
CONTRACT PROCEDURE RULES

Responsible Cabinet Member – Councillor Steve Harker, Resources Management Portfolio
Responsible Director – Lorraine O’Donnell, Assistant Chief Executive

Purpose of Report

1. The purpose of this report is to seek Members approval to proposals to change the way in which contracts are procured and contract awards are made.

Summary

2. The council’s contract procedure rules have not been revised since the new political management arrangements were adopted in 2000. However, since that time, there have been significant changes within the field of local government procurement and much good work to review this area has been carried out by Resources Scrutiny Committee.
3. The rules have been revised to achieve the following objectives:
 - (a) to enhance value for money in procurement;
 - (b) to become more proactive in procurement;
 - (c) to enhance members’ role in procurement;
4. This report explains when the revised rules apply and the major changes to the existing rules. It must be recognised that the rules need to be kept under regular review and the main changes we anticipate having to reflect in these rules in the future have also been identified. The revised contract procedure rules are set out in (**Appendix A**),

Information and Analysis

5. This report outlines the following:
 - (a) the current arrangements;
 - (b) reasons for revising the rules;
 - (c) principles underlying the changes;
 - (d) scope of the new rules;
 - (e) members’ roles and responsibilities;
 - (f) strategic procurement decisions;
 - (g) use of internal services;
 - (h) other changes.

The current arrangements

6. The current rules have been in place since 2000 and the version that has been incorporated in the Constitution is largely unchanged from many years before that date.

7. This council is unusual in still having a Tender Panel. No other top tier authority in the region has such arrangements and none of the beacon councils for procurement feature this form of decision-making.
8. At Cabinet level, the portfolio holder for procurement is Councillor Harker, Resources portfolio and Resources Scrutiny Committee has the corresponding scrutiny responsibility. Resources Scrutiny conducted a review of beacon councils for procurement and concluded that our procurement arrangements must be updated.

Reasons for revising the rules

9. In addition to learning from good practice as explained above, other reasons for revising our existing rules are:
 - (a) since the rules were agreed, new forms of procurement have become commonplace e.g. use of framework agreements, e-auctions and collaborative procurement which are not covered fully by the current rules;
 - (b) the National Procurement Strategy stipulates that members' roles should be strategic in a modern authority;
 - (c) Resources Scrutiny called for a major overhaul of the way we carry out procurement;
 - (d) the authority has enhanced many aspects of procurement e.g. partnering in housing and building maintenance; Private Finance Initiative; public-public partnership through Darlington Stockton Partnership and the establishment of a Corporate Procurement Unit . It is now necessary to modernise member arrangements and the procedure rules.
 - (e) too often, under the current arrangements, members get involved in procurement decisions at a stage when the ability to influence decisions is limited. For example once a procurement approach has been selected and evaluation criteria developed, deciding which bidder fulfils the criteria is a mechanistic process. Members need to be involved much earlier in the process when strategic decisions on procurement routes and evaluation criteria are made.

Principles underlying the change

10. The principles underlying the change are:
 - (a) to enhance value for money (vfm) in procurement – the rules will ensure that where a vfm decision has been made (often at considerable effort) e.g. to develop a partnership or framework agreement, then this will be maximised by pointing all subsequent relevant work to that contract. In this way, unnecessary, non-value added procurement activity will be eliminated;
 - (b) to become more proactive in procurement – the changes outlined above in departments and corporately will enable us to become more proactive at exploiting good practice. The Corporate Procurement Unit was formed to raise standards, adopt e-procurement and enable better 'policing' through the production and use of better management and information;
 - (c) to enhance members' role in procurement – good practice in procurement, as in other areas of councils' activities is for members to adopt a strategic rather than operational role. The development of an effective contracts log will enable both the executive and scrutiny to focus more effectively on the performance of individual procurement projects and overall procurement activity.

11. The rules introduce the facility to use frameworks, collaborate on procurement activity etc, more easily (without having to waive current rules) and at the same time, increase the rigour of securing vfm in these arrangements e.g. by specifying the maximum lifespan of such arrangements. The rules do not provide all information on vfm, see section on internal services below.
12. Appointments to the remaining posts of the Corporate Procurement Unit have now been made. The Corporate Procurement Unit is on track to deliver its financial targets this year, as last. In addition, the new investment will permit revision of the procurement strategy, contracts log and to carry out training for both officers and members.

Scope of new rules

13. These contract procedure rules apply to the procurement of goods and services by Darlington Borough Council. As has been the case in other areas of corporate policy and procedures, these rules are to be promoted to schools for adoption.
14. Where external funding has been secured on the condition that specific contractual rules apply, the conditions of the funding will take precedence over these rules.
15. A new exemption has been added to cover individual packages of specialist care where existing contracts would not cover the requirements. This has been introduced to ensure that vulnerable clients receive care as soon as possible.

Members' roles and responsibilities

16. A key aim of these rules is to increase member involvement in procurement. The main responsibilities under the new rules are:
 - (a) Council's role is to agree the rules and any subsequent revisions of these.
 - (b) Cabinet's role is to agree the Strategic Procurement Plan.
 - (c) Each Strategic Procurement will have a procurement strategy.
 - (d) Relevant Cabinet Members will be consulted in the development of each procurement strategy.
 - (e) Strategic Procurement Decisions will be taken by Cabinet. As for all Cabinet Decisions, Strategic Procurement Decisions will be subject to the call-in procedure.
 - (f) Resources Scrutiny has a critical role in monitoring the effectiveness of procurement decisions. They will be responsible for monitoring the implementation of the Procurement Strategy for each Strategic Procurement. In addition an Annual Procurement Plan will be reported which will include all forthcoming contracts, this plan will highlight those that are considered Strategic Procurement decisions.
 - (g) Tender Panel would have to be abolished to support the new, enhanced arrangements (a)-(d).
17. In order to give effect to the proposed changes the section 3 of the Constitution, Responsibility for Functions, which allocates functions to the Executive, Council Committees and Officers will need to be amended. These amendments are set out in **Appendix B**. Procurement and award of contracts is an Executive function and changes to the Council Procedure Rules are a Council function. It is therefore for Members of Cabinet to approve the changes to the Section 3 and to refer to Council the changes to the Contract Procedure Rules.

Strategic Procurement Decisions

18. As outlined above, it is intended to produce an annual procurement plan specifying the main procurement decisions to be made in the forthcoming year. Over time the production of this plan would be linked with the service and financial planning cycle so that where services are being reviewed, procurement options are identified. A risk assessment would be used to identify those high value and complex issues for which Cabinet decisions would be necessary. Routine procurement decisions would be carried out under delegated powers. Departures from the plan would be reported to Cabinet, with regular monitoring requests to Resources Scrutiny Committee. The plan is to be updated if necessary throughout the year to take account of issues requiring decision in-year, for example in the case of receipt additional funding.
19. Each strategic procurement issue/project is now expected to have its own strategy/action plan to make the procurement decision including all necessary consultation etc. It is expected that, under the new arrangements relevant Cabinet members would be key to shaping these strategies, including the development of appropriate evaluation criteria. In this way member involvement is to be captured upstream to reduce problems experienced with the existing arrangements.

Use of Internal Services

20. The decision as to whether or not to use internal services is not a matter for these rules. Instead such decisions should be shaped by the corporate procurement strategy that seeks to ensure best value for the authority in pursuit of its strategic goals.

Other Changes

21. Other more minor changes are:
 - (a) introduction of e-tendering;
 - (b) thresholds have been updated;
 - (c) advertising rules have been amended to reflect more efficient practices such as Internet advertising.
22. Further changes to the rules are anticipated to be necessary to incorporate:
 - (a) the results of the capital project review;
 - (b) ongoing dialogue with the third sector on the position in relation to grants

Outcome of Consultation

23. Consultation has been undertaken with members and officers that are involved in the tendering and procurement process.

Legal Implications

24. This report has been considered by the Borough Solicitor for legal implications in accordance with the Council's approved procedures. There are no issues which the Borough Solicitor considers need to be brought to the specific attention of Members, other than those highlighted in the report.

Section 17 of the Crime and Disorder Act 1998

25. The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely, the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area. It is not considered that the contents of this report have any such effect.

Council Policy Framework

26. The issues contained within this report do not represent change to Council policy or the Council's policy framework.

Decision Deadline

27. For the purpose of the 'call-in' procedure this does not represent an urgent matter.

Key Decisions

28. This is classed as a key decision and has been included in the forward plan

Recommendation

29. It is recommended that :-
- (a) The revised Contract Procedure Rules be referred to Council for adoption.
 - (b) These rules are to be promoted to schools for adoption
 - (c) The amendments to section 3 of the Constitution, Responsibilities for Functions, be approved.

Reasons

30. The recommendations are supported by the following reasons:-
- (a) To increase and enhance member's role in procurement.
 - (b) Improve the Councils' procurement practices.

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Background Papers

CIPFA Model Contract Procedure Rules

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