

MUNICIPAL YEAR 2012/2013 REPORT NO. **108A**

MEETING TITLE AND DATE:

Council – 30 January 13

Report of:

Director of Finance, Resources and Customer Services

Contact officer and telephone number:

Dave Levy, Assistant Director Procurement, Ext: 3212

Agenda – Part: 1

Item: 13

Subject: Changes to Contract Procedure Rules

Wards: All

Cabinet Member consulted: Cllr Stafford

1. EXECUTIVE SUMMARY

All Councils are required to have in place a set of rules which govern and control the procurement & contracting policies of the Council. Enfield Council meets this requirement through its Contract Procedure Rules (CPRs) which are contained within the Constitution.

The CPRs have been reviewed to ensure they reflect current best practice and a number of changes are recommended in this report and the attached draft documents. Audit Committee on 20th November 2012 agreed to recommend these changes to Council.

2. RECOMMENDATIONS

That Council approves of the proposed changes to the Contract Procedure Rules

3. BACKGROUND

3.1 The Council may only contract with external parties within the legal framework for local authority procurement i.e. in accordance with the UK Public Contracts Regulations 2006 (as amended), the Council's Contract Procedure Rules (s135 of the Local Government Act 1972), the general duty to obtain Best Value (Local Government Act 1999) and also the European Treaty principles of transparency, proportionality, non-discrimination of providers in member states and equality of treatment.

- 3.2 The Contract Procedure Rules are reviewed on an annual basis, the last one in 2011, by officers from across the Council. This year there is a fundamental rewrite of the CPRs to take into account:
- Findings from the audit of Procurement by Internal Audit (May 2012) which found 'The CPRs are complex, unclear and difficult to understand in some areas'
 - The development of the shared procurement service with London Borough of Waltham Forest and the need to harmonise processes and procedures for the benefit of staff and business.
 - A general need to simplify CPRs and support them with separate best practice guidance
 - Supporting the local economy through greater access to Council contract opportunities
- 3.3 As the changes to the CPRs this year are in effect a complete revision only the main changes have been highlighted below. The full version of the Rules is appended to this report. Additional guidance for officers will follow including a one page overview.
- 3.4 The Contract Procedure Rules forms part of a suite of procurement documents which govern how the Council spends public money. These are the basic rules to ensure legal compliance. The Council also has a Corporate Procurement Strategy and a Sustainable Procurement Policy which establish the overarching aims of procurement in the organisation and establishes our commitment to having a positive impact on the local economy, the environment and socially through our contracts.
- 3.4 Significant Changes
- a) The Application of the Rules (Rule 1.1)
- This change clarifies those contracts to which the rules do apply and those which do not apply. The specific exclusions are:
 - Contracts of employment are excluded because they are not contracts for services and the employment of staff is not a procurement process.
 - Contracts solely for the sale or purchase of land as these are outside the scope of the UK Public Contracts Regulations. Such transactions fall within the scope of the Council's Property Procedure Rules. Where works, supplies or services are associated with property transactions these may fall within the scope of the CPRs and officers should consult with Legal services.
 - The instruction of barristers is based on a number of factors including experience, availability and price but it is impractical to seek competitive quotes for specialised pieces of legal advice or representation. Legal Services' internal procedures – which meet Law Society quality accreditation (Lexcel) – include procedures to ensure that the selection, quality and price of barristers is monitored.

- Equally, in conducting legal proceedings it is from time to time necessary to make use of specialist professional services such as expert witnesses where the criteria for their appointment is entirely about their personal knowledge and experience and so should not be treated as a procurement.
- Where the Council makes a genuine unconditional grant to another organisation or individual then this should not be treated as procurement. A grant that is subject to conditions and a grant agreement may be treated as procurement and so may fall within the rules, depending on the particular circumstances of the grant in question.
- Genuine emergencies beyond the control of the Council
- Care packages or educational placements where it is considered in the Council's interests or is required to meet obligations under the relevant legislation.
- Adult social care service packages managed by the Council on behalf of a client under the Personalisation agenda e.g. Managed Accounts & Direct Payments

b) Exceptions to Competitive Tendering (rule 7)

For contracts that fall within the scope of the Contract Procedure Rules the presumption is that they will be competitively tendered or quotes sought. However there are instances whereby it is not possible or inappropriate to compete contracts and these are defined in section 7 of the new CPRs. For example if an existing framework or contract exists then officers should use those rather than run a competition.

c) Tendering Thresholds (rule 5)

It is proposed to align the tendering thresholds with Waltham Forest which will enable greater co-operation and collaboration between the boroughs and also assist local businesses as they will be confident that both boroughs work in the same manner.

The proposed thresholds provide greater flexibility and reduced bureaucracy for officers whilst maintaining controls, via the Council's e-tendering solution ProContract, to ensure that procurement is carried out in a transparent manner.

