excess of £25k unless an appropriate framework is utilised.
- 2.1.12 The rules regarding procurements above UK Procurement threshold in accordance with PCR2015 remain the same.
- 2.1.13 To support the rationale behind the lower threshold, Appendix 2 details the lowest procurement threshold of the Neighbouring Councils to demonstrate that the Council is in alignment with the majority of other Councils.

3 Options and Reasons for Recommendations

- 3.1 The current Contract Procedure Rules required updating. The amendments ensure that the Council has the rules in place now the UK has left the European Union, acknowledges UK Public Contract Regulations (2015) and the Government Transparency Code (2014).
- 3.2 The proposal is to amend the rules in line with the guidance provided by Government.

3.3 There is no amendment to the Scheme of Delegation as a consequence of these amendments. Delegation Authority remains the same with the value still set at £25k for Chief Executive Approval.

4 Policy/Budget Reference and Implications

4.1 The recommendations in this report are within the Council's agreed policy and budgets. There is no impact to Council Budgets by introducing these rules.

4.2 No Council Performance Indicators are affected as a consequence of adopting these rules.

5 Financial Implications

5.1 There are no Financial Implications as a consequence of adopting these rules.

6 Legal Implications

6.1 The legal implications are contained within the body of the report. The final decision on any amendment to the Contract Procedure Rules lies with full council.

7 Equal Opportunities Implications

7.1 There is no impact to Equalities, Human Rights and Data Protection from this report and no impact assessment was required.

8 Staffing Implications

8.1 There are no staffing implications as a consequence of adopting these rules. The role of procurement manager is a shared role with Watford Borough Council.

9 Environmental Implications

9.1 The rules around sustainability have been enhanced. Sustainable, Environmental and Social Value Criteria are encouraged through the guidance around Evaluation Criteria and inclusion within Council Procurements. This will be further stated in the Council's Procurement Strategy to be published in 2022.

10 Community Safety Implications

10.1 There are no Community Safety implications as a consequence of adopting these rules.

11 Public Health implications

11.1 There are no Public Health implications as a consequence of adopting these rules.

12 Customer Services Centre Implications

12.1 There are no Customer Services Centre implications as a consequence of adopting these rules.

13 Communications and Website Implications

13.1 The Council's website will be required to be updated on adopting th Rules.

14 Risk and Health & Safety Implications

- 14.1 The Council has agreed its risk management strategy which can be found on the website at <http://www.threerivers.gov.uk>. In addition, the risks of the proposals in the report have also been assessed against the Council's duties under Health and Safety legislation relating to employees, visitors and persons affected by our operations. The risk management implications of this report are detailed below.
- 14.2 The changes proposed are to mitigate risk currently experienced within the council. The requirement to advertise for contracts in excess of £5k was not practical and deemed as onerous. In practice, this was largely worked around with procurement exemptions sought by officers. The recommended higher level of advertising at £25k is in accordance with Government Transparency Rules. Officers would if the recommendations are agreed by council be able to process and receive quotes for requirements under £25k (whilst still providing a detailed brief to Suppliers). The proposed changes mean that there will be less requirement for exemptions and provide a more pragmatic and less onerous approach to securing value on lower cost contracts.
- 14.3 The key risk that the council faces in delivering successful procurement is ensuring that officers build in sufficient time to conduct a procurement, write a detailed specification successfully outlining the requirements, outline detailed evaluation criteria and understand the supply market. A failure to address one of these four issues typically leads to a poor outcome or the seeking of a procurement exemption (in the case of time). If the Contract Procedure Rules are adhered to by officers, the risks of an unsuccessful procurement are largely mitigated. For large procurements, a strategy should be written that reflects the business case and the perceived outcome of the tender process.

The following table provides specific detail

Nature of risk	Consequence	Suggested Control Measures	Response	Risk Rating
Legislative Risk	The Council's Rules already reflected current Legislation with the same rules in place as existed prior to Brexit. The changes proposed are in accordance with current UK Law.	Adherence of Officers to the Contract Procedure Rules	Tolerate	1
Framework Agreements	Use of Appropriate Framework and use of Direct Award. Officers do not conduct a full market engagement to determine alternatives within the market.	Recommendation Reports and Business Cases are assessed and reviewed. Competition is encouraged. Time is built into procurement process.	Treat	6
Threshold Increase	More Lower Value Procurement (under £10k) is conducted with splitting up of Contracts and more orders placed.	Spend Review and Analysis. Identification of Contracts for the Procurement Pipeline	Treat	6

	Officer do not receive competitive quotations for spend under £25k and above £10k.			
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14.4 The above risks are scored using the matrix below. The Council has determined its aversion to risk and is prepared to tolerate risks where the combination of impact and likelihood scores 6 or less.

Likelihood Very Likely ----- ↓ Remote	Low 4	High 8	Very High 12	Very High 16
	Low 3	Medium 6	High 9	Very High 12
	Low 2	Low 4	Medium 6	High 8
	Low 1	Low 2	Low 3	Low 4
	Impact Low -----▶ Unacceptable			

Impact Score	Likelihood Score
4 (Catastrophic)	4 (Very Likely (≥80%))
3 (Critical)	3 (Likely (21-79%))
2 (Significant)	2 (Unlikely (6-20%))
1 (Marginal)	1 (Remote (≤5%))

14.5 In the officers' opinion none of the new risks above, were they to come about, would seriously prejudice the achievement of the Strategic Plan and are therefore operational risks. The effectiveness of the management of operational risks is reviewed by the Audit Committee annually.

15 Recommendation

15.1 That the sub-committee recommend to approve version 10.1 of the Contract Procedure Rules with the Council Constitution being amended accordingly.

APPENDICES / ATTACHMENTS

Appendix 1 – Contract Procedure Rules (Version 10.1)

Appendix 2 – Thresholds (Neighbouring Councils)