

**Eden District Council
Accounts and Governance Committee**

13 April 2017

Council

20 April 2017

Annual Review of the Procurement Rules

Report of the Director of Finance

1. Purpose of the Report

- 1.1 To outline proposed changes to the Council's Procurement Rules for consideration and inclusion in the constitution.

2. Recommendation

1. That the Accounts and Governance Committee considers the proposed amendments to the appended Procurement Rules and recommends them to Council for inclusion in the Constitution; and
2. That Council, subject to consideration of any comments from Accounts and Governance Committee, approves the proposed amendments to the appended Procurement Rules 2017 for inclusion in the 2017 Council Constitution.

3. Report Details

- 3.1 The Constitution is required to be reviewed on an annual basis. The review is undertaken by the Accounts and Governance Committee which recommends to Council what amendments, if any, should be made to the formal Constitution.
- 3.2 The Accounts and Governance Committee has established a Constitution Review Group to assist in the annual review of the Constitution. These issues are addressed elsewhere on the agenda for this meeting. This report outlines the annual changes that have been requested by the Director of Finance in relation to the Council's Procurement Rules. The proposed Procurement Rules 2017 are attached to this report as an Appendix.
- 3.3 The existing Procurement Rules have been reviewed and amended where it is felt amendment will clarify and improve procedures and compliance by staff.
- 3.4 Where changes have been made, they are highlighted as follows:
- Additions are shown by a vertical mark on the left side of the page;
 - Deletions are shown by the deleted item being struck through horizontally.
- 3.5 The views of Accounts and Governance Committee are sought on the proposed amendments. Council will be given an update as to the recommendations from the Committee.

- 3.6 Assuming the draft Procurement Rules are approved, the Appendix will be included in the 2017 Constitution.

4. Policy Framework

- 4.1 The Council has four corporate priorities which are:

- Decent Homes for All
- Strong Economy, Rich Environment
- Thriving Communities
- Quality Council

- 4.2 This report meets Quality Council corporate priority

5. Implications

5.1 Legal

- 5.1.1 The Council's Constitution is reviewed annually to ensure that rules and procedures are up to date

- 5.1.2 This Council will, and must take account of, comply with, and where appropriate, promote any relevant statutory provision or change of recommended practice in its Procurement Rules. The Procurement Rules prescribe the detailed provisions which must be met on the conduct of any procurement and how the relevant statutory provisions are to be applied.

5.2 Financial

- 5.2.1 Any decision to reduce or increase resources must be made within the context of the Council's stated priorities, as set out in its Council Plan 2015-2019, as agreed at Council on 17 September 2015.

- 5.2.2 There are no direct financial implications. However, adherence to the Procurement Rules should result in effective procurement, resulting in decreased costs to the Council.

5.3 Equality and Diversity

- 5.3.1 The Council has to have regard to the elimination of unlawful discrimination and harassment and the promotion of equality under the Equality Act 2010 and related statutes.

- 5.3.2 There are no implications.

5.4 Environmental

- 5.4.1 The Council has to have due regard to conserving biodiversity under the Natural Environment and Rural Communities Act 2006.

- 5.4.2 There are no implications.

5.5 Crime and Disorder

5.5.1 Under the Crime and Disorder Act 1998, the Council has to have regard to the need to reduce crime and disorder in exercising any of its functions.

5.5.2 There are no implications.

5.6 Children

5.6.1 Under the Children Act 2004, the Council has to have regard to the need to safeguard and promote the welfare of children in the exercise of any of its functions.

5.6.2 There are no implications.

5.7 Risk Management

5.7.1 Risk Management is the process whereby attempts are made to identify, actively control and reduce risk to protect the Council. This covers not only the traditional areas of insurable risk, but also the organisational risk that the Council faces in undertaking all its activities.

5.7.2 An annual review of the Procurement Rules ensures that the Council complies with legislation and recommended best practice.

6. Reason for the Decision/Recommendation

6.1 Effective procurement is important in a sound system of corporate governance. These Procurement Rules set out the procedures and steps that the Council should take.

