

## **AUDIT COMMITTEE**

**28 SEPTEMBER 2010**

### **REVISIONS TO CONTRACT PROCEDURE RULES**

Report from: Deborah Upton, Monitoring Officer

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#### **Summary**

This report sets out proposed changes to the Contract Procedure Rules and the Council's procurement framework, to ensure that the processes are more streamlined, whilst remaining robust.

#### **1. Budget and Policy Framework**

- 1.1 The Contract Procedure Rules are a matter for full Council to agree, as they form part of the Constitution. Therefore the Audit Committee is asked to recommend this report to full Council.
- 1.2 The Audit Committee is asked to accept this as an urgent item to enable the report to be referred to Full Council on 14 October 2010 for decision.

#### **2. Background**

- 2.1 In September 2006 the Council approved a move to a risk based procurement system. The Council's previous procurement process was a value based process, i.e. value thresholds determine which procurement process should be followed e.g. if your procurement is above £15,000 and below £100,000 you are obliged to seek three quotations. Though value is extremely important it is only one of many factors, or risks, that are important to an organisation. To gain a truer picture of risk one should consider other factors, for example impact upon the public, complexity of delivery model, availability of supply solutions, whole life costs etc.
- 2.2 By defining procurement in terms of overall risk, the Council is able to make informed decisions about the allocation of resource and scrutiny. Such risk based procurement models are advocated by the National Procurement Strategy (NPS) and considered best practice and a key area for future work.
- 2.3 In addition the National Procurement Strategy obliges councils to adopt a 'Gateway' review process; where projects are reviewed and scrutinised at selected pre determined stages and passage from one stage to the next is

only possible having successfully passed through the appropriate gates, and this forms part of the Council's current procurement process.

### **3. Revisions to the current process**

3.1 The current process for procurements is set out below.

#### **Procurement Process for Projects Classified as High Risk**

3.2 Reports are required for review and scrutiny by the appropriate gatekeeper at each Gateway. High Risk reports will require a detailed analysis.

##### **Summary of Gateway Approval for High Risk Procurements:**

	Approval Route
Gateway 0 – Project Commencement	Approval to commence a procurement given by Directorate Management Team
Gateway 1 – Options Appraisal / Feasibility	Approval to proceed to the next stage obtained following successful passage through Procurement Board and approval by Cabinet. External review proposed at this point if appropriate.
Gateway 2 – Competitive Process	The Councils procurement professionals – Procurement section - will approve the procurement strategy and procurement tools.
Gateway 3 – Contract Award	As per Gateway 1
Gateway 4 – Contract Management	As per Gateway 1. Paper submitted annually to Cabinet throughout contract term.

#### **Procurement Process for Projects Classified as Medium Risk**

3.3 Reports are required for review and scrutiny by the appropriate gatekeeper at each Gateway. Medium Risk reports will require less detailed narrative than High Risk reports.

##### **Summary of Gateway Approval for Medium Risk Procurements:**

	Approval Route
Gateway 0 – Project Commencement	Approval to commence a procurement given by Directorate Management Team
Gateway 1 – Options Appraisal / Feasibility	Approval to proceed to the next stage obtained from Officer Scrutiny Panel (OSP) – Procurement Standards Group (PSG). Value of external review considered at this point.
Gateway 2 – Competitive Process	Procurement section will approve the procurement strategy and procurement tools.
Gateway 3 – Contract Award	As per Gateway 1, with the addition of Cabinet approval if either the contract value exceeds financial thresholds or OSP decides Cabinet approval is appropriate.
Gateway 4 – Contract Management	As per Gateway 1. Paper submitted at contract term mid point.

## **Procurement Process for Projects Classified as Low Risk**

- 3.4 The intention of this process is to provide scrutiny but without the rigidity and structure of the High and Medium Risk processes.

### **Summary of Gateway Approval for Low Risk Procurements:**

	Approval Route
Gateway 0 – Project Commencement	Approval to commence a procurement given by Directorate Management Team
Gateway 1 – Options Appraisal / Feasibility	Approval to proceed to the next stage obtained from Directorate Management Team
Gateway 2 – Competitive Process	Procurement section will approve the procurement strategy and procurement tools.
Gateway 3 – Contract Award	As per Gateway 1, with the addition of Cabinet approval if contract value exceeds financial thresholds
Gateway 4 – Contract Management	As per Gateway 1.

