

## INTERIM AMENDMENT TO THE COUNCIL'S CONTRACT PROCEDURE RULES TO PERMIT IMPLEMENTATION OF A RISK-BASED SOURCING TRIAL

Joint report of the Borough Treasurer and the Monitoring Officer

### 1. INTRODUCTION AND PURPOSE OF REPORT

1.1 The purpose of this report is to:

- Explain the Risk-based sourcing approach
- Set out the interim amendments required to the Council's Contract Procedure Rules (CPRs)
- Detail the longer term plan for permanent changes to CPRs

### 2. BACKGROUND

2.1 STAR launched its new Business Plan for 2017-2020 in June 2017. As part of the new STAR Business Plan we have developed an approach of 'collaborative transformation' which has five objectives and ten building blocks which form the 20 work streams in our Delivery Plan for 2017/18.

2.2 One of the work streams within the Business Plan is the 'Local Investment' project which is designed to provide more opportunities for local businesses and SMEs. Through proactive engagement and simpler procurement process it aims to increase local and SME spend.

2.3 One of the key enablers for this work stream is the 'Risk-Based Sourcing' (RBS) work stream which will allow for simpler procurement processes for Council services and Businesses. Risk-Based Sourcing is when a range of risk factors determine the procurement process rather than value alone, for below OJEU procurements. Therefore the procurement process is made proportionate and appropriate and allows resources to be focussed on the more complex procurements.

Collaborative Transformation	
Objective	Commercial
Building Block	Strategic Sourcing
Work Stream	Risk-Based Sourcing

2.4 The benefits of 'RBS' are:

- Procurement routes based on risk rather than value alone
- Procurement professionals can use their professional judgement
- Focus resources where we can add value and demonstrate our procurement worth
- Simplified processes
- More opportunities for conversations and engagement with Council services
- More speedy options to go to market
- Increased market engagement

- More opportunities for local and SME businesses
- Increased compliance as more engagement and challenge

2.5 The approach will allow for more time to be spent on pre-market engagement and contract management where more added-value can be secured rather than on the 'procurement process'.

2.6 There are no costs associated with the introduction of 'RBS'. However, evidence has been provided from an Authority that has used this process that they delivered on average 10% cost reduction from all procurement that passes via the procurement team for below OJEU activity.

2.7 STAR Board have been consulted informally on this as part of the Business Plan development, and also with specific briefings at Board meetings on 12<sup>th</sup> June 2017 and 19<sup>th</sup> July 2017. The detailed business case was presented to the STAR Joint Committee on 21<sup>st</sup> August 2017 and approved.

### 3. CHANGES REQUIRED TO CPRs

3.1 The implementation of 'RBS' will require a change to the Council's current Contract Procedure Rules. The Contract Procedure Rules form part of the Council's constitution and any significant changes require full Council approval. The CPRs for Stockport Council are harmonised with those for Rochdale and Trafford Councils. In order to implement the Local Investment project in January 2018, interim changes to the CPRs set out in Paragraph 3.3 are requested to allow for the trial.

3.2 Interim changes to Stockport Council's CPRs are required to ensure the Local Investment project remains compliant with the Council's constitution (see Annex A and B for full outline of Rules 6 and 7 respectively):

#### 3.2.1 Rule 5.5.5 - Table 1 Supplies, Services and Concession

The CPR's currently state:

Value Band	Value	Procurement Activity	Minimum Requirement for Advertising the Opportunity
B	£5,000.0 - £49,999.99	Minimum three Quotes in accordance with Rule 6 – Quotes	N/A
		In accordance with Rule 7 – Tenders	The Chest (and Contracts Finder over £25k)
C	£50,000 and up to Regulation Threshold	In accordance with Rule 7 – Tenders	The Chest and Contracts Finder

Replace Value Bands B and C with:

Value Band	Value	Procurement Activity	Minimum Requirement for Advertising the Opportunity
B	£5,000.0 - £24,999.99	Minimum three Quotes in accordance with Rule 6 – Quotes following consultation with STAR	N/A
C	£25,000 and up to Regulation Threshold	Minimum three Quotes in accordance with Rule 6 – Quotes and subject to risk-based sourcing. Route to market to be agreed in conjunction with STAR	The Chest
		In accordance with Rule 7 – Tenders and subject to risk-based sourcing. Route to market to be agreed in conjunction with STAR	The Chest and Contracts Finder

### 3.2.2 Rule 5.5.5 – Table 1 Works and Public Works Concessions

The CPR's currently state:

