



REPORT OF:	HEAD OF FINANCE
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TO:	EXECUTIVE
DATE:	28 January 2016
EXECUTIVE MEMBER:	COUNCILLOR G KNIGHT

KEY DECISION REQUIRED:	NO
WARD (S) AFFECTED:	ALL

SUBJECT:	NEW CONTRACT PROCEDURE RULES
RECOMMENDATIONS:	
<p>(i) That the new Contract Procedure Rules at Annex 1 are approved.</p> <p>(ii) That the Monitoring Officer is authorised to amend the Constitution to include the new Contract Procedure Rules.</p>	
REASONS FOR RECOMMENDATIONS:	
To adopt new Contract Procedure Rules as part of the Council's Constitution.	
EXECUTIVE SUMMARY:	
<p>The Council's Contract Procedure Rules (CPRs) form an important part of our governance framework, help to ensure best value and protect us from allegations of impropriety.</p> <p>Since they were last updated there has been new UK legislation and significant amendments to the EU regulations governing procurement. The Council has also recently acquired an e-procurement system (In-Tend).</p> <p>As a result of all of these changes it has been necessary to completely re-write the CPRs rather than just amend the existing ones in the Constitution.</p>	

Full Council is required to approve this recommendation.

STATUTORY POWERS

1. The Council is required to produce Contract Procedure Rules under Section 135 of the *Local Government Act 1972*.
2. It is also required to comply with the *Public Contract Regulations 2015* and various EU Directives governing public sector procurement activity.

ISSUES

3. The Council's Contract Procedure Rules (CPRs) form an important part of our governance framework, help to ensure best value and protect us from allegations of impropriety.
4. Since they were last updated there have been significant amendments to the UK and EU regulations governing procurement and the Council has acquired an e-procurement system (In-Tend).
5. The In-Tend system is hosted by Surrey County Council and is used by the majority of Surrey districts to support procurement activity. As a self-contained electronic system with a detailed "audit-trail" facility it offers better transparency and security around the tendering and contract letting processes than manual systems. All tender documentation (with the exception of very low value tenders) is now published by the Council on this system and all information received from suppliers comes via it.
6. Its adoption meets the requirements of the recent *Public Contract Regulations 2015* which include the need to ensure that all except low value tender processes are run on a fully electronic basis.
7. The processes required by this system are now fully reflected in the new CPRs
8. There have also been recent changes to EU procurement regulations - in particular around the use of standardised documents and new financial thresholds – which now drive particular approaches to procurement.
9. Given the scope of these changes it has not been possible to simply amend the existing CPRs. The approach taken has been to completely re-write them and to do so in a way that meets the UK and EU regulatory changes and reflects the requirements of the In-Tend system - as well as aligning with the regulations of other Surrey district councils to better support joint-procurement and other shared service arrangements in the future.

OPTIONS

10. The Executive may approve the new CPRs (the preferred option), reject them or request amendments.

LEGAL IMPLICATIONS

11. There are no legal implications.

FINANCIAL IMPLICATIONS

12. There are no direct financial implications arising from this report as the cost of hosting the In-Tend system - and initial training in its use – has been largely covered by Surrey County Council. Any residual costs have – and will be - met from existing budgets.

EQUALITIES IMPLICATIONS

13. There are no equalities implications.

RISK MANAGEMENT IMPLICATIONS

14. If the Council fails to maintain and follow up-to-date CPRs there may be financial and reputational consequences. This is mitigated through these procedures and their regular review.

CONSULTATION

15. The Executive Member for Finance was consulted during the preparation of this report.

POLICY FRAMEWORK

16. The adoption of these new CPRs requires the replacement of *Procedure Rule 8, Part 4: Procedure Rules* of the Constitution.

Background Papers: None

CONTRACT PROCEDURE RULES

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General

Introduction

1. These Contract Procedure Rules (CPRs) provide basic guidance to anyone making a contract for the Council. They apply equally to the supply of goods, materials, services or other work. In making such contracts, the overriding objective is to obtain the best value for the Council.

Application

2. Every contract made by or for the Council must comply with these CPRs except where exemptions are obtained in advance. The circumstances where an exemption would apply are listed in Appendix A.

