

Appendix D

THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA

ADMINISTRATION COMMITTEE –17 November 2010

REPORT BY THE DIRECTOR OF LEGAL SERVICES

CHANGES TO THE PROCUREMENT RULES AND CONTRACT REGULATIONS

This report recommends changes to the Council's Procurement Rules and Contract Regulations

FOR DECISION

1. INTRODUCTION

- 1.1 The last time the Contract Regulations were significantly amended was in 2006 with further minor adjustments made in 2007. Since then the EU Remedies Directive has been introduced and Cabinet has issued instructions for tighter controls as a result of an Internal Audit report on the St Quentin's Capital Works project. More recently, an Internal Audit report on Elm Park Gardens has highlighted the need for changes to the procurement rules. Government has decided to make public spending data more freely available and the Council needs to be in a position to be able to meet this requirement. The opportunity for review has therefore been taken to provide more clarity around some of the procedures, update references to Council policies and the establishment and to respond to the recommendations referred to in the above.

2. BACKGROUND

- 2.1 The Procurement Rules and Contract Regulations, found in part four of the Council's Constitution, are an essential part of the Council's procurement framework which is designed to ensure that contracts are let lawfully and achieve the best value for money available.

3. PROPOSED CHANGES

3.1 Appendix 1 sets out the current regulations with the proposed additions underlined and proposed deletions crossed through. Many of the changes are cosmetic or correct existing typographic and numbering errors. The significant changes are as follows, (numbering refers to paragraph numbering in the amended regulations):

Title: there are no separate "procurement procedure rules" so the inclusion of this phrase in the title may cause confusion.

1.01(c) The Procurement Code of Practice is an internal guide implemented in April 2009 which seeks to bring together current procurement advice and sets out in more detail the various stages of the procurement cycle for officers to follow..

2.16 This addition to the regulations concerns contracts of £500,000 or more per annum and contracts that are regarded as high risk or politically sensitive and reflects recommendations arising from the review of St Quentin Children's Centre carried out by Internal Audit for more robust monitoring of contract performance.

2.18 The advertising of contracts with a value over £10,000 is made compulsory and not only where practicable. This will enable the Council to adequately respond to the recommendations of the Governments Transparency objectives affecting procurement through the maintenance of a register of all contracts >£10,000.

2.19 reminds officers that Construction Line should not be relied upon as the main source of information about organisations to be invited to tender and the existence of an approved list of tenderers does not obviate the need for a competition.

2.20(b) emphasises that a more detailed appraisal of tenderers financial strength may be necessary for complex or high value contracts and dependant on the time that has passed since the tenderer last submitted accounts to Companies House.

2.21 and 2.22 delivery and opening of tenders has been substantially revised to improve clarity of these requirements. These amendments reflect recommendations of Internal Audit in their draft Elm Park Garden's audit report.

2.26 and 2.27 clarify the circumstances in which it is necessary to obtain approval from a Cabinet Councillor for contract extensions or variations. These amendments reflect recommendations of Internal Audit in their draft Elm Park Garden's audit report.

4.02(d) adds the Council's corporate goals for equalities and diversity and business continuity, to the checklist of Minimum Requirements to Proceed on procurement.

4. CONSULTATION

4.1 In preparing these amendments the Head of Strategic Procurement has consulted procurement colleagues in Family and Children's Services, Housing, Health and Adult Social Care, and General Services as well as Legal Services and the Procurement Board.

5. OPTIONS

5.1 The Committee may approve the proposed changes to the Contract Regulations and recommend to Full Council that these changes are adopted or it may decline to do so and give alternative directions to officers.

6. FINANCIAL, LEGAL, PERSONNEL, AND EQUALITIES IMPLICATIONS

6.1 There are no specific financial, legal personnel or equalities implications. The Local Government Act 1972 creates a duty on local authorities to make standing orders with respect to the making of contracts. Section 135 provides:

"(1) A local authority may make standing orders with respect to the making of contracts by them or on their behalf.

(2) A local authority shall make standing orders with respect to the making by them or on their behalf of contracts for the supply of goods or materials or for the execution of works.

(3) Standing orders made by a local authority with respect to contracts for the supply of goods or materials or for the execution of works shall include provision for securing competition for such contracts and for regulating the manner in which tenders are invited, but may exempt from any such provision contracts for a price below that specified in standing orders and may authorise the authority to exempt any contract from any such provision when the authority are satisfied that the exemption is justified by special circumstances."

7. RECOMMENDATION

- 7.1 The Committee is asked to recommend to Council the changes to the Procurement Rules and Contract Regulations highlighted in Appendix 1

**MICHAEL COGHER
DIRECTOR OF LEGAL SERVICES**

**DEREK MYERS
TOWN CLERK AND CHIEF EXECUTIVE**

Background papers used:

- Report by the Head of Internal Audit and Risk Management on Contract Review of St Quentin Children's Centre and Recommendation for Future Projects, February 2010

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