

Title of meeting:	Governance & Audit & Standards Committee / Full Council
Date of meeting:	25 January 2023 Governance & Audit & Standards Committee 14 March 2023 Full Council
Subject:	Contract Procedure Rules
Report by:	Peter Baulf - City Solicitor & Richard Lock - Assistant Director, Procurement
Wards affected:	All
Key decision:	No
Full Council decision:	Yes

1. Purpose of report

- 1.1. The purpose of this report is to seek approval to replace the Council's current Contract Procedure Rules ("**CPRs**") with those attached at Appendix A. Adopting the revised rules will help ensure that the Council is able to more effectively and proportionally discharge its procurement function in readiness for the forthcoming legislative procurement reforms. The revised rules will also provide a dynamic platform from which to implement existing and future locally led policy within the Council's procurement practices.

2. Recommendations

- 2.1. To endorse the revised CPRs as attached at Appendix A and:
- 2.2. To RECOMMEND that Full Council resolves to approve those revised CPRs as an amendment to Part 3A of the Council's Constitution, to be fully implemented and take effect from 01 July 2023.

3. Background

Legal position

- 3.1. The Local Government Act 1972 requires the Council to have rules in place about "*the manner in which the Council buys goods or materials, services and works*" which shall include "*provision for securing competition*".



- 3.2. As a 'Best Value' authority, the Council "*must 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*" (Local Government Act 1999)
- 3.3. As a "Contracting Authority" for the purpose of the Public Contracts Regulations 2015 ("**PCR 2015**"), the Council must procure goods, works and services in compliance with those rules.
- 3.4. The CPRs meet the legislative requirement under the LGA 1972 and should enable the Council to meet its best value obligations and procure lawfully.
- 3.5. CPRs are 'owned' for constitutional purposes by the City Solicitor.

Current rules

- 3.6. The current CPRs were drafted in late 2015, approved by the Council on the 10 November 2015 under Council minute 2015/93 and came into effect on 01 January 2016.
- 3.7. CPRs were last reviewed in late 2019 when a report was taken to this committee with recommendations for amendment, which were endorsed by this committee on the 20 September 2019 and approved by Council on 15 October 2019.
- 3.8. Since early 2021, Legal Services, Procurement Services and Finance have undertaken a detailed review of the effectiveness and proportionality of the CPRs and have noted a number of issues within the existing CPRs;
 - the structure of current CPRs does not reflect the typical sequencing of the procurement life cycle which can make them difficult to navigate ;
 - the current rules are not fully up to date with existing policy and practice which can create confusion and ambiguity;
 - the current rules include areas of duplication and contradiction with other areas of the constitution, particularly in relation to Financial Rules;
 - the current rules are overly prescriptive in places and can compromise the Council's ability to act dynamically within the constraints of the wider regulatory procurement framework, this will only be exacerbated when the wider regulatory reforms come into place unless action is taken in advance;

4. Reasons for recommendations

- 4.1. The new CPRs have been drafted to be a more coherent, legally correct and practical document than the current CPRs. Procurement activity is a fundamental part of the Council's activity as it is the means through which the Council spends a significant amount of taxpayer money.
- 4.2. The new CPRs have been reviewed in parallel against other existing related constitution / policy to ensure that the Council benefits from maximised synergy and co-ordination.



- 4.3. The new CPRs have been developed in conjunction with a review of procurement governance processes and associated value / risk thresholds which will allow for proportionate focusing of valuable professional resources onto higher risk / value procurement activities, improve efficiency and address risk on a relevant and proportionate basis.
- 4.4. The new CPRs remove locally imposed value thresholds. This will give greater flexibility to the Council to make commissioning decisions and focus more upon local needs, communities and businesses within the broader constraints of the wider regulatory framework.
- 4.5. Whilst the language used within the new CPRs must retain an element of 'legalese', the ambition with the new CPRs is for them to be seen as a useful, practical and easy to read document which will help an officer, irrespective of their level of expertise in procurement, to understand where they are in the procurement process and what they need to take into account.
- 4.6. Through focusing on providing a summary framework rather than detailed process requirements the new CPRs will provide a flexible platform and allow for the dynamic implementation of regulatory requirements, local policy, process re-design and adoption of best practice on a continuous improvement basis.
- 4.7. To achieve the ambitions outlined above, the structure has been an important focus of the redraft with it split into 8 separate parts reflecting the key procurement responsibilities. This structure largely replicates the structure suggested by the Chartered Institute of Public Finance and Accountancy (**CIPFA**). The key points are as follows;

Part 1 - The Rules and Key Responsibilities

Sets out why the Council needs these rules; the legal basis of the rules; the roles and responsibilities across the council for compliance with them; and a simplified process through which all procurement activity will have an appropriate level of assurance

Part 2 - Activity Before a Procurement

An area that the current CPRs does not address e.g. the need for early and appropriate engagement with support services (legal, procurement and finance); the requirement to consider alternative options to procurement (make or buy, shared service arrangements, etc.); the ability to reserve procurements to local business or certain categories of business; highlighting the regulated nature of pre-procurement activity (i.e. market engagement and testing); and the requirement to set out clearly what it is the Council wants (specification). Generally the biggest contributor to the achievement of best value lies in effectively planned and executed pre-procurement activity which the revised rules will focus on to a much greater extent.

