

## **HAMBLETON DISTRICT COUNCIL**

**Report to:** Audit, Governance and Standards Committee  
25 March 2015

**From:** Director of Support Services and Deputy Chief Executive

**Subject:** **PROCUREMENT PROCEDURE RULES**

All Wards

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### **1.0 PURPOSE AND BACKGROUND:**

- 1.1 The Council's Constitution contains Procurement Procedure Rules which set out the procedures for entering into contracts for the provision of works, supplies and services.
- 1.2 The Public Contracts Regulations 2015 ("the Regulations") have recently been made. They apply revised European Union rules on public procurements. As a consequence there is a need to change the Council's Procurement Procedure Rules.
- 1.3 The opportunity has been taken to propose some other changes to the Rules.

### **2.0 THE CURRENT RULES:**

- 2.1 The current Rules largely deal with mid-range procurements of a value between £80k (Supplies and Services) or £125k (Works) and the EU financial thresholds. Below the values of £80k and £125k more informal quote procedures apply. Above the EU thresholds full EU procurement procedures are required with Europe-wide advertisement.
- 2.2 The current Rules require the mid-range of procurements to follow some of the EU procedures, but not all. In this sense they are a light-touch version of the EU regulations. It is not proposed to change this aspect of the Rules.
- 2.3 The Rules also specify various procedural matters connected with invitations to tender, the acceptance of tenders and the content of contracts. In particular, they identify situations where tenders cannot be accepted without reference to the Leader of the Council and/or Cabinet.

### **3.0 THE REVISED RULES:**

- 3.1 The draft revised Rules are attached as an Annex to this report.
- 3.2 The main changes are:-
  - 3.2.1 they make it clear that the Rules can be waived by Cabinet or, in an emergency, by Senior Officers (Rule 2(2)). This is the current position, but the amendment makes it clear on the face of the Rules rather than having to rely on other provisions within the Constitution.
  - 3.2.2 rather than identifying specific types of procurement procedure (open, restricted, negotiated etc), they require one of the procedures identified in the Public Contract Regulations to be used (Rule 4);

- 3.2.3 they make it clear that where the Council is collaborating with other bodies the procurement rules of another body may be used instead of this Council's (Rule 5). This is not currently dealt with in the Constitution;
- 3.2.4 the value at which tenders which are over budget can be accepted has been increased to £20,000. This still requires the approval of the Leader of the Council (Rule 10(2));
- 3.2.5 Heads of Service are included as Officers authorised to sign contracts. This reflects recent management changes. The value of authorisation has been increased to £20,000 (Rule 12(2)(b));
- 3.2.6 the value at which a variation to a contract has to be reported to Cabinet has been increased to £20,000 (Rule 13(4)).

#### **4.0 CONCLUSION:**

- 4.1 The revisions to the Rules are necessary to synchronise them with the new Public Contract Regulations.
- 4.2 The opportunity has been taken to be more specific about the rules to be applied in procurement partnerships and how the Rules can be waived.
- 4.3 Some values have been increased to reflect the increased value of contracts in recent years.
- 4.4 Other amendments reflect minor procedural or organisational changes.

#### **5.0 RECOMMENDATIONS:**

- 5.1 It is recommended that Council be asked to adopt the revised Procurement Procedure Rules in the Annex to this report.

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**Background Papers:** None

**Ref:** GN

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**HAMBLETON**  
**DISTRICT COUNCIL**

**PROCUREMENT PROCEDURE RULES**

**February 2015**

### **APPLICATION AND COMPLIANCE:**

1. (1) These Rules apply to Council procurements in relation to a proposed public supply contract, public works contract or public services contract, other than a contract excluded from the application of these Rules by Rules 2 or 3.
- (2) Every procurement undertaken by the Council shall comply with the Public Contracts Regulations 2015 ("the Regulations") and EU law and any reference to a Regulation is a reference to that Regulation in the Regulations.

### **GENERAL EXCLUSIONS AND AMENDMENT:**

2. (1) These Rules (with the exception of Rule 1(2)) do not apply to any procurement for the purchase or sale of land or any interest in land, for the lending or borrowing of money or for the employment of any officer of the Council.
- (2) These Rules may be varied for a specific procurement by Cabinet or in emergency by the Chief Executive or a Director in consultation with the Leader of the Council.