C W Howey
Director of Finance

Governance Checks:

| | |
|--|---|
| Checked by, or on behalf of, the Chief Finance Officer | ✓ |
| Checked by, or on behalf of, the Monitoring Officer | ✓ |

Background Papers:

None

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Procurement Rules 2017

1. General

- 1.1 The Rules, in conjunction with the Accounting and Audit Rules, comply with the requirements for Standing Orders under S135 of the Local Government Act 1972.
- 1.2 Procurement is the process by which the Council manages the acquisition of all its goods, services and works: land acquisition and disposal are excluded.
- 1.3 These Procurement Rules provide a corporate framework for the procurement of all goods, services and works for the Council. The Rules are designed to ensure that:
- all procurement activity is conducted with openness, probity and accountability;
 - the Council obtains value for money and the required level of quality and performance in all its procurement.
- 1.4 In these Rules the following definitions apply:

| | |
|----------------------|---|
| (Assistant) Director | Chief Executive, Deputy Chief Executive and all Assistant Directors. |
| Authorised Officer | Any officer who, by the nature of his or her job, or as directed by a manager, is authorised to undertake procurement activity |
| Chief Officer | One of the following: Chief Executive, Deputy Chief Executive, Director of Finance |
| Contract | Any form of contract, agreement, or other arrangement, for the supply of goods, services, or works |
| Director of Finance | Includes the Director's deputy, the Financial Services Manager |
| Executive Member | A Member of the Council's Executive |
| Goods | All supplies and materials that the Council purchases, or obtains |
| Guidance | The Council's Procurement Guidance for Officers |
| Leader | The Leader of the Council, as appointed by full Council |
| Management Team | The Chief Executive, Deputy Chief Executive, Director of Finance and other Assistant Directors |
| Senior Auditor | The Council's in-house Internal Auditor |
| Services | Includes all services which the Council purchases, or obtains, including advice, specialist consultancy work, agency staff, and so on |
| Works | Covers all construction and property-related procurement |

- 1.5 All values referred to in the Rules are exclusive of VAT.
- 1.6 Throughout these Rules the Director of Finance shall deputise for the Senior Auditor in his absence, and vice versa.
- 1.7 Every procurement made by, or on behalf of the Council, shall comply with these Rules and no exception from any of the provisions is allowed, except by agreement of:
- a. procurements less than £60,000 - the relevant (Assistant) Director and the Director of Finance;
 - b. procurements of £60,000 or more , but less than £100,000 - the Executive; and
 - c. procurements of £100,000 or more – Council.
- 1.8 The specified limits apply to contracts with a fixed or known value.

2. Orders for all Work, Goods and Services

- 2.1 Official orders shall be in the manner approved by the Director of Finance and shall be issued only by authorised officers. A list of authorised officers shall be submitted by each (Assistant) Director, to the Director of Finance, on an annual basis.
- 2.2 Official orders shall be issued for all work, goods, or services to be supplied to the Council, except for supplies of public utility services, periodical payments, such as rents or rates, petty cash purposes, or where a formal contract is entered into, or such other exceptions as the Director of Finance may approve.
- 2.3 No order shall be issued for work, goods, or services, unless the cost is covered by an approved budget, or by special financial provision. Under no circumstances should personal goods/requirements be ordered via an official Council order.

3. Procurements Under £60,000

- 3.1 The following apply where any individual purchase or contract is less than £60,000 in total. Artificial breaking down of any procurement so that individual elements are less than this limit is not permitted.
- 3.2 Purchases of less than £5,000 do not require competitive quotes. However, officers are encouraged to obtain comparisons and should be satisfied that the purchase gains value for money for the Council. This can be done by contacting suppliers directly and using catalogues, or various internet sites. Other relevant sources are trade magazines and recommendations from other staff/councils. It is suggested that, where the value of the procurement is greater than £500, a record is made of why the supplier was chosen.

