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Constitution Review Working Party

Held at Ryedale House, Malton
on Wednesday 27 January 2010

Present

Councillors Wainwright (in the Chair), Clark, Keal and Knaggs

In Attendance

Mrs L Carter, P Cresswell, Mrs M Jackson and Miss J Waggott

Minutes

1 Apologies for absence

An apology for absence was received from Councillor Mrs Keal.

2 Minutes of the last meeting of the Constitution Review Working Party held on 8 July 2009

The minutes of the last meeting of the Constitution Review Working Party held on 8 July 2009 were presented.

Resolved

That the minutes of the last meeting of the Constitution Review Working Party be approved and signed by the Chairman as a correct record.

3 Urgent Business

The Chairman reported that there were no items which he considered should be dealt with at the meeting as a matter of urgency by virtue of Section 100B(4)(b) of the Local Government Act 1972.

4 Declarations of Interest

There were no declarations of interest received.

5 Changes to the Constitution

The Corporate Director (s151) circulated a report, which outlined for consideration proposed changes to the Council's Contract Procedure Rules (CPR) including the changes required following the approval of the Commissioning Board proposals.

A number of changes to the Contract Procedure Rules were proposed, the report outlined the rationale and Annex A to the report detailed the proposed changes.

The Working Party considered the proposed changes in detail. It was agreed that:

- Paragraph 8.4 be amended to include a mechanism for enabling technical amendments to be made in line with EU rules, without the necessity to convene a meeting of the Constitution Working Party.
- Paragraph 8.5 (a) being amended to read "invitations to quote or tender being issued by use of the internet. A Head of Service may publish invitation to tender notices on appropriate internet web sites in substitution **or in addition to** publication of newspapers or trade journals
- Paragraph 8.5 (b) being amended by the addition of the words "**and is auditable**"

Resolved

That the proposed changes to the Constitution, as set out in Annex A to these minutes, be approved as a basis for the preparation of a revised set of Contract Procedure Rules to be presented to the Policy & Resources Committee.

8.2 Framework Contracts – Proposed New Paragraph

The purchase of goods or materials and the procurement of works or supply of services, where a Framework Arrangement or Contract is let through or on behalf of a public body, consortium, association or similar body provided that tenders or quotations are invited and contracts placed in accordance with procedures which are equivalent to these Contract Procedure Rules and also comply with any national or EU legislation, is permitted. A Framework Contract to which more than one contractor is party must provide for competition between the contractors in respect of any Call Off above £50,000.

8.3 Acceptance of Tenders

Current Wording:

15.1 All tenders and quotations for items exceeding an amount or value to be determined from time to time by the Council shall normally be submitted to the Council's Policy and Resources Committee for acceptance but where necessary to avoid undue delay the appropriate Service Unit Manager in consultation with the Chairman of that Committee may accept such tenders or quotations subject to these contract standing orders and to this procedure not applying to any case of difficulty or unusual circumstances.

15.2 Where a proposed contract does not exceed an amount or value to be determined from time to time by the Council the Service Unit Manager concerned may subject to the provisions of contract standing order 24 enter into such for the purpose provided that wherever practicable four competitive quotations shall be invited by the Service Unit Manager before entering into such contract but so that the requirement to obtain four quotations shall not apply in the case of contracts specified in contract standing order 13.

Proposed Wording:

All Tenders may be accepted by the appropriate Head of Service, provided that:

- (a) It is within the approved budget;
- (b) the Head of Service notifies award of the contract to:
 - (i) the Chief Finance Officer and relevant Committee Chairman; or
 - (ii) in the case of a tender which falls above EU Procurement Levels the relevant Policy committee.
- (c) where the contract value exceeds EU Procurement Levels the contract is not awarded until the required time period has elapsed.
- (d) the identity of any Tenderer other than the Tenderer submitting the tender accepted shall not be disclosed to any other Tenderer.

8.4 EU Procurement – Proposed New Section

CONTRACTS TO WHICH EU PROCUREMENT RULES APPLY

(i) **Thresholds**

Advice should be sought from the Chief Finance Officer in respect of any procurement with an estimated value greater than EU Procurement thresholds upon whether EU Procurement Rules apply. The threshold values are reviewed on a regular basis, normally every two years. Table 1 identifies when EU Procurement Rules are likely to apply:

Table 1: EU Procurement Thresholds - Valid from January 2010

	All Procedures	Prior-information Notice
Supplies	£ 156,442	£607,935
Services	£ 156,442	£607,935
Works	£3,927,260	£3,927,260

Procurement exercises with an estimated contract value within 10% of Threshold levels where EU Procurement Rules apply should also be advertised in the OJEU to avoid OJEU advertising requirements being unintentionally breached.

