



CABINET – 15TH APRIL 2015

SUBJECT: AMENDMENTS TO STANDING ORDERS FOR CONTRACTS & IMPLEMENTATION INTO UK LAW OF THE NEW EUROPEAN UNION PUBLIC CONTRACTS DIRECTIVES 2014

REPORT BY: ACTING DIRECTOR OF CORPORATE SERVICES AND S.151 OFFICER

1. PURPOSE OF REPORT

- 1.1 To advise Members and seek Cabinet approval of the proposed amendments to the Council's Standing Orders for Contracts following the implementation into UK Law of the New European Union ('EU') Public Contracts Directives 2014, prior to referral to Council

2. SUMMARY

- 2.1 As a way of background since 2011 the European Commission, Member States and the European Parliament have negotiated a new set of rules covering public contracts and the procurement discipline. The purpose of the EU procurement rules is to open up the public procurement market and to ensure the free movement of supplies, services and works within the EU. Following extensive consultation throughout the EU including Wales the new rules were agreed by the European Commission and came into force on 17 April 2014. Subsequently Member States including the UK were required to transpose the new rules into national law within twenty four (24) months of the aforementioned date.
- 2.2 On 26 February 2015 the UK formally implemented the New EU Public Contracts Directives 2014 into national law via the UK Public Contract Regulations 2015 ('Regulations'). The implementation of the new Regulations will undoubtedly impact all public sector organisations procurement operation/ function together with any associated rules and procedures.
- 2.3 Standing Orders for Contracts ('SOFC') is an element of the Council's Constitution which details how decisions are made and the procedures which are followed when undertaking the procurement discipline and contracting with third party organisations. The current version of SOFC together with the adoption of the Welsh Government Procurement Policy, Caerphilly County Borough Council Procurement Policy and Strategy was presented and approved by Council on 19 November 2013. The 2013 report also advised Members of the potential changes to the EU Public Contracts Directives.
- 2.4 Due to the implementation of the new Regulations there has been a need for Officers within Legal, Audit and Procurement to review and update the Council's SOFC to ensure legal compliance with the new Regulations.

3. LINKS TO STRATEGY

- 3.1 The Council is under a duty to keep under review its constitution arrangements. SOFC forms part of the Council's Constitution and therefore the recommendations in this report supports that obligation.

4. THE REPORT

- 4.1 The Council's Constitution sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that decision making is efficient, transparent and accountable to local people.
- 4.2 In 2010, the Head of Legal Services, Head of Corporate Finance and Head of Procurement completed a review of SOfC, after extensive consultation, the revision was presented and approved by Council on 27 April 2010. Subsequently the current version of SOfC together with the adoption of the Welsh Government Procurement Policy, Caerphilly County Borough Council Procurement Policy and Strategy was presented and approved by Council on 19 November 2013. This approach demonstrates the Council's commitment of continuously reviewing its Constitutional requirements and meeting the aims and objectives of modern day Procurement.
- 4.3 Implementation of the new Regulations supports not only the UK and Welsh Government priorities for Procurement but fundamentally the aims and objectives of this Council. The changes provide a much more modern, flexible and commercial approach with many new features added to streamline and modernise public sector procurement. Simplistically it is envisaged that the new rules will allow contracting authorities to run procurement exercises faster, with less red tape and more focus on getting the right supplier and the best tender. For suppliers the process of bidding for public contracts should be quicker, less costly and less bureaucratic, enabling suppliers to compete more effectively.
- 4.4 The new regulations will help to deliver the Council's aims and objectives for modern day procurement and many of the new rules are inline with the Council's wider policies and strategies namely:
- Community Benefits
 - Open, Accessible Competition
 - Simplified Standard Processes
 - Electronic Procurement & Timescales
 - Supplier Engagement & Innovation
 - Reserving Contracts
 - Temporary Exemption for Public Service Mutuals
 - Improving Quality of Bids
 - New Lighter Regime / New Rules for Social Services
 - New Reporting and Governance Requirements.
- 4.5 The Council's current version of SOfC is generally considered to be effective; however, there are amendments required to ensure compliance with the new procurement Regulations. The proposed amendments are summarised in **Appendix A** together with SOfC as amended. The amendments will ensure compliance with the new Regulations and allow a legally secure operational guide to procuring in an open, fair and transparent manner whilst maintaining all the principals of the new procurement rules.
- 4.6 To support the implementation of the new rules, training and workshop sessions have been provided to relevant Officers across the Council. These sessions, which have been well received by Officers were undertaken by external practitioners covering both the procurement and legal disciplines. Furthermore continued support and training on SOfC will be provided by Officers of the Corporate Procurement Unit together with providing on going advice and guidance on the new Regulations in consultation with the Council's Legal Services. In addition guidance documentation such as the procurement Code of Practice will be updated in due course and will be a further support mechanism.
- 4.7 Unfortunately there was limited notification given by UK central government for the implementation of the new Regulations, therefore extensive consultation across the Council on the practical operation (day-to-day) of SOfC has not been possible. However a consultation exercise will be undertaken over the next few months and any amendments proposed as a result of the consultation exercise will be presented to members for ratification.

5. EQUALITIES IMPLICATIONS

- 5.1 An EqIA screening has been completed in accordance with the Council's Strategic Equality Plan and supplementary guidance and no potential for unlawful discrimination and/or low level or minor negative impact have been identified, therefore a full EqIA has not been carried out.

6. FINANCIAL IMPLICATIONS

- 6.1 There are no financial implications associated with the amendments to Standing Orders for Contracts, or the implementation of the New EU Public Contracts Directives 2014 via the UK Public Contract Regulations 2015.

7. PERSONNEL IMPLICATIONS

- 7.1 There are no personnel implications

8. CONSULTATIONS

- 8.1 Consultations on report and its proposals have taken place, comments and views are reflected within the report.

9. RECOMMENDATIONS

- 9.1 It is recommended that

- 9.1.1 Cabinet note and approve the proposed amendments to the Council's Standing Orders for Contracts in line with proposals set out within Appendix A and recommend to Council that the Council's Monitoring Officer be authorised to make the necessary amendments to the Council's Constitution to reflect the approved amendments.
- 9.1.2 Members note the implementation of the New EU Public Contracts Directives 2014 via the UK Public Contract Regulations 2015 and how the new rules support the Council's aims and objectives for modern day procurement.
- 9.1.3 Members note that due to the limited timeline on the implementation of the new Regulations an extensive consultation across the Council on the practical operation (day-to-day) of Standing Orders for Contracts has not been possible. However a consultation exercise will be undertaken in the next few months and any amendments proposed as a result of the consultation exercise will be presented to members for ratification.

10. REASONS FOR THE RECOMMENDATIONS

- 10.1 To ensure that the Council's rules on the procurement of goods, works and services remain fit for purpose and in compliance with Procurement Regulations.

11. STATUTORY POWER

- 11.1 Local Government Act 1972, The European Union Treaty & Directive made thereunder, Public Contract Regulations 2015.

Author: Elizabeth Lucas, Head of Procurement, lucasej@caerphilly.gov.uk
Consultees: Councillor Barbara Jones, jonesb12@caerphilly.gov.uk
Chris Burns, Interim Chief Executive, burnsc1@caerphilly.gov.uk

Nicole Scammell, Acting Director of Corporate Services & S151,
scammn@caerphilly.gov.uk

Gail Williams, Monitoring Officer/Principal Solicitor, willige@caerphilly.gov.uk

Ian Evans, Contracts Manager, evansi1@caerphilly.gov.uk

Russell Allen, Senior Legal Assistant, allenr@caerphilly.gov.uk

Richard Harris, Internal Audit Manager, harrirm@caerphilly.gov.uk

Background Papers:

New European Union ('EU') Public Contracts Directives 2014

UK Public Contract Regulations 2015

Caerphilly CBC Standing Orders for Contracts

Appendices:

Appendix A: Proposed Amendments and Standing Orders for Contracts