

# WIRRAL COUNCIL

## CABINET

22 SEPTEMBER 2011

<b>SUBJECT:</b>	<b><i>REVISION OF THE COUNCIL'S CONTRACT PROCEDURE RULES</i></b>
<b>WARD/S AFFECTED:</b>	<b><i>ALL</i></b>
<b>REPORT OF:</b>	<b><i>DIRECTOR OF LAW, HR AND ASSET MANAGEMENT</i></b>
<b>RESPONSIBLE PORTFOLIO HOLDER:</b>	<b><i>COUNCILLOR ADRIAN JONES</i></b>
<b>KEY DECISION?</b>	<b><i>NO</i></b>

### 1.0 EXECUTIVE SUMMARY

- 1.1 The purpose of this report is to seek Cabinet approval of the revision of the Council's Contract Procedure Rules ("CPR").
- 1.2 The CPR forms part of the Council's Constitution and therefore the proposed changes can only take effect once approved by Council. If Cabinet is agreeable to the revision made to the CPR, Council will be recommended to endorse the revision at its meeting on 11 October 2011.
- 1.3 The revision of the CPR has principally been undertaken so as to address issues raised by the Audit Commission following their review of the Council's Highway and Engineering Services Procurement Exercise ('HESPE').
- 1.4 The Council agreed, as part of the action plan endorsed by the Audit Commission, to revise the CPR to improve (amongst other things) clarity in relation to the governance arrangements, in-house bids, roles of officers and the tender process.

### 2.0 RECOMMENDATION/S

- 2.1 That Cabinet:
  - (i) confirms its approval of the revised Council's Contract Procedure Rules set out at Appendix 1 to this report; and
  - (ii) that Council be recommended to approve the revised Council's Contract Procedure Rules set out at Appendix 1 to this report.

### 3.0 REASON/S FOR RECOMMENDATION/S

- 3.1 The CPR appears at Part 4 of the Council's Constitution and therefore any changes proposed must be approved by Council.

3.2 The changes proposed address the issues raised by the Audit Commission concerning the Council's CPR and makes further improvements to the manner in which the Council undertakes procurement.

#### **4.0 BACKGROUND AND KEY ISSUES**

4.1 Following the Audit Commission's review of the Council's HESPE contract, a number of recommendations were proposed to address areas of weakness in the Council's current CPR.

4.2 The main areas of weakness (in respect of the CPR) related to clarity being required in relation to:

- (i) governance arrangements;
- (ii) variations to existing contracts and extra work orders;
- (iii) managing conflicts of interests;
- (iv) in-house bids; and
- (v) the tender process.

4.3 The revision of the CPR introduces a new principle: the Overriding Objective.

4.4 The procurement of any contract for goods and/or services or works falling within the scope and remit of the CPR must comply with the Overriding Objective.

4.5 Overriding Objective provides that:

Any procurement process undertaken for or on behalf of the Council in relation to the provision of goods and/or services or works shall promote:

- Fairness;
- Competition;
- Quality; and
- Value for money.

4.6 For the purposes of the Overriding Objective:

Fairness means:

Ensuring:

- equality of treatment of all those involved in the procurement exercise;
- an open and transparent procurement process is followed; and
- integrity of the procurement process is maintained through compliance with all relevant legal requirements.

Competition means:

The procurement process:

- balances the need to achieve value for money, quality and fairness;

- affords the opportunity to legitimate parties to participate; and
- positively promotes choice.

Quality means:

Ensuring the procurement process:

- follows, so far as practicably possible, recognised good practice;
- encourages comprehensive and compliant tender submissions;
- adopts an effective and efficient process; and
- ensures probity.

Value for Money means:

The procurement process:

- is cost effective and efficient; and
- allows the Council the choice to accept the lowest price or the most economically advantageous tender submission.

- 4.7 The primary aim of the Overriding Objective is to assist the Council in meeting and discharging its obligations whether legal and/or financial when procuring goods and/or services or works.
- 4.8 The exercise of any discretion permitted under the CPR shall be consistent with the furtherance of the Overriding Objective.
- 4.9 The revision of the CPR also introduces the 'Procurement Toolkit'. The Toolkit will consist of and contain advice, guidance, information, supporting documents, templates, and precedents to assist effective and efficient procurement by the Council and promote the Overriding Objective. An overview of the Procurement Toolkit is set out at Appendix 2 to this report. The Toolkit does not require Cabinet or Council approval as its primary function is to provide operational support within the framework of the CPR to officers engaged in procurement.
- 4.10 There is a positive obligation within the CPR for any officers engaged in a procurement exercise for goods and/or services or works to have regard to and be consistent with the Procurement Toolkit. The Toolkit will be prepared and maintained by both the Council's Corporate Procurement Service and Legal and Member Services.
- 4.11 The revision of the CPR forms part of the strategic and operational review of the approach and manner in which the Council undertakes procurement. The Council has already adopted a Procurement Strategy which clearly details the Council's strategic aims and objectives in undertaken procurement and is the first of three elements that form and detail the Council's approach to procurement. The revised CPR, is the second element and provides a clear framework for effective procurement and establishes important parameters to ensure appropriate governance arrangement and safeguards are implemented.