- 3.3 Chief Officers should obtain at least two competitive quotations where the estimated cost of the goods or services exceeds £5,000, but is less than £10,000.
- 3.4 From £10,000 to £60,000, a minimum of three quotations should be sought. Where the opportunity is advertised it should be published on both The Chest and the Council's website. Less than three quotations may be sought in special circumstances where it is not practicable to do otherwise. In such cases, the (Assistant) Director shall keep a written record detailing the reasons for waiving the rules. For quotes of £5,000 or more, use of The Chest is considered best practice (see 4.6.1.2 below).
- 3.5 An exception to the above is where use is made of a framework arrangement or Cumbria County Council's Strategic Commercial Procurement Unit (the County Council's purchasing organisation). In such cases, while no further quotes are required, the Authorised Officer should be satisfied and able to demonstrate that they are achieving value for money. The use of frameworks is another means of securing procurement. Where suppliers are part of a framework, then only these suppliers need be contacted.
- 3.6 In general, the lowest price should be accepted. It is assumed that the quotation process will have been clear on setting out the required specification. However, each (Assistant) Director can approve a written request from an Authorised Officer, with stated reason, to accept a quotation other than the lowest, where there is good reason to do so. Such approved requests should be recorded and all relevant documents and correspondence retained by the (Assistant) Director concerned.
- 3.7 Procurement (corporate credit) cards can be used for purchases. All procurement cards must be specific to individual officers, with an individual total credit limit, as authorised by the Director of Finance. Advice on the use of procurement cards is set out in the Procurement Guidance for Officers.
- 3.8 Any purchase of goods, works, or services which requires the Council to enter into a formal written agreement with the supplier, shall not take place until the terms of that agreement have been referred to the Deputy Chief Executive and approved by him/her.

4. Procurements of £60,000 or more

- 4.1 When the estimated value of the goods, works, or services to be procured exceeds £60,000, the relevant (Assistant) Director shall invite competitive tenders on the following basis:

Numbers of Tenders to be Sought

The following should normally be the minimum number of tenders sought:

| Tender Value £ | Number of Tenders To Be Sought |
|-------------------|--------------------------------------|
| | Minimum |
| 60,000 - 100,000 | 3 |
| 100,000+ | 4 |

The (Assistant) Director shall have authority to accept a tender and direct that a contract be entered into on the basis set out in paragraphs 4.10 and 4.11 below.

4.2 The (Assistant) Director shall determine which one of the following tender procedures is adopted:

a. **Open Tendering**

At least fourteen days' notice is to be given on the Council's website and The Chest stating the nature, purpose and extent of the proposed contracts, inviting tenders and stating the date by which tenders must be received. Information published on the Council's website shall direct external parties to The Chest. If considered appropriate, the (Assistant) Director may consider giving similar notice in appropriate publications.

b. **Restricted Tendering**

This procedure should be used where a large volume of interest is expected or specialist expertise is necessary to fulfil the requirement.

At least fourteen days' notice is to be given on the Council's website and The Chest inviting suppliers to complete a Pre-Qualification Questionnaire. The Procuring Officer shall select no less than 3 organisations (4 where the value is over £100,000) to tender.

Special List

In special circumstances the (Assistant) Director may compile a Special List of tenderers for the procurement of works, goods or services, provided that:

- i. the estimated value of the works, or the supply of goods or services, does not exceed £100,000;
- ii. the tenderers shall be persons who, in the professional judgement of the (Assistant) Director, have the skills and capacity to efficiently complete the work, the goods, or services; and
- iii. prior to the invitation to tender, the (Assistant) Director shall have recorded the list of tenderers, together with his/her reasons for using a Special List and inclusion of specific tenderers thereon and shall have such action approved by the Director of Finance.

Where a (Assistant) Director considers that a Special List would be appropriate for the carrying out of works, goods, or services, but the estimated value is £100,000 or more, such a Special List can be approved by Council, or the Executive (if less than £500,000).

4.3 Sub-Contracts and Nominated Suppliers

The (Assistant) Director shall have authority to include sub-contractors and/or nominated suppliers within a larger overall contract, providing that the selection, tender and subsequent award have been in accordance with these Rules.