Preparing for the Contract

Contract/tender information to be recorded from the start

4. With the exception of contracts below £5,000 all contracts must be fully documented on the In-Tend e-procurement system.
5. All contract files should clearly record the identity of the officer undertaking the procurement (the Procuring Officer).

Requirement for a Procuring Officer

6. The Procuring Officer is responsible for ensuring and recording that the relevant authority has been obtained and there is sufficient budget in place for the procurement before any steps are undertaken.
7. The Procuring Officer is to ensure that the supplier is sufficiently capable and financially sound to undertake the contract by making enquiries, pursuing references and reviewing the quotes, tender proposals/method statements as appropriate, during the procurement process.

Specification and evaluation criteria

8. A specification and evaluation criteria must be prepared in advance of tenders or quotations being sought. The evaluation criteria will be set to identify the “most economically advantageous tender” (MEAT), based on price and a range of value considerations. Both the specification and the evaluation criteria must be recorded and used to evaluate tenders/quotations received.
9. If a potential supplier requires information not provided in the specification, such additional information must be sent to all other bidders through the correspondence link within your project on the In-tend portal. It is important that all potential suppliers are treated equally.

Procedural Steps of the Procurement

Estimated value of contracts

10. An estimated value must be identified and documented for every contract immediately before starting the procurement process to confirm there is adequate budget provision, and to determine the appropriate form of tender or quotation process to follow.
11. For contracts which continue over a number of years, the estimated value of the contract shall be taken to be **the annual value multiplied by term of the contract including any extension periods** as this will allow the Procuring Officer to assess whether European procurement rules apply.
12. For contracts which repeat annually but have no fixed contract term, the annual value should be multiplied by four years.

Division of contracts

13. Large scale works or orders must not be broken down into smaller units for the purpose of creating lower value contracts unless there are sound operational or management reasons for doing so. The avoidance of any part of the CPRs is not an acceptable reason for such action.

Specialist advice

14. All contracts must comply with the Public Contract Regulations 2015. Where there is a conflict between these CPRs and any statutory provision, the law must prevail. Advice on the tender process and form of contract should be taken from the Procurement Officer and Legal Services at the start of any procurement project.
15. The procedures outlined by contract value in Table 1 below are the minimum. It is important to remember that procurement rules are designed to achieve best value for the residents of Reigate & Banstead. Consequently, where better value for the Council might be achieved by seeking more tenders or quotations, this should be done. The figures outlined in this document are exclusive of VAT.

Framework agreements

16. Procuring Officers wishing to let a Framework Agreement should follow the steps required in Table 1.
17. Procuring Officers may purchase goods, works or services from existing Framework Agreements if best value can be demonstrated.