The revised CPR also provides greater flexibility enabling more robust procurement to be undertaken whilst recognising the importance to ensure that the Council maximises its purchasing power and harnesses any economies of scale. The Procurement Toolkit is the third element and essentially provides operational and practical advice, guidance and support to all those persons engaged in procurement.

- 4.12 Any discretion that is exercised under the CPR must be consistent with the furtherance of the Overriding Objective. Where there is any conflict between the elements of the Overriding Objective, then 'Fairness' shall prevail.
- 4.13 The revised CPR does not change any financial thresholds.
- 4.14 Cabinet will be aware that at its meeting on 23 June 2011, it approved an amendment to Rule 16 of the CPR by introducing Rule 16A (which is subject to Council approval). For completeness the revised CPR attached at Appendix 1 includes Rule 16A, although some minor amendments have been made following the complete review of the CPR now being concluded.
- 4.15 The revised CPR specifically includes a provision (at Rule 20) to deal with any in-house bid to be prepared and submitted by the Council in relation to any contract for good and/or services or works.
- 4.16 The revised CPR will be reviewed in approximately 12 months time to ensure it remains effective and if necessary will be revised to ensure continuous improvement.
- 4.17 Cabinet deferred this report at its last meeting on 21 July following comments being received that same afternoon from the Audit Commission on the revised CPR. Cabinet considered it appropriate that the comments of the Audit Commission should first be considered by Council officers before Cabinet was invited to consider the revised CPR and decide whether Council should be recommended to approve the revised CPR.

## **5.0 RELEVANT RISKS**

- 5.1 It is important that the Council ensures that any procurement undertaken is lawful and robust so as to avoid any potential challenges.
- 5.2 Whilst any weaknesses identified by the Audit Commission in relation to the Council's current CPR do not render the CPR ineffective or unlawful, it has been recognised and accepted that measures should be taken to address them.
- 5.3 The proposed changes to the CPR will address the weakness identified in the Council's current CPR and therefore will mitigate further any potential challenge to the manner and way the Council undertake a procurement exercise.

## **6.0 OTHER OPTIONS CONSIDERED**

- 6.1 Consideration has been given to a more prescriptive procurement framework being introduced. However, such an approach was considered less effective in

assisting the Council to not only maximise its purchasing power and harnesses any economies of scale but also in establishing a robust and accountable procurement framework capable of being flexible and mitigating the weakness/risks that had been identified.

## **7.0 CONSULTATION**

7.1 The revised CPR has been shared with key all Chief Officers, key officers engaged in procurement and the Audit Commission. The comments made by the Audit Commission on 21 July have duly been considered and addressed by officers.

## **8.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS**

8.1 All voluntary, community and faith groups will be required to comply with the CPR if and when it applies to any dealings with the Council.

## **9.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS**

9.1 The CPR requires clear rules and procedures to be followed. Compliance with the CPR will have financial implications. The CPR requires such implications to be considered before a procurement exercise is undertaken.

## **10.0 LEGAL IMPLICATIONS**

10.1 The Council has a duty to achieve best value and must comply with both domestic and EU legislation concerning the procurement of goods and/or services or works. Failure to do so exposes the Council to a risk of challenge and liability should the Council be found to be in breach.

## **11.0 EQUALITIES IMPLICATIONS**

11.1 There are no equalities implications arising from this report. Any procurement exercise should however give due regard to such issues.

11.2 Equality Impact Assessment (EIA)

- |                                       |     |
|---------------------------------------|-----|
| (a) Is an EIA required?               | No  |
| (b) If 'yes', has one been completed? | N/a |

## **12.0 CARBON REDUCTION IMPLICATIONS**

12.1 There are no carbon reduction implications arising out of this report.

## **13.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS**

13.1 There are no planning and community safety implications arising out of this report.

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## **APPENDICES**

Appendix 1                      Revised Contract Procedure Rules  
Appendix 2                      Procurement Toolkit: Overview

## **REFERENCE MATERIAL**

Relevant EU procurement legislation

The Public Contracts Regulations (inc any amendment regulations)

Relevant case law

## **SUBJECT HISTORY (last 3 years)**

<b>Council Meeting</b>	<b>Date</b>
Cabinet - Revision of Contract Procedure Rule 16A	23 June 2011
Cabinet - Revision of Contract Procedure Rules	21 July 2011