

Corporate Governance and Standards Report

Report of Executive Head of Governance

Author: Peter Mulholland

Tel: 01483 44955

Email: peter.mulholland@guildford.gov.uk

Lead Councillor responsible: Nigel Manning

Tel: (01252) 665999

Email: nigel.manning@guildford.gov.uk

Date: 26 March 2015

Revisions to Procurement Procedure Rules

Executive Summary

The Public Contracts Regulations 2015 came into force on 26 February 2015. Procurements undertaken on or after this date must comply with the new regulations. The purpose of this report is to recommend appropriate amendments to the Council's Procurement Procedure Rules to take account of these new regulations. However, further minor amendments may be required as the new procurement regime beds in.

Recommendation

The Committee is asked to recommend to Council that:

- a) the amended Procurement Procedure Rules attached to the report at Appendix 1 be approved and adopted
- b) the Managing Director be given delegated authority to make other related changes to the Procurement Procedure Rules as she (in consultation with the Executive Head of Governance and the appropriate lead councillor) considers desirable and necessary as the new procurement regime beds in.

Reason for recommendation:

To ensure that the Council's Procurement Procedure Rules take account of the new Public Contracts Regulations 2015.

1. Purpose of Report

- 1.1 The Public Contracts Regulations 2015, came into force on 26 February 2015. Procurements undertaken on or after this date must comply with the new regulations. The purpose of this report is to recommend appropriate amendments to the Council's Procurement Procedure Rules (PPR) to take account of these new regulations.

2. Strategic Framework

- 2.1 To deliver its vision the Council has necessarily to procure works, goods and services. Keeping the Procedure Procurement Rules up to date is an important part of the Council's governance in carrying out such procurements legally and obtaining best value for the Council.

3. Background

- 3.1 In 2014 the European Union (EU) adopted 3 new Directives on public procurement:
- a new *classic* Procurement Directive
 - a Concessions Directive and
 - an updated Utilities Directive.
- 3.2 The first of these – the *classic* Directive – has now been transposed into UK law with the Public Contracts Regulations coming into force on the 26th February 2015. These regulations replace The Public Contracts Regulations 2006.
- 3.3 We have already reflected some of the new requirements in the Council's Procurement Procedure Rules (PPR), which we amended as recently as December 2014. Whilst the majority of the proposed amendments in this report are required to reflect the 2015 regulations, officers have taken the opportunity to make a number of other small amendments to our PPR.
- 3.4 Specific changes brought in by the 2015 regulations, which we have reflected in these amendments, include:
- The special regime for social and other specific services set out in Schedule 3 to the 2015 Regulations. These have a higher EU threshold (£650K) and a light-touch tender regime for contracts over that threshold (regulations 74 to 77).
 - The introduction of new procurement procedures including the *Competitive Procedure with Negotiation* (regulation 29) and the *Innovative Partnership* procedure (regulation 31).
 - New requirements for procurements below the relevant EU threshold figures but above £25,000 (including the requirement for them additionally to be advertised on Contracts Finder) (regulations 109 to 112).
 - New requirements for clauses permitting termination where the contract has been wrongly awarded (regulation 73) and for the Council and its contractors to pay invoices within 30 days (regulation 113).
- 3.5 The new regulations have only been in force for a matter of weeks. Local authorities were given only a short amount of time to incorporate the changes into their own PPR, hence the need to bring this report to councillors as swiftly as

possible. It is likely that other related changes to our rules will be required as the new procurement regime beds down. Therefore, it is requested that the Managing Director, in consultation with the Executive Head of Governance or his nominated deputy and the appropriate lead councillor, be given delegated authority to make such additional changes as required. This is to ensure compliance with the new rules, an appropriate level of governance and adherence to the principles of best value in all procurement activity.

- 3.6 Councillors are asked to note that the regulations, which in due course bring the new Concessions Directive into force in England and Wales, will necessitate further amendments to the PPR, as may the regulations regarding the updated Utilities Directive. These amendments can only be made once we know the final form of the relevant new UK regulations.

4. Financial Implications

- 4.1 Having up to date PPR is an important part of obtaining best value for the Council. Apart from that, there are no specific financial implications.

5. Legal Implications

- 5.1 There are no legal implications other than as mentioned in this report.

6. Human Resource Implications

- 6.1 There are no human resource implications directly relating to the introduction of the new regulations. Additional support for developing the procurement functions of the Council to complement the legal service will be delivered by a temporary post approved as part of the growth bid process for the 2015-16 budget.

7. Conclusion

- 7.1 All local authorities have to incorporate the new Public Contracts Regulations 2015, into their PPR. Our rules were amended in December 2014, to accommodate the EU Directives as specified in the 2006 regulations in the knowledge that further changes would have to be made once the 2015 regulations had been laid.
- 7.2 The new regulations came into force on 26 February 2015, giving local authorities very little time to introduce them to their PPR. However, we have now managed to achieve this, although further amendments may be necessary as the new regulations bed down. The draft Procurement Procedure Rules are attached at **Appendix 1**, for members of the Governance and Standards Committee to consider recommending to Council.

8. Background Papers

The Public Contracts Regulations 2015

www.legislation.gov.uk/uksi/2015/102/pdfs/uksi_20150102_en.pdf

9. Appendices

Appendix 1 Draft of amended Procurement Procedure Rules