Procedural rules for a procurement

18. The Procuring Officer must ensure that all procurement activity complies with the procedures shown in Table 1 below.

Table 1: Procedural steps of a procurement

1. Value over 4 years?	2. Use In-Tend?	3. Procedure?	4. Minimum number of quotes or tenders?	5. Use a PQQ?	6. Minimum time for receipt of quotes or tender?	7. Authority to award contract?	8. Contract requirement & signatory?	9. Errors & exemptions agreed by?
Up to £5,000	Optional	Contact Supplier	1 written quote	No	Determined by the Procuring Officer	Service Manager (or delegated officer acting on behalf of Service Manager)	No. Retain quotes and invoices.	Service Manager
£5,001 - £10,000	Yes	Quick Quotes	1 written quote	No	Determined by the Procuring Officer	Service Manager (or delegated officer acting on behalf of Service Manager)	Yes. The Councils terms and conditions must be used, and a specification appended to the order. To be signed by Service Manager (or delegated officer).	Service Manager
£10,001 - £24,999	Yes	Quick Quotes	3 written quotes (but procedure must be open to all)	No	14 days	Service Manager (or delegated officer acting on behalf of Service Manager)	Yes. The Councils terms and conditions must be used, and a specification appended to the order. To be signed by Service Manager (or delegated officer).	Service Manager
£25,000 - £164,176	Yes	Quick Quotes or Framework Agreement	Open competition in UK or Framework requirements	No	21 days or as per Framework requirements	Service Manager	Yes – as agreed by Legal Services. To be signed by Service Manager.	Service Manager in consultation with CFO & Portfolio Holder
£164,176 and above Supplies and Services²	Yes	OJEU with ITT Or Mini Competition (or direct award as applicable) if using a Framework Agreement	Open procedure ¹ – unlimited Restricted procedure ¹ – top 5 from PQQ shortlist Other procedures ¹ – appropriate numbers as agreed with Procurement Officer and Legal Services Framework requirements	Yes standard PQQ	Open procedure – 35 days (5 day reduction for electronic tender bids) All other procedures: PQQ - 30 days, plus subsequent ITT - 30 days	Up to £250,000 – Service Manager in consultation with relevant Portfolio Holder Above £250,000 – Executive	Yes – as agreed by Legal Services. Up to £250,000 to be signed by Service Manager. Above £250,000 to be signed by Chief Executive Officer and Legal Services Officer.	Up to £250,000 - Portfolio Holder, CFO & Service Manager Over £250,000 - Executive
£164,176 - £4,104,394 Works only³	Yes	ITT Or Mini Competition or direct award as applicable) if using a Framework Agreement	Open competition in UK Framework requirements	Yes standard PQQ	21 days	Up to £250,000 – Service Manager in consultation with relevant Portfolio Holder Above £250,000 – Executive	Yes – as agreed by Legal Services. Up to £250,000 to be signed by Service Manager. Above £250,000 to be signed by Chief Executive and Legal Services Officer.	Up to £250,000 - Portfolio Holder, CFO & Service Manager Over £250,000 - Executive
£4,104,394 and above Works only³	Yes	OJEU level ITT Or Mini Competition (or direct award as applicable) if using a Framework Agreement	Open procedure ¹ – unlimited Restricted procedure ¹ – top 5 from PQQ shortlist Other procedures ¹ – appropriate numbers as agreed with Procurement Officer and Legal Services/Framework requirements	Yes standard PQQ	Open procedure – 35 days (5 day reduction for electronic tender bids) All other procedures: PQQ - 30 days, plus subsequent ITT - 30 days	Executive	Yes – as agreed by Legal Services. To be signed by Chief Executive Officer and Legal Services Officer.	Executive

¹ For EU procurements different procedures can apply (i.e. open, restricted, competitive dialogue, competitive procedure with negotiation or innovation partnerships). Contact the Procurement Officer or Legal Services to agree the most appropriate method.

² Consumable goods and services.

³ Building or civil engineering projects

Abbreviations

OJEU Official Journal of the European Union
CFO Chief Finance Officer
HoS the relevant Head of Service

PQQ Pre-Qualification Questionnaire
RFQ Request for Quote
ITT invitation to Tender

Tender and quotation handling procedure

19. All tenders for contracts valued at more than £5,000 must be returned through the In-Tend system and must only be opened via the appropriate tender opening process.

Pre-qualification questionnaire (PQQ)

20. PQQ's cannot be used for tenders below EU thresholds. However you may ask suitability assessment questions relating to a potential supplier provided that the questions are relevant to the subject matter of the procurement and proportionate.
21. A standard PQQ will be available on the In-tend portal for all tenders above EU thresholds. Any deviations from the standard wording must be recorded and will need to be reported to Crown Commercial Services.

Tender opening

22. For all tenders valued at more than £5,000 the tender "opening ceremony" function within the In-Tend system must be used.
23. The Procuring Officer may wish to invite the Service Manager and Portfolio holder to observe the opening ceremony if the tender is value at more than the EU threshold.

Clarifications of tenders

24. Tender or bid clarifications may become necessary during the evaluation of tenders e.g. if a bid appears especially low, or especially high on price or where there are aspects of the bids that are unclear or contain minor errors.
25. Clarification may also be sought from tenderers on matters of quality or performance or particular terms and conditions of contracts.
26. The Procuring Officer should give all tenderers who are able to meet the requirements of the tender the same opportunity to engage in tender/bid clarification. All communication must be via the clarification link on the In-tend portal to maintain a proper audit trail.