### **Procurements with a Contract Term Value Less than £100,000**

- 3.5 Procurements with a total contract term value less than £100,000 are not required to undergo a full Risk Analysis and equally are not be subject to the Gateway process detailed above. Officers must seek quotations as value dictates and making award decisions on a best value basis. Officers are however be encouraged to procure in the spirit of the Gateway process, engaging in structured options appraisal, contract award and contract management as required by Directorate Management Teams.

## **4. Revisions to the process**

- 4.1 The current process has been largely successful and is recognised by officers and members as providing an effective check and balance on procurements to ensure that value for money is received. However it can sometimes be unnecessarily unwieldy for some Low Risk (but high value) procurements, and other matters may not be addressed at Directorate Management teams.
- 4.2 The current Contract Procedure Rules are contained in the Constitution but the procurement processes and good practice are not. It is intended that the revised Contract Procedure Rules will incorporate the procurement manual, processes and procedures into one document, which will be enshrined in the Council's Constitution. In addition, this will add weight to the procedures as a failure by officers to comply with the Constitution can be deemed in some cases to be gross misconduct.
- 4.3 It is intended that the new process will operate as a risk and value based Procurement Gateway Process which is split into two categories:

- Category A Procurements - procurements where the anticipated value over the entire contract term is below £100,000 and the risk is deemed as insignificant.
- Category B Procurements - procurements where the anticipated value over the entire contract term is above £100,000 and for all procurements that are above the EU procurement threshold for supplies (goods), works or services.

4.4 The revised processes will mean that all procurements in excess of £1,000 will be required to have at least one written quotation and for £15,000-£100,000 a minimum of three quotations will be required.

4.5 In respect of all other procurements, the decision on the risk of the procurement project will initially be based upon value as specified below:

- Low Risk – For Supplies (Goods), Services and Works requirements between £100,000 and £250,000 – Approved at all appropriate stages of the Procurement Gateway Process by the Strategic Procurement Team unless otherwise dictated by the Strategic Procurement Board.
- Medium Risk – For Supplies (Goods), Services and Works requirements above £250,000 – Approved at all appropriate stages of the Procurement Gateway Process by the Strategic Procurement Board unless otherwise dictated by the Strategic Procurement Board.
- High Risk – Any Supplies (Goods), Services and Works requirements categorised as High Risk by the Strategic Procurement Board regardless of value – Recommended by the Strategic Procurement Board to the Cabinet for approval at all appropriate stages of the Procurement Gateway Process.

## 5. **Summary of Main Changes**

5.1 The following points provide a summary of the main changes between the current Contract Procedure Rules and the proposed new Contract Procedure Rules.

### 5.1.1 **Procurement Categorisation**

- (a) The Old Contract Procedure Rules split procurement values between three categories; (1) below £15,000; (2) £15,000-£100,000; and (3) above £100,000.
- (b) The new Contract Procedure Rules consists of two procurement categories – Category A (Insignificant Risk - below £15,000 and £15,000-£100,000) and Category B (Low Risk - £100,000 - £250,000, Medium Risk – Above £250,000 and High Risk – any procurement project of any value, the decision-making for which is deemed by the Strategic Procurement Board as a matter for the Cabinet.

### 5.1.2 Risk Analysis Tool

The old Contract Rules required all procurement projects subjected to the gateway process to be subjected to the Risk Analysis Tool assessment in order to determine Low, Medium and High Risk categorisation.

The new Contract Procedure Rules replaces the Risk Analysis Tool with a process whereby the Strategic Procurement Board reviews the initial procurement risk categorisation in accordance with value, and either ratifies risk ratings or upscales risk in accordance with the project specific conditions and identified risks.

### 5.1.3 Deletion of the Officer Scrutiny Panel (OSP) (Procurement Standards Group) and renaming of the Procurement Board

- i. The OSP no longer exists within the new process and all Medium Risk responsibilities have been transferred to the Strategic Procurement Board including the approval for extending all contracts.
- ii. The Procurement Board has been renamed as "The Strategic Procurement Board". For the avoidance of doubt, the Strategic Procurement Board is a Cabinet Advisory Group and has no formal decision making powers.

