



AUDIT AND RISK MANAGEMENT COMMITTEE

Monday, 27 June 2022

REPORT TITLE:	REVIEW OF CONTRACT PROCEDURE RULES
REPORT OF:	DIRECTOR OF LAW AND GOVERNANCE

REPORT SUMMARY

This report comprises the biennial review of the Council's Contract Procedure Rules (CPR) which regulate the way in which the Council's contracts are procured. The last review took place in September 2020.

The CPR underpin the fulfilment of the Wirral Plan 2021-2026, in particular the aim of achieving a prosperous inclusive economy where businesses can thrive and create jobs and opportunities for all at a sustainable financial cost to the Council.

The report has no ward implications

RECOMMENDATION/S

The Audit and Risk Management Committee is requested to approve the changes to the Contract Procedure Rules that are highlighted in the appendix to this report and recommend to the Constitutional and Standards Committee their adoption by the full Council as part of the Council's Constitution.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATIONS

- 1.1 The Committee is required to review the CPR every 2 years.
- 1.2 Since the last review in September 2020 the UK has withdrawn from the European Union (Brexit). The CPR need to reflect that event.
- 1.3 An opportunity has been taken to simplify procedures for low value procurements below £25,000 so that procurement officers have more time to concentrate on higher value procurements.
- 1.4 It is also proposed that the Head of Procurement is given more discretion to delegate to his senior officers the duty to decide whether approval should be given to requests for exceptions to the CPR and to approve contract extensions where the value is under £100,000. This will provide additional business continuity and resilience to the procurement service by reducing reliance on the availability of a single person to provide approvals.
- 1.5 Some changes rationalise the terminology used in the