Post tender negotiations

27. The Procuring Officer should take advice from Legal Services and no negotiations may be entered into with any suppliers submitting tenders or quotations unless the Chief Finance Officer considers it necessary to obtain best value for the Council, to accommodate unforeseen changes in the specification, or for any other reason the Chief Finance Officer considers is appropriate.
28. In this event, details of the negotiations must be recorded in writing and must be conducted either solely with the supplier who has won the tender, or with all suppliers who have submitted tenders. The reasons for entering into post tender negotiations must be recorded.

Content of Contracts

Terms and conditions of contracts

29. Every contract over £5,000 must be in writing, in a form approved by Legal Services.
30. On some occasions the Council may be obliged to contract on the standard terms and conditions of another supplier on low value purchases. In these cases:
 - (a) complete the invitation to quote template (ITQ) and produce a specification of the services required and send to the Procurement Officer.
 - (b) the Procurement Officer will approach Legal Services to agree on the Terms and Conditions of contract.
 - (c) Legal Services will advise if the suppliers Terms and Conditions can be used in this instance.

Public liability insurance and professional indemnity insurance

31. The Procuring Officer must consider the Council's need for appropriate indemnities backed by insurance. In the case of a contract for works or services, the contract must require the supplier to carry Public Liability insurance to a minimum of £5m unless otherwise agreed by the Chief Finance Officer.
32. In the case of a contract for professional services, the contract must require the supplier to carry Professional Indemnity insurance to a minimum of £5m unless otherwise agreed by the Chief Finance Officer.
33. For all contracts there must be a requirement for the supplier to carry Employers Liability insurance to a minimum of £5m.
34. These insurance requirements are summarised in the table below:

Table 2: Insurance Requirements Summary

Type of insurance	Minimum Value
Public Liability	£5 million
Professional Indemnity	£5 million
Employers Liability	£5 million

Assignment of contracts

35. Assignment or under-letting of contracts is not to be permitted except with the prior consent of the Chief Finance Officer, and then only where the Chief Finance Officer is satisfied that an effective vetting procedure for assignees or subcontractors has been implemented.

Liquidated damages

36. The Procuring Officer must consider whether the contract should provide for the supplier to pay liquidated damages on failure to complete the contract by the specified completion date. Where considered appropriate by the Head of Legal Services, the contract must require the supplier to pay damages for any breach of the terms of the contract. Advice on liquidated damages should be taken from Legal Services at an early stage in the procurement project.

Corruption, bankruptcy and cancellation

37. Every contract must state that the Council may cancel the contract and recover any resulting losses if the supplier, his employees or anyone acting on his behalf, with or without his knowledge, does anything improper to influence the Council or commits an offence under Bribery Act 2010.
38. Every contract must state that if the supplier enters into liquidation or administration, the Council is entitled to cancel the contract and recover any resulting losses.

Performance bonds

39. Where a contract is estimated to be £25,000 or over, the relevant Procuring Officer must discuss with the Service Manager before the procurement, whether the Council should require security for its performance. It must be recorded that either no such security is considered necessary, or, specify in the conditions of tender the nature and amount of security to be given.
40. In the latter case the relevant Service Manager must ensure that the required bond or other security is in place at the time the contract is let.

Nominating subcontractors and suppliers

41. Where it is decided to be in the Council's interest that a subcontractor or supplier should be nominated to a main supplier, at least three tenders for the nomination must be invited in accordance with one of the methods described in Table 1 above.
42. The invitation to tender as subcontractors or suppliers must require an undertaking from any tenderer to enter into a contract with the main supplier, including an obligation to indemnify the main supplier in respect of matters included in the sub contract.

Consultants

43. Any consultant employed by the Council to let or manage contracts must comply with these CPRs. The contract with any consultant must provide that all records maintained by the consultant in relation to a contract must be made available to the Council on request and handed over to the Council on completion of the procurement.