#### • DMT Gateway Approval and Contract Award Role

- i. The old Contract Procedure Rules gave Directorate DMTs the authority to approve Low Risk gateway stages and award Low Risk Contracts below £250,000 for Supplies (Goods) and Services and £500,000 for Works procurements.
- ii. The new Contract Procedure Rules remove the authority for each respective Directorate DMT to approve any Low Risk Gateway stages or to approve any contract awards or extensions.
- iii. The new Contract Procedure Rules transfer and delegate authority to the Strategic Procurement Team to approve any Low Risk Gateway stages or to approve any Low Risk contract awards Contracts below £250,000 for Supplies (Goods) and Services and £500,000 for Works.

#### • Cabinet Role

- i. The old Contract Procedure Rules gave authority to the Cabinet to approve all High Risk Gateway stages and award all High Risk contract and contracts over £250,000 for Supplies (Goods) and Services and £500,000 for Works.
- ii. The new Contract Procedure Rules remove the authority for the Cabinet to award contracts over £250,000 for Supplies (Goods) and Services and £500,000 for Works and delegate this responsibility to the Strategic Procurement Board for all procurement projects.
- iii. The new Contract Procedure Rules authorise the Strategic procurement Board to review and recommend procurement projects deemed as High Risk to the Cabinet for Gateway stage approval and contract award as and when deemed necessary.

- **Review and amendment of Contract Procedure Rules**

- i. The old Contract Procedure Rules required any amendments other than EU Procurement Financial Threshold values, to be approved by Full Council.
- ii. The new Contract Procedure Rules, delegate the power to amend any part or all of the Contract Procedure Rules to the Monitoring Officer, in consultation with the Council Member responsible for championing Strategic Procurement (as appointed by the Leader of the Council), the Chief Executive and the Council's Chief Finance Officer.
- iii. The new Contract Procedure Rules require any amendments to the Contract Procedure Rules by the Monitoring Officer to be reported to the Cabinet and the Full Council for informational purposes only.

- **Exemptions To Contract Procedure Rules**

- i. The new Contract Procedure Rules include revised provisions for approval of exemptions.
- ii. The old Contract Procedure Rules required Officers to seek direct permission from the Council's Monitoring Officer.
- iii. The new Contract Procedure Rules require Officers to first seek signed approval from their Director for permission to seek an exemption from the Monitoring Officer after which the Officer must now submit and present their signed exemption request to the Monitoring Officer at the Strategic Procurement Board.
- iv. The new Contract Procedure Rules require Directors to discuss and gain support for all proposed exemptions with the appropriate portfolio holder and make them aware of benefits/risks of the exemption approach.
- v. The old Contract Procedure Rules required an annual report by the Monitoring Officer to the Full Council on all exemptions.
- vi. The new Contract Procedure Rules no longer requires an annual report to the Full Council, rather after each exemption has been approved by the Monitoring Officer at the Strategic Procurement Board, the exemption report will go onto the Cabinet for informational purposes in accordance with the Cabinet rules.

- **The new Contract Procedure Rules provide clarity on the following procurement aspects:**

- i. Interpretation of procurement processes and procedures.
- ii. Procurement Governance Structure across organisation at all value and risk levels.
- iii. Ten strategic procurement objectives which must be followed by all Officers undertaking procurement activities.
- iv. Officer responsibilities and delegated authority.
- v. Risk management.
- vi. Equalities legislation and duties.
- vii. Sustainability.

- viii. Contract formalities and bonds/parent company guarantees.
- ix. Performance and contract management.
- **Gateway Stage Amendments**
  - i. Within the old Contract Procedure Rules, Gateway 0 was a mandatory DMT approval stage.
  - ii. Within the new Contract Procedure Rules, Gateway 0 no longer exists as a formal Gateway stage as it is now a precondition of both Category A and Category B procurements that DMT has approved Officers to subject a requirement to a procurement process in line with Contract Procedure Rules either directly or through the appropriate scheme of delegation.
  - iii. The old Contract Procedure Rules required the Strategic Procurement Team to quality assure and sign off all procurement and contract documentation at Gateway 2 prior to the commencement of a procurement tendering process.
  - iv. The new Contract Procedure Rules removes the need for Gateway 2 to be signed off by the Strategic Procurement Team and requires Officers to self certify quality assurance sign off of the Gateway 2 stage in accordance with guidance with the new Contract Procedure Rules and new procurement process guidance templates on the Strategic Procurement Intranet site (currently under review to coincide with the commencement of the new Contract Procedure Rules and revised Gateway Procurement Process).
  - v. The old Contract Procedure Rules required a Gateway 4 Contract Management report to either DMT (Low Risk), OSP (Medium Risk) or Procurement Board plus the Cabinet (High Risk) on a one-off basis for a one-off procurement projects and on an annual basis for the duration of the termed contracts.
  - vi. The new Contract Procedure Rules change the Gateway 4 stage to a one-off project appraisal report to either the Strategic Procurement Team (Low Risk), the Strategic Procurement Board (Medium Risk) or the Cabinet (High Risk) at the completion of a one-off procurement project and on the first anniversary of a termed procurement contract.
  - vii. The new Contract Procedure Rules include a new Gateway 5 stage, which is a detailed contract management report to the Strategic Procurement Board for Low and Medium Risk Procurements (and the Cabinet if recommended by the Strategic Procurement Board for High Risk procurements) on as many occasions as deemed necessary based upon risk and project conditions (e.g. quarterly, bi-annually and annually).
- **Procurement Manual**
  - i. The old Contract Procedure Rules was a short document which made reference to the Procurement Manual for further information on procurement process which caused considerable ambiguity and the potential for non compliance to occur.
  - ii. The new Contract Procedure Rules encompasses the Procurement Manual within the one document, removing process ambiguity and ensuring a clear and coherent process.