4.4 Work, Goods, or Services Undertaken by Consultants

Any architect, engineer, surveyor, or other consultant (not being an officer of the Council), who is appointed by the Council for carrying out any work, or the provision of goods, or services, shall ensure throughout the appointment that he shall:

- a. comply with these Rules;
- b. at any time during the carrying out of the contract, produce to the (Assistant) Director, or his/her representative, on request, all the records maintained by him in relation to the contract; and
- c. on completion of a contract, transmit all such records, as requested, to the (Assistant) Director.

4.5 Exceptional Cases

4.5.1 The Executive may decide that only one tender shall be sought where the goods, works, or services to be executed:

- a. constitute an extension of the existing contract, provided that the (Assistant) Director may authorise an extension to a cost up to 10% above the approved allocation, or £100,000, whichever is the lesser; or
- b. constitute the continuation of a programme of works commenced by a contractor and the (Assistant) Director certifies that there are exceptional circumstances why he/she should seek, or negotiate, a tender from that contractor only.

4.5.2 More than one tender need not be sought where:

- a. the goods to be supplied are proprietary articles, or are sold only at a fixed price and no satisfactory alternative is available; or
- b. the (Assistant) Director certifies that the works to be executed, or the goods to be supplied, are required so urgently as not to permit the invitation of more than one tender; or
- c. the works to be executed, or the goods to be supplied, consist of repairs to, or the supply of parts of, existing proprietary machinery or plant.

4.5.3 Procurement can be made using a framework agreement or Cumbria County Council's Strategic and Commercial Procurement Unit (the County Council's purchasing organisation).

4.6 Forms of Tendering

4.6.1 Electronic Tendering

- 4.6.1.1 Electronic tendering is the Council's preferred method of advertising, issuing and receiving tenders. This should be made clear to all prospective tenderers.
- 4.6.1.2 The Council's electronic tender system is the North West e-tendering portal, 'The Chest'. Detailed guidance is available in the Procurement Guidance for Officers.
- 4.6.1.3 Any invitation to quote or tender should include a Specification detailing the Council's requirements to be published on the system.
- 4.6.1.4 Use of The Chest prevents tenders being opened until after the expiry of the published closing date. When a procurement exercise is being carried out via The Chest, tenders submitted by any other means and opened prior to the return deadline will be excluded from the process.

4.6.2 Hard Copy Tenders

- 4.6.2.1 Hard copy tenders are strongly discouraged and only considered in exceptional circumstances. Advice should be sought when considering them as an option. However, if a hard copy tender is decided unavoidable:
 - a. such tenders shall be returned in one of the Council's pre-printed standard envelopes, or in a plain envelope, which shall be securely sealed and shall bear the word 'TENDER', followed by the subject to which the tender relates;
 - b. the tender envelope shall not bear any distinguishing matter or mark by the tenderer to indicate its identity. The Council reserves the right to disqualify any such tender so marked, at the absolute discretion of the Senior Auditor;
 - c. if a tender envelope bears any distinguishing matter or mark indicating the identity of the tenderer, immediately upon its receipt at the offices of the Council, the receiving officer shall place it in a plain envelope bearing the word 'TENDER', followed by the subject to which the tender relates. The officer shall sign, date and time such action upon the envelope after sealing it securely; and
 - d. where a tender does bear some distinguishing matter or mark and is not disqualified, this shall be noted on the List of Tenders. The circumstances and the awarding of the contract shall be notified to the next Member meeting.

4.6.3 **Opening of Tenders**

- 4.6.3.1 Hard copy tenders shall be opened in the presence of the relevant (Assistant) Director, or his nominated representative, and the Senior Auditor.
- 4.6.3.2 The tender envelopes referred to above shall be addressed impersonally to the Chief Executive and, until the opening time, remain in the custody of the Chief Executive.
- 4.6.3.3 Electronic tenders shall be released by the appointed verifier. Appointed verifiers are allocated the responsibility by the system.

4.7 **Tenders**

- 4.7.1 Where the tenders are received electronically via The Chest, all relevant detail will be recorded on the portal using the system's comprehensive audit trail. A record of tenders received should be made as soon as they have been opened. This record should be in a form agreed by the Director of Finance (see Guidance), signed by those present and filed in the Tendering Opening File which is kept in the safe and a copy retained by the relevant (Assistant) Director.