Value Band	Value	Procurement Activity	Minimum Requirement for Advertising the Opportunity
B	£5,000.0 - £74,999.99	Minimum three Quotes in accordance with Rule 6 – Quotes	N/A
C	£75,000 - £249,999.99	Minimum six Quotes in accordance with Rule 6 – Quotes	N/A
		In accordance with Rule 7 –Tenders	The Chest and Contracts Finder
D	£250,000.00 and up to the Regulation Threshold	In accordance with Rule 7 –Tenders	The Chest and Contracts Finder

Replace Value Bands B, C and D with:

Value Band	Value	Procurement Activity	Minimum Requirement for Advertising the Opportunity
B	£5,000.0 - £24,999.99	Minimum three Quotes in accordance with Rule 6 – Quotes following consultation with STAR	N/A
C	£25,000 - up to the Regulation Threshold	Minimum three Quotes in accordance with Rule 6 – Quotes and subject to risk-based sourcing. Route to market to be agreed in conjunction with STAR	The Chest
		In accordance with Rule 7 –Tenders and subject to risk-based sourcing. Route to market to be agreed in conjunction with STAR	The Chest and Contracts Finder
D	Not required		

3.2.3 Current Rule 5.5.6: Where the contract value falls within Value B or D for Goods, Services and Concessions Contracts or Value Band C or E for Works and Public Works Concessions Contracts, the ASO shall determine which procurement activities should be undertaken by reference to the Procurement Handbook

Replace 5.5.6 with: Where the Contract value falls within value band B or C for Supplies, Services and Concession Contracts or value band B or C for Works and Public Works Concession Contracts within Rule 5.5.5 Table 1, the ASO and the APO shall jointly determine which procurement activities should be undertaken.

3.2.4 New rule 6.4.4: In accordance with the Council's risk-based sourcing policy, the ASO and/or APO may require a best and final offer from the Tenderer whose submitted Quote is the most economically advantageous, the lowest price or the highest price in accordance with Rule 5.6.2.

3.2.5 New rule 7.6.6: In accordance with the Council's risk-based sourcing policy, the APO may require a best and final offer from the Tenderer whose submitted Tender is the most economically advantageous, the lowest price or the highest price in accordance with Rule 5.6.2.

3.3 The changes required apply only to sub-OJEU (Official Journal of the European Union) threshold procurement activity. This activity is not caught by the Public Contracts Regulations 2015. The risk of challenge to the application of risk-based sourcing techniques from the wider supply market is mitigated as provisions for challenging a Contracting Authority's decision to award a Contract relate only to those procurement activities caught by the Public Contracts Regulations 2015.

- 3.4 This request has been issued to Rochdale Council and has been approved. A trial of risk based sourcing at Rochdale Council is underway.
- 3.5 This request will be issued to Trafford Council to ensure consistency of approach to the amendment of the harmonised Contract Procedure Rules agreed by the three Councils.
- 3.6 These interim arrangements will remain in force until longer term changes are approved by the STAR Councils in accordance with section 3 below.

**4. LONG TERM CHANGES TO THE CPRs**

- 4.1 As part of the STAR Business Plan, there is a work stream on ‘Simplify’ where we are reviewing all our processes and simplifying it for ourselves, businesses and Council services, where it is appropriate to do so. This allows time for more ‘value added’ activities where STAR can deliver greater procurement worth.
- 4.2 Therefore as part of ‘Simplify’ a review of the Contract Procedure Rules is planned to take place in 2017-18 Q3/Q4. This will allow time for this risk-based sourcing approach to be trialled, giving STAR clarity on how the harmonised CPRs should be permanently re-drafted to incorporate risk-based sourcing as business as usual for STAR Councils.
- 4.3 Permanent changes to the harmonised CPRs will be developed in consultation with each Council’s finance and legal teams. It will then be sent to the STAR Board and STAR Joint Committee for approval, prior to formal adoption into the constitution of each STAR Council.

Financial	There are no financial implications to this report other than the potential to achieve savings if approved.
Legal Implications	There are no legal implications to this report as it will only impact spend below certain required EU thresholds.
Equality/Diversity Implications	There are no negative impacts identified.  As part of the roll out of the Local Investment project, STAR will be identifying ways in which it will highlight the project and ways to engage more with businesses in the local BME community, as well as other communities.

**5. RECOMMENDATION**

It is recommended that the Cabinet review the proposed changes and comment on the same.

