



Cyngor Castell-nedd Port Talbot
Neath Port Talbot Council

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

Cabinet

30 October 2019

Report of the Head of Legal Services –C.Griffiths

Matter for Decision

Wards Affected: All Wards

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL CONTRACT PROCEDURE RULES

Purpose of the Report:

1. To seek approval to implement new Contract Procedure Rules for Neath Port Talbot County Borough Council (“the Council”).

Executive Summary:

2. The current Contract Procedure Rules were drafted in 2004 and as such require updating so as to reflect the legal and policy changes that have been implemented to date which impact on the Council’s procurement activities. Procedural aspects of the Council’s procurement activities also require updating at an operational level and this report aims to provide an overview of the proposed new arrangements that officers would wish to implement, subject to approval by Members.

Background:

3. The aim of the Council's Contract Procedure Rules are to ensure the Council has standing orders and procurement procedures providing a corporate framework for the procurement of all goods, services and works for the Council. The overarching purpose being to ensure that the Council complies with all European, UK and Welsh law that governs and/or relates to the procurement of goods, services and works and ensure that the Council obtains value for money and the required level of quality and performance in all contracts.
4. As a result of legislative changes to procurement rules (which began with the Public Contract Regulations 2015) and new policy directives from the Welsh Government, an update to these Contract Procedure Rules is now necessary. It should be noted that the Council is already in compliance with these legislative requirements but the Contract Procedure Rules required updating to ensure that such processes are documented accordingly. The proposed Contract Procedure Rules (contained in Appendix 1 to this Report) will also aim to address strategic decisions taken by this Council such as the implementation of the Ethical Code of Practice.
5. A cross-directorate Procurement Strategy Group (PSG) was formed to undertake a review of the Contract Procedure Rules and to obtain input from all Council departments on potential changes. As a result of such discussions, a revised set of Contract Procedure Rules has now been developed led by the Corporate Procurement Unit.

6. The key changes in the proposed Contract Procedure Rules are set out below:

6.1 **Thresholds**

Current Arrangements

Contracts of a value above certain prescribed thresholds (known as OJEU thresholds) are covered by the Public Contract Regulations 2015 which require contracts to be advertised in the Official Journal of the European Union (OJEU). Such procurements are undertaken in compliance with the requirements of the Public Contract Regulations 2015 by the Council's Corporate Procurement Unit

The Contract Procedure Rules set out requirements for the procurement of contracts valued below the OJEU thresholds and under the current Contract Procedure Rules:

- contracts valued above £50,000 are required to be advertised through a medium considered to be appropriate by the officer, usually the Welsh Government (WG) funded sell2wales website, and there is also the ability to invite single tenders in certain limited circumstances and utilise the "Select List" of contractors operated by the Environment Directorate.
- for contracts valued between £5000 and £50,000 (or between £10,000 and £50,000 for works contract) there is a requirement to obtain 3 written quotations.

The current Contract Procedure Rules contain a limited number of exemptions from the requirement for competition.

Considerations

The general view of the PSG was that it would be helpful for the practical reasons of speed, flexibility and resources for the

contract value threshold for advertising tenders to be greater than £50,000.

An officer requires a license (currently free from the WG) and training to use the sell2wales website. The process of advertising a contract requires that a reasonable period of time is allowed for the duration of the tender.

The Corporate Procurement Unit undertakes the procurement of the Council's corporate contracts and a variety of other contracts utilising the e-procurement system (currently funded by the Welsh Government), and provides procurement advice and support throughout the Council.

Lowering the contract value threshold for the requirement for competition would mean a greater number of officers across all departments working with the e-procurement system or the Corporate Procurement Unit being required to lead on a higher number of procurement exercises for which the capacity does not currently exist in the Corporate Procurement Unit

For the above reasons an initial consideration was raising the requirement for advertising a tender to a contract value threshold level of £75,000.

However the Wales Procurement Policy Statement (WPPS) states that the Council shall adopt the principle that procurement will be open, accessible competition. It states that "public bodies should adopt risk based, proportionate approaches to procurement to ensure that contract opportunities are open to all and smaller, local suppliers are not precluded from winning contracts individually, as consortia, or through roles within the supply chain".

The WPPS states that this principle shall be achieved by the advertisement of all contracts over £25,000 on the sell2wales website. Failure to follow the WPPS could give rise to grounds

for a public law challenge to the Council's Contract Procedure Rules.

Ensuring smaller firms have greater visibility of the opportunity and ample opportunity to bid is also in line with the policy approaches of sustainability, seeking to increase the amount of local based procurement and local spend.

Therefore the officer recommendation is that the proposed Contract Procedure Rules provide that all contracts over £25,000 be advertised on the sell2wales website whilst retaining some flexibility for officers in the interests of efficient management to ensure a proportionate approach is applied to contracts between £25,000 and £75,000.

Proposed changes in relation to thresholds

Contracts valued at over £25,000 are required to be advertised on the sell2wales website, however, for contracts between £25,000 and £75,000 in a case where the officer considers undertaking the tender process on sell2wales inappropriate in the interests of efficient management an alternative method of advertising the contract may be utilised and the officer must ensure that value for money is obtained for the Council.

Provision is made for the continued operation of the "Select List" in the proposed Contract Procedure Rules however the wording clarifies that use of the "Select List" must be through the Environment Directorate to ensure appropriate controls and safeguards are in place for the Council.

Contracts valued at between £10,000 and £25,000 require a minimum of 3 written Quotations from competitive sources are to be obtained unless the officer considers this inappropriate in the interests of efficient management whilst at all times ensuring that value for money is obtained for the Council.

There is no requirement for a quotation or tender process for contracts under £10,000 although there is a requirement for the officer to obtain value for money for the Council.

There are no substantive changes to the exemptions from the requirement for competition within the proposed Contract Procedure Rules.

6.2 **Value for money**

The references to “Best Value” within the current Contract Procedure Rules are replaced in the proposed Contract Procedure Rules by references to “Value for Money” as the “Best Value” statutory regime is no longer applicable in Wales. The definition of “Value for Money” included within the proposed Contract Procedure Rules reflects the definition adopted by the WPPS.

6.3 **Welsh Language**

Provision is included in the proposed Contract Procedure Rules to reflect the requirements of the Welsh language standards issued to the Council by the Welsh Language Commissioner with regard to situations where a tender should be published in Welsh, where a tender may be submitted in Welsh, where interviews under a tender process are to be offered in Welsh and where communications during the tender process are to be issued in Welsh.

6.4 **Community Benefits and Environmental/Sustainability Benefits**

The consideration of social, community and wider environmental/sustainability benefits is emphasised within the proposed Contract Procedure Rules with signposting to the

relevant Welsh Government guidance and the Council's community benefits officer.

6.5 **Contract Management**

The proposed Contract Procedure Rules establish a corporate contract register for all contracts with a value in excess of £10,000 so that the Council can further develop our record keeping for contract spend and to provide up to date lists of all externally sourced services, works and goods. The proposed Contract Procedure Rules allocate responsibility for managing the contract and ensuring that it is carried out in accordance with its terms and conditions.

6.6 **Procedure**

The proposed Contract Procedure Rules utilise template documents and update procedural documents.

6.7 **Local Procurement/Community Wealth Building Approach**

As facilitated by the Regulations, provision is built into the proposed Contract Procedure Rules to assist in engaging local suppliers in Council run tenders. This addresses the commitment given by this Council in our Valleys Strategy and as part of the work undertaken with the voluntary sector.

A local procurement or community wealth building approach encourages the use of local suppliers in order to generate local business growth and keep money spent within the area. This approach also incorporates the principles of sustainability and ethical employment. The desired outcome is to create strong local supply chains and to build wealth in local communities.

This approach can be developed in line with the Regulations and can incorporate the statutory goals set by the Well-being of Future Generations (Wales) Act.

In particular the Regulations enable the following steps:

- Linking procurement to wider corporate strategies
- Working with local business to test markets (pre-procurement)
- Engagement work with business networks (pre-procurement)
- Capacity building of social economy organisations
- Developing accessible portals (i.e. e-procurement)
- Packaging contracts to make them more accessible, for examples, dividing contracts into lots
- Streamlining procurement documentation as far as possible
- Using social and environmental criteria and awarding contracts in a way which is not just dependent solely on price
- Excluding tenders if they do not comply with social or labour law obligations
- Restricting some tenders to “sheltered workshops” and “social enterprises” (to participate in such tenders 30% of the organisation’s work force must be “disadvantaged”)
- Continuous spend analysis and outcome monitoring

As facilitated by the Regulations, community wealth building principles are built into the Council’s proposed Contract Procedure Rules to enable a local procurement approach to be utilised through the Council’s procurement activities.

In particular the following provisions are included in the proposed Contract Procedure Rules:

- Consideration of reserved contracts and sustainability at the procurement planning stage (set out in the tender strategy)

- document, being the document provided to the Corporate Procurement Unit authorising the procurement process).
- Consideration of the 5 ways of working under the Well-being of Future Generations Act at the procurement planning stage (as set out in the tender strategy document).
 - Increased emphasis on community benefits at the procurement planning stage (as set out in the tender strategy document with sign posting to the Community Benefits Team).
 - Inclusion of environmental benefits in the community benefits section of the proposed Contract Procedure Rules.
 - Emphasis on pre-engagement with local suppliers under the market testing provisions of the proposed Contract Procedure Rules so as to make local suppliers aware of upcoming opportunities.
 - The ability to divide contracts up into smaller lots when tendering is highlighted in the preliminary steps provisions of the proposed Contract Procedure Rules so as to encourage the involvement of smaller and local suppliers.
7. Should Members approve the implementation of the proposed Contract Procedure Rules, a report will be taken to Full Council to make all members aware of the changes being implemented and to seek authority to amend the Constitution of Neath Port Talbot County Borough to include the proposed Contract Procedure Rules.
8. The current position is that the proposed Contract Procedure Rules will be implemented on a specified date (likely January 2020) and prior to its adoption a training programme will be implemented with commissioning and contracting officers in all directorates and a user guide/summary will be placed on the intranet for all officers to be aware of.

9. A programme will also be developed where the Corporate Procurement Unit will monitor compliance with the Contract Procedure Rules on a quarterly basis. For example, selecting contracts at random from the proposed contracts register and checking procurement practices associated with them.

Financial Impacts:

10. Lowering the contract value threshold to £25,000 for advertising contracts in order to meet the WPPS principle in relation to the requirement for competition could have a financial impact on the Council in that a greater number of officers across all departments will be working with the e-procurement system and, if the Welsh Government determine not to continue funding for the e-procurement system, a cost (presently undetermined) will need to be met by the Council to obtain licences for each officer to be able to use the e-procurement system. Indications at present though are that the Welsh Government are likely to fund the cost for a further 2 years.

Integrated Impact Assessment:

11. A first stage impact assessment has been undertaken to assist the Council in discharging its legislative duties (under the Equality Act 2010, the Welsh Language Standards (No.1) Regulations 2015, the Well-being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016, a copy of which is included at Appendix 2. The first stage assessment has indicated that a more in-depth assessment is not required for the reasons set out in Appendix 2

Valleys Communities Impacts:

12. As facilitated by the Public Contract Regulations 2015, provision is built into the proposed Contract Procedure Rules to

assist in engaging local suppliers in Council run tenders. This addresses the commitment given by this Council in our Valleys Strategy and as part of the work undertaken with the voluntary sector. A local procurement or community wealth building approach encourages the use of local suppliers in order to generate local business growth and keep money spent within the area. This approach also incorporates the principles of sustainability and ethical employment. The desired outcome is to create strong local supply chains and to build wealth in local communities.

Workforce Impacts:

13. As part of the implementation of the proposed Contract Procedure Rules training programme will be implemented with commissioning and contracting officers in all directorates and a user guide/summary will be placed on the intranet for all officers to be aware of. Officers of the Corporate Procurement Unit will also prepare template documents and guidance to assist in compliance.

Legal Impacts:

14. The proposed Contract Procedure Rules will help the Council to demonstrate compliance with all appropriate procurement legislation.

Risk Management Impacts:

15. Failure to have appropriate and up-to-date Contract Procedure Rules in place could increase the likelihood of challenge from the public that there is no transparency as to how contractual arrangements are facilitated. From a corporate governance perspective, such rules are crucial to demonstrate that the Council has in place appropriate procedures and rules to achieve principles of transparency, accountability, value for

money and equal opportunity all organisations who wish to contract with us.

Consultation:

16. There is no requirement for external consultation on this item

Recommendations:

17. It is recommended that

(a) Members approve the proposed draft of the Contract Procedure Rules included at Appendix 1 of this Report for implementation on a date on the 6th January 2020 or such other date as maybe determined appropriate by the Head of Legal Services;

(b) That a report be taken to Full Council for information purposes whilst at the same time authority be sought to amend the Constitution of Neath Port Talbot County Borough Council to include the proposed Contract Procedure Rules at Appendix 1 to this Report.

Reasons for Proposed Decision:

18. To ensure that the Council's Contract Procedure Rules are brought up-to-date so as to reflect the legal and policy changes that have been implemented since the date that the current Contract Procedure Rules were approved and which impact on the Council's procurement activities and procedural aspects of the Council's procurement activities are updated at an operational level.

Implementation of Decision:

19. The decision is proposed for implementation after consultation with the Scrutiny Committee and then consideration and approval by Council.

Appendices:

20. Appendix 1 – Proposed Contract Procedure Rules
Appendix 2 – First Stage Integrated Impact Assessment

List of Background Papers:

21. The Constitution of Neath Port Talbot County Borough Council

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