(ii) **Standards**

If the European Committee for Standardisation (CEN) has issued a relevant standard, all the goods and materials used or supplied, and all the work done under the contract, must be in line with that standard.

(iii) *The Euro*

A provision should be included in any contractual documentation requiring the contractor to convert prices to sterling from Euro and to submit invoices for payment accordingly once notice is given to the contractor.

(iv) **Number of tenderers**

If the contract is expected to exceed EU limits, a minimum of five contractors or suppliers must be invited to tender except where the adopted procedure provides otherwise. (In cases where fewer than five contractors or suppliers apply and are shortlisted, all contractors or suppliers must be invited to tender.)

If during the course of a competitive tendering exercise, an officer becomes aware that the value of bids received exceeds the EU Thresholds, but bid invitations have not been extended through the OJEU notice procedure as it was anticipated that the threshold would not be exceeded, advice must be sought from the Chief Finance Officer upon how to proceed.

Where the Council has an aggregated requirement for specified goods or services with an estimated annual value at or greater than the figures provided in Table 1, a Prior Indicative Notice (PIN) must be placed in the Supplement to the Official Journal of the European Community (OJEU) once annually.

(v) **Buyer's Profile**

The Council shall publish and maintain a buyer's profile via the internet incorporating the following information:

- (a) a brief description of future and current tenders within the year 1 April to 31 March
- (b) the date the advert was dispatched to OJEU
- (c) the OJEU reference number
- (d) the closing date for notification of interest in relation to expressions of interest
- (e) the tender dispatch date
- (f) the closing date for tenders
- (g) the award date
- (h) the identity of the successful tenderer
- (i) the award notice reference number
- (j) the date of the award notice

(vi) **EU Procedures:**

All contracts with a value in excess of EU limits shall be let in accordance with a procurement method which is acceptable within EU law. The acceptable methods are the Restricted, Open and Negotiated Procedures and Competitive Dialogue.

Where the Restricted Procedure, Open Procedure or Competitive dialogue are used the Council is required to place a Contract Notice in the Official Journal of the European Community and the timescale for expressions of interest in response to such notices is prescribed.

Advertisement is subject to the following constraints:

- (a) advice must be sought upon the applicable timescales;
- (b) the accelerated procedure may only be used with the consent of the Chief Finance Officer.

Table 2 sets out the ordinary timescales. The applicable timescales may be reduced further as indicated in Tables 3 and 4 where electronic systems are used to publish the contract notices and provided unrestricted electronic access to documentation:

Table 2: Advertisement in OJEU without use of electronic media

Minimum no. of calendar days after sending the Contract Notice to OJEU	EU Open Procedure	EU Restricted Procedure	EU Accelerated Procedure	<i>EU Negotiated Procedure</i>
(i) to the closing date for receipt of registrations of interest from contract notice	-	37 days	15 days	37 days (if poss.)
(ii) to the closing date for receipt of tenders	52 days	40 days	10 days	21 days
as (ii) above, but where a PIN is published between 52 and 365 days prior to the Contract Notice	36 days	26 days	N/A	21 days (i.e., same as above)
Minimum no. of days to allow following decision on contract award before formalising contract	10 days	10 days	10 days	10 days
Max. no. of days after contract award in which to send Contract Award Notice	48 days	48 days	48 days	48 days

Table 3: Notice of contract compiled and submitted electronically:

Minimum no. of calendar days after sending the Contract Notice to OJEU	EU Open Procedure	EU Restricted Procedure	EU Accelerated Procedure	EU Negotiated Procedure
(i) to the closing date for receipt of registrations of interest from electronic contract notice	-	30 days	10 days	30 days (if poss.)
(ii) to the closing date for receipt of tenders	45 days	35 days	10 days	14 days
as (ii) above, but where a PIN is published between 52 and 365 days prior to the Contract Notice	29 days	19 days	N/A	14 days (i.e., same as above)
Minimum no. of days to allow following decision on contract award before formalising contract	10 days	10 days	10 days	10 days
Max. no. of days after contract award in which to send Contract Award Notice	48 days	48 days	48 days	48 days

Table 4: Notice of contract compiled and submitted electronically and unrestricted electronic access to all contract documentation provided at tender receipt stage

Minimum no. of calendar days after sending the Contract Notice to OJEU	EU Open Procedure	EU Restricted Procedure	EU Accelerated Procedure	EU Negotiated Procedure
(i) to the closing date for receipt of registrations of interest from electronic contract notice	-	30 days	10 days	30 days
(ii) to the closing date for receipt of tenders	40 days	14 days	10 days	21 days
as (ii) above, but where a PIN is published between 52 and 365 days prior to the Contract Notice	29 days	5 days	N/A	21 days (i.e., same as above)
Minimum no. of days to allow following decision on contract award before formalising contract	10 days	10 days	10 days	10 days
Max. no. of days after contract award in which to send Contract Award Notice	48 days	48 days	48 days	48 days

