

Body: Cabinet

Date: 9 December 2015

Subject: Contract Procedure Rules and Procurements

Report Of: Henry Branson, Senior Head of Projects,
Performance and Technology

Ward(s) All

Purpose To seek approval of revised contract procedure rules and agree approaches to two key procurements.

Decision Type: Key

Recommendation: Cabinet is asked to:

- i. Recommend the new contract procedure rules for approval by Council.
- ii. Authorise an exception to the existing contract procedure rules to appoint ESCC directly to procure the council's energy supply and manage the council's energy services
- iii. Authorise an exception to the existing contract procedure rules to procure the same software solution as Lewes District Council to manage Community Infrastructure Levy payments as part of a shared service.

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1.0 Introduction

- 1.1 The contract procedure rules (CPRs) form part of the council's constitution and determine how officers contract with external bodies. The CPRs ensure lawfulness and best practice in terms of the procurement of services, supplies or works. Clear and up-to-date CPRs play a key role in ensuring that best value is achieved for the authority and that the Council is not exposed to risk.
- 1.2 Local authority procurement is an evolving area which is subject to scrutiny and challenge. The current CPRs were approved in 2009 and need to be fully revised now to ensure they reflect current law, best practice and the environment in which the council is now operating.
- 1.3 Both the existing and the new CPRs include provision for exceptions to be made, subject to certain conditions, thresholds and approvals, where there is a case to directly appoint a supplier. There are two such cases

outlined in this report, both of which involve joint working with other local authority partners.

2.0 Contract Procedure Rules Revisions

2.1 Reasons for revisions

There are three key reasons for revising the CPRs at this time:

1. To reflect the Public Contract Regulations 2015 which came into force earlier this year.
2. To achieve a standard set of CPRs for Eastbourne Borough Council, Lewes District Council and Eastbourne Homes Ltd.
3. To enable a modern and responsive approach to procuring works, supplies and services.

2.2 Public Contract Regulations 2015

The Public Contracts Regulations 2015 (PCR 2015) implement the 2014 EU Public Sector Procurement Directive and a range of other reforms. They largely apply to public contracts that exceed certain value thresholds.

The PCR 2015 outline a number of standard procurement procedures for public bodies to follow. They also mandate the use of Government portals such as Contracts Finder for the advertising of certain contracts and place greater emphasis on electronic availability of procurement documents.

As is the case with previous PCRs, there are a number of exemptions and exceptions defined within the regulations which contracting authorities may choose to exercise, with appropriate care and legal advice.

The revised CPRs reflect the important changes contained with the PCR 2015.

2.3 Standardisation of CPRs

Eastbourne Borough Council (EBC) is on a path of ever closer partnership working. The 'Eastbourne Homes in Partnership' approach adopted by the Eastbourne Homes Board in 2014 saw much closer working between EBC and Eastbourne Homes Limited (EHL). This has resulted in integration of back office services, co-location at 1 Grove Road and shared management arrangements.

EBC is already sharing a range of services with Lewes District Council (LDC), in addition to shared senior management roles, and in October 2015 both EBC and LDC Cabinets approved the outline business case for wider integration of services and workforces.

It is clear that the future will entail staff working across multiple organisations to deliver shared and closely integrated services. It is therefore important that staff can work to a set of common policies, rules and procedures in key areas, and therefore the revised CPRs will be put forward for adoption by EHL and LDC as well as EBC.

2.4 Modernisation of CPRs

In order to respond effectively to the economic constraints facing local authorities, and continue to deliver the wide range of statutory and non-statutory services we do, EBC has needed to become more modern, agile and entrepreneurial, as well as working more effectively in partnership.

Our CPRs are a key enabler of this modern approach, and aspects of the current rules are now out of step with the way we need to do business. The PCR 2015 encourage a more electronic approach to procurement and this, amongst other changes, is reflected in the revised rules.

2.5 Summary of revisions

The full revised CPRs are attached as Appendix One. Key changes include:

- Simplification and standardisation of the contract value thresholds that determine the approach taken to procurement. The summary of thresholds and procedures required is outlined in section 6 of the CPRs. The new rules include a higher threshold for low value procurements for which no specified number of quotes is required, with provisions to ensure accountability for any direct awards of lower value contracts.
- Updating the rules around advertising contracts to reflect the requirements of PCR 2015. These are outlined in section 7 of the CPRs.
- A 'digital by default' approach to tendering, meaning that tenders will be advertised online and responses will be submitted via an electronic tendering system, thus removing the outdated need for hard copies to be submitted and recorded in a tender opening book.
- Clear rules stating that disposal of land via sale or lease must only happen after auction, invitation of tenders or expressions of interest following public advertisement, in at least one newspaper circulating in the District, unless specifically authorised by Cabinet.

2.6 The CPRs form a key part of EBC's constitution, and therefore must be approved by full Council before coming into effect. Therefore, Cabinet is asked to recommend the revised CPRs for approval by full Council in February 2016.

3.0 Energy Procurement

3.1 The council's electricity and gas contracts expire in 2016 and a review was carried out by Improvement and Efficiency Social Enterprise (IESE) as part of the Shared Procurement Service to assess options for utilities procurement and associated energy management services.

The review focussed on two potential providers LASER (an energy buying group set up by Kent County Council) and East Sussex County Council (ESCC). Both are public sector focussed and can provide energy supplies which are compliant with the public procurement rules. LASER is our current supplier.