### **THRESHOLDS:**

3. (1) These Rules (with the exception of Rule 1(2) and 18 do not apply to any procurement where the estimated value of the contract (net of value added tax) at the relevant time is less than the relevant threshold.
- (2) For the purposes of paragraph (1) the relevant threshold is £125,000 in the case of a works contract, £80,000 in the case of a supply contract and £80,000 in the case of a services contract.
- (3) For the purposes of paragraph (1) the estimated value of a contract shall be the value of the total consideration payable, net of value added tax (calculated in accordance with this regulation), which the Council expects to be payable under the contract.
- 4) For the purposes of paragraph (1) the estimated value of a supply contract for the hire of goods is:-
  - (a) the value of the consideration which the Council expects to be payable under the contract if the term of the contract is fixed; or
  - (b) the value of the monthly consideration payable under the contract multiplied by 48 if the term of the contract is indefinite or uncertain at the time the contract is entered into.
- (5) For the purposes of paragraph (1) the estimated value of a services contract which does not indicate the total price is:-
  - (a) the aggregate of the value of the consideration which the Council expects to be payable under the contract if the term of the contract is fixed for 48 months or less; or
  - (b) the value of the consideration which the Council expects to be payable in respect of each month of the period multiplied by 48 if the term of the contract is fixed for more than 48 months, or over an indefinite period.

- (6) Where the Council has a single requirement for goods or services or for the carrying out of a work or works and a number of contracts have been entered into or are to be entered into to fulfil that requirement, the estimated value for the purposes of paragraph (1) of each of those contracts is the aggregate of the value of the consideration which the contracting authority expects to be payable under each of those contracts.
- (7) Where the Council intends to provide any goods to the contractor awarded a works contract for the purpose of carrying out that contract, the value of the consideration of the works contract for the purposes of paragraphs (3) and (6) shall be taken to include the estimated value at the relevant time of those goods.
- (8) The relevant threshold for the purposes of paragraph (1) for a framework agreement or other system for electronic and/or aggregated procurement is the threshold for:-
  - (a) a works contract, where the agreement or system relates to the carrying out of work or works;
  - (b) a services contract, where the agreement or system relates to the provision of services; or
  - (c) a supply contract, where the agreement or system relates to the purchase or hire of goods.
- (9) The estimated value of a framework agreement or system for electronic and/or aggregated procurement is the aggregate of the values estimated in accordance with this Rule of all the contracts which could be entered into under the framework agreement or other system.
- (10) The relevant time for the purposes of paragraph (1) means the date on which a decision is made to enter into a contract.

#### **SELECTION OF CONTRACT AWARD PROCEDURES:**

4. For the purpose of awarding contracts the Council shall use one of the methods envisaged by Part 2 of the Regulations and, subject to Rules 5 to 17, comply with the requirements of the Regulations that apply to the method chosen as if the Regulations applied to that procurement PROVIDED that any requirements in the Regulations that relate to notices, time periods, publication of notices or information or electronic availability or transmission of documents shall not apply.

#### **JOINT PROCUREMENT:**

5. (1) The Council may take the lead in a Joint Procurement with one or more public bodies in which case these Rules shall apply to the Procurement.
- (2) The Council may allow another public body to take the lead in a Joint Procurement in which case that other public body's procurement rules shall apply PROVIDED that the procurement complies with the Regulations.

#### **INVITATION TO TENDER:**

6. (1) All invitations to tender shall clearly state:-
  - (a) That all physical tenders shall: -
    - Be in a sealed envelope (bearing the distinctive label supplied with the tender forms);

- Devoid of any mark or wording which might identify the sender;
  - Addressed to the Chief Executive;
  - Sent by post, courier or delivered by hand to his office.
- (b) Whether tenders may be submitted electronically.
- (c) That failure to comply with any of the foregoing requirements will render a tender liable to disqualification.
- (d) The closing date and time for the receipt of tenders (Allowing a reasonable period for the applicants to prepare their tenders)
- (e) Tenders received after that date and time will not be considered.
- (2) The invitation shall also state: -
- (a) A description of the works, supplies or services being procured;
  - (b) The specification and instructions on whether any variants are permissible;
  - (c) The evaluation criteria including any weightings as considered appropriate;
  - (d) Pricing mechanism and instructions for completion;
  - (e) The terms and conditions of contract;
  - (f) Whether the Council is of the view that TUPE may apply;
  - (g) The form and content of method statements to be provided;
  - (h) Any further information which will inform or assist tenderers in preparing tenders.