Part 3 - Selecting a Sourcing Process

This part better reflects the legal obligations on the Council under PCR 2015, recognising the numerous legal ways of meeting those obligations in a proportionate



way. The legal method to 'reserve' contracts to local businesses or Small and Medium sized Enterprises (SMEs) /Voluntary, Community and Social Enterprises (VCSEs) is reflected and supports the Council's Social Value Policy objectives. A process has been set out for oversight of the 'emergency' procurement process under regulation 32 of PCR (negotiated procedure without prior publication).

Part 4 - The Form of Contract

This Part sets out the responsibilities of Directors for agreeing contract terms below a certain value with minimum requirements on those terms based on statutory requirements (e.g. 30 days payment terms, mandatory termination provisions) as well as simply good practice (the VAT position, the management of contracts and insurance provisions). The rules also address the increasing use of electronic signatures and provide clear instructions as to how these should be used.

Part 5 - The Procurement Process

Here the draft revised CPRs focus on how the Council lawfully selects its contractors - the need to ensure contractors are suitable both in delivering services and their economic and financial standing. Ensuring that the legal obligations to set fair, transparent, proportionate and appropriate award criteria and the process for managing the procurement process (e.g. administration of bids, clarifications, corrections etc)

Part 6 - After the Commencement of the Contract

The principles for on-going contract management responsibility and the oversight of strategic contracts to the Council.

Part 7 - Transparency and Record Keeping

This section is focused on the legal obligations of the council in relation to confidentiality duties owed to suppliers; the publication of contract award notices; debriefing tenderers; the contents of the statutory procurement report under regulation 84 and the responsibilities in relation to the maintenance of the Council's contract register.

Part 8 - Variations and Extensions

This refers to the legal principles that apply when the Council wishes to vary a contract and the relevant level of engagement with the support services required. It also deals with the process for the extension of contracts, and where an extension is proposed that is not provided for within the terms of the contract, that it be treated as a new contract for the purpose of procurement legislation and internal sign-off.

Part 9 - Waivers

This sets out a simpler process for sign-off of waivers based on the value of the contract.

5. Implementation

- 5.1. On the assumption that the Committee endorses the recommendations set out within this report and the revised CPRs are formally approved at Full Council on 14 March 2023 the new rules will come into effect from 01 July 2023.



- 5.2. Any procurement activity which is in the process of being completed and was formally instigated prior to the launch date for the new rules will need to comply with the existing rules.
- 5.3. During the approximately 3 month implementation period, Procurement and Legal will engage with services at all levels to provide information and, as appropriate, training on the new rules. Communications will be engaged to ensure that all staff email communications and other means of raising awareness of the forthcoming changes can be utilised.
- 5.4. Information and training materials will be developed which can be flexibly communicated via meetings, in-person training courses, e-learning and revised web page content.
- 5.5. In order to gain maximum benefit from the revised CPRs procurement skills will need to be developed across all Council services.
- 5.6. Procurement, in consultation with Legal and other services as relevant, will develop and deliver wider corporate training which covers all key procurement life cycle activities - establishing need, soft market testing, specification writing, bid evaluation through to contract management and benefits realisation. This training is currently being scoped with the target that it will be ready for delivery prior to April 2023.
- 5.7. Similarly, a review of procurement governance processes and associated procurement documentation will also be undertaken to ensure that when the new rules come into effect the Council will be able to immediately benefit from improved flexibility, efficiency and effectiveness.
- 5.8. No further additional Procurement and Legal resource capacity is envisaged to be required to support the implementation of the new rules, although there may be some impact on the capacity of these services to support other development of further policy initiatives during the implementation period.
- 5.9. Sufficient budget is currently in place to develop the training materials mentioned above which will be developed within the 22/23 financial year and no on-going budget allocation is being sought in order to effectively deliver the recommendations set out within this report.

6. Integrated impact assessment

6.1. An integrated impact assessment is not required as the recommendation does not have a negative impact on any of the protected characteristics as described in the Equality Act 2010.

7. Legal implications

7.1. This report is written by the City Solicitor and contains the legal implications within the body of the report.

8. Director of Finance's comments

8.1. The revised CPR framework including appropriate financial thresholds and limits have been formulated in consultation with the Director of Finance.

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Signed by: Richard Lock - Assistant Director, Procurement

Appendices

Appendix A: Draft: Contract and Procedure Rules.

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: