



GA.19 13/14

Governance & Audit  
Committee

26 September 2013

**Subject: Motion from Council – Proposed amendments to Contract  
Procedure Rules.**

Report by:

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Purpose / Summary:

To consider the motion of Council to request an amendment to the Contract Procedure Rules.

**RECOMMENDATION(S):**

- 1) That Members approve that the Contract Procedure Rules are not amended.**

**IMPLICATIONS**

**Legal: All access to information is contained within relevant legislation.**

**Financial FIN/9/15: None.**

**Staffing : None arising as a result of this report.**

**Equality and Diversity including Human Rights : None arising as a result of this report.**

**Risk Assessment : This report is for information only**

**Climate Related Risks and Opportunities : None arising as a result of this report.**

**Title and Location of any Background Papers used in the preparation of this report: No background papers were used in the preparation of this report.**

**Call in and Urgency:**

**Is the decision one which Rule 14 of the Scrutiny Procedure Rules apply?**

**Yes**

**No**

**Key Decision:**

**Yes**

**No**

## **Motion from Council – Proposed amendments to Contract Procedure Rules.**

At the meeting of Council held on 17 June 2013, the Council resolved that a motion be submitted to Governance and Audit Committee for consideration.

### **MOTION TO:**

- 1. REMOVE EXCEPTIONS FROM CONTRACT PROCEDURE RULES**
- 2. DETAILS OF BIDS, TENDERS AND NEGOTIATIONS TO BE MADE AVAILABLE FOR FULL MEMBER AND PUBLIC SCRUTINY ONCE OPENED.**

### **Response from the Head of Financial Services (S151 Officer)**

Our Contract and Procurement Procedure Rules have been drawn up in conjunction with Procurement Lincolnshire to ensure that the Council, including its officers and elected members, are protected against the potential of a successful legal challenge. These Regulations are based on best practice and have been adopted, (with minor variations), by all the local authorities in Lincolnshire as Partner Authorities of Procurement Lincolnshire. It should be pointed out that no matter how effective the Regulations are they can be no guarantee that a challenge will not be raised, but as long as the Regulations are followed, then this will protect the Council from a successful legal challenge based on a breach of The Public Procurement Regulations 2006.

Procurement Lincolnshire, as our procurement resource, have, in addition to the Procurement and Contract Procedure Rules, put in place numerous procedures to ensure that the Council cannot be accused of favouring a single bidder, failing to achieve value for money or denying suppliers the opportunity to bid for work. Tenders and quotations are undertaken electronically which ensures there is a full and verifiable audit trail, evaluation models have been developed to ensure transparency and value for money, while supplier training takes place to make suppliers aware of upcoming opportunities.

Although the Regulations are comprehensive, to follow the Regulations in their entirety would not always provide the Council with the best result, which is why a process for Exceptions is included. There are, for instance, occasions when only a single supplier can deliver a service. Examples include upgrades to IT software that can only be delivered by the supplier of the IT system, or the extension of a bespoke piece of work where it would be detrimental to approach a new supplier. There may also be occasions when for very valid reasons a contract needs to be extended and this can only be with the existing supplier. If exceptions were not allowed, this could

put the Council in a worse position, and rather than protect the Council could in effect open it up to challenge.

The Exception process is designed to ensure that these decisions are not taken lightly, and that depending on the value and complexity of the exception being requested, this will be dealt with by either the Management Team or elected Members. In fact if the value of the exception is above the European Threshold, (as identified within the Public Procurement Regulations 2006,) then Legal Lincolnshire must be consulted.

The advice we have received from Procurement Lincolnshire is that the processes in place are sufficiently robust to protect the Council, and that to remove the exception process from our Regulations would not achieve the result suggested within the question.

In terms of making available details of bids and tenders, the electronic tender process currently followed provides a full audit trail, meaning that all documents are accessible. However it is important to note that tender submissions by their very nature frequently contain confidential information which may be inappropriate to divulge to the public, especially as this could involve divulging this information to competing suppliers. Although the Freedom of Information Act applies, suppliers have the opportunity within the tender process to identify information that they believe is commercially sensitive. Ultimately the Information Commissionaire will have the final say, but it would not be advisable to automatically make available full details of bids received to public scrutiny. We do however publish details of successful bids, including the name and contact details of the successful supplier, together with the total tender figure for that contract.

Member engagement in the procurement process should be agreed as part of the procurement plan. The Council is currently reviewing it's governance arrangements in this area and is seeking to strengthen how this is done. However, as with the response on public scrutiny, it is not appropriate for members to scrutinise the detailed tenders. The Council's current Contract Procedure Rules (supported by procurement guidance and specialist advice where appropriate) ensure that an open, transparent and equitable process is followed by officers to enable decisions to be made on the award of contracts and approval of exemptions

### **Recommendation of S151 Officer**

1. That exemption clauses remain within the Contract Procedure Rules.
2. That details of bids and tenders are not made available for public scrutiny due to their commercially sensitive nature.
3. That Member's adhere to the approved governance arrangements relating to access to information of a commercially sensitive nature .