

AUDIT AND GOVERNANCE COMMITTEE – 18th January 2023

REVISION OF CONTRACT PROCEDURAL RULES

1. Purpose of this report

- 1.1. To outline the proposed changes to the Contract Procedural Rules which were unable to be completed in the last revision in 2019 and changes required to ensure compliance with Procurement Audit of 2020
- 1.1 To seek approval of the proposed recommendations and the implementation of the revised Contract Procedure Rules across the Council.

2. Recommendation

- 2.1 **The Committee is asked to consider the revisions to the Contract Procedure Rules detailed below, recommending them for approval and publication on the Council's website.**

3. Background information

- 3.1 The last revision made to CPR's made in 2019 reflected changes due to the introduction of the Strategic Procurement and Contract Management Team.
- 3.2 The new revisions reflect the growing remit and development of procurement within the Council including innovation performed by the Strategic Procurement and Contract Management Team and recommendations in the 2020 Procurement Audit. The changes made are:

Strategic updates

- Social Value
- Zero Carbon 40/45
- Minimum value for undertaking a competitive quotation exercise
- Grants/State Aid
- Substantive Posts Exemption

Operational updates

- Concession Contracts
- In house Service level Agreements
- Pre market Engagement/Market Research
- Conflict of Interest signed by all procurement participants
- Rejection of late Standard Questionnaires, Quotations and Tenders
- Record of all procurement documentation
- Second Signature for contracts under £70K
- PEAD's for Contract Variation/ Novation/Extensions

- Estimating Contract Values
- Submission and Opening of Quotations and Tenders
- Exceptions to Requirements of Competition
- Revised FTS thresholds
- Change in value when publishing Contracts Finder Notices

3.3 The working group have identified recommendations in the following key areas summarised below based on the findings detailed in Section Four.

Key Strategic Recommendations

3.4 Social Value

Social value outcomes are considered and embedded into Council contracts, by utilising the social value toolkit which helps us evaluate social value proposals and manage the providers performance in delivering the outcomes. The toolkit also supports suppliers to develop action plans to enhance their social value capability. Contract procedure rules have been updated to mandate the consideration of social value within procurement activity. The Strategic Procurement Team will consider social value in all procurement above £70,000, where appropriate.

3.5 Zero Carbon 40/45

Contract Procedure Rules have been updated to ensure that carbon reduction initiatives are considered in procurements supported by the carbon wheel tool and aligned to the Council's ambition to achieve net zero carbon.

3.6 Minimum value for undertaking a competitive quotation exercise

To streamline and modernise procurement processes the minimum value for undertaking a competitive procurement exercise through requesting at least 3 quotes has been increased from £10,000 to £20,000. The requirement for preparing a business case in support of a procurement has also been uplifted to £20,000. This gives Services more flexibility in low value, routine purchases.

3.7 Grants / State Aid

Grants have been incorporated with specific guidance relating to grants given by the Council to ensure its interests are protected. Awareness of state aid rules have been included as these are specific to grants and there are consequences if the rules are broken.

The new CPR's also link to a new Grants register detailing awards given by the Council.

3.8 Substantive Posts Exemption

An addition has been made to the rules when there is an urgent requirement to obtain specialist skills on a short-term basis which are not currently available in the Council's structure. In such circumstances a waiver is required to approve the exemption to competition if agency or interim appointments are being made via an alternative recruitment agency to the corporate agency contract.

Additional Recommendations

3.9 Concession Contracts

The Council awards a number of concession contracts which are income

earning contracts to the Council. The new CPR's recognise this type of contract which are currently used and provide clarity on the rules relating to their use.

3.10 In-house Service level Agreements

The revised rules contain guidance on essential elements that should be included in any SLA.

The rules have also been updated to reflect changes as a result of insourcing construction related activity and the ending of the NPS Barnsley relationship.

3.11 Pre-Market Research/ Market Engagement

The need to consider the market and the suppliers in the market is now included in the CPR's to ensure procurements are developed to deliver a better outcome whilst maximising competition and improved supply chains for the Council.

3.12 Conflict of Interest

All participants within a procurement should sign a conflict of interest form to ensure any conflicting interests are declared to maintain the integrity of the procurement process.

3.13 Rejection of late Standard Questionnaires, Quotations and Tenders

Revision to CPR's ensures wording covers all stages of the procurement process are treated the same if submitted after stated deadlines.

3.14 Record of all procurement documentation

CPR's require that all documentation from the procurement process should be recorded and stored within the e-tendering system for audit purposes.

3.15 Second Signature for contracts under £70,000

The revised CPR's have clarified who the second signature should be for signing contracts under £70,000, The signatory should be a person with delegated authority and who has responsibility for the contract procured.

3.16 PEAD's for Contract Variation/ Novation/Extensions

The revised CPR's require a new set of documents to be completed on all contracts with a value of over £70,000 to ensure all the correct contractual, governance and processes are performed before any variation is enacted, extension to a contract is authorised or contract novated to a new contractor.

CPR's have also been updated to contain the requirement to publish a Modification Notice where the Regulations apply and there has been a variation to a contract.

3.17 Estimating Contract Values

Guidance has been developed to clarify how contract values are estimated prior to a procurement process.

3.18 Submission and Opening of Quotations and Tenders

The requirement for 2 independent verifiers has been removed as there is a full audit trail in the e-tendering system.

3.19 Exceptions to Requirements of Competition

The revised CPR's have been updated to contain the requirement to publish a Voluntary ex ante Transparency (VEAT) notice where the Regulations apply

and a procurement exercise is not undertaken.

CPR's have also been updated to include a requirement for all waivers to be approved by the Head of Strategic Procurement and Contract Management prior to obtaining signatories from other authorised officers.

3.20 Revised FTS Thresholds

Since the last revision of the contract procedural rules, the FTS thresholds have been revised and this change is reflected in the new CPR's along with the requirement to value contracts inclusive of VAT.

3.21 Change in value when publishing Contracts Finder Notices

Updates have been made to specify that Contracts Finder Notices should be published, where applicable, where contracts are valued at £20,000 excluding VAT.

Appendix:

Appendix One – Contract Procedure Rules

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Date: 10th January 2022