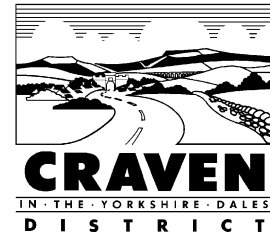


Audit and Governance Committee 10 November 2014



Contract Procedure Rules - Amendment

Report of the Strategic Manager, Financial Services Management

Ward(s) affected: All

1. **Purpose of Report** – To make minor amendment to Contract Procedure Rules.
2. **Recommendations** – Members are recommended to:
 - 2.1. Approve amendment to Contract Procedure Rules to provide clarity between the potential or perceived conflict of section 2.2 (d), 2.2(i) and 3.1/3.2 to ensure CPRs are clear, open and transparent
 - 2.2. Approve amendment to wording of clause 3.2 to provide clarity on the length of framework agreements.
3. **Amendment to CPR2 Scope and Application**
 - 3.1. Section 2 of the Contract Procedure Rules (CPRs) deals with the scope and application of the CPRs. Clause 2.2 states that the CPRs do not apply to certain types of contract including 2.2d) and 2.2i) below
 - 2.2 d) excludes orders placed under a corporate contract arranged by a central purchasing unit and
 - 2.2 i) excludes contracts entered into through collaboration with other local authorities or other public bodies, where a competitive process has been followed that complies with the CPRs of the Lead Authority.
 - 3.2. The exclusions outlined above would include framework contracts and the assumption would therefore be that no further consultation of the CPRs is necessary when using a framework agreement. However, the CPRs then go on to make reference to rules applicable to framework agreements at clause 3.
 - 3.3. In order to provide clarity and eliminate any potential conflict, approval is sought to add the following phrase to 2.2. These Procedure Rules do not apply to transactions of the following types “save for CPR3 which applies to (d) and (i)”
4. **Amendment to CPR3 – Collaborative Arrangements & Use of Framework Agreements**
 - 4.1. Under the Public Contracts Regulations 2006, clause 19(10) states that the term of a framework agreement should not normally exceed 4 years. However a longer term may be granted in exceptional circumstances. For example, where the suppliers are required to make significant initial investment or where, due to the nature of the relevant market place, it is not appropriate for the parties to conduct regular

competitions. The Yorbuild suite of frameworks are an example of frameworks that have been let for a period of 6 years.

- 4.2. The wording of our current CPR3.2 states that” the term of the framework agreement must not exceed four years”. It does not go on to qualify that in certain exceptional circumstances a longer term may be granted. This clause is therefore out of step with the current European Regulations and would preclude in its present format use of any framework which had been let for a period greater than 4 years. In order to safeguard transparency and competition Contracting Authorities are required at the time of tendering to put into the contract notice the duration of framework. This means that the derogation from the four year limit is clearly identified and invites scrutiny from the European Commission in appropriate cases and transparency is maintained.
- 4.3. In order to correct this anomaly in the wording it is recommended that the current clause 3.2 of the CPRs is deleted and replaced by the following
- “The term of a framework agreement should normally not exceed four years. However, a longer term may be granted in exceptional circumstances . The framework can be a single provider or multi provider. In the case of multi provider there must be an intention to appoint at least three suppliers.”
- 4.4. An example of the proposed amended CPR 2 and 3 have been attached at Appendix A

5. **Implications**

5.1. **Financial and Value for Money (vfm) Implications** - There are no financial implications associated with this report.

5.2. **Legal Implications** - None arising directly from this report.

5.3. **Contribution to Council Priorities** – Procurement and contract Procedure Rules contribute to Council priority, Council Transformation and contribute to ensuring financial stability and ensuring adequate controls are in place to help ensure corporate priorities are achieved.

5.4. **Risk Management** – There are no risks directly associated with this report

5.5. **Consultations with Others** – Legal Services

6. **Access to Information: Background Documents** Contract Procedure Rules

7. **Author of the Report**

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8. **Appendices**

Appendix A – Amended CPR2 and CPR3