

Title of meeting:	Governance & Audit & Standards Committee Meeting
Date of meeting:	20 September 2019
Subject:	Update(s) to Portsmouth City Council's Contract Procedure Rules
Report by:	City Solicitor
Wards affected:	All
Key decision:	No
Full Council decision:	Yes

1. Purpose

- 1.1. The purpose of the report is for the Governance Audit and Standard Committee ("GAS") to consider the proposed updates to Portsmouth City Council's ("the Council's") Contract Procedure Rules (the "CPRs") ("the Report").
- 1.2. The Report sets out the proposals and justifications for:-
 - 1.2.1. implementing a new price increase control by way of an existing agreed approval process for specific Council contracts; and
 - 1.2.2. carrying out a full legal review of the CPRs in light of recent legislative changes (detailed below).

2. Recommendations

- 2.2 It is recommended that the GAS consider whether to recommend to Full Council the adoption of the proposals set out in this report.

3. Background

- 3.1. The Council has a statutory duty to create and maintain standing order(s) for the provision of contracts for the supply of goods or materials or the execution of works.¹
- 3.2. The CPRs as created and implemented by the Council (pursuant to Part 3A of the Council's constitution)² approved on 10 November 2015 under Council minute 2015/93 taking effect from 1 January 2016.³
- 3.3. The City Solicitor is responsible for updating and maintaining the CPRs and has delegated authority to amend the CPRs from time to time in accordance with Article 12 of the Constitution.⁴

¹ Section 135 Local Government Act 1972.

² Part 3A of the Constitution.

³ Contract Procedure Rules at Appendix A.

⁴ Article 12 of the Constitution.

- 3.4. The CPRs have not been updated since 2016.
- 3.5. The decision of the Strategic Contract Management Board ("SCMB") of 23 April 2019 ("the Meeting") minuted the agreed action to implement a price increase control and approval process to be implemented across the Council for in term Council contracts above a total contract value of £1,000,000. Therefore, an amendment to the CPRs is necessary.
- 3.6. The SCMB is made up of the following: the Deputy Leader, the Section 151 Officer, the Audit Officer, the Legal Officer and Procurement Officers. The SCMB has delegated authority pursuant to the Chief Executive to make decisions as prescribed by the CPRs.
- 3.7. The SCMB terms of reference are inserted at Annex B to the Report for reference.

4. Reasons for recommendations

4.1 Price Increase Control and Approval Process

- 4.1.1. The legal duty to promote Best Value⁵ requires the Council to *'make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness'*.⁶
- 4.1.2. The purpose of the change was reported to SCMB noting due to a recent rise in inflation in the UK and the impact this has had on Supplier's production costs. Suppliers increasingly seek to recover costs by way of increasing in term contract prices.
- 4.1.3. Any increase to an in term contract price results in increased Council spend. For example, if a 6% price increase is requested on a contract valued at £1,500,000 p.a., the additional Council spend will be £90,000 p.a. If a 6% price increase is requested a contract valued at £3,000,000 p.a., the additional Council spend will be £180,000 p.a.
- 4.1.4. Currently, within the CPRs there is no authorisation process which prescribes and/or controls how price increase requests should be dealt with by internal Council clients.
- 4.1.5. The CPRs have a number of process implemented forums (including the Procurement Gateway Board) as well as a waiver system, allowing for such decisions to be fed to said decision making forum by the client to discuss and debate.
- 4.1.6. The change to the CPRs would allow the Procurement Gateway Board to monitor price increases within in term Council contracts which, at any point throughout its term, have an aggregate total whole life cost of £1,000,000 or more.

⁵ Section 3 of the Local Government Act 1999 (as amended by s137 of the Local Government & Public Involvement in Health Act 2007)

⁶ Ibid.

4.1.7. The recommendation is for the Consumer Price Index Rate ("CPI") to be utilised as the authorisation threshold in accordance with the following approval matrix:-

Table 1: Price Increase and Approval Process - Approval Matrix

CPI	Contract type	Sign off required
> CPI	All contracts	3 rd Tier Manager
CPI > 2%	All contracts	Director
CPI > 2% < 10%	Operational Contract ⁷	Procurement Manager
CPI > 2% < 5%	Strategic Contract ⁸	Procurement Manager
CPI > 5%	Strategic Contract (after negotiation)	Contract Manager, Head of Service and Procurement Manager - SCMB

4.1.8. For any price increases to contract(s) which have an aggregate total whole life cost of less than £1,000,000 are to be managed by the relevant contract manager assigned to said contract and the revised CPRs will expressly provide for this. This shall be the case except where price increases to these contract(s) brings the whole life cost of £1,000,000 or more. In these circumstances, any price increase to the contract(s) will be managed in accordance with the revised process.

4.1.9. To accommodate the revised process implemented within the CPRs, it is recommended that:-

4.1.9.1. The Council's standard contracts⁹ are amended to include a new clause allowing for three months' notice for any proposed price increase together with a three month review period. The CPRs will link into said standard clause and ensure the correct timeframe is included.

4.2 Standard review of the CPRs

4.2.1. CPR 29 provides that the '*City Solicitor shall keep the Rules under review and may make minor changes (including changes consequential to changes in legislation)*'.¹⁰

4.2.3. The Council's standard terms¹¹ have been updated by Legal Services to take into account any legislative changes which have occurred prior to February 2019. The CPRs however, have not. As such it is necessary for a full review of the CPRs to be carried out.

4.2.2. Legislative updates have occurred since the CPRs were first implemented including, for example:-

⁷ As defined in the CPRs.

⁸ Ibid.

⁹ <https://www.portsmouth.gov.uk/intranet/procurement/procurement---spending-%C2%A3100,000---%C2%A31million>

¹⁰ Rule 29 of the CPRs.

¹¹ <https://www.portsmouth.gov.uk/intranet/procurement/procurement---spending-%C2%A3100,000---%C2%A31million>

- the implementation of the GDPR¹² which occurred in May 2018;
- the Council's adoption of the Armed Forces Covenant;
- update of the revised insurance provisions as included within the Council's standard contracts; and

5. Equality Impact Assessment

5.1. The contents of this report do not have any relevant equalities impact and therefore an equalities assessment is not required.

6. Legal Implications

6.1. The City Solicitor's comments are contained within this report.

7. Director of Finance's comments

7.1. The price increase control and approval process outlined in paragraph 4 aims to improve best value from supplier contracts with PCC.

7.2. Service cash limits include a provision for annual inflation changes.

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Signed by:

Appendices:

Appendix A - the Council's Contract Procedure Rules

Appendix B - SCMB Terms of Reference

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by on

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Signed by:

¹² the General Data Protection Regulation (*Regulation (EU) 2016/679*).