

CAMBRIDGE CITY COUNCIL

REPORT OF: Director of Resources

TO: Civic Affairs Committee

29/6/2011

WARDS: All

INTERIM AMENDMENTS TO THE CONTRACT PROCEDURE RULES

1 INTRODUCTION (or EXECUTIVE SUMMARY for long reports)

1.1 The Council's Contract Procedure Rules ("the Rules") were last reviewed in September 2007 and remain fit for purpose. In this report the Strategic Procurement Adviser recommends that the voluntary "standstill" clause within the Rules is deleted to bring the Council's approach to standstill into line with the procedure set out in the Public Contracts Regulations 2006.

1.2 A major review of the Rules will be undertaken later in the year as part of the corporate review of the Council's processes and procedures aimed at removing barriers to getting things done.

2. RECOMMENDATIONS

2.1 To approve the amendments to Rule 21 of the Contract Procedure Rules as set out in Appendix A to this report.

2.2 To approve additional amendments to the Contract Procedure Rules by the substitution of references to the Director of Finance, the Director of Customer and Democratic Services with the Director of Resources and the substitution of references to the Head of Legal and Democratic Services with the Head of Legal Services.

3. BACKGROUND

- 3.1 Rule 21 (the Standstill Rule) currently requires the standstill process described below to be carried out towards the end of each procurement valued at £30,000 or over.
- 3.2 The procedure is as follows:
- (i) When the preferred bidder has been identified at the end of the evaluation process and before the contract is awarded to the winning bidder, a letter is sent to all bidders informing them of the Council's intention to award the contract and giving them details about how their bid was evaluated and the relative merits of the winning bid.
 - (ii) There follows a period of 10 calendar days during which any disgruntled bidder can raise any objections to the procurement process followed by the Council.
 - (iii) At the end of the period, if no objections have been received, or those that have been received have been resolved, the contract is awarded.
 - (iv) If there are any outstanding objections, contract award is delayed until these have been resolved.
- 3.3 The Council's voluntary regime is very similar to the statutory standstill process laid out in the Public Contracts Regulations 2006. The statutory standstill process must be followed for all contracts of a value equal to or above the relevant thresholds. The current thresholds are:
- Services and supplies £156,442
 - Works £3,927,260
- 3.4 Recent case law has led to a reconsideration of the use in the Council of the voluntary standstill period. The cases dealt with situations where the procuring body had voluntarily opted to use parts of the statutory procurement process set out in the Public Contracts Regulations for below threshold procurements. In the particular circumstances of each of the cases the Courts decided that use of parts only of the statutory process could, in some circumstances, imply compliance with the full statutory regime as set out in the Public Contracts Regulations and that the procurement processes that had been followed should be assessed on this basis.
- 3.5 A finding that the Council should have followed the full statutory regime for a below threshold contract carried out in accordance with

the Council's Rules could create a problem, for example, because the periods specified for the completion of various stages (advertising/PQQ/submission of tenders) in the Council's Rules for a below threshold procurement are significantly different to those applying to a procurement following the full regulatory regime. If this was the case, the Council would be non-compliant and open to challenge.

- 3.6 It is therefore recommended that, in order to avoid situations arising where there might be doubt as to whether a procurement has or should have followed the full regulatory regime, the Council stops using the voluntary standstill period. The statutory process will continue to apply to above threshold contracts.
- 3.7 The proposed amendments to the Standstill Rule are set out at Appendix A to this report.
- 3.8 This recommended change is compatible with the corporate project to eliminate unnecessary bureaucracy from Council processes. The voluntary standstill process can be very time consuming and lead to delays in making decisions and moving forward with projects. To date all of the comments and objections received during the voluntary standstill period have been satisfactorily resolved by the officers undertaking the procurement.
- 3.9 The recommendation to remove the Standstill Rule does not underestimate the importance of giving clear feedback to bidders at the end of a procurement process about how their bid has been evaluated. Rule 21.9 states that where the contract value is £75,000 or over, each bidder is debriefed about the characteristics and relative advantages of the successful bid to enable each bidder to understand clearly why its own bid was not successful. Bidders for contracts under £75,000 may also ask for feedback about the Council's decisions in a procurement process which officers must supply within no more than 10 days of the request (Rule 21.10).
- 3.10 Amendments to reflect the changes in titles of the former Director of Finance and the Head of Legal and Democratic Services to the Director of Resources and the Head of Legal Services and the reference in Rules 19 and 24.1 to the former Director of Customer and Democratic Services has been deleted and replaced with the Director of Resources to whom the responsibilities have been transferred.

4 CONSULTATIONS

As the scope of this change is limited it is not felt necessary to consult widely. Service users on the Council's Best Practice Procurement Group and the Legal section have been consulted and support the proposed change. A more substantial consultation exercise will be carried out when the full review of the Contract Procedure Rules is carried out.

5 **CONCLUSIONS**

The intention behind this technical change to the Contract Procedure Rules is to avoid any confusion in a procurement process as to whether the Council is or is not following the statutory procurement regime and to remove an unnecessary step in process for contracts where the value is below the thresholds set out in the Public Contracts Regulations 2006 (see para 3.3 above).

6 **IMPLICATIONS**

(a) **Financial Implications**

There are no financial implications

(b) **Staffing Implications** (if not covered in Consultations Section)

There are no staffing implications but the removal of the voluntary standstill process will simplify the procurement process for low value contracts and remove one task from officers responsible for leading procurements.

(c) **Equal Opportunities Implications**

An Equality Impact Assessment for this proposed change has NOT been conducted because the proposed amendment is limited in scope to bring the Council's Contract Procedure Rules into line with statutory requirements and to reflect changes consequent on reorganisation within the Council. A much wider review of the Rules will be undertaken as part of the corporate initiative referred to in the Executive Summary above and an Equality Impact Assessment will be carried out in connection with that review.

(d) **Environmental Implications**

There are no environmental implications

(e) **Community Safety**

There are no community safety implications

BACKGROUND PAPERS: The following are the background papers that were used in the preparation of this report:

There were no background papers used in the preparation of this report

The author and contact officer for queries on the report is Debbie Quincey, on extension 7400

Report file:

Date originated: 21 June 2011

Date of last revision: 21 June 2011