- **Gateway Reporting Templates**

- i. The old Contract Procedure Rules required Officers to complete and submit a Low, Medium or High Risk template for Gateway 1, Gateway 3 and Gateway 4 to the appropriate approval body (DMT, OSP, Procurement Board plus the Cabinet). This amounted to 9 separate reporting templates plus another potential 3 amended reporting templates for projects requiring Cabinet approval.
- ii. The new Contract Procedure Rules replace the old 9 report templates and the potential 3 additional Cabinet reporting templates with 4 standardised reporting templates which can be used for Low, Medium, High and Cabinet reports and will save considerable Officer process time and effort.

## **6. The Way Forward**

- 6.1 The revisions to the procurement processes have been the subject of extensive consultation within the Council, both from Directors and their Directorate Management Teams, representatives of Directorates through the Strategic Procurement Board and individual representations.
- 6.2 As the revised contract procedure rules (incorporating the procurement manual) will form part of the Constitution, they have been considered by Cabinet on 28 September and will be presented to full Council on 14 October 2010. Following such approval, it is intended that the new procedure will take effect from 1 January 2011, to ensure that training can be given to all staff in the period October – December. A full set of standard documentation will also be produced and hyperlinked to the documentation, to ensure consistency and that officers have the correct tools to carry out procurements.

## **7. Financial and Legal Implications**

- 7.1 The legal implications have been set out throughout this report and the attached contract procedure rules.
- 7.2 There are no direct financial implications arising as a result of this report.

## **8. Risk Management**

- 8.1 Since the last revision of the Contract Procedure Rules and the inception of the Gateway Process in 2006, the local government procurement landscape has changed considerably with greater exposure to risk and market challenge. This exposure to risk and challenge has been further increased through the introduction of the new Remedies Directive on 20<sup>th</sup> December 2009, whereby the ability of tenderers to challenge local authorities and the subsequent contractual and financial implications upon local authorities for a failure to follow more compliant and transparent procurement processes has been considerably heightened.



- 8.2 The new Contract Procedure Rules provide the flexibility and overall greater control over procurement projects to ensure that procurement projects are subjected to a project specific risk analysis and thereafter managed through the appropriate gateway stages to ensure that the Council's risk exposure is mitigated as best as possible and that projects are subjected to an overall robust and compliant process which yields value for money outcomes.
- 8.3 The old Contract Procedure Rules and corresponding Procurement Manual were cause of considerable ambiguity on process and Officer responsibilities, which have all been overcome within the new Contract Procedure Rules.
- 8.4 The new Contract Procedure Rules will provide the Strategic Procurement Board with greater control and view of expenditure across the Council, especially in relation to expenditure of high value but low risk (previously not captured effectively under the old gateway process). This will allow the Strategic Procurement Board in conjunction with the Strategic Procurement Team, to lead and deliver on efficiency and improvement strategies aimed at achieving both cashable and non cashable savings.
- 8.5 Failure to adopt the new Contract Procedure Rules will expose the Council to potential risk of challenge within its procurement processes and will result in Officers following outdated procurement practices which are not reflective of current procurement legislation, best practice procurement practices and which cannot be effectively and proactively managed by the Council.

## **9. Recommendations**

- 9.1 That the Audit Committee recommend that full Council adopt the Contract Procedure Rules as set out in the attached Appendix

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**Background Papers: None**