

Cherwell District Council

Council

17 July 2017

<p>Approval of Amendments to the Joint Contract Procedure Rules</p>
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Report of Assistant Director - Transformational Governance

This report is public

Purpose of report

To seek approval to amendments required to be made to the Joint Contract Procedure Rules in place at Cherwell District Council and South Northamptonshire Council in order to ensure those Rules continue to reflect current law and procurement practice.

1.0 Recommendations

The meeting is recommended, subject to South Northamptonshire Council resolving in similar terms at its meeting on 19 July 2017,

- 1.1 To agree the changes made to the Joint Contract Procedure Rules at Appendix 1.

2.0 Introduction

At its meeting on 17 December 2012 the Council agreed to adopt a common set of contract procedure rules with South Northamptonshire Council in order to ensure that the joint procurement team were able to work to a common set of rules and procedures and to mitigate the risk arising from having different procedural rules at the two Councils. This report is to seek approval to update those rules to ensure they keep pace with current procurement practice and recent developments in procurement law.

3.0 Report Details

- 3.1 In 2012, Council resolved to adopt a common set of contract procedure rules with South Northamptonshire Council in order to ensure that the joint procurement team were able to work to a common set of rules and procedures and to mitigate the risk arising from having different procedural rules at the two Councils.

- 3.2 Those rules, now known as the Joint Contract Procedure Rules, have provided a robust framework for successfully managing the Councils' procurement activity since 2012.
- 3.2 However, following changes in procurement law by the coming into force of the Public Contracts Regulations 2015 (PCR15), and a review of current procurement practice by the Joint Procurement Steering Group in May 2017, those Rules are no longer considered sufficient to manage the volume of the Councils' procurement activity without appropriate amendment to ensure they continue to reflect current law and procurement practice and, in their observance, mitigate the risk of procurement challenge.
- 3.3 The proposed amendments to the Joint Contract Procedure Rules are therefore shown as tracked changes in the draft at Appendix 1, with a clean copy of the same at Appendix 2. The amendments are endorsed by both the Monitoring and Section 151 Officers and are accordingly brought to this meeting for formal acceptance. A similar report is being taken to the meeting of South Northamptonshire Council on 19 July 2017 and, subject to South Northamptonshire Council resolving in similar terms, it is recommended that the amended Rules come into effect on 20 July 2017.
- 3.4 The main changes to the Joint Contract Procedure Rules are as follows:
- 3.4.1 The circumstances in which the Rules do not apply (page 2) now echo the like provisions in PCR15.
- 3.4.2 All contracts above £5K must now be recorded in the Contracts Register.
- 3.4.3 The definition of Principal Procurement Decision (PPD) has been changed to the effect that JPSG can now approve all contract awards of whatever value above £150K (Head of Service has responsibility below that threshold) provided the cost does not exceed the approved budget or, if it does, by no more than a specified tolerance. JPSG has determined this tolerance so that the cost of the award must not exceed the allocated revenue budget by more than 5% or £25,000 (whichever is the greater) and/or the allocated capital budget by more than 5% or £100,000 (whichever is the greater).
- 3.4.4 Section 7 (commencing a procurement) sets out the procedure for commencing a procurement. It still requires the project officer having a budget available to begin the procurement, as well as the project officer engaging with the procurement team, but the need to obtain Executive or other formal authority to kick start a tender process has been removed on the grounds the practice is a superfluous and unnecessary layer of administration where a budget is available and the procurement team alert to the procurement requirement.
- 3.4.5 Section 10(a) (tenders/quotes to be invited) now references the new thresholds recommended by JPSG.
- 3.4.6 Section 10(b) (advertising a contract) has been updated at the recommendation of JPSG to reference only the methods of contract advertising mandated by PCR15. The table now accords with procurement law and current practice.

- 3.4.7 Section 10(e) (tender evaluation) now references an obligation to record and maintain all judgements, observations etc. on which any decision to award (or not to award) is based.
- 3.4.8 Section 10(f) (contract awards) includes the changes requested by JPSG to ensure within budget contract awards can be made as appropriate by HoS/JPSG unless they fall to be made by Executive / Cabinet as PPDs, and there is a reminder as to what constitutes a PPD, with related tolerances, included as a footnote to the table.
- 3.4.9 Section 13 is updated to reflect that tendering procedure is now conducted electronically.
- 3.4.10 Section 23 is updated to accommodate the new values applicable to the publication of contract awards in the (internal) Contracts Register and (external) Contracts Finder.

4.0 Conclusion and Reasons for Recommendations

Council is recommended, subject to South Northamptonshire Council resolving in similar terms, to adopt the revised Joint Contract Procedure Rules appended to this report with effect from 20 July 2017.

5.0 Consultation

Joint Procurement Steering
Group

Who promoted and agreed the amendments to
the Joint Contract Procedure Rules

6.0 Alternative Options and Reasons for Rejection

- 6.1 The following alternative options have been identified and rejected for the reasons as set out below.

Option 1: To accept the recommendations.

Option 2: To revise the amendments made to the Joint Contract Procedure Rules as Council sees fit prior to formal acceptance. This is not recommended as the documentation attached has been endorsed by the Monitoring and Section 151 Officers.

Option 3: Not to agree the amendments made to the Joint Contract Procedure Rule so that one. This is not recommended for the reasons set out in Option 2.

7.0 Implications

Financial and Resource Implications

- 7.1 The Joint Procurement Steering Group, which includes officers in Procurement and the Section 151 Officer, has contributed to the drafting of the new procedure rules. The changes are accordingly endorsed for acceptance.

Comments checked by:

Paul Sutton, Chief Finance Officer - telephone: 01295 221634, email: paul.sutton@cherwellandsouthnorthants.gov.uk

Legal Implications

- 7.2 It is necessary for the Council to include in its Constitution appropriate procedure rules covering procurement of works, goods and services. The Monitoring Officer strongly endorses acceptance of the changes made to the current Rules in order to ensure they continue to reflect current law and procurement practice and, in their observance, mitigate the risk of procurement challenge.

Comments checked by:

Nigel Bell, Interim Legal Services Manager – telephone: 01295221687, email: nigel.bell@cherwellandsouthnorthants.gov.uk

Risk Implications

- 7.3 The adoption of common procedure rules across both Councils significantly mitigates the risk of misapplication of procedures/rules and unlawful decision taking.

Comments checked by:

Louise Tustian, Team Leader - Strategic Intelligence & Insight Team – telephone: 01295 221796, email: louise.tustian@chwerwellandsouthnorthants.gov.uk.

8.0 Decision Information

Wards Affected

All

Links to Corporate Plan and Policy Framework

Grow the District – reduce costs of services

Lead Councillor

Councillor Tony Ilott,
Lead Member for Financial Management

Document Information

Appendix No	Title
1	Joint Contract Procedure Rules (with tracked changes)
2	Joint Contract Procedure Rules (clean copy)
Background Papers	
None	
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