## BACKGROUND PAPERS

- STAR Business Plan for 2017-2020

Anyone wishing to inspect the above background papers or requiring further information should contact Nichola Cooke on 07711 45455.

## **Annex A – Extract from the Contract Procedure Rules: Rule 6**

### **6. Quotes**

#### **6.1 Requests for Quotes**

- 6.1.1 All Quotes, including those in mini-competitions under Framework Agreements, must be confirmed in writing before a decision to award can be made and all Quotes must be stored on The Chest.
- 6.1.2 When requesting a Quote, an appropriate description of the Supplies, Services, execution of Works or Concessions (commensurate with the value of the Contract) setting out the Council's requirements in sufficient detail must be provided to prospective Bidders to enable the submission of competitive Quotes.
- 6.1.3 The request for a Quote shall also make reference to or include the following as a minimum:
- a. the terms and conditions of Contract that will apply; and
  - b. notification that Quotes are submitted to the Council on the basis that they are compiled at the Bidder's expense; and
  - c. a description of the award criteria as appropriate and in accordance with Rule 5.6; and
  - d. the date and time by which a Quote is to be submitted by; and
  - e. that the Council is not bound to accept any Quotes submitted.
- 6.1.4 The proposed form of Contract must comply with Rule 8 and where possible the Council's standard terms and conditions of Contract must be used. Advice must be sought from a STAR Legal Officer and approval given by the SRO for Legal where alternative terms and conditions are used.
- 6.1.5 Where requests for a Quote are sought from more than one prospective Bidder, where possible, the request must be sent to each Bidder at the same time and contain the same conditions. Any supplementary information must be given on the same basis.

#### **6.2 Submission and Receipt of Quotes**

- 6.2.1 Bidders must be given a reasonable period in which to prepare and submit a proper Quote, consistent with the complexity of the Contract requirement.
- 6.2.2 In the event that an abnormally low Quote is received, the ASO must take advice from STAR on how to proceed.
- 6.2.3 Any Quote (including all associated documents) submitted after the specified date and time for submission of Quotes shall only be accepted or considered by the Council in exceptional circumstances and only with agreement from the SRO for Legal Services.
- 6.2.4 If fewer than the minimum number of Quotes is received as stipulated in Table 1 in Rule 5.5, then advice must be sought from the Director of Procurement (STAR) as to whether to proceed. Any decision must be recorded in writing and stored on The Chest.

#### **6.3 Amendments to Quotes**

- 6.3.1 The Council may accept amendments to Quotes, including those in mini-competitions under Framework Agreements, providing they are received prior to the closing date for submissions. In such circumstances, any alterations must be made by resubmitting a new Quote and clearly highlighting which Quote (and associated documents) is correct and which should be considered as part of the procurement activity.
- 6.3.2 A Quote may be amended after the closing date for submission if the amendment is made only in order to correct an arithmetical error. Such amendments may only be made with the prior approval of the Director of Procurement (STAR).

#### **6.4 Evaluation of Quotes**

- 6.4.1 All compliant Quotes, including those in mini-competitions under Framework Agreements, must be checked by the ASO to ensure they are arithmetically correct. The ASO may seek advice from STAR if there is any doubt. If arithmetical errors are found they should be notified to the Bidder, who should be requested to confirm or withdraw their Quote. Alternatively, if the rates in the Quote prevail over the overall price, an amended Quote may be requested to accord with the rates given by the Tenderer.
- 6.4.2 Where MEAT is used as the award criteria, all evaluations including an explanation of the reasons for the scores should be recorded on The Chest. The ASO must then confirm to STAR that the Contract can be awarded in accordance with Rule 6.5 by updating the PID.
- 6.4.3 Officers must ensure transparency and fairness during the evaluation process.

#### **6.5 Contract Award – through a Quotation Process**

- 6.5.1 The Contract will be awarded in accordance with the award criteria used.

- 6.5.2 Where the Quote is not within the relevant approved budget but additional budgetary provision is available, the relevant ASO, with the approval of the SRO for Finance, may accept the Quote ensuring compliance with the Financial Procedure Rules/Regulations.
- 6.5.3 The approval to award the Contract must be given in accordance with the Council's Scheme of Delegation.
- 6.5.4 All award decisions must be recorded in the PID, signed and dated by the ASO, the APO and the SRO for the relevant service.
- 6.5.5 Once the decision has been made and the approval given to award the Contract, the ASO must send a Contract award letter to the winning Bidder(s).
- 6.5.6 Prior to commencement of the Contract, the Contract must be completed in accordance with Rule 8.2 unless Rule 82.5 applies.
- 6.5.7 STAR will, where necessary, advise on the formalities for completion of the contract by parties other than the Council and how to ensure that the Contract is legally binding.