3.2 Electricity and gas are traded commodities and the actual price we pay is likely to be the same irrespective of the supplier chosen. Therefore the cost of the procurement services and any energy management services provided is where value for money is best assessed.

3.3 The review recommended the selection of ESCC for the following reasons:

- ESCC would be nearly £5k cheaper per year than LASER for the energy procurement package.
- ESCC can provide additional value with the validation of water and oil bills, use of TEAM energy software, and the inclusion of Government's Carbon Capture fee - LASER cannot offer any of these facilities.
- ESCC can offer additional energy services that LASER cannot e.g. data monitoring, renewing display energy certificates. These carry an additional charge but would be partly offset by the other savings and will free up EBC staff time to focus on more ambitious sustainable energy projects.

It should also be noted that LDC have selected ESCC for similar reasons, so the appointment would support the shared services programme.

3.4 Both LASER and ESCC would procure energy in a compliant manner under the Crown Commercial Services framework. The authorisation sought from Cabinet is to directly appoint ESCC to provide the procurement and energy management services. The estimated total cost of the contract is £65k, so it is comfortably under the OJEU thresholds and therefore within Cabinet's authority to authorise a direct appointment.

4.0 Community Infrastructure Levy Software Procurement

4.1 The Community Infrastructure Levy (CIL) is a planning charge, introduced by the Planning Act 2008 as a tool for local authorities in England and Wales to help deliver infrastructure to support the development of their area.

As with funding obtained via Section 106 (s106) agreements, it is important that CIL funds are properly administered to ensure they are used for the agreed purpose and are clearly auditable.

EBC and LDC intend to enter into a shared service for the administration of CIL and s106 monies, hosted by LDC.

4.2 LDC and EBC use different case management systems for processing planning applications. EBC's system does not have a CIL module. LDC's supplier, Idox, has teamed up with a company called Exacom Systems to deliver Exacom's market leading CIL/s106 'Obligations Suite' to Idox's large customer base. The Exacom product can be used as part of an integrated solution with Idox or as a standalone product. LDC has already agreed to purchase the Exacom system.

4.3 Given the intention to enter into a shared service, and the lack of a product from EBC's supplier, it is recommended that Cabinet authorise an exception to the CPRs to enable EBC to directly appoint the same supplier, Exacom, as LDC. The estimated contract value is £45k so it is comfortably under the OJEU thresholds and therefore within Cabinet's authority to authorise a direct appointment.

5.0 Resource Implications

- 5.1 The goal of the revised CPRs is that they are applied consistently across EBC, LDC and EHL, thus making it easier for staff working across the organisations to carry out compliant procurements. Less staff time will be spent learning different CPRs in each organisation.

A training and awareness programme will be developed for staff who are likely to carry out procurement exercises to ensure they understand and can apply the new rules. The new CPRs refer to further guidance being available in a Contract Manual. LDC have an existing manual and EHL have some existing guidance on good practice. A new Contract Manual will be developed for use by all three organisations reflecting the new Regulations and CPRs.

- 5.2 The energy procurement solution will allow the Council to continue to deliver the required energy services and release capacity to focus on strategic sustainable energy projects. The transition to ESCC would be managed by the Senior Sustainability Officer.
- 5.3 The CIL procurement will underpin a shared service between EBC and LDC to ensure a consistent and thorough approach to managing CIL and s106 monies. Without a single system, the efficiencies of a shared service would be lost.

6.0 Legal and Financial Implications

6.1 Revised CPRs

The new CPRs have been drafted by the Legal team and are compliant with EU law, including the new PCR 2015.

The CPRs form an important part of the council's constitution. Changes of substance to the constitution will only be approved by the full Council after consideration of the proposal by the Monitoring Officer and, where appropriate, the Audit and Governance Committee.

The Monitoring Officer and the Audit and Governance Committee have both considered the revised rules and have recommended them for approval.

6.2 Energy Procurement

ESCC will procure the energy through a framework that was set up by the Crown Commercial Service following the required public procurement rules. This will enable the council to meet its public procurement obligations when buying energy.

The estimated three year contract value, if all the additional services were taken from ESCC, is £65k. All of the costs would be spread on a pro-rata basis against the relevant buildings. The additional energy management services are subject to the public procurement rules. The value of the services to be provided is below the EU threshold that would require a regulated procurement process to be followed. However the CPRs would apply to the contract and normally require a competitive tender process to be undertaken to select the service provider.

6.3 CIL Procurement

The value of the CIL software to be provided is below the EU threshold that would require a regulated procurement process to be followed. However the CPRs would apply to the contract and normally require a competitive tender process to be undertaken to select the service provider.

- 6.4 Cabinet may authorise an exception to the CPRs for a specific contract where this is not prohibited by the public procurement regulations. As a general principle, Cabinet should only agree to waive these requirements if there are good and objectively demonstrable grounds for doing so. The reasons for waiving the requirement for a tender process and entering into the arrangements with ESCC and Exacom are set out elsewhere in this report and Cabinet is asked to agree an exception to the CPRs to allow the award of these contracts without a tender process.

7.0 Summary

- 7.1 This report brings together a number of current procurement issues. Cabinet is requested to recommend the new CPRs to Council for approval, and also to exercise its authority to waive the current CPRs in respect of two procurements which represent best value and support the shared services strategy.

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Background Papers:

IESE Review: Utilities procurement and management – September 2015