**RECEIPT, STORAGE AND OPENING OF TENDERS:**

7. (1) All tenders shall be dated and timed (and physical tenders initialled) upon receipt and paragraphs (2) to (6) shall apply.
- (2) Electronic tenders shall be kept in a separate folder under the control of the ICT department and shall not be opened until the deadline has passed for the receipt of tenders.
- (3) All tenders for any contract shall remain in the custody of the Committee and Member Support section until the time appointed for their opening. They shall:
- (a) be opened at one time, as soon as possible after the closing time fixed for the receipt of such tenders and
  - (b) in the presence of a panel of two officers representing separate sections.
- (4) Any written tender inadvertently opened before the closing time fixed for the receipt of such tenders shall be immediately passed to the Chief Executive with a written explanation of the circumstances. The Chief Executive shall then decide whether the tender will be considered.
- (5) When tenders are to be opened, the panel will open and certify the tenders received.
- (6) In no case will a panel include an officer employed within the section directly concerned with any tender that is to be opened.

### **TENDER EVALUATION:**

8. (1) The aim of the tender evaluation process is to secure best value for money (the most economically advantageous tender under EU law) and is defined as:

“The optimum combination of whole life costs and benefits to meet the customer’s requirements”.

Contracts should not be awarded on the basis of lowest price alone. There must always be an assessment of quality and the costs that will be incurred throughout the life of the asset or contract period.

- (2) Examples of other costs to be considered are:

- Delivery and installation,
- Operative resources,
- In-house management resources,
- Consumables,
- Spare parts,
- Licences,
- Taxes,
- Maintenance,
- Energy consumption,
- Depreciation,
- Disposal.

- (3) Tenders subject to the EU procurement regulations shall be evaluated in accordance with the relevant regulations and the evaluation criteria set out in the Notice of Invitation to Tender. All other tenders are to be evaluated in accordance with the criteria set out in the Invitation to Tender.

- (4) The details of the evaluation criteria shall be determined prior to the publication of, and included in, the invitation to tender. The criteria shall be strictly observed at all times throughout the contract award process.

- (5) All evaluations should be conducted by a panel of at least two officers and all tenders received shall be subject to the tender evaluation process. The panel will be responsible for recording the details of evaluation process and they shall keep adequate records of the decisions being taken.

- (6) The Corporate Finance section is to be involved in the evaluation and any follow-up clarification of all tenders originally estimated to cost over £250,000. This figure is the estimated cost over the whole life of the contract.

- (7) All post tender clarifications are to be undertaken by someone other than the officer leading the tender evaluation.

### **POST TENDER NEGOTIATIONS:**

9. (1) Post tender negotiations may only take place where the procurement is not subject to the Public Contract Regulations and if:-

- (a) all/any tender(s) received are in excess of the budget provision; or
- (b) the appropriate Director, after consultation with the Director of Support Services, considers that the analysis of the tenders indicates that additional financial or other benefits may be obtained for the Council through post-tender negotiation.

- (c) If post tender negotiations are proposed, then the opportunity for such post tender negotiation shall be extended to all tenderers. All tenderers shall be invited to submit their best and final offers at the conclusion of the negotiations. (The best and final offers are to be evaluated by revisiting the objective scoring process and revising the scores as appropriate).
- (d) Where post-tender negotiations are appropriate then a panel containing at least 2 suitable officers shall be present and a written record shall be kept of all negotiations, including notes of all meetings, phone calls, attendees etc together with any letters, information provided/received, emails etc.

#### **ACCEPTANCE OF TENDERS:**

- 10.(1) A Director may accept the most economically advantageous tender if payment is to be made by the Council or the highest tender if payment is to be received and the sums are within budget. If any other tender is to be accepted it shall only be:-
  - (a) after consultation with the Leader; and
  - (b) if the sum is still within the agreed budget.

If the Leader so wishes, the tenders shall be submitted to the Cabinet for determination.

- (2) Where the price of the most economically advantageous tender exceeds the budget provision by no more than 5% or £20,000, whichever is the lower, the Director shall be empowered to accept the tender if payment is to be made by the Council, subject to the concurrence of the Leader. If the Leader so wishes Cabinet will consider a report from the appropriate Director before the tender is accepted. The minutes of the meeting shall indicate which tender is to be accepted and the reason(s) therefore.
- (3) In all other circumstances acceptance of tenders shall be considered by Cabinet.

#### **ALTERATIONS:**

- 11.(1) Where examination of tenders reveals errors or discrepancies which would affect the tender figure(s) in an otherwise successful tender, the tenderer is to be given details of such errors and discrepancies and afforded an opportunity of confirming or withdrawing his offer. If the tenderer withdraws the next tender in competitive order is to be examined and dealt with in the same way. An exception to this procedure may be authorised only by Cabinet after consideration of a report by the Director concerned.

#### **OFFICERS AUTHORISED TO SIGN CONTRACTS:**

- 12.(1) Contracts shall only be signed by officers with the appropriate delegated authority. For the purpose of these Rules a contract can range from an official order with a value of a few £ to a more formal contract worth several £million.
- (2) Officers are empowered to sign contracts to various limits. The following £limits will apply unless covered by specific authorisation or delegation: -
  - (a) Directors to budget limit;
  - (b) Heads of Service or Section Heads to £20,000 or budget limit, whichever is the lower;
  - (c) All other staff to the value specified on their delegated authority forms.

### **CONTRACTS PAYMENTS – ON ACCOUNT AND FINAL:**

- 13.(1) The Director of Support Services shall be informed as soon as possible of all contracts, agreements, awards or other instruments involving the payment or receipt of money on behalf of the Council.
- (2) Payment to contractors on account of contracts shall be authorised only on a certificate signed by the Director or other duly authorised officer of the appropriate department showing the total amount of the contract, the value of work executed to date, retention of money, amount paid to date, VAT and tax and the amount now certified.
- (3) Every variation on a contract for building or construction works shall be authorised in writing by the appropriate Director or other responsible officer nominated by him in writing for that purpose. A copy of the variation shall be forwarded to the Director of Support Services promptly.
- (4) When variations result in an overall increase in the amount of an accepted tender or estimate by 5% or £20,000 whichever is the lower, this shall be reported to Cabinet by the Director as soon as possible with an estimate of the probable new total cost.
- (5) The final certificate on a contract or accepted estimate shall not be issued by the appropriate Director until he has produced a detailed statement of account together with such vouchers and documents as the Director of Support Services may require relating to prime cost items and particulars of additions and omissions, and the Director of Support Services shall have approved the amount to be certified.
- (6) The duties of a Director under this Regulation shall be exercised by any Architect, Engineer or Surveyor, when employed by the Council as a Consultant, where the circumstances require it.

### **POST PROJECT EVALUATION AND REPORTING:**

- 14.(1) All Capital schemes with a value of over £250,000 shall be subject to a review using the project evaluation template. The report shall be considered by the Capital Programme Working Group and reported on to Members, either through the Members' Bulletin or a Cabinet report subject to the nature and conclusions of the review.

### **NOMINATED AND NAMED SUB-CONTRACT/SUB-CONTRACTORS:**

- 15.(1) In these Procedure Rules any reference to a contract shall, where appropriate, also be taken to include a sub-contract.
- (2) The appropriate Director or person nominated by him shall, regardless of the value of the sub-contract, be authorised to nominate to the main contractor the person whose tender or quotation is, in his opinion, the most satisfactory, provided that where it is other than the most economically advantageous, the tender or quotation shall be referred to the Cabinet for consideration prior to any nomination being made.
- (3) The terms of the invitation shall require an undertaking by the tenderer that if he is selected he will be willing to enter into a contract with the main contractor on terms which indemnify the main contractor against his own obligations under the main contract in relation to the work or goods included in the sub-contract.

**EXTERNAL SUPERVISING OFFICERS:**

- 16.(1) It shall be a condition of the employment by the Council of any person (not being an officer of the Council) to supervise a contract that in relation to such contract he shall comply with these Procedure Rules as if he were a Director of the Council.

**SPECIFICATION OF GOODS, MATERIALS AND WORKMANSHIP:**

- 17.(1) Where an appropriate British or European Standard Specification, British or European Standard Code of Practice or Government Departmental specification is current at the date of tender, every contract shall require that, as the case may be, all goods and materials used or supplied and all workmanship shall be at least in accordance with that standard or specification.

**PROCUREMENT MANUAL:**

- 18.(1) All those involved in conducting procurements on behalf of the Council shall have regard to the guidance in any Procurement Manual or other Guidance current at the time of the procurement and approved by the Chief Executive.