

Corporate Governance and Standards Committee Report

Report of Director of Corporate Services

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E-Tendering – Proposed Amendments to Procurement Procedure Rules

Executive Summary

To support the introduction of e-tendering at Guildford Borough Council a new appendix to the Procurement Procedure Rules is required. This report presents options for managing the procurement process electronically, recommends which options to implement and proposes the text for the new e-tendering appendix. By moving to an electronic system, multiple attendees are not required to be present at the opening of quotations or tenders. Introducing a mandatory e-tendering system will automate current requirements and, in the case of the supplier bid settings, ensure the key information for the record of returns is immediately available following the opening ceremony. Automation will ensure an electronic returns register is set up to replace the current hard copy version.

If approved, an introductory period, initially for six months, shall be implemented to allow for training and a bedding in period. During this time, the use of e-tendering will be optional. However, as the law has changed to make the use of e-tendering mandatory in the near future, the use of e-tendering shall (subject to any further extensions within the legislative time frame to be authorised by the Director of Corporate Services) become mandatory for all procurements over EU threshold. It is desirable to move towards e-tendering for all procurements irrespective of value.

Recommendation to Council

The Executive is asked to recommend to Council that **the proposed E-Tendering Appendix is added to Part 4 – Procurement Procedure Rules of the Constitution. The proposed appendix sets the rules and procedures for the use of e-tendering, where they differ from the current rules.**

Reason(s) for Recommendation:

The Council is required to introduce e-tendering following the introduction of the Public Contracts Regulations 2015.

1. Purpose of Report

- 1.1 The purpose of this report is to recommend the addition of an Appendix to the Procurement Procedure Rules to address the use of E-tendering at Guildford Borough Council. The appendix is referenced in section 15, paragraph 15.1, as below:

15.1 Electronic tendering systems will be introduced in the course of the financial year 2015–2016 and details of the system will be incorporated in an appendix to these Rules.

2. Strategic Priorities

- 2.1 The use of technology to support procurement helps to deliver the “Our Council” theme of the Council’s strategic framework. The Corporate Plan includes the following priority and aim under the “Our Council” theme:

Priority: Improve value for money and efficiency in service delivery.

Aim: Ensure the effective and efficient use of technology to support our procurement strategy.

- 2.2 The use of e-tendering is also detailed in the Corporate Procurement Strategy 2015-2017, on pages 10 and 11. Here a stated aim is “to be undertaking procurement electronically for contracts just after the start of the financial year 2015/2016, i.e. by 1 July 2015.”
- 2.3 The addition of an appendix to the Procurement Procedure Rules will help the delivery of the theme, priority and aims, as stated in 2.1 and 2.2, by supporting the introduction of e-tendering. Clear requirements and procedures are necessary to support the introduction of e-tendering, because the procedure of receiving and opening tenders represents a change of process.

3. Report

3.1 Background

Following the appointment of a Procurement Officer, Guildford Borough Council is now in a position to utilise the skills and knowledge of the Procurement Officer to implement an e-tendering system. The system to be used going forward is the Intend system.

The use of an e-tendering portal provides the following key benefits over a paper based procedure:

- a clear audit record of the procurement process;

- a central contact point with all correspondence and clarifications recorded;
- the ability to shorten the timescales for full EU procedures;
- being able to meet our obligation to publish opportunities to Contracts Finder and the Official Journal of the EU from within the portal without the need to re-enter information on multiple websites.

There will be training rolled out in the first quarter of 2016 to key procuring officers on using the portal. After completing the training, officers will be given access to the portal to manage their procurement responsibilities. Any additional support will be available from the Procurement Officer.

3.2 Current Requirements for Receiving and Opening Tender Returns

The current Procurement Procedure Rules clearly define the procedure for receiving and opening tender returns, section 25.10 paragraphs 25.10.1 to 25.10.5, as below:

25.10 Return of Quotations and Tenders:

25.10.1 *Quotations must be returned to the respective EHoS or HoS by whom they will be held securely and unopened until after the closing time and date for receipt of responses. All responses must be opened at one time in the presence of two persons.*

25.10.2 *Tenders must be returned to the EHoG. They will be retained securely unopened until after the date and time for receipt of responses. All tenders must be opened at one time and in the presence of a councillor, the EHoG or his or her nominee and the HoS for the procurement activity or his/her nominee.*

25.10.3 *Any tender received after the date and time indicated for receipt will be retained unopened by EHoG until all other valid tenders have been opened and recorded. It will then be opened and returned to the sender. Exceptionally the EHoG may, on being satisfied that there is evidence of posting in time for delivery by the due date authorise acceptance of the tender provided other tenders have not already been opened.*

25.10.4 *A record shall be kept for both quotations and tenders of:*

- (i) *the nature of the works, goods or service to be supplied;*
- (ii) *the authority for entering into the contract;*
- (iii) *the name of each person by or on whose behalf a quotation or tender was submitted;*
- (iv) *the amount of each quotation or tender ;*

(v) *the date and time of opening of the quotation or tenders*

(vi) *the names of those present at the opening of the quotation or tender.*

25.10.5 A tender or quotation that does not comply with the instructions to tenders or is conditional must be treated as non-compliant and rejected. Non-compliant tenders or quotations will not be evaluated. The Council's decision in this respect is final.