4.8 **Late Tenders**

- 4.8.1 Any tender submitted in competition received after the specified time may be viewed to ascertain the name of the tenderer, but no details of the tender shall be disclosed. The tenderer shall be notified that the Council will be unable to accept the late submission.
- 4.8.2 Notwithstanding these provisions, the Senior Auditor and the appropriate (Assistant) Director shall have discretion to determine that any such tender can be considered if:
 - a. there is evidence of submitting in time for delivery by the due date in the normal course of delivery; or
 - b. in special circumstances, the reason presented is viewed as legitimate by the Senior Auditor and appropriate (Assistant) Director; and
 - c. that, in their opinion, the late tender has not prejudiced the tendering process.

providing always that the other tenders have not then been opened and the circumstances justifying any such acceptance reported by them to the next available Member meeting.

4.9 **Errors**

- 4.9.1 Where examination of tenders reveals errors or discrepancies which would affect the tender evaluation in an otherwise successful tender, the tenderers shall be given the details of such errors and discrepancies and afforded an opportunity of confirming or withdrawing the offer. If the tenderer withdraws, the next tender in competitive order shall be examined and dealt with in the same way. Any exception to this procedure may be authorised only by, or on behalf of the Executive or Council, after consideration of a report by the (Assistant) Director of the department concerned.

4.10 **Basis of Acceptance**

- 4.10.1 Tenders should be sought on one of two bases:

- a. most economically advantageous tender (MEAT); or
- b. the lowest price.

The basis of any criteria for acceptance must be made clear in the tender documentation.

- 4.10.2 In general, MEAT is likely to be the more appropriate basis. An award on the basis of lowest price should be reserved for commodities such as gas, paper, where it is possible to precisely specify the good, or supply, to be procured.

- 4.10.3 If the basis is MEAT, the assessment of how this will be done should be set out in the tender documents. This should state:

- a. the categories of assessment;
- b. any weighting for each category; and
- c. how the assessment is to be carried out.

Further detail on this method of assessment is set out in the Procurement Guidance for Officers.

Unless there are exceptional reasons, the weighting given to price should be between 70% and 90%. A figure lower than 70% will require the approval of the appropriate Executive Member.

4.11 **Acceptance**

- 4.11.1 Tenders sought in accordance with these Rules may be accepted by the (Assistant) Director of the department concerned, subject to:

- a. the works or goods being included in an approved revenue or capital programme;

- b. the tender to be accepted not exceeding (as opened) by more than 10%, the cost figure approved by the appropriate committee for the works, goods, or services;
- c. if the budget is exceeded, the excess can be met by virement through the procedures laid down by the Accounting and Audit Rules: the (Assistant) Director should formally record the virement by filling in a virement request form; and
- d. where the accepted sum is over £100,000, the acceptance shall be reported to the appropriate Executive Member.

4.11.2 The proposed acceptance of any tender not in accordance with this section shall be referred for consideration by the Executive (if less than £500,000), or Council. The provisions above also apply where goods, or the rights to operate income-generating services, are being sold.

4.12 **Form of Contract**

4.12.1 A contract shall be drawn up in writing in a form approved by the Deputy Chief Executive and shall specify:

- a. the goods or services to be procured (including any appropriate technical specification(s));
- b. the price to be paid, with a statement of discounts, or other deductions;
- c. the times, or times at, or by which, the contract is to be performed; and
- d. all other material items.

4.13 **Assignment**

4.13.1 In every written contract for the execution of the work, or the supply of goods or materials, the following clause shall be inserted:

'The contractor shall not transfer or assign, directly or indirectly, to any other person, any part of this contract without the express written permission of the Council. A sub-letting of any part(s) of the contract, except to the extent permitted in writing by the Council officer concerned, is prohibited'.

4.14 **Liquidated Damages**

4.14.1 Liquidated damages are a pre-estimate of the loss that may arise if the contractual provisions of a contract are not met. It may be appropriate to include liquidated damages in some contracts. The amount to be specified in each such contract shall be determined by the (Assistant) Director of the department concerned.