Significantly, Officers will be required to obtain at least one quote from a local supplier for purchases below £75,000, where practicable. This supports the Council's Sustainable Procurement Policy and provides greater opportunity for local businesses to win Council contracts.

The new thresholds are as follows:

Up to £5000	One written quote received– local where practicable
£5001 - £20,000	minimum of 2 written quotes received – at least 1 local where practicable.
£20,001 – £75,000 (£100k for works)	Minimum of 3 written quotes sought – at least 1 local where practicable
Over £75k (or £100k for works)	Competitive tendering (nb over £173k for supplies/services, £4.3m for works = EU Tender)

There will no longer be the requirement to advertise for contracts with a value of less than £75k, officers will simply need to obtain the necessary number of quotes as listed above. However, guidance will be provided to officers to ensure that aggregation rules are complied with and that officers bear in mind the principles of cross border interest.

d) Approval to Procure (rule 8)

All procurements over the EU Threshold require the approval of the Strategic Procurement Board before being allowed to proceed, Officers are required to present a business case which demonstrates the need for the procurement, anticipated savings, the procurement approach, any community benefits from the contract, and a project plan. This officer board will then scrutinise and challenge the business case as appropriate.

This change addresses an Internal Audit Recommendation to embed the role of Strategic Procurement Board in the CPRs to provide greater control over major procurement activity.

Contracts over £75,000 (supplies and services) or £1m (works) must also be reported to the Cabinet Portfolio member for approval to commence the procurement process.

e) Mandatory use of the Council's e-tendering solution (rule 9.2)

All procurement must now be conducted on the Council's e-tendering solution (ProContract) unless otherwise agreed by the Assistant Director Procurement.

The benefits of this system are that:

- Suppliers can register interest on the portal (www.londontenders.org) and receive alerts when the Council issues tenders or wishes to search for suitable companies from whom to obtain quotes.
- It is used by 17 London Boroughs so also provides access to other contract opportunities for local SMEs.
- It enables the procurement to be carried out electronically, reducing the need for paper.
- The workflow in the system mirrors the CPRs therefore ensuring compliance
- Once a procurement is concluded the contract is promoted to the contract register module thus providing an accurate contract database, upon which future strategic procurement decisions can be made.

4. ALTERNATIVE OPTIONS CONSIDERED

Amending Enfield's previous CPRs was considered, however these contained a mixture of rules and guidance which were lengthy and confusing for officers. Therefore a complete revision was required based upon those in operation at Waltham Forest whilst taking into account best practice currently in operation in Enfield and other boroughs. These have then been distilled down in to the basic Rules staff must follow.

5. REASONS FOR RECOMMENDATIONS

To enable the proposed changes to the Contract Procedure Rules to be progressed to Council in January 2013 for formal approval as part of the Council's Constitution.

6. COMMENTS OF THE DIRECTOR OF FINANCE AND CORPORATE RESOURCES AND OTHER DEPARTMENTS

6.1 Financial Implications

There are no specific financial implications arising from this report.

6.2 Risk Management Implications

Having clear and consistent Contract Procedure Rules is essential to mitigate the risks of non-compliance with both statute and best practice.

The current revision also addresses recent developments including the shared procurement service with LB Waltham Forest and the need to simplify CPRs.

They will be supported by a short guide for everyday use which should reduce the risk of no-compliance at local level.

6.3 Legal Implications

The Council is required under the Local Government Act 2000 to have a Constitution, as part of that constitution the Council has the Contract Procedure Rules, (which is a requirement under s135 of the Local Government Act 1972) which reflect current legislation such as The Public Contracts Regulations 2006. Corporate Procurement play a pivotal role in ensuring compliance and works closely with Legal Services to ensure Officers within the Council are aware and understand their requirements with regards to procurement under the Contract Procedure Rules, to ensure value for money in accordance with the Best Value principles under the Local Government Act 1999.

6.4 Property Implications

There are no property implications.

7. Risks

The Corporate Procurement Team provides advice, guidance and support to officers in the Council in order to mitigate the likelihood of challenges being made against the Council for anti-competitive practices, which helps protect the Council's reputation. This is especially important in a climate of increased challenge in UK courts and the EU Commission.

8 IMPACT ON COUNCIL PRIORITIES

Fairness for All

The Contract Procedure Rules ensure:

- That procurement processes are appropriate to the scale and risk involved so that they are not unduly onerous.
- Our procurement processes are open, fair and transparent.

9. PERFORMANCE MANAGEMENT IMPLICATIONS

The CPRs ensure that procurement is carried out in a way that complies with all legislation and ensures that best value is achieved. Consequently this will support the delivery of excellent services by the borough since it will ensure that the goods and services are procured in an effective manner.

10. PUBLIC HEALTH IMPLICATIONS

There are no specific public health implications arising from this report.

Background Papers

None