


| | | |
|-----------------|-----------------------------------|--|
| Agenda Item No: | 15 |  |
| Committee: | Council | |
| Date: | 23 July 2015 | |
| Report Title: | Update to the Code of Procurement | |

Cover sheet:

1 Purpose / Summary

To consider changes to the Code of Procurement as a result of the Public Contracts Regulations 2015, as recommended by Corporate Governance Committee on 14 July 2015.

2 Key issues

- The Code of Procurement describes the way the Council procures goods and services and is part of the Council's Constitution as detailed in Part 4, Rule 7.
- The current Code of Procurement was adopted by Council on 26 July 2012.
- The Code of Procurement requires updating to ensure compliance with the Public Contracts Regulations 2015.
- The 2015 Regulations implement the 2014 EU Public Sector Procurement Directive and a number of new reforms, recommended by Lord Young in his report 'Growing Your Business', to make public procurement more accessible to small businesses.
- Attached is an updated version of the Code of Procurement, highlighting the recommended changes.
- The updated Code was considered by Corporate Governance Committee on 14 July 2015 with their amendments incorporated in the attached updated Code.

3 Recommendations

- It is recommended that the updated Code of Procurement be approved.

| | |
|-------------------------------|---|
| Wards Affected | All |
| Forward Plan Reference | |
| Portfolio Holder(s) | Cllr John Clark, Leader Cllr Chris Seaton, Portfolio Holder, Finance |
| Report Originator(s) | Rob Bridge, Corporate Director and Chief Finance Officer Mark Saunders, Chief Accountant |
| Contact Officer(s) | Paul Medd, Chief Executive Rob Bridge, Corporate Director and Chief Finance Officer Mark Saunders, Chief Accountant |
| Background Paper(s) | Code of Procurement as adopted in July 2012 Public Contracts Regulations 2015 |

Report:

1 Introduction

- 1.1 The Council's Constitution sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Some of the procedures are required by law; others are a matter for the Council to choose. This includes the way the Council procures goods and services, which are presented in Part 4, Rule 7.
- 1.2 In addition to being best practice to review the procurement rules regularly to ensure they remain up to date, there have been significant recent changes in the regulatory framework for procurement following the implementation of the Public Contracts Regulations 2015. These put into English law the changes agreed early in 2014 amending the European Procurement Directives for procurements above the OJEU threshold, together with the UK requirements proposed by Lord Young which affect procurement below the OJEU threshold. Many of the measures in the regulations came into effect from 26 February 2015.
- 1.3 Although the Council's Code of Procurement is being updated to formally comply with the new regulations, all Council procurements since the implementation date of 26 February 2015 have complied with the new regulations.

2 Main Changes

- 2.1 Current EU procurement threshold for goods and services contracts is £172,514 and works contracts £4,322,012.
- 2.2 **Below EU Threshold Requirements**
 - Pre-Qualification or any form of selection (except by using a framework or closed membership consortium) prior to tender is prohibited for contracts valued under £172,514 (goods, services and works). However, contracting authorities may ask questions relating to a potential supplier provided that the questions are relevant to the subject matter of the procurement and proportionate. This will mean the Council may have to evaluate larger number of tenders or quotations for some contracts.
 - From 1st April 2015, all tenders which are advertised in any way and valued at over £25,000 must also be advertised on Contracts Finder (the government's national website). This does not include those tenders which are offered through frameworks (such as the Crown Commercial Services), buying organisations (such as ESPO) or closed membership categories (such as Constructionline). Potentially, this could increase the number of bidders and discourage some local contractors in bidding (see also 2.3 below).
 - From 1st April 2015, similarly details of all contracts awarded must be published on Contracts Finder.
 - All undisputed invoices must be paid within 30 days. The contracting authority must publish annually the proportion of invoices that were paid within 30 days, the total amount of liability for late payments if 30 days is breached and the total amount of interest paid as a result of failure to comply.
 - All contracts must include a requirement of the prime contractor to pay sub-contractors under the same or better terms.
 - Selection criteria must be proportionate and relevant to the subject matter. A turnover cap has been introduced to facilitate SME participation. Contracting authorities will not be able to set company turnover requirements at more than two times contract value except where there is a specific justification.

2.3 Where existing standing orders in local government are in place that have a higher value for advertising tenders, the higher value applies rather than £25,000. This Council's threshold for tendering for goods and services contracts is £25,000 and for works contracts £100,000.

2.4 **Above EU Threshold Requirements**

- All procurement documentation to be available from when the contract notice has been published. The intention is that by publishing a full specification at the outset, bidders will self-select and not bid for inappropriate work. However, this means that more work will have to be carried out by officers in advance of the date of advertising and is likely to lengthen the time taken to undertake the procurement.
- Part B procurements are abolished, i.e. services which were exempt from OJEU under the previous regime are now either subject to a new Light Touch regime (eg. certain social care and health contracts) or subject to the full OJEU procedure (eg. leisure).
- Move to full electronic tendering by 2018.

2.5 The attached Code of Procurement has been amended to incorporate the above changes and these have been highlighted throughout the document. It now also makes reference to the Council's Anti-Fraud and Corruption Policies and the Procure to Pay system (Agresso) which provides a paperless ordering to payment method which can also administer the 30 day supplier payment requirement.

2.6 The Code of Procurement also now makes reference to transparency and publishing of Council procurement data in line with the Local Government Transparency Code 2014. This requires the Council to publish data on all procurements and orders raised over £5,000.

2.7 The new requirements have the potential to increase the administration of procurements above £25,000 through increased officer time spent evaluating larger number of tenders. Consequently, officers will evaluate the impact of the new regulations over the coming months and report back to members with any further changes that may be appropriate, for example the potential to raise the limit for tenders for goods and services to £50,000.