



ARTICLE NO: 1H

**CORPORATE & ENVIRONMENTAL
OVERVIEW & SCRUTINY
COMMITTEE**

**MEMBERS UPDATE 2015/16
Issue: 1**

Report of: Borough Solicitor

Relevant Managing Director: Managing Director (People and Places)

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SUBJECT: PUBLIC CONTRACTS REGULATIONS 2015

1.0 PURPOSE OF THE ARTICLE

- 1.1 To brief Members on the new Public Contracts Regulations 2015 (the Regulations) and related guidance, and to highlight associated procedural implications for the Council which will require amendments to its Contracts Procedure Rules (CPRs).
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2.0 BACKGROUND

- 2.1 The 2015 Regulations transpose the April 2014 EU Public Procurement Directive into UK law, together with the addition of a UK-specific 'below-threshold' section designed to help Small and Medium-sized Enterprises ("SMEs") gain greater access to Public Sector tendering opportunities.
- 2.2 Most of the Regulations came into force on 26 February 2015.
- 2.3 A summary of the new changes that are likely to have a significant impact on the Council's procurement processes are outlined below.
- 2.4 Training on the Regulations was provided to Officers during April 2015.
- 2.5 The changes introduced by the Regulations are reflected in a revised version of the Contracts Procedure Rules which will be considered by Council at its meeting on 22 July 2015. In addition, the Borough Solicitor shall prepare/update, as appropriate, relevant Procedure Practice Notes (PPNs) and process flow charts to assist officers in meeting compliance.

3.0 THE MAIN CHANGES:

3.1 BELOW-THRESHOLD PROCUREMENTS

Below-threshold procurements are defined as contracts whose value lies below the current EU tendering thresholds, which are £172,514 for Supplies and Services and approximately £4.3m for Works ('Works' can be broadly defined as construction

activities). This section of the Regulations is designed to reduce barriers to SME access to Public Sector tendering opportunities.

3.1.1 Advertising of tender opportunities

All below-threshold procurements above £50,000 in value must now be widely advertised via a UK government portal, and all tender documents must be freely downloadable from a website. Details of contract awards must also be published on the government portal.

3.1.2 Pre-Qualification of potential bidders

The use of Pre-Qualification Questionnaires (PQQs) or other supplier filtering processes is no longer permissible for tenders between £25,000 and £172,514 in value.

3.2 ABOVE-THRESHOLD PROCUREMENTS

Above-threshold procurements are defined as contracts whose value lies above the current EU tendering thresholds, which are £172,514 for Supplies and Services and approximately £4.3m for Works.

3.2.1 Reporting requirements

For every above-threshold procurement, a formal report must be drawn up giving details of around 15 specified parameters relating to the purchasing process and its outcome.

3.2.2 Division into lots

Active consideration must be given to dividing all above-threshold tenders into smaller lots (to give more opportunities to SMEs). If it is decided not to subdivide a procurement into lots, the reasons must be given in the procurement documents or in the report described at 4.2.1 above.

3.2.3 e-Procurement software

The Council must be able to conduct all above-threshold tendering activities electronically with suppliers, including receiving above-threshold tenders from bidders, by 18 October 2018.

3.3 MISCELLANEOUS PROVISIONS

3.3.1 Starting with data for financial year 2015-16, the Council is required to publish on the internet the percentage of invoices it has paid within 30 days and the amount of interest paid to suppliers due to late payment.

3.3.2 The Council must include a maximum 30-day payment clause in its contracts, and oblige all contractors and first- and second-level subcontractors to include the same provision in their contracts.

4.0 IMPLICATIONS

4.1 BELOW-THRESHOLD PROCUREMENTS

4.1.1 Procurement will arrange the publication of advertisements and contract award information on the government portal, and the Council's website has been modified to allow the publication of tender documents. It is anticipated that the e-procurement system to be acquired by the Council will facilitate automatic publication of advertisements on the government portal as well as replacing the Council's tender document webpage.

- 4.1.2 Existing CPRs allow tenders to be advertised in local and trade media only, and permit the filtering of suppliers. These rules are designed in part to keep the number of tenders to manageable volumes whilst encouraging participation by suitable local firms. However the new Regulations mean that the Council will have no control over the number of tenders it receives in response to UK-wide advertisements on the government portal within the below-threshold value band. All tenders received will need to be evaluated and all unsuccessful suppliers may require debriefs. The e-procurement system will also help by supporting the management of higher volumes of tender submissions from suppliers. One way to mitigate the impact of these changes is to increase the use of framework agreements which legitimately and fairly limit tendering opportunities to a reasonable number of approved suppliers.
- 4.1.3 Constructionline can no longer be used to select shortlists of potential tenderers for construction contracts below £172,514.

4.2 ABOVE-THRESHOLD PROCUREMENTS

- 4.2.1 The new reporting requirements are likely to become the focus of Freedom of Information requests. A Procurement Practice Note (PPN) will be prepared to explain the new requirements. This will include a report template.
- 4.2.2 A PPN will provide guidance on circumstances where subdivision of contracts into smaller lots might be appropriate.
- 4.2.3 With regard to the new requirement to have an e-procurement system in place by October 2018, the Council has participated (without obligation) in a tendering process for an e-procurement software package carried out by The Chest (a purchasing organisation of North West local authorities). This represents the lowest risk – and probably lowest cost – opportunity to obtain a suitable e-procurement system. The tendering process was completed in May 2015 and the system will be acquired in August 2015 for roll-out during Autumn 2015. Funding has been identified.

4.3 MISCELLANEOUS PROVISIONS

- 4.3.1 The new prompt payment reporting requirements are being addressed.
- 4.3.2 A template of contract wording designed to flow down the 30-day payment requirement to contractors and their subcontractors has been provided by Crown Commercial Service (part of the Cabinet Office) and will be implemented in future contracts. The Council's current payment period is already 28 days.

5.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY

- 5.1 There are no significant implications.

6.0 FINANCIAL AND RESOURCE IMPLICATIONS

- 6.1 Wider advertising of contract opportunities and restrictions on the use of PQQs will almost certainly result in an increase in the volume of below-threshold tender enquiries and tender submissions, and consequently increase the overall workload of Officers while tenders are in progress.
- 6.2 An e-procurement system will assist with the management of higher volumes of interaction with potential suppliers, and this will have an acquisition, training and support cost of approximately £2,000 per year.

7.0 RISK ASSESSMENT

- 7.1 The changes relating to below-threshold tenders are likely to have an impact on procurement timescales. However the impact will vary greatly because it is dependent upon the supplier market for each commodity or service, and will be difficult to pre-estimate and hence support with adequate resources.

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.

Appendices

None.