

Appendix B

Board/Committee:	POLICY AND ORGANISATION
Date of Meeting:	25 th September 2019
Title:	AMENDMENTS TO CONTRACT PROCEDURE RULES- PART 4 SCHEDULE 13
Author:	BOROUGH TREASURER
Status:	FOR DECISION

Purpose

To appraise the Board of necessary changes to the Councils' Contract Procedure Rules concerning the Council's procurement of goods, services and supplies to ensure compliance with updated legislation as detailed below.

Recommendation

That the Policy and Organisation Board recommends to Full Council that the proposed amendments to the Contract Procedures Rules are approved and adopted as an amendment to Part 4 Schedule 13 of the Constitution.

1 Background

- 1.1 The legislation governing procurement within the Public Sector has been reformed and updated in recent years; the Public Contracts Regulations 2015 brought into force in English law updated principles set out in European Law. The Public Contracts Regulations 2015 ("the Regulations") place legal obligations on all Public Service organisations to ensure any procurement of goods, services or supplies are undertaken in accordance with this legislation.
- 1.2 The Council's own Contract Procedure Rules (CPR's) were written to ensure fairness and transparency but now need updating to reflect the latest requirements of the Regulations; in particular the Regulations require public service organisations to undertake all procurement in electronic format. The CPR's have therefore been updated to reflect the requirements of the Regulations and the changes are detailed below. The opportunity has also been taken to update local terminology and practice.
- 1.3 In the event of BREXIT the Regulations will continue to apply as prevailing English law. If the law changes following BREXIT then the Council will need to make further changes accordingly, as it would in the event of any legislative change that affects the way it operates and the services it provides. In the event of a no-deal BREXIT scenario the Council may no longer be able to access the Official Journal of the EU ("OJEU") for tenders of the highest value. In such

circumstances the Council will need to access the 'Find a Tender' system which will be initiated by the UK Government in the event of a no-deal BREXIT.

2 Report

- 2.1 The Council has acquired software (Proactis) which allows connection to the South East Business Portal (SEBP) and is a procurement portal for service providers and suppliers; it is a national database despite the name suggesting a more local forum. The SEBP has previously been used to advertise opportunities to tender for work with the Council.
- 2.2 The Council is now required to advertise all procurement opportunities electronically so the software has been upgraded to allow for this functionality and ensure compliance with Legislation. The software has been configured to allow users to follow pre-set "process maps or work flows" which guide them through the stages required by the legislation from low level procurement to the more complex and above OJEU threshold procurements. The current EU thresholds are £181,302 for Supply, Services and Design Contracts and £4,551,413 for Works contracts. Additionally the software is configured to replicate the Council's own CPR's when EU limits do not apply thus ensuring fairness and protecting the Council against challenge.
- 2.3 The software then links to the South East Business Portal (SEBP) and advertises all opportunities for services, supplies or works that are available to suppliers. Further adverts are placed on Tenders Electronic Daily and Contracts Finder when appropriate procurement financial levels are met.
- 2.4 The SEBP is a national database used by suppliers; it is a free and easy to use service. Once registered, suppliers will receive automated notification of any opportunities related to their area of business and registration takes an average of 5 minutes.
- 2.5 Many Councils use this software and recent opportunities advertised have confirmed some of the Councils current suppliers are already registered. If not already connected, registration to the portal is free and simple to undertake with full support given by the software providers thus negating any need for assistance from Council staff.
- 2.6 The Council is currently contacting all existing suppliers by e-mail or letter inviting them to register on the SEBP so they are automatically notified of any opportunities within their area of business. This will allow all sizes of business to register for Council opportunities and the Council's own website will continue to signpost to the SEBP.

2.7 The software also has the facility to maintain the Council's Contracts Register and provide reporting functions to assist in the Council's transparency agenda; it stores details and documents of all procurements securely within the system allowing for a full auditable history of all actions taken, documents issued, received and awards made. The software is also set-up to integrate with the UK Government's 'Find a Tender' system which will be operational in the event of a no-deal BREXIT scenario.

2.8 **The proposed changes to the Contract Procedure Rules are as follows:**

- Text amended to confirm all procurements must be undertaken in electronic format using the Council Proactis software which in connects to the SEBP, Contracts Finder and Tenders Electronic Daily, where appropriate procurements levels are met.
- Confirmation that a Procurement Guide will be available to Officers for help and assistance, full advice will be available from the Borough Solicitor and where appropriate the Head of Internal Audit and the Procurement Section Head.
- Confirmation that all records relating to Procurement will be created and kept within the Proactis software allowing fully auditable records.
- Amendment to confirm that a nominated representative of the S151 Officer or Financial Services will provide assurance regarding bidder's economic and financial standing (paragraph 7.1.2).
- Available extensions to Framework agreements in accordance with the relevant Regulations (paragraph 7.3.1).
- Procedures to be followed and Officers responsibilities at levels of procurement values including clarification that Members are not involved in the shortlisting or opening of Tenders (paragraph 8.1.1).
- Increase in lowest financial level requiring only one quotation (to streamline processes and align with advertising requirements) (paragraph 8.1.1)
- Advertising requirements at procurement values (paragraph 8.1.1).
- Changes to the opening of Tenders which will now be held securely within the software and unobtainable for viewing until the deadline for tenders has been reached (paragraph 13.5).
- Secure opening of Tenders within the software (paragraph 13.5).
- Updated procedures for Clarifications of Tenders (paragraph 14.1).
- Confirmation that when awarded Contracts must be posted

onto the Contracts Register within the Proactis software.

Finally, terminology and Officer titles have been updated to reflect the roles and procedures now in place.

- 2.9 Whilst there is clarification that Members are not involved in the shortlisting or opening of Tenders, there is an expectation that Officers responsible for procurements should advise the relevant Board Chairman when tenders are received, particularly where any of the tenders exceed the funding limit, and the outcome of any shortlisting. If Board approval has been sought for a specific scheme and tenders are received which do not keep within the funding limit set by the Board approval the matter will need to revert to the Board for reconsideration.

3 Risk Assessment

- 3.1 Legal challenges against contract awards are becoming more frequent and expensive. Compliance with the Regulations, GBC Procurement Guidelines, Financial Regulations and the implementation of the new in house software will help mitigate the risk of challenge.
- 3.2 The Proactis software is configured to allow various permissions for Officers; access will be restricted to the appropriate Officers and levels of access have been created in conjunction with the Internal Audit Section. The software contains a fully detailed audit history to show all interrogations of the software including view only access thus ensuring the security and integrity of the system.

4 Conclusion

- 4.1 Good Procurement practices ensure transparency and protect the Council against costly legal challenge. The improvements made to the Council's software and procedures allows the Council to advertise opportunities more widely, attract the optimum number of bidders, encourage competition and achieve value for money.

The new Contract Procedure Rules and procedures will assist Officers in procuring goods, supplies and services fairly and at the best cost and quality available.

Financial Services comments:	Included in report
Legal Services comments:	Included in report
Risk Assessment:	Included in report
Background papers:	None