## **Annex B – Extract from the Contract Procedure Rules: Rule 7**

### **7. Tenders**

#### **7.1 Invitations to Tender**

- 7.1.1 All Tender opportunities must be placed on The Chest and, where appropriate, Contracts Finder in accordance with Table 1 at Rule 5.5.
- 7.1.2 The Invitation to Tender, shall include the following where appropriate:
- a. A form upon which the Tenderer can provide details of its bid (“Form of Tender”);
  - b. A reference to the Council’s ability to award in whole, in part or not at all;
  - c. A Specification that describes the Council’s requirements in sufficient detail to enable the submission of competitive offers;
  - d. the terms and conditions of Contract that will apply;
  - e. A requirement for Tenderers to declare that the Tender content, price or any other figure or particulars concerning the Tender have not been disclosed by the Tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose);
  - f. A requirement for Tenderers to fully complete and sign all Tender documents including the Form of Tender and certificates relating to canvassing and non-collusion;
  - g. Notification that Tenders are submitted to the Council on the basis that they are compiled at the Tenderer’s expense;
  - h. A description of the award procedure and the evaluation criteria to be used to assess Tenders including any weightings as considered appropriate and in accordance with Rule 5.6. The evaluation criteria must be clear, concise and unambiguous and must be approved by the APO in consultation with the ASO. The evaluation criteria cannot be amended once published in the Invitation to Tender;
  - i. The method by which any arithmetical errors discovered in the submitted Tenders are to be dealt with and in particular, whether the overall price prevails over the rates in the Tender or vice versa;
  - j. Whether the Council is of the view that TUPE will be applicable in relation to the procurement activities;
  - k. Whether additional arrangements will be required in relation to pension provision;
  - l. Provisions relating to the Council’s termination rights in the event that corruption is discovered;
  - m. The relevance and application of any parent company guarantees and/or bonds;
  - n. That the Council is not bound to accept Tenders; and
  - o. Any matters required by local polices in Schedule 1.
- 7.1.3 The proposed form of Contract must comply with Rule 8 and where possible the Council’s standard terms and conditions of Contract must be used. Advice must be sought from the STAR Legal Officer and approval given by the SRO for Legal where alternative terms and conditions are used.
- 7.1.4 All Tenderers invited to Tender must be issued with the same information at the same time and contain the same conditions. Any supplementary information must be given on the same basis.
- 7.1.5 All communications relating to Tenders must be recorded on The Chest.

#### **7.2 Pre and Post Tender Clarification Procedures**

- 7.2.1 Providing pre-Tender clarification to potential or actual Tenderers, or seeking clarification of a Tender, is permitted subject to Rule 7.2.3.
- 7.2.2 Post-tender clarification may be undertaken with Tenderers only where it is essential in order to be completely clear about any fundamental aspect of the Tender submission before the completion of the Tender evaluation process and subject to Rule 7.2.3.
- 7.2.3 All pre- and post- tender communication must be conducted either in writing or in a meeting recorded by the ASO or APO. All correspondence or meetings must be documented and retained on The Chest. Where a meeting is required, there must always be more than one Officer present.
- 7.2.4 At all times during the clarification process, the Council shall consider and implement the principles of non-discrimination, equal treatment and transparency.
- 7.2.5 Unless otherwise permitted by the Regulations, in no circumstances are post-award negotiations permitted.

### 7.3 Submission and Receipt of Tenders

- 7.3.1 Tenderers must be given a reasonable period in which to prepare and submit a proper Tender, consistent with the complexity of the Contract requirement and in accordance with the Regulations.
- 7.3.2 Any Tender (including all associated documents) submitted after the specified date and time for submission of Tenders shall only be accepted or considered by the Council in exceptional circumstances and only with agreement from the SRO for Legal Services.
- 7.3.3 All Tenders received, including those in mini-competitions under Framework Agreements, must remain unopened until the specified closing date and time has passed.
- 7.3.4 If less than the minimum number of Tenders is received as stipulated in Table 1 in Rule 5.5, then advice must be sought from the Director of Procurement (STAR) on how to proceed. Any decision must be recorded in writing and stored on The Chest.

