

Board/Committee:	Standards and Audit Sub-Board
Date of meeting:	17 November 2022
Title:	Revised and Updated Contract Procedure Rules
Author:	Borough Solicitor & Monitoring Officer and Head of Benefits, Procurement and Insurance
Status:	For Decision and recommendation to Full Council

Purpose

Further to previous reports to this Sub-Board, the Policy and Organisation Board and the previous Standards and Governance Committee – and in response to the action plan agreed with Internal Audit to improve the Council’s procurement practices – this report introduces a new set of Contract Procedure Rules to replace the existing Rules which appear in the Council’s Constitution.

Recommendation

That the Sub-Board:

- i. approves the Contract Procedure Rules set out in the Appendix to this report;**
- ii. agrees that the new Contract Procedure Rules shall be presented to Full Council for approval as a change to the Constitution.**

1.0 Background

1.1 Section 135(2) of the Local Government Act 1972 sets out that all Councils “*shall make standing orders with respect to the making by them or on their behalf of contracts for the supply of goods or materials or for the execution of works*”. This has been supplemented by further legislation over time, including the Public Contracts Regulations 2015, which set the framework within which contracts over certain threshold values must be administered. There is also an abundance of Procurement Policy Notes, which provide Government guidance on the procurement system.

1.2 The Council has Contract Procedure Rules (CPRs) which appear within the Constitution at Part 4 Schedule 13. These were last updated in 2019 to reflect the introduction of an electronic procurement system. In accordance with the Council’s general duty to pursue continuous improvement a review of the CPRs was initiated in early 2021. The Head of Benefits, Procurement and Insurance and the Borough Solicitor sought external assistance in undertaking the review of the CPRs from the Chartered Institute of Public Finance and Accountancy (CIPFA). CIPFA are the professional member’s organisation for people working in public finance. They provide information and guidance, training and consultancy for the public sector.

1.3 Following a report from the Council's Internal Audit service in July 2021 finding a lack of compliance with the Council's CPRs and providing a 'no assurance' rating, an Action Plan was agreed with a number of actions required to improve the Council's procurement practices. One of the actions required was to review and update the Council's Contract Procedure Rules. The importance of historical non-compliance with procurement rules cannot be overstated as has also been noted by the Council's external auditors, EY, in their March 2022 report to the Policy and Organisation Board, where they described the issue as a 'critical risk'.

1.4 Whilst the Government intend to reform the procurement system, the Procurement Bill will still take some time to become an Act of Parliament. At that stage it may be that certain provisions require further regulations and/or action to come into force. When new legislation is in force the Council will need to further review and amend its CPRs accordingly.

2.0 Report

2.1 The CPRs are part of a suite of documents that govern the procurement process at the Council. Further to the Internal Audit report in July 2021, the Head of Benefits, Procurement and Insurance drafted a Procurement Strategy which was approved in January this year by the Policy and Organisation Board. This sets the overarching approach to procurement, and it will be supplemented in due course with an addendum to cover Social Value, as noted in the action plan.

2.2 In 2019 the Council had to introduce an electronic procurement system to be compliant with the law. The previous version of the CPRs was updated at that time with the primary focus of introducing the electronic procurement system as integral to the Council's approach.

2.3 The CPRs have now been comprehensively redrafted with assistance from CIPFA to reflect updated practice requirements, with the benefit of practical experience over the past three years.

2.4 The new CPRs follow the same order as the existing rules, taking the relevant considerations in the order that they are likely to apply to the process:

- Section 1 – scope of Contract Procedure Rules
- Section 2 – common requirements
- Section 3 – conducting procurement
- Section 4 – contract and other formalities
- Section 5 – contract management

Importantly, there is more detailed guidance within the CPRs for Officers to aid their assistance of what should be considered at each stage of the process, and, at the end of the new CPRs, there are appendices that set out further specific guidance on particular areas such as business ethics, confidentiality and data protection; as well as a glossary and summary flowchart.

- 2.5** The new CPRs clarify the process whereby exemptions/waivers from the rules can be agreed at an appropriate level without needing to revert to approval from one of the Council's Boards. This enables the Council to run its procurement business in a more efficient manner but will not prevent appropriate reporting to the relevant Council Board for Council projects and procurements.
- 2.6** The Table 1 set out in paragraph 8.2 summarises the various options available to the Council when undertaking a procurement.
- 2.7** Due to the risk to compliance of repeat instructions to favoured contractors at a low value creating a cumulative value which would require a higher tier process to be followed, it is concluded that some thresholds – and the requirements of the process within that threshold – should be changed from how they appear in previous CPRs. For purchases worth less than £5000, three quotes must be obtained, with a selection based on the lowest quote. For purchases between the values of £5000 and £50,000, three quotes must be obtained with the selection based on the “most economically advantageous quote”.
- 2.8** Procurement is a highly litigated, and therefore risky, area of work for the Council. In the past 12 months Officers have noted an increased tendency from suppliers that it has contact with to query and challenge procurement processes that have been undertaken. It is considered that updated CPRs will assist Officers in determining the correct process to follow and ensuring robust and accountable practices which will result in value for money for the public purse. Additional support for Officers from the procurement and legal teams is required to manage the process and mitigate the risks of challenge and litigation.

3.0 Risk Assessment

- 3.1** The Council must have CPRs and it will assist Officers to have greater clarity and detail regarding the various considerations that should apply to different procurements at different values. The review of the CPRs is required by the Action Plan following the Internal Audit report in July 2021, and means that the Council meets its duty of continuous improvement.

4.0 Conclusion

This report introduces the revised CPRs and explains how they are necessary, how they meet one of the requirements of the recent audit reports and will improve the Council's processes.

Financial Services comments:	There are no direct financial implications arising from this report. Updated and current Contract procedure Rules will assist the Council in
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	ensuring it has in place “proper arrangements” to secure value for money in its use of resources
Legal Services comments:	Contained within the report
Equality and Diversity:	N/A
Climate Change implications:	N/A
Crime and Disorder:	None
Service Improvement Plan implications:	N/A
Corporate Plan:	Deliver effective services - continually review and improve our services
Risk Assessment:	See section 3.
Background Papers:	
Appendices:	Appendix – revised Contract Procedure Rules
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