Managing the contract

Contract management

44. For all contracts in excess of £25,000 a Contract Manager should be appointed. Where reasonably practicable, the Contract Manager should be part of the initial procurement process and an officer of Reigate & Banstead Borough Council. The Procuring Officer must notify the name of the Contract Manager to the supplier prior to letting of the contract.
45. The role of the Contract Manager will be to manage the contract throughout its duration, as well as enforce duties owed to the Council under contract and to be responsible on behalf of the Council for those duties owed to the contractor.
46. The responsibilities of the Contract Manager will include:
 - (a) monitoring performance of the supplier against the agreed level of service
 - (b) monitoring the continuing level of operational and financial risk to which the Council is exposed and to institute controls as appropriate
 - (c) ensuring the supplier's compliance with all appropriate health and safety obligations
 - (d) facilitating the resolution of issues between the supplier and users of the service
 - (e) ensuring prompt payment of invoices and compliance with all financial regulations and CPRs during the lifetime of the contract
 - (f) ensuring that appropriate arrangements are made for the termination or re-letting of the contract at the appropriate time.

Variations

47. Where the relevant Contract Manager considers an existing contract needs to be varied (i.e. practical changes which do not alter the essential nature of the original contract as opposed to additional works or supplies not originally envisaged) he or she may approve these subject to the proposed variation being contained within the total budget approved for the contract. The reasons for and details of any such variation must be recorded and stored with the contract.
48. Where the approved budget would be exceeded because of the variation, approval for any such variation must be sought in accordance with column 9 of Table 1.

Contracts register

49. All contracts in excess of £5,000 will be recorded within the In-Tend system and this will effectively be the Council's contract register. Where possible, all records of activity up to the letting of the contract will be maintained in the In-Tend system.
50. The Agresso financial system will show the state of account of each contract between the Council and supplier, together with any other payments and related professional fees.

Retention of records

51. Store copies of all contracts for the duration of the contract and a further 6 years.
52. Contracts signed under Seal are required to be stored for the length of the contract and a further 12 years.
53. We are required to grant access to these contracts, but access to specific documents or items of information may be denied under EU or national rules on access to documents and data protection.

Conflict of interest

54. All purchasing decisions should free of any conflict of interest. A conflict of interest may arise where someone involved in the purchasing decision has a close financial or relational connection with a potential supplier (or other party involved) and this could influence the outcome of the buying process.
55. The fact that a supplier may be subject to a conflict of interest does not mean that the supplier should not be considered, so long as the conflict is declared, recorded, its potential impact assessed, and the risks appropriately managed.

Appendix A: Applying for Exemptions from Contract Procedure Rules

Application Procedure

Any exemptions from CPRs must be obtained before the procurement process commences. To obtain an exemption:

- contact the Procurement Officer for a copy of the CPR Exemption Form
- complete the Exemption Form and send to the Authorised Officer (as shown in column 9 of Table 1) for approval
- once approval has been granted the signed document should be returned to the Procurement officer.

Examples

CPRs may not apply in the following situations:

1. a procurement by the Council acting solely as the agent of another body in compliance with the contract standing orders of that other body and where the Council either does not incur expenditure, or is to be fully reimbursed by another party.
2. Contracts of employment.
3. Orders placed against a Call-off Contract itself awarded in accordance with these CPRs.
4. Where the Council is part of a public sector consortium contracting with a supplier(s) for the provision of supplies, services or works, where the Council is not the lead authority and the contract has been let in accordance with the Contract Standing Orders of the lead authority.
5. Purchase or sale by auction.
6. Where “spot-purchases” demonstrably provide better value for money than longer term contract arrangements.
7. Where only one supplier is able to carry out the works or services and where no satisfactory alternative is available because of:
 - technical reasons, artistic reasons or because of exclusive rights
 - branded items which are sold at a single fixed price.
8. Orders required as an addition to an existing or previous contract and it is necessary to use the same supplier for the reasons stated in 10.
9. An extension to an existing contract which is within the terms of the contract provided that the decision is taken at the level (Service Manager/Portfolio Holder/Executive) at which the original decision to award the contracts was required by these CPRs.
10. An extension for additional work to an existing contract where the goods/services required are outside the scope of the original contract but the

circumstances are such that it would be inappropriate to offer the additional work to competition.

11 An emergency where immediate action is necessary to:

- prevent significant loss to the Council
- prevent danger, injury or hardship
- comply with public health requirements.

In such circumstances, the best practicable means of obtaining value for money should be used. If the contract exceeds £25,000 in value, the Service Manager should consult the relevant Portfolio Holder and the Chief Finance Officer.

12 Any other exemption specifically authorised by the Executive.