

Report to Constitution Working Group

Date of meeting: 26 January 2016



**Epping Forest
District Council**

Subject: New Draft Procurement Rules

Responsible Officer: Alan Hall – Director of Communities (01992 56 4004)

Democratic Services Officer: Mark Jenkins (01992 56 4607)

Recommendations:

- (1) That the new Draft Procurement Rules (attached as Appendix C) be considered by the Working Group, noting the list of key differences from the current Contract Standing Orders (attached as Appendix B), prior to an external check being undertaken by a specialist procurement lawyer;**
- (2) That the comments of the Working Group on the Draft Procurement Rules be provided to the Director of Communities (as Chairman of the (officer) Contract Standing Orders Working Party); and**
- (3) That the final version of the Draft Procurement Rules, incorporating any comments from the Working Group at this meeting and the specialist procurement lawyer, be considered at the Working Group's next meeting to be held on 22nd March 2016, together with all the other documents comprising the Council's proposed new Constitution, prior to submission to the full Council for adoption.**

Background

1. At its meeting on 30th June 2015, the Working Group noted that the Council's Corporate Governance Group (CGG - chaired by the Chief Executive and comprising the four Directors, Chief Internal Auditor and Deputy Monitoring Officer) had asked the Director of Communities to chair a new Contract Standing Orders Working Party to fundamentally review the Council's Contract Standing Orders and to formulate a new set of (what is proposed to be called) Procurement Rules for the future that:

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

2. The Working Group also noted the Terms of Reference of the Working Party and the proposed reporting arrangements and timescales. As a result, the Working Group agreed to add the consideration of this subsequent report and recommendations of the Contract Standing Orders Working Party to the Constitution Working Group's Work Programme for 2015/16.

3. The CGG's decision to set up the Working Party followed concerns identified by the CGG about the complexity and inflexibility of the Council's current Contract Standing Orders (which have been developed and added to over many years, without any fundamental review). In the CGG's view, this has led to difficulties in staff understanding

the Council's approach to procurement, and the procedures that need to be followed, which had increase the potential and likelihood of breaches of Contract Standing Orders.

4. Indeed, in November 2015, it was necessary for a total of 260 breaches of one Contract Stranding Order alone (relating to cumulative spends with individual contractors in excess of £10,000 over a 4-year period) to be reported to the Cabinet.

5. The CGG's decision to set up the Working Party has resulted in the most fundamental review of the Council's Contract Standing Orders for at least 25 years.

The Contract Standing Orders Working Party and methodology of approach

6. The Terms of Reference for the Contract Standing Orders Working Party were approved by Management Board on the 3rd June 2015 and are reproduced at Appendix A. The Working Party has met on six occasions since June 2015. The last meeting was held on 4th January 2016.

7. In the first instance, the Director of Communities drafted a Framework for the new Procurement Rules, which set out a proposed structure and details of the proposed coverage of each section. At the same time, he produced a list of questions to put to the Working Party to consider specific issues identified in drafting the Framework.

8. The Working Party then considered, over four separate meetings, the proposals set out within the Framework and each of the queries that needed to be considered. Although this was a laborious exercise, it gave the Working Party a good opportunity to consider and discuss the proposed structure for the new Procurement Rules and the general direction to be taken.

9. Following consideration of the Framework and all the issues, the Director of Communities then drafted the new Draft Procurement Rules, which were considered in detail by the Working Party at its meeting on 4th January 2016.

10. The Draft Procurement Rules, incorporating all the comments of the Working Party, were then considered by the CGG on 13th January 2016, where approval was given to submit the Draft Procurement Rules (incorporating the comments of the CGG) to this meeting of the Constitution Working Group for consideration. Prior to the CGG meeting, all Assistant Directors were also consulted on the proposals and their views taken into account.

New Procurement Rules

11. The new Draft Procurement Rules are attached as Appendix C for consideration by the Working Group.

12. Those members of the Working Group acquainted with the Council's current Contract Standing Orders will see that the new Procurement Rules are, indeed, fundamentally different from the existing Contract Standing Orders. For this reason, it is impossible to "read across" the two documents to see where all of the changes have been made.

13. Therefore, a list of the key differences between the current Contact Standing Orders and the proposed new Procurement Rules is attached at Appendix B. Also attached, at Appendix D, are the existing Contract Standing Orders for reference. It is emphasised that, due to the very many changes that have been made to the new Draft Procurement Rules, compared to the current Contract Standing Orders, it is impossible to list all of the differences.

14. The approach the Working Party has taken to the new Procurement Rules is for the document to comprise all of the main procurement requirements that officers must comply with, supported by a suite of additional new documents which are referred to (and will be accessed through hyperlinks) within the Procurement Rules - and which officers will also be required to follow.