3.3 E-Tendering Procedure Changes based on section 25.10

3.3.1 Paragraph 25.10.1

Subject to approval, the requirement for quotations to be returned to the respective Director or Head of Service will no longer be required. Responses will be submitted via the e-tendering portal and remain unopened until an 'Opening Ceremony' takes place.

The e-tendering portal is completely auditable so there is no risk presented by moving from requiring two persons to be present when tenders are opened.

3.3.2 Paragraph 25.10.2

Subject to approval, the requirement for quotations to be returned to the Director of Corporate Services will no longer be required. Responses are submitted via the e-tendering portal and remain unopened until an 'Opening Ceremony' has taken place.

The e-tendering portal is completely auditable, therefore it will no longer be a requirement for a Councillor, the Director of Corporate Services and Head of Service (or their nominees) to be present when tenders are opened.

There is an option available on the e-tendering portal for a formal opening ceremony, which would specify a number of persons who need to log-in to authorise the opening ceremony. Although this is possible on the system the Memorandum of Understanding with Surrey County Council to use the SE Shared Services Portal only allows for the use of informal opening ceremonies.

Option 1: Have multiple attendees at the opening ceremony to oversee the procuring officer running the process

Option 2: Have a formal opening ceremony and require multiple persons to log in to authorise the process.

Option 3: Have the opening ceremony run solely by the procuring officer, followed by confirmation of the returns and timings to be sent to the appropriate procurement stakeholders, which dependent on contract value may include the Lead

Councillor, Director of Corporate Services and the Head of Service. This confirmation would include the information currently required for the tender register, covered in paragraph 25.10.4.

Option 4: Have the opening ceremony run solely by the Procurement Officer. Following the opening ceremony send a notification email containing the returns register information to the appropriate procurement stakeholders, which dependent on contract value may include the Lead Councillor, Director of Corporate Services, Head of Service and procuring officer.

The recommendation would be for option 3. This option would ensure all parties are informed of the results of the opening ceremony and offer a clear audit record of the process, as shown in 3.3.1.

3.3.3 Paragraph 25.10.3

The e-tendering project can be set up to deal with any late returns automatically once the opening ceremony has been started.

In the event that bidders have problems with the e-tendering portal and have been unable to upload their return and the council has been notified in advance of the problem prior to the return deadline, it is possible to add manual returns during the opening ceremony.

This is the sole option for meeting the requirements of paragraph 25.10.3.

3.3.4 Paragraph 25.10.4

There are two options for the tender register:

Option 1: The current hard copy register is completed and signed by the procuring officer carrying out the opening ceremony.

Option 2: The current hard copy register is replaced with an electronic register, which will be hosted on the Procurement intranet site.

Recommendation: The recommendation is to move to an electronic register as set out in option 2. The advantage of using an electronic register is that the procuring officer can access the register from anywhere, whereas the hard copy register would need to be accessed from one location.

3.3.5 Paragraph 25.10.5

No changes are required to this paragraph.

3.4 Recommended Text for the E-Tendering Appendix

Appendix 3

E-Tendering

1. Introduction

- 1.1 These rules apply to all procurement activity undertaken using the Council's e-tendering portal.
- 1.2 The use of e-tendering is optional during the introductory period. Following the introductory period the use of e-tendering will become mandatory for all procurements.
- 1.3 The use of e-tendering is being introduced following the introduction of the Public Contracts Regulations 2015. The use of electronic means to publish tender opportunities and make the documents available electronically is required by regulation 22.
- 1.4 All procuring officers will be required to attend training before being given access to the e-tendering portal.

2. Thresholds

- 2.1 The use of e-tendering is not based on monetary thresholds, it is suitable for all quotes, tenders and framework mini-competitions.

3. Guidance & Mandatory Settings

- 3.1 When setting up a new procurement on the e-tendering portal the procuring officer must refer to the separate E-Tendering Guidance document and, in particular, the mandatory settings.
- 3.2 The E-Tendering Guidance document is available on the intranet in the Procurement Toolkit.