4.15 Performance Bonds

- 4.15.1 Where a contract is for the execution of the works or is estimated to be £100,000 or more in value or amount, the (Assistant) Director shall consider whether the Council should require security for its due performance and shall either certify that no such security is necessary or, in consultation with the Director of Finance, shall specify in the conditions of tender the nature and amount of the security to be given. In the latter event, the Council shall require and take a bond or other sufficient security for the due performance of the contract.

4.16 Specifications and Standards

- 4.16.1 All tenders shall include a written specification of the proposed works, goods, or services.
- 4.16.2 Where an appropriate standard, as formulated by a European Standards body and implemented by a British Standard specification (BS/EN) is current, all goods and materials used or supplied and workmanship shall be required to conform with that standard, or other equivalent European Standard, as a minimum requirement.

4.17 Cancellation

- 4.17.1 In every written contract, a clause shall be inserted to secure that "the Council shall be entitled to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation if the contractor shall have offered, or given, or agreed to give to any person, any gift or consideration of any kind, as an inducement or reward for doing, or forbearing to do, or for having done or forborne to do, any act in relation to obtaining, or the execution of the contract, or any other contract with the Council, for the showing or forbearing to show, favour or disfavour to any person in relation to the contract, or any other contract with the Council, or if the like acts shall have been done by any person employed by him or acting on his behalf (whether with or without the knowledge of the contractor) or, if in relation to any contract with the Council, the contractor or any person employed by him, or acting on his behalf, shall have committed any act of dishonesty or corruption."

4.18 Health and Safety

- 4.18.1 All contracts entered into should comply with the provisions within the Council's General Health and Safety Policy in relation to contracts and contractors.

4.19 Public Procurement Requirements

- 4.19.1 On procurements over the EU financial thresholds, the Public Procurement Regulations may apply and must always be followed. The current thresholds for specified categories of goods and services are set out in the Procurement Guidance for Officers.
- 4.19.2 The Public Procurement Regulations should also be considered and the principles used as guidance for procurements under the EU financial thresholds.

4.20 Project Management Arrangements

- 4.20.1 All procurements with an expected lifetime cost in excess of £1,000,000, or involving substantial organisational change, must be conducted in accordance with PRINCE II (see Guidance) and both the project mandate and the project brief must be agreed by Management Team.

5. Procurement Guidance for Officers

- 5.1 The detailed implementation of these rules is supported by Guidance which is available in the Procurement section of SharePoint. All officers undertaking procurement should be familiar with the Procurement Guidance for Officers.

6. Diversity

- 6.1 All procurement should be undertaken in a non-discriminatory way and promote equality of opportunity.
- 6.2 Supporting detail on achieving diversity is set out in the Procurement Guidance for Officers.

7. Emergency Situations

- 7.1 In the acute phase of an emergency, goods and services may be procured on the process that best fits the situation. As far as possible, the approval of the Director of Finance, Chief Executive or Emergency Co-ordinator (under the Eden Emergency Response Plan), should be obtained. A note should be kept of the procurement basis and sent at a convenient time to Financial Services.
- 7.2 After the acute phase is over, Procurement Rules should be followed wherever practicable. If this is not considered appropriate in particular instances, dispensation can be obtained from the Director of Finance, or the Chief Executive. They will forward details to Financial Services for record purposes. Dispensations from Procurement Rules will be reported to the next Executive meeting.

8. Conflict of Interest

- 8.1 If it comes to the knowledge of a Member or an employee of the Council that a contract in which he or she has a disclosable pecuniary interest has been, or is proposed to be entered into by the Council, he or she shall immediately give written notice to the Council's Deputy Chief Executive. The Deputy Chief Executive shall report any such declarations to the Executive and Accounts and Governance Committee.

9. Annual Revision

- 9.1 These Procurement Rules should be reviewed annually by the Financial Services Manager as part of the annual review of the Constitution.

10. Effective Date

10.1 This revision is effective from 21 April 2017.

For: Corporate Bulletin Board
Members' Bulletin Board
Corporate SharePoint

cc Deputy Chief Executive
Member Services