



ESPO MANAGEMENT COMMITTEE

13 JUNE 2018

PROPOSED CHANGES TO THE CONTRACT PROCEDURE RULES

REPORT OF THE DIRECTOR

Purpose of Report

1. The purpose of this report is to:
 - a. report on the operation of the Contract Procedure Rules (CPRs) between 1st July 2016 and 30th June 2017.
 - b. seek approval of the proposed amendments to the Contract Procedure Rules from 1st July 2018.

Background

2. Rule 8 (Annual Reporting) of ESPO's Contract Procedure Rules stipulates that the Director of ESPO, in consultation with the Director of Law and Governance, shall at least once in each financial year submit a report to the Management Committee in relation to the operation of these Rules. This includes (amongst other things) details of the approved exceptions to these Rules and approved extensions to contract where this has not been provided for in the contract, and proposed revisions to these Rules and/or changes required to accommodate the requirements of UK and EU procurement law, as may be necessary from time to time.
3. Officers of Leicestershire County Council and ESPO work together on an annual basis to review the Contract Procedure Rules and agree on any draft revisions and amendments to be proposed for approval.

Approved Exceptions to the Rules

4. Between 1st July 2016 and 30th June 2017 four approved exceptions to the Contract Procedure Rules have been recorded in the Exceptions Log maintained by the Director of ESPO. Details of the exceptions are set out at Appendix A of this report.

5. Reasons for the exceptions:

- a. Market test of Early Learning and Curriculum products from the TTS range in the 2017/18 ESPO Catalogue, to assess customer demand and buying trends prior to re-procuring frameworks in time for the 2018/19 Catalogue.

The additional items to be included in the catalogue are in keeping with the range and scope of the framework but the supplier of these products owns the IPR. As these are new items ESPO has no historic demand patterns.

Proposal to procure through direct award, facilitated by a modification to the existing Frameworks, under Rule 30 of the Contract Procedure Rules and Regulation 72 (1) (e) of the Public Contracts Regulation.

Total Value of spend £150k

- b. Trial scheme for 12 months for the procurement by ESPO of membership packages from the Youth Sports Trust.

Youth Sports Trust, founded for promoting sport in young people as a means of boosting wellbeing, leadership skills and achievements, offers a wide range of solutions, networking and learning opportunities to schools to improve the outcomes for all young people of all abilities. It is inclusive of people with disabilities and also supports sport in families and the community. It operates its own proprietary scheme, which includes access to celebrity GB Olympic athletes, acting as role models and ambassadors. It has strong political cross party engagement and regular meetings with ministers from the Department for Health, Department of Education, Culture Media and Sport and has a seat on the ministerial board for P.E and school sport.

ESPO is seeking to support schools customers by rewarding those with a qualifying level of expenditure through a loyalty scheme which will also have a positive impact on the lives of some of the three million school children indirectly served by ESPO.

Research employed to explore the market for suitable providers identified Youth Sports Trust as being uniquely positioned to deliver the specific outcomes ESPO is looking to achieve.

Exception under Rule 6 (a) (i) the CPRs requested on the basis that there is no reasonably satisfactory alternative provider of this service in the European Union.

Budget of £50k allocated for the 12 month trial scheme.

- c. Infor provides the proprietary system and software enabling the integration of financial management, procurement, customer services and logistics into one common platform at ESPO. Any parallel contract to provide additional services to this would need to dovetail with this proprietary

support service. It is therefore considered that there is no reasonable satisfactory alternative to Infor to provide additional services.

Exception under Rule 6 (a) (i) of the CPRs requested for an in-scope extension of services to the existing support contract with the only supplier capable of performing it.

Annual spend £35,724.

- d. Engagement of The Education Company to improve marketing capabilities, customer retention and catalogue sales through subscription to Spirit data service and CRM. The list is unique and exposing the procurement to competition is highly unlikely to result in competitive bids. This will also allow for confidentiality in not exposing to competitors the action we are undertaking to better understand our customers.

Exception under Rule 5b of the CPRs to proceed without call for competition.

12 month period, including set up, £30,590.

Approved Contract Extensions where no provision in the Contract

6. Between 1st July 2016 and 30th June 2017 there were no contract extensions approved where there was no provision in the Contract.

Proposed Revisions to the Rules

7. Proposed changes to the Rules are :
- i. Additional minor changes to clarify the approach around procurement of Concessions Contracts. New rule on the treatment of Concession Contracts and a revised definition of concession contracts to align with the Concessions Contracts Regulations 2016 (CCR);
 - ii. The minimum monetary value at which the Public Contract Regulations 2015 (PCR) or CCR applies is reviewed every two years by the European Commission. Published amendments December 2017 came into force on the 1 January 2018. The amendments slightly increased the financial thresholds for the award of public works, services and supply contract and concession contracts. Contract Procedure Rules are amended to reflect revised threshold figures.
 - iii. The preamble to the CPRs has been amended to clarify the application of the CPRs in the context of the incorporation of ESPO Trading Limited, avoid duplication with Rule 4 and summarise previous text.
8. The revisions have been reviewed and are supported by the Director of ESPO, Head of Procurement and Commercial, Commercial Solicitor and Practice Manager Procurement and Compliance.
9. A copy of the proposed Contract Procedure Rules is set out at Appendix C to this report

10. Should the Management Committee approve the draft revised Contract Procedure Rules they will be published on ESPO's intranet and internet sites and communicated to all relevant managers and staff within ESPO, including via newsletters and other appropriate communication channels.

Recommendations

11. It is recommended that:
 - a. the contents of this report on the operation of the Contract Procedure Rules between 1st July 2016 and 31st June 2017 be noted;
 - b. that Management Committee approve the proposed amendments to the Contract Procedure Rules detailed at Appendix B.

Equal and Human Rights Implications

12. The Rules ensure that all suppliers and potential suppliers receive equal treatment when bidding for contracts.

Background Papers

None.

Officer to Contact

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Appendices

Appendix A: ESPO Contract Procedure Rules Exceptions and Extensions
July 2016 – June 2017

Appendix B: Table of proposed amendments to ESPO Contract Procedure Rules
from - 1 July 2018

Appendix C: Copy of the proposed Contract Procedure Rules