

## Changes to Contract Procedure Rules



A working group of Council officers has conducted a full review of the Council's Contract Procedure Rules which are included in Part 4 G of the Council's Constitution and has proposed some amendments to the Rules to clarify certain ambiguities, to tighten up procedures and to address the consequences of the United Kingdom's withdrawal from the European Union.

### **Recommendations**

That Council:

- 1) Agrees to the suggested amendments to Part 4G of the Council's Constitution – "Contract Procedure Rules" - as detailed in Appendix 1 to this report.
- 2) Approves the changes as detailed in Appendix 1 to this report. Appendix 2 contains the current contract procedure rules for comparison purposes.

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## Background

- 1.1 From time to time Full Council has considered and approved proposed amendments to the Council's Contract Procedure Rules to reflect changes in legislation and developments in case law. However, in the light of the United Kingdom's withdrawal from the European Union on 31<sup>st</sup> December 2020 and prior to any pending legislation stemming from the Government's Green Paper – Transforming Public Procurement, certain amendments to the Council's existing Contract Procedure Rules are required
- 1.2 A working group of Council officers has reviewed the Council's existing Contract Procedure Rules and has suggested the proposed amendments listed in the table of amendments appended to this report in Appendix 1.
- 1.3 Some of the proposed amendments are designed to provide additional clarity to the existing drafting. Other amendments are to address procedural irregularities which have come to light during recent months as a result of scrutiny of reports during the Covid Pandemic. Finally, some of the amendments specifically address references to EU Procurement Law which no longer applies in the United Kingdom after 31<sup>st</sup> December 2020. EU law has already been incorporated into UK Law under the Public Contracts Regulations 2015 and the Concession Contract Regulations 2016 and therefore previous, references to EU law in the Rules have been removed and alternative references have been made to appropriate sections in UK legislation.

## 2 Current Position

- 2.1 Appendix 1 to this report includes a full list of the proposed amendments to the Council's existing Contract Procedure Rules with a rationale for each of the proposed changes.
- 2.2 Highlights of the significant amendments to the Contract Procedure Rules are as follows: -
  - (a) Rule 10.1 - The Council has stipulated the minimum insurance requirements for a contract:

*"All written Contracts shall include the Council's minimum requirements for insurance cover namely:*

- *Public Liability Insurance - ; £10m*
- *Employers Liability Insurance - £5m and*
- *Professional Indemnity Insurance - £2m,*  
*except where a Framework Agreement is used in which case, the levels of cover specified in the Framework Agreement shall apply. Any departure from these agreed thresholds must be approved by the Director of Finance and the Director of Legal Services and the Head of Corporate Governance."*

The reason for the proposed change in Appendix 1 is as follows:

*"The new Rule is to clarify any ambiguity with regard to the requisite levels of insurance cover for contracts which is the basis of frequent clarifications Rule 7.5 of the Finance Procedure Rules (Insurance) states that the Director of Finance will determine the extent of insurance cover which must be provided for in any external contract.... There is an option to reduce the cover requirements in respect of specific contracts."*

- (b) Rule 12.2 – the proposed change amends the wording for post tender clarification issues which arise frequently, and which have been a cause for concern in the light of the previous wording which only allowed for post tender clarifications to address an obvious error. This amendment is particularly important in view of the application

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of the Social Value Portal to evaluate the social value elements of bids which requires a post clarification exercise to verify bid submissions:

*“Post tender clarifications may be undertaken with tenderers provided the Council ensures equal treatment of all participants and specifies and applies a process for post tender clarifications in the Invitation to Tender and ensures that no Tenderer is given an advantage over any other Tenderer. For the sake of clarity any clarifications on the commercial element of a bid and risk profile must not change the original price offer. This includes verifying abnormally low bids where specific legal advice is required.”*

The reason for the proposed amendments to the wording in Appendix 1 is as follows:

*“New wording has been included in line with recent case law to address ambiguity in the interpretation of the Rules in practice. The Council must be clear in its tender documentation how it will deal with post tender clarifications and afford equal treatment to all bidders. Removal of the wording limiting to post tender clarifications relating to obvious error.”*

- (c) Rule 16.1 has been amended to address issues arising on construction contracts in relation to security for the Council:

*“16.1 The Director of Finance and the Director of Legal Services shall advise as to the appropriate degree of security (if any) required to protect the Council from a Contractor default prior to the invitation to tender. The rationale for the advice should be documented on The Chest. Liquidated damages clauses should always be used in contracts where appropriate*

*16.2 A retention sum (appropriate to the circumstances of the contract) should be written into the terms and conditions of any contract for Works, with a Contract Value of over £50,000, unless the Director of Legal Services agrees to waive the specific requirement. “*

The reason for the proposed amendment in Appendix 1 is as follows:

*“New wording introduced at the request of the Director of Finance and the Head of Corporate Governance after full discussion. This should facilitate uniformity of approach across works contracts.”*

## **Financial Implications**

It is important to ensure that the Contract Procedure Rules are revised on a regular basis to ensure that such rules are in place, understood and followed by all officers in the letting of all contracts. This ensures that the Council can demonstrate that the awarding of contracts has been properly undertaken to support the most economic and effective use of resources as well as minimizing the risk of procedural challenge. (Anne Ryans)

## **Legal Services Comments**

- 7.1 Legal Services have participated in the review of the Council’s Contract Procedure Rules by a working group of Council officers and support the recommendation to approve the proposed amendments to the Rules. (Elizabeth Cunningham Doyle)

Procurement has been fully engaged with this review of the CPR’s and is in agreement with all of the updates in the latest version as it will provide clear instruction to be considered in all external expenditure. (Steve Boyd)

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## **Appendices**

Appendix 1 – Table of Amendments

Appendix 2 – Current Contract Procedure Rules.to the Rules