15. It should be noted that most of the supporting documents have not yet been drafted/updated yet, but all those required to be in place at the time the new Procurement Rules are adopted (which is all but one of the documents) will be in place.

Contracts Finder and the Local Government Transparency Code 2015

16. It is a legal requirement, under the Public Contracts Regulations 2015, that for all contracts with a value in excess of £25,000:

(a) If a public body intends to invite contractors to express an interest in being considered for the contract, through the placement of an advertisement in any media, it must also upload details of the invitation on the Government's Contracts Finder website; and

(b) Following the award of a contract, public bodies must upload details of **all** the tenders received, together with the name of the successful tenderer, to the Contracts Finder website (even if details of the original invitation were not be provided to Contracts Finder, since no advertisement was placed in the first instance)

17. These requirements are covered by the Draft Procurement Rules, at Sections 5.3, 16.7 and 16.8.

18. The separate DCLG's Local Government Transparency Code 2015, which is a Code of Recommended Practice:

- Requires local authorities to publish certain procurement information quarterly; and
- Recommends that local authorities publish additional information.

19. The requirement to publish procurement information quarterly is covered by Section 24 of the Draft Procurement Rules.

20. The recommendations of the Code to publish additional information are as follows:

(a) To place on Contracts Finder details of every invitation to tender for contracts with a value that exceeds £10,000 (compared to the £25,000 threshold in the Public Contracts Regulations); and

(b) To publish:

- Monthly - the procurement information that must be published quarterly
- Details of every invitation to tender for contracts to provide goods and/or services with a value that exceeds £500 (instead of £5,000)
- Details of invitations to quote where there has not been a formal invitation to tender
- All contracts in their entirety where the value of the contract exceeds £5,000
- Company registration number at Companies House
- Details of invitations to tender or invitations to quote that are likely to be issued in the next twelve months.

- Details of the geographical (eg. by ward) coverage of contracts entered into by the local authority
- Details of performance against contractual key performance indicators
- Information disaggregated by voluntary and community sector category (eg. whether it is registered with Companies House, Charity or Charitable Incorporated Organisation, Community Interest Company, Industrial and Provident Society, Housing Association, etc).

21. Whilst, clearly, the requirements of the Code to publish certain procurement information quarterly must be followed, the recommendations of the Code to provide additional procurement information have not been incorporated within the Draft Procurement Rules - because both the Working Party and the Corporate Governance Group are of the view that:

- The administrative burden of providing the additional recommended information would be immense, and would require additional staff capacity/resources;
- The additional workload would not justify the very limited benefits that would be obtained;
- The intention to streamline and make the new Procurement Rules more flexible would be hindered if the recommendations were adopted; and
- Very few other local authorities have adopted the recommendations.

Survey of other local authorities

22. As part of its Work Programme, the Working Party undertook an on-line survey of other local authorities to ascertain their approach to Contract Standing Orders. The Working Party formulated a list of questions for the survey, which were sent to all of the local authorities in Essex, together with the other local authorities in the Audit Commission's Nearest Neighbour Group of similar authorities.

23. In total, 25 local authorities were surveyed. The response, however, was a little disappointing - with only 6 councils (24%) responding. As part of its approach, the Working Party considered the results of the survey; although it was interesting to note the results, the outcome of the survey did not result in the Working Party feeling a need to change the proposed direction for the Procurement Rules.

Role of the Constitution Working Group and next steps

24. The Working Group is asked to consider the new Draft Procurement Rules at Appendix C, noting the key differences from the current Contract Standing Orders listed at Appendix B, and to provide any comments to the Director of Communities.

25. It is proposed that the Draft Procurement Rules (incorporating any amendments by the Working Group) are then checked externally by a specialist procurement lawyer, to confirm (or otherwise) that they comply with UK and EU procurement legislation, and to provide any associated advice. This is the same approach as being taken to the external checking of the rest of the proposed new Constitution.

26. It is proposed that the final version of the Draft Procurement Rules, incorporating any comments from the Working Group at this meeting and the specialist procurement lawyer, be considered further at the Working Group's next meeting on 22nd March 2016, together with all the other documents comprising the proposed revised Constitution, prior to submission to the full Council for adoption on 26th April 2016.

27. Shortly after the new Procurement Rules have been formally adopted, mandatory training will be provided to all officers who will be required to know and follow the new procedures.

Appendices

- (A) Terms of Reference – Contract Standing Orders Working Party
- (B) Main differences between Contract Standing Orders and Draft Procurement Rules
- (C) Draft Procurement Rules
- (D) Current Contract Standing Orders