



## **AGENDA ITEM: 12**

**Audit and Governance Committee  
30 June 2015**

**Council  
22 July 2015**

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**Report of: Borough Solicitor**

**Relevant Managing Director: Managing Director (People and Places)**

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**SUBJECT: REVISED CONTRACTS PROCEDURE RULES**

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### **1.0 PURPOSE OF THE REPORT**

1.1 To agree updated Contracts Procedure Rules (CPRs) to incorporate the requirements of the Public Contracts Regulations 2015, and to highlight associated implications for the Council.

### **2.0 RECOMMENDATION TO AUDIT AND GOVERNANCE**

2.1 That the Contracts Procedure Rules set out in Appendix A to this report be submitted to Council for approval.

### **3.0 RECOMMENDATION TO COUNCIL**

3.1 That the Contracts Procedure Rules set out in Appendix A to this report be approved.

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### **4.0 BACKGROUND**

4.1 Major revisions to the existing CPRs have become necessary as a result of the Public Contracts Regulations 2015, and the publication of associated guidance by the Cabinet Office (the Crown Commercial Service). The changes are likely to have a significant impact upon the administration and conduct of Council procurements.

4.2 The Public Contracts Regulations 2015 (the Regulations) came into force on 26 February 2015. The Regulations bring into effect requirements of the April 2014 EU Public Procurement Directive, together with the addition of a UK-specific 'below EU threshold' section designed to increase transparency and help SMEs (small and medium sized enterprises) gain greater access to Public Sector tendering opportunities.

## **5.0 CURRENT POSITION**

- 5.1 Three training sessions on the Regulations were provided for relevant officers during April 2015. A revised set of Contract Procedure Rules have been prepared for approval, see Appendix A. Members can find a tracked change version of the existing Contract Procedure Rules at Appendix B.
- 5.2 It is acknowledged that the volume and complexity of the changes, when superimposed upon CPRs, which have already been subjected to a series of ad hoc amendments over a long period, mean there is a need to thoroughly review them and redraft it in a clearer format. It is proposed that the most suitable time to do this will be when further amendments are required as a result of the implementation of a new e-procurement system, which is planned for Autumn 2015. Meanwhile, a series of flowcharts and Procurement Practice Notes will be produced to assist Officers in understanding and adhering to the processes described in the CPRs.

## **6.0 SUMMARY OF MAIN CHANGES**

- 6.1 The majority of amendments and additions result directly from legal requirements set out in the Public Contracts Regulations 2015:

New Rule 8 - describes the new tender advertising requirements, including use of the government's 'Contracts Finder' website to increase transparency in respect of tender opportunities that are below the EU tendering threshold.

Rule 9 (was Rule 8) - has been amended to incorporate the prohibition on pre-selection of potential suppliers for tenders below £172,514. This provision is designed to increase access to tenders for SMEs which often struggle to complete complex Pre-Qualification Questionnaire documents.

Rule 10 (was Rule 17) - deals with the use of Constructionline for tenders for works between £172,514 and the EU Works threshold of £4.3m.

Rule 12 (was rule 10) - has been amended to make open tendering the norm rather than the exception, again to increase access for SMEs.

New Rule 14(iv) - introduces the concept of Most Economically Advantageous Tender (MEAT) (as opposed to considering price only) into above EU threshold tender evaluations.

Rule 16 (was Rule 14) – has been amended to include new compulsory contract clauses relating to contract termination and prompt payment.

New Rule 18 - describes the new Regulation restricting contract modifications. The new Regulation is relatively prescriptive, but has the benefit of clarity and does allow greater flexibility to add additional work to existing contracts than did the previous version of the Regulations.

New Rule 19 - introduces the requirement to consider dividing large procurements into smaller Lots. This is designed to help SMEs gain greater access to large contracts by splitting requirements, where this is feasible and appropriate.

New Rule 21 - describes extensive new reporting requirements, aimed at increasing transparency.

- 6.2 Amendments that are not related to the Public Contracts Regulations 2015 have deliberately been kept to a minimum. The main change that falls into this

category is the removal from Note 6(iii) (was Note 4(iii)) of reference to building industry tendering codes which are understood to be obsolete.

## **7.0 IMPLICATIONS**

- 7.1. Constructionline is used by the Council and other Councils as a way of reducing the number of potential bidders for construction-related contracts. It involves the selection of a shortlist of potential bidders from a list of pre-registered accredited suppliers, thus reducing the considerable workload associated with assessing the large numbers of Pre-Qualification Questionnaire responses that often result from using the standard supplier filtering process.
- 7.2 Constructionline can no longer be used to select shortlists of potential tenderers for construction contracts below £172,514, because this would constitute pre-tender filtering which is prohibited by the new Regulations for tenders below this threshold. Therefore Rule 11 (was Rule 17) has been drafted to accommodate the continued use of Constructionline for construction contracts between £172,514 and the EU Works threshold of £4.3m only. This is understood on balance to be permissible in principle and takes into account non-statutory guidance issued by the Crown Commercial Service which allows the continuation of certain practices which were embodied in Contracts Procedure Rules prior to the Regulations taking effect.
- 7.3 Constructionline is a UK-only service, so it is not to be used where the procurement exercise being undertaken would be of interest to contractors (etc) from other EU states. A scrutiny process is described in Rule 11 (was Rule 17). The continued use of Constructionline will be kept under review, particularly in the light of any future guidance issued by the Crown Commercial Service.

## **8.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY**

- 8.1 There are no significant sustainability/community strategy implications.

## **9.0 FINANCIAL AND RESOURCE IMPLICATIONS**

- 9.1 Wider advertising of contract opportunities and restrictions on the use of Pre-Qualification Questionnaires will almost certainly result in an increase in the volume of below EU threshold tender enquiries and tender submissions, and consequently increase the overall workload of Officers while tenders are in progress. This will be mitigated to some extent by the planned introduction of an e-procurement system and, where appropriate, the continued but limited use of Constructionline.

## **10.0 RISK ASSESSMENT**

- 10.1 The relative complexity and unfamiliarity of the revised Regulations could lead to procedural issues and on occasion the possibility of challenge. Process flowcharts and supporting Procurement Practice Notes are being produced, which in addition to the training already provided and support from the Procurement Executive will assist in minimising this risk.
- 10.2 As noted, the continued use of Constructionline will be kept under review to ensure appropriate practice is followed.

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## **Background Documents**

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

## **Equality Impact Assessment**

The decision does not have any direct impact on members of the public, employees, elected members and / or stakeholders. Therefore no Equality Impact Assessment is required.

## **Appendix**

Appendix A – Revised Contracts Procedure Rules

Appendix B – Tracked change version of Contracts Procedure Rules

Appendix C – Minute of Audit & Governance Committee (Council only)