4. Communication

- 4.1 All communication during the tender process must be conducted via the e-tendering portal.
- 4.2 Any clarification questions must be submitted bidders using the correspondence function of the e-tendering portal.
- 4.3 In the event the procuring officer is contacted via email, telephone or in person regarding the procurement, they must direct the individual to the e-tendering portal. The procurement must not be discussed directly with individual bidders.

4.4 Clarifications and responses to clarification questions will be issued to all bidders via the e-tendering portal.

5. Return of Quotations and Tenders

5.1 All quotations and tenders must be returned via the e-tendering portal and will remain unopened and anonymous until the closing time and date for the receipt of responses.

5.1.1 The only exception to 5.1 is where bidders are having problems with the e-tendering portal and are unable to upload their return. The council must have been made aware of the problem prior to the return deadline.

5.1.2 Where a return has been returned by other means, following agreement by the Council that this is acceptable, the return must be manually added at the start of the opening ceremony.

5.2 Any pending, or late, tender returns will be rejected by the e-tendering portal once the opening ceremony has been started.

5.3 An electronic record shall be kept for both quotations and tenders of:

- The contract title;
- The contract reference;
- The return date and time;
- The number of expressions of interest;
- The number of returns;
- The name of the person/company submitting the quotation or tender;
- The value of each quotation or tender;
- The date and time the opening ceremony is started;
- The name of the procuring officer carrying out the opening ceremony.

5.4 Following the opening ceremony a confirmation email shall be sent to the appropriate procurement stakeholders, which dependent on contract value may include the Lead Councillor, Director of Corporate Services and the Head of Service, which should include the information listed in 5.3.

6. Notification of Award Decision

6.1 Notification of the award decision and feedback for the unsuccessful bidders must be issued using the e-tendering portal.

3.5 Following the Introductory Period

Following the successful completion of the introductory period the use of e-tendering will become mandatory at the Council, as per paragraph 15.2 of the Procurement Procedure Rules.

Subject to approval, once full implementation has taken place, it may be necessary to conduct a further review of the Procurement Procedure Rules to address the differences in corporate processes. Such an opportunity should also be used to deal with any other anomalies identified as the Council moves forward with its Corporate Procurement Strategy.

4 Equality and Diversity Implications

4.1. No implications apply.

5. Financial Implications

5.1. No implications apply to the inclusion of the Appendix to the Procurement Procedure Rules.

5.2. There are ongoing costs related to the licensing, maintenance and hosting of an e-tendering system, but these are accounted for in the revenue budget.

5.3. The training for In-Tend, which will be rolled out in the new year, does not have any financial implications because the training was paid for in 2014. This training is still available and fully paid for.

6. Legal Implications

6.1. Public Contracts Regulations 2015

Following the introduction of the Public Contracts regulations 2015 in February 2015, the use of electronic tendering is required. The mandatory use of electronic tendering is required to be fully implemented by 18th October 2018 (regulation 1(3)(c)).

General principles about the use of electronic and non-electronic means of communication

22.—(1) Subject to paragraphs (3), (5), (8) and (10), all communication and information exchange under this Part, including electronic submission, shall be performed using electronic means of communication in accordance with the requirements of this regulation.

(2) Subject to paragraph (13), the tools and devices to be used for communicating by electronic means, and their technical characteristics, shall be non-discriminatory, generally available and interoperable with the information and communication technology products in general use and shall not restrict economic operators' access to the procurement procedure.

Transitory provision prior to full commencement of regulation 22(1) to (7)

121.—(1) This regulation applies during the period beginning on the date mentioned in regulation 1(3)(a) and ending immediately before the date mentioned in regulation 1(3)(c).

(2) During that period, contracting authorities may choose between the following means of communication for the purposes mentioned in paragraph (3):—

- (a) electronic means in accordance with regulation 22;
- (b) post or other suitable carrier;
- (c) fax;
- (d) a combination of those means.

(3) That choice is available for all communication and information exchange in respect of which both the following criteria are met:—

- (a) the use of electronic means would, in accordance with regulation 22(1) to (5), have been required if those provisions had been in force;
- (b) the use of electronic means is not required by any other provision of these Regulations that is in force.

Citation, commencement, extent and application

1.—(1) These Regulations may be cited as the Public Contracts Regulations 2015.

Commencement

(2) Except for the provisions mentioned in paragraphs (3) to (6), these Regulations come into force on 26th February 2015.