8.5 E-Commerce – Proposed New Section

Nothing in the Contract Procedure Rules shall prevent:-

- a) invitations to quote or tender being issued by use of the internet. A Head of Service may publish invitation to tender notices on appropriate internet web sites in substitution for publication in newspapers or trade journals.
- b) receipt of quotations or tenders by use of the internet provided the Head of Service and Chief Finance Officer have agreed that suitable privacy and security mechanisms are in place for the receipt and opening of such submissions and where an electronic tendering system is available which meets the satisfaction of the Monitoring Officer and Chief Finance Officer.

Tenders may be submitted by electronic means provided that:

- a) evidence that the transmission was successfully completed is obtained and recorded;
- b) each tender submitted electronically is deposited in a secure mailbox before the return date, and;
- c) electronic tenders are kept in a separate secure folder until the deadline is passed for receipt of tenders.

8.6 Revision to Limits

The current and proposed limits are shown on Annex A1.

8.7 Commissioning – Proposed New Paragraph

To add to Section 9 - Negotiated Tendering Procedure - the following circumstances where this procedure may be used:

- 9.2.5 when the procurement forms part of a project or service that is being delivered under the Council's General Principles for Commissioning.

CONTRACT STANDING ORDERS

NB: The CSO Paragraph References are based on the existing Contract Procedure Rules for the purposes of this table.

ESTIMATES		CURRENT	PROPOSED
CSO	4.1	£18,000	£50,000
CSO	4.2	£64,800	£50,000

TENDERING

CSO	7.1	£50,000	£50,000
CSO	7.2	£50,000	£50,000
CSO	8.1	£50,000	£50,000
CSO	8.2	£50,000	£50,000
CSO	9.1	£50,000	£50,000

COMPETITION REQUIREMENTS FOR CONTRACTS BELOW A SPECIFIED VALUE

CSO	12.1	£2,500 & £50,000	£5,001 & £50,000
CSO	12.2	£2,500	£5,000

ACCEPTANCE OF LOWEST TENDER OR HIGHEST

CSO	15.1	£50,000	£50,000
CSO	15.2	£50,000	£50,000

SUBCONTRACTS AND NOMINATED SUPPLIERS

CSO	17.1.1	£38,400	£50,000
CSO	17.1.3	£38,400	£50,000

ENGAGEMENT OF CONSULTANTS

CSO	18.1.4	£64,800	£50,000
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OPENING TENDERS

CSO	21.1.2	£18,000	£50,000
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FORMALITIES

CSO	25.1.3.1	£18,000	£5,000
CSO	25.1.3.2	£18,000	£5,000

CSO	25.1.3.3	£18,000	£5,000
CSO	25.1.4	£18,000	£5,000
CSO	25.1.5.1	£54,300	£50,000
CSO	25.1.5.2	£54,300	£50,000
CSO	25.1.5.3	£54,300	£50,000
CSO	25.1.5.4	£54,300	£50,000
CSO	25.1.6	£54,300	£50,000

BONDS

CSO	27	£144,000	£150,000
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FINANCIAL STANDING ORDERS

FINANCIAL ADMINISTRATION

FSO	1.4	£23,500	£50,000
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BUDGETARY CONTROL

FSO	3.3	£8,400	£50,000
FSO	3.4	£23,100	N/A

FINANCIAL REGULATIONS

CONTRACTS - VARIATION ORDERS

FR	7	£4,500	£5,000
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INCOME

FR	9.10	£500	£5,000
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ORDERS FOR WORK, GOODS AND SERVICES

FR	13.9		
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Current:

- a) Cost not exceeding £4,500 authorised by Service Unit Managers.
- b) Cost not exceeding £15,000 authorised by the Chief Executive, Chief Financial Officer or any one Director.

- c) Cost between £15,000 and £50,000 authorised by the Chief Executive, Chief Financial Officer or any one Director, with approval of the Chairman of the appropriate Committee.
- d) Cost exceeding £50,000 to be authorised by the appropriate Committee and, if necessary, tenders invited in accordance with Standing Orders relating to Contracts.

Proposed:

- a) Cost not exceeding £5,000 authorised by Service Unit Managers & Heads of Service.
- b) Cost not exceeding £25,000 authorised by the Chief Executive, Chief Finance Officer or any one Director.
- c) Cost between £25,001 and £50,000 authorised by the Chief Executive, Chief Finance Officer or any one Director, with approval of the Chairman of the appropriate Committee.
- d) Cost exceeding £50,000 to be authorised by the appropriate Committee and, if necessary, tenders invited in accordance with Contract Procedure Rules.