### 7.4 Verifying and Opening Tenders

- 7.4.1 Tenders are to be verified by an APO who is independent of the procurement activity to which the Tender relates.
- 7.4.2 Once verified, Tenders are to be opened in accordance with the following Table 2:

**Table 2**

<b>Value of Contract</b>	<b>Officers required to be present</b>	<b>Expected Duration</b>
£0 - £49,999.99	APO	Within 2 working days of the deadline for submission
£50,000 and above	CM or SCM	Within 2 working days of the deadline for submission

### 7.5 Amendments to Tenders

- 7.5.1 The Council may accept amendments to Tender submissions, including those in mini-competitions under Framework Agreements, providing they are received prior to the closing date for submissions.
- 7.5.2 A Tender may be amended after the closing date for submission if the amendment is made only in order to correct an arithmetical error. Such amendments may only be made with the prior approval of the Director of Procurement (STAR).

### 7.6 Evaluation of Tenders

- 7.6.1 If a PQQ or an expression of interest prior to PQQ was used, all those Tenderers must be given feedback at the relevant stage.
- 7.6.2 In the event that an abnormally low Tender is received, the ASO must take advice from STAR on how to proceed.
- 7.6.3 All compliant Tenders, including those in mini-competitions under Framework Agreements, must be checked by the ASO and the APO to ensure they are arithmetically correct. If arithmetical errors are found they should be notified to the Tenderer, who should be requested to confirm or withdraw their Tender. Alternatively, if the rates in the Tender prevail over the overall price, an amended Tender price may be requested to accord with the rates given by the Tenderer.
- 7.6.4 Where MEAT is used as the award criteria, all evaluations including an explanation of the reasons for the scores should be recorded on The Chest. The ASO must then confirm to STAR that the Contract can be awarded by updating the PID.
- 7.6.5 Officers must ensure transparency and fairness during the evaluation process.

### 7.7 Contract Award – through a Tender process

- 7.7.1 The winning Tender shall be awarded the Contract in accordance with the award criteria used.
- 7.7.2 Where the Tender is not within the relevant approved budget but additional budgetary provision is available, the relevant ASO, with the approval of the SRO for Finance, may accept the Tender ensuring compliance with the Financial Procedure Rules/Regulations.
- 7.7.3 The approval to award the Contract must be given in accordance with the Council's Scheme of Delegation.
- 7.7.4 All award decisions must be recorded in the PID, signed and dated by the ASO, the APO and the SRO for the relevant service.
- 7.7.5 A Contract which has a contract value above the Regulation Thresholds, can only be awarded after a notice of the proposed award has been given to all unsuccessful Tenderers and the 10 day standstill period has elapsed from the date the notice was given. If the 10 days expire on

a non-working day, then the notice period will be deemed to have lapsed on the next working day.

- 7.7.6 Once the decision to award a Contract is made, each Tenderer must be notified by either the ASO or the APO in writing of the outcome. All Tenderers must be notified simultaneously and as soon as possible of the intention to award the Contract to the successful Tenderer(s) and this should be done via The Chest. The letters must include a description of the relative advantages of the successful Tenderer.
- 7.7.7 Prior to commencement of the Contract, the Contract must be completed in accordance with Rule 8.2 unless Rule 8.2.5 applies.
- 7.7.8 A STAR Legal Officer will, where necessary, advise on the formalities for completion of the contract by parties other than the Council and how to ensure that the Contract is legally binding.
- 7.7.9 The APO must publish a contract award notice in the OJEU and on the Council's website no later than 48 days after the date of award of the Contract where a Contract value exceeds the Regulation Threshold and has been tendered pursuant to the Regulations or is subject to the relevant provision of the Regulations relating to Contract award.
- 7.7.10 Contract award letters, feedback to Tenderers and the contract Terms and Conditions, including any incidental documentation must be approved by the APO prior to sending where the value of the Contract is over the Regulation Thresholds.

### **7.8 Enquiries about the Tender process**

- 7.8.1 The confidentiality of Tenders and the identity of Tenderers must be preserved at all times insofar as this is compatible with the Councils' obligations under FOIA and EIR.
- 7.8.2 If the Council receives a request for information under the FOIA as a result of the de-briefing process, the request must be referred to both the Director of Procurement (STAR) and the relevant Officer of the Council who deals with such requests. The Council will be responsible for responding to the request.
- 7.8.3 Any challenges, complaints or requests for feedback, clarification or further information must be referred to the Director of Procurement (STAR) who will advise on how to respond and notify the SRO for Legal.