

Report to Constitution Working Group

Date of meeting: 25th January 2018



**Epping Forest
District Council**

Subject: Review of Procurement Rules

Responsible Officer: Alan Hall – Director of Communities (01992) 564004

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Recommendations:

- (1) That the outcome of the 12-Month Review of the Council's Procurement Rules by the Procurement Rules (officer) Working Party and the Corporate Governance Group be noted;**
- (2) That, as a result of the Review, the proposed changes to the Procurement Rules shown in the revised document attached as an Appendix be approved for submission to the next meeting of the Council for adoption; and**
- (3) That no changes be made to the Total Contract Values thresholds set out in Appendix 1 of the Procurement Rules.**

Report

1. In March 2016, the Working Group considered and agreed to recommend to the full Council a new set of Procurement Rules, to replace the Council's former Contract Standing Orders. The purpose of the new Procurement Rules is that they:

- Adopt a more modern and flexible approach than previously;
- Are simpler to understand and comply with than the former Contract Standing Order;
- Are more responsive to the current and future procurement needs of the Council;
- Meet the Public Contracts Regulations 2015; and
- Ensure appropriate controls and probity to safeguard the use of public money.

2. The new Procurement Rules were adopted by the Council in April 2016, following which they became effective in June 2016. In accordance with good practice, officers have undertaken a review of the Procurement Rules after one year's operation, initially through the Procurement Rules Working Party (that formulated the new Rules in the first instance), chaired by the Director of Communities, with the recommendations of the Working Party considered by the (officer) Corporate Governance Group, chaired by the Chief Executive.

3. Generally, both the Working Party and the Corporate Governance Group felt that the introduction of the new Procurement Rules had been very successful and had been welcomed by officers across the Council. It was felt that staff better understood the Council's requirements and that the Procurement Rules were easier to follow than the previous Contract Standing Orders and had resulted in far fewer breaches.

4. However, the Working Party did identify a small number of suggested minor changes, the main ones of which are summarised below.

- Section 2(d) - some slight revisions are proposed, requiring Spending Control Officers to consult the Council's Legal Team on the use of all Framework Agreements, to ensure that Spending Control Officers do not by-pass the Legal Team before using Framework Agreements and issue purchase orders instead of contracts.
- Section 21 of the Procurement Rules authorises Spending Control Officers to extend existing contracts, where the contract allows an extension, up to the maximum period allowed by the contract. However, following comments received from some members, a proposed change is proposed to require that reports to Portfolio Holders and Cabinet about tender awards also include details within the recommendations about any proposed contract extensions.
- Similarly, a new requirement has been included to consult the relevant Portfolio Holder by email on their views about proposed extensions of contracts with values over £1million, before contracts are extended. This would also ensure that Spending Control Officers consider whether or not contracts should be extended well in advance of the contract end date, in case a decision is made to procure a new contract.
- Based on the experience of officers over the review period, the Corporate Governance Group has concluded that it is not worth the Council incurring the cost of requiring contractors to take on Performance Bonds since, despite the cost having to be met by the Council, they are reliant on the contractor's choice of bond company and the bond company meeting the contractor's obligations if the contractor goes into liquidation. Furthermore, since many contractors do not have parent companies, it is felt that the alternative requirement to provide a parent company guarantee should not apply either.

A proposed change has therefore been made to the Procurement Rules to no longer require either a Performance Bond or a Parent Company Guarantee, with a proviso that Spending Control Officers may consider it appropriate to use one of these arrangements for certain types of contracts where they are considered to be both appropriate and beneficial for the Council (e.g. for long term, high value service contracts).

- Section 4.5 of the Procurement Rules currently requires Spending Control Officers to seek advice from the Accountancy Team regarding the calculation to be used to assess Liquidated and Ascertained Damages. Since this is a standard calculation, it is proposed that Spending Control Officers should calculate the appropriate level of Damages themselves, using the standard spreadsheets that are available, without reference to the Finance Team.
- Section 4.8 - The Working Party concluded that the level of cover for insurances did not require amendment. However, in order to aid reading, the different insurance cover requirements have been provided in bullet point form within this section.
- Section 24.1 currently requires the Corporate Procurement Manager to obtain procurement information required by Part 2.1 of the Local Government Transparency Code from Spending Control Officers every 3 months, and to ensure that the information is published every 3 months in accordance with the Code. Since the Procurement Manager obtains this information from a variety of sources, and publishes the information every 3 months, there is no need for this information to be sought from Spending Control Officers every 3 months as currently required

by the Procurement Rules. It is therefore suggested that the requirement for the Corporate Procurement Manager to solicit information from Spending Control Officers every 3 months be deleted.

5. The Working Party also considered whether or not the thresholds for the Total Contract Values within the 5 contract categories listed in Appendix 1 of the Procurement Rules should be amended, but concluded that no changes should be made.

6. The proposed draft revised Procurement Rules, incorporating the proposed changes are provided as an Appendix to this report.

7. The Working Group is asked to note the outcome of the Review, consider the proposed changes to the Procurement Rules and, subject to any views of the Working Group, recommend the adoption of the updated Procurement Rules to the next meeting of the Council.

8. Once the new Procurement Rules have been adopted, further training sessions will be held for relevant staff to provide a refresher and to advise them of the changes.