(3) Paragraphs (1) to (7) of Regulation 22 come into force—

- (a) for the purposes of regulations 27(6), 28(9), 34(13), 36(4), 53(3) and 121(2)(a), on 26th February 2015;
- (b) for the purposes of regulation 37(7), on 18th April 2017;

(c) for all other purposes, on 18th October 2018.

(4) Regulations 37(7) and 59(7) come into force on 18th April 2017.

(5) Regulation 61 comes into force on 18th October 2018.

(6) Regulations 106, 108, 110 and 112 come into force—

(a) in relation to contracting authorities which perform their functions on behalf of the Crown, on 26th February 2015;

(b) in relation to other contracting authorities, on 1st April 2015.

6.2. Procurement Procedure Rules

The council's Procurement Procedure Rules require the addition of an appendix to address the use of Electronic Tendering, section 15 as below:

15 ELECTRONIC TENDERING

15.1 Electronic tendering systems will be introduced in the course of the financial year 2015–2016 and details of the system will be incorporated in an appendix to these Rules.

15.2 Use of the electronic tendering system will become mandatory after an introductory period during which training will be provided.

7. Human Resource Implications

- 7.1. The Human Resources implications are notification to, and training for, the Council's Procuring Officers. There will be training delivered on the use of the e-tendering portal and procuring officers will need to be made aware of the additional e-tendering appendix to the procurement Procedure Rules.

All procuring officers will be notified of the addition of the e-tendering appendix by email, along with information on the use of e-tendering during the introductory period.

9. Summary

- 9.1 To support the introduction of e-tendering, the inclusion of a new appendix to the Procurement Procedure Rules is required.

The options relate to changes to the procedure for managing the returns of quotations and tenders and are as follows:

- Where returns are sent to
There is only one option when using e-tendering and that is for the returns to be submitted electronically via the portal.

- Record of Returns

There are two options for the recording of returns.

- Option 1
Continue using the hard copy returns register.
- Option 2
Use an electronic returns register

The recommended option is option 2. The use of a centrally held electronic returns register is preferred due to its accessibility from any location. By introducing rules on mandatory settings for stage settings on the e-tendering portal all of the required information is available immediately following the opening ceremony.

- Opening of Quotations and Tenders

There are four options for the opening of quotations and tenders.

- Option 1
Have multiple attendees to oversee the running of the opening ceremony.
- Option 2
Have a formal opening ceremony and require multiple sign-ins to authorise it.
- Option 3
Have the opening ceremony run solely by the procuring officer. Following the opening ceremony send a notification email containing the returns register information to the appropriate procurement stakeholders, which dependent on contract value may include the Lead Councillor, Director of Corporate Services and Head of Service.
- Option 4
Have the opening ceremony run solely by the Procurement Officer. Following the opening ceremony send a notification email containing the returns register information to the appropriate procurement stakeholders, which dependent on contract value may include the Lead Councillor, Director of Corporate Services, Head of Service and procuring officer.

The recommended option is option 3. Options 1 and 2 are not necessary due to the clear audit record held on the e-tendering portal. Option 4 is an option, which could be implemented, but option 3 is preferable because it follows the Council's approach of devolving procurement to the individual departments and making the procuring officers responsible for their procurements.

- Rejection of Pending and Late Returns

The e-tendering system automatically rejects any pending or late returns upon commencement of the opening ceremony.

This requires the addition of rules regarding the set-up of the stage within the e-tendering portal.

10. Conclusion

- 10.1 In conclusion it is recommended that the text, as shown in 3.4, is approved to be used for the new E-Tendering Appendix to the Procurement Procedure Rules. This new appendix incorporates the recommended options, as summarised in section 9, and the addition of a new appendix is required by the current Procurement Procedure Rules, in paragraph 15.1.

During the introductory period there will be two options for tendering:

- Option 1
Paper based quotation or tender process, as governed by section 25.10, paragraphs 25.10.1 to 25.10.5.
- Option 2
E-Tendering using the South East Shared Services portal, governed by the e-tendering appendix, as per Section 3.4 of this report.

Following the conclusion of the introductory period, e-tendering shall become a mandatory requirement irrespective of contract value as this will discharge the Council's duty to keep a contracts register and complies with transparency requirements.

11. Background Papers

- 11.1 The following background papers are referred to in this report:

- Guildford Borough Council Constitution: Procurement Procedure Rules available online at:
<http://www2.guildford.gov.uk/councilmeetings/documents/s2139/Part%20409%20-%20Procurement%20procedure%20rules.pdf>
- Public Contracts Regulations 2015 available online at:
http://www.legislation.gov.uk/uksi/2015/102/pdfs/uksi_20150102_en.pdf
- Corporate Procurement Strategy 2015-17 available online at: