

COUNCIL	AGENDA ITEM No. 13(c)
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NEW CONTRACT REGULATIONS & AMENDMENT TO CONTRACT RULES

R E C O M M E N D A T I O N S
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That Council amends the Constitution to include revised Contract Rules following legislative changes and the Council approves the Rules to ensure appropriate oversight in the exercise of that discretion

1. PURPOSE AND REASON FOR REPORT

- 1.1 The purpose of this report is to amend the Constitution following changes to the Contract Rules.
- 1.2 The Contract Rules set out how the Council ensures fair competition in letting contracts below EU threshold limits. Above EU threshold limits there are national rules regarding the letting of contracts.
- 1.3 This report explains some of the main changes to the Contract Rules. The revised Rules are set out in Appendix 1 to this report with track changes.

2. PRINCIPAL ISSUES

- 2.1 The main changes to the Rules are:

1. **Contracts Finder** – This comes into force from 1 April 2015. Where the Council advertises a contract opportunity over £25k then it must also be advertised on “Contracts Finder”. This is a national website operated by the ‘.gov.uk’ pages.

This requirement is in addition to the requirement under the Transparency Code to advertise all invitations to tender and contracts above £5,000 in value.

This is clearly a measure designed to encourage tendering by small businesses. In addition there are new rules about carving contracts into lots to encourage smaller enterprises to bid in to larger value tenders.

2. **Light Touch Regime** – The distinction between Part A and Part B contracts is removed and replaced with application of the full regime or a ‘light touch regime’.

All service contracts which exceed £172k must adhere to the regulations in full, unless listed in schedule 3 – the ‘light touch’ list.

Once light touch contracts exceed 750,000 euros they must also adhere to the full regime

3. **Cabinet guidance** – For the first time the Cabinet Office will provide guidance on the interpretation of the Regulations. This is statutory guidance and therefore binding on the Council

Guidance can be found at the following link: <https://www.gov.uk/transposing-eu-procurement-directives>

It can be noted from the link that much of the guidance is still under development with some guidance only being added within the last week.

4. **Public Sector Mutuals** – There is a carve-out for public sector mutuals. This means that social enterprises or any employee led non-profit companies can be directly awarded contracts for a period of three years. This is to encourage the Government’s agenda around mutuals.
5. **Pre-Qualification Questionnaires** – These will be abolished for contracts below the EU thresholds and a standardised PQQ to be used in other cases. Contracting authorities will need to adhere to guidance issued by the Cabinet Office on assessing whether bidders meet requirements or minimum standards relating to suitability, capability, legal status and financial standing.
6. **Contracts between public authorities** – This aspect of the Regulations codifies the existing case law. Public authorities have sought to rely on various exemptions to take them outside of the full procurement regime. This part of the Regulations now clarifies how that is possible within the legislation ;
7. **Innovation Partnership** – This is an entirely new procurement procedure and arises where a contracting authority identifies the need for an innovative product, service or works that cannot be met by purchasing them from the market place. It includes an element of research and development.

3. IMPLICATIONS

Legal implications:

- 3.1 The Contract Rules apply to all contracts below EU threshold (£172K) and light touch contracts below 750,000 euros. They ensure propriety in the expenditure of Council funds.
- 3.2 For the first time the legislation imposes statutory requirements on tendering below EU threshold with the introduction of the Contracts Finder. The Contract rules are otherwise discretionary.
- 3.3 Contract Rules are approved by Council for incorporation in the Constitution. Development of various templates and guidance on Insite is in development. Training was delivered on 5 March and on 30 March so relevant officers are aware of the new legislation.

Financial implications:

- 3.4 There are no financial implications ensuing from the change to the Constitution

4. BACKGROUND DOCUMENTS

Appendix 1 – Contract Rules Revised Version