

Is the final decision on the recommendations in this report to be made at this meeting?

Yes

Proposed Changes to the Constitution – Amendment to Contract Procedure Rules

| | |
|-----------------------------------|--|
| Final Decision-Maker | Full Council |
| Portfolio Holder(s) | Cllr David Reilly, Portfolio-holder for Finance and Governance |
| Lead Director | Lee Colyer, Director of Finance, Policy and Development |
| Head of Service | Jane Fineman, Head of Finance and Procurement |
| Lead Officer/Report Author | Dan Hutchins, Procurement Manager |
| Key Decision? | No |
| Classification | Non-Exempt |
| Wards affected | Not Applicable |

This report makes the following recommendations to the final decision-maker:

1. That the Full Council be requested to approve the updated Standing Orders on Procurement and Contracts, as set out in Appendix A.

This report relates to the following corporate priorities:

- A Prosperous Borough
- A Green Borough
- A Confident Borough

Timetable

| <i>Meeting</i> | <i>Date</i> |
|-----------------------------------|--------------------|
| Management Board | 29 March 2017 |
| Constitution Review Working Party | 2 June 2017 |
| Audit & Governance Committee | 27 June 2017 |
| Full Council | 26 July 2017 |

Proposed Changes to the Constitution – Amendment to Contract Procedure Rules

1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 The current Standing Orders on Procurement and Contracts in the Constitution were written around 6 years ago, and since then there have been major legislative changes in procurement. The Social Value Act was introduced in 2012 and the new Public Contracts Regulations 2015 were implemented on 26 February 2015. Whilst the Council has been compliant with OJEU (Official Journal of the European Union) legislation, the Constitution needs to be updated to reflect the updated mechanisms and thresholds for taking tenders to the market. A review of the current Contract Standing Orders has been undertaken and they have been re-written to ensure that they now reflect the current legislation.
- 1.2 This report is seeking approval to include the updated Standing Orders on Procurement and Contracts into the Constitution.

2. INTRODUCTION AND BACKGROUND

The Standing Orders on Procurement and Contracts (known internally as Contract Standing Orders or Contract Procedure Rules)

- 2.1 The proposed Contract Standing Orders mainly reflect the changes in legislation. There is little judgement that can be applied. However, public sector bodies can set their own Constitutional procurement strategies for contracts of less than OJEU value, providing they still advertise their opportunities to enable the market to be open to competition.
- 2.2 The Council is required to advertise any contract with a value of or above £164,176 (supply and service contracts), £4,104,394 (public works contracts) and £589,148 (social and other specific service contracts) in accordance with OJEU regulations. All contracts above OJEU thresholds must follow the OJEU Procurement process as laid out by the Public Contracts Regulations 2015.
- 2.3 Government guidelines now suggest that any contract with a total lifecycle cost of more than £25,000 be advertised in a way that promotes fair and equal competition (achieved at TWBC by advertising on “Contracts Finder” and the “Kent Business Portal”). If this were adhered to strictly, many more contracts would need to be formally tendered, which would considerably increase the procurement resource required by the Council. Practically, it appears that there is a balance to be struck between the cost of procurement administration and the risk of challenge and potential legal proceedings.
- 2.4 Our current contract standing orders are as follows:

| Contract Value (total lifecycle cost*) | Procedure |
|---|------------------------------|
| Less than £10k | 1 quote required |
| £10k - £49,999 | 3 quotes required |
| £50k - £74,999 | 4 quotes required |
| £75k – OJEU | Consult Legal for advice |
| On or above OJEU threshold | Fully compliant OJEU process |

2.5 It is proposed that these be updated to:

| Contract Value (total lifecycle cost*) | Procedure |
|---|---|
| Less than £14,999k | 2 quotes required (inc. local supplier) |
| £15k - £99,999 | 3 quotes required (inc local supplier) |
| £100,000k - £OJEU | Full Process with Advert |
| On or above OJEU threshold | Fully compliant OJEU process |

2.6 The proposal enables smaller contracts of low risk to be procured efficiently, by obtaining quotations, but includes a local supplier bid to assist local businesses and comply with the Social Value Act. It is considered that a procedure valued at up to £100,000 is unlikely to attract legal challenge because of the costs that would be associated with it, but in order to get a good sample of the market three quotes will be required. Above £100,000, it is important that we get the very best value for money from the market and the additional cost of a lengthy procedure should be offset by the gains made from the competition. It is also considered that the threat of legal challenge increases above £100,000 as the value of the contract then makes the potential legal cost a viable risk.

2.7 A benchmark analysis has been undertaken of the thresholds adopted by the other authorities in Kent (see Appendix B). It can be seen that the thresholds proposed for TWBC are very much within the normal parameters for the other authorities.

3. AVAILABLE OPTIONS

- 3.1 The Contract Standing Orders can remain unchanged. This leaves the Council's standing orders out of step with current legislation.
- 3.2 The Contract Standing Orders can be amended as proposed (as set out in Appendix A), which will ensure compliance with current legislation and a balance of procurement cost, value for money and risk of challenge.
- 3.3 The Contract Standing Orders can be amended as proposed, with a variation to the procedure to market (from Note 2.5 above).

4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 The preferred option would be 3.2 above. This recommendation was benchmarked against other local authorities in Kent, as evidenced in Appendix B. The £100,000 threshold for quotations, rather than a full process, was verified as a reasonable risk ceiling in discussions with professionals from procurement consultants. It builds social value criteria into the procedure by promoting working with local businesses. It also reduces exposure to risk associated with the lowest value threshold, as a single quotation will no longer be acceptable.

5. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 5.1 Management Board agreed the proposed changes at the meeting on 29 March 2017 and gave permission for the changes to be taken to the Constitution Review Working Party.

- 5.2 The Constitution Review Working Party agreed with the proposed changes at the meeting on 2 June 2017 and agreed that the changes should be put before the Audit and Governance Committee before going to Full Council.
- 5.3 At their meeting held on 27 June 2017, the Audit and Governance Committee unanimously supported the recommendations.

6. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 6.1 Having had the unanimous support of the Audit and Governance Committee, this matter is now presented to the Full Council for final approval and adoption.

7. CROSS-CUTTING ISSUES AND IMPLICATIONS

| Issue | Implications | Sign-off (name of officer and date) |
|---|---|---|
| Legal including Human Rights Act | The Legal team have been heavily involved in this process and the proposed changes bring the Council's Constitution into line with the legislative changes that have been made in regards to procurement. There are no consequences arising from the recommendation that adversely affect or interfere with individuals' rights and freedoms as set out in the Human Rights Act 1998. | Senior Lawyer (Corporate Governance) |
| Finance and other resources | The changes will allow the Procurement service to continue working cross-functionally with the other services in the organisation without increasing the burden of administration. | Head of Finance and Procurement |
| Staffing establishment | There are no specific implications. | Head of HR or deputy |
| Risk management | The report is presented to members for information rather than decision and so raises no new implications for the Council's risk register. | Head of Audit Partnership |
| Environment and sustainability | There are no specific implications. | Sustainability Manager |
| Community safety | There are no specific implications. | Community Safety Manager |
| Health and Safety | There are no specific implications. | Health and Safety Advisor |
| Health and wellbeing | There are no specific implications. | Healthy Lifestyles Co-ordinator |
| Equalities | There are no specific implications. | West Kent Equalities Officer |

8. REPORT APPENDICES

The following documents are to be published with this report and form part of the report:

Appendix A Standing Orders on Procurement and Contracts

Appendix B Analysis of Other Local Authority Standing Orders

9. BACKGROUND PAPERS

Constitution Review Working Party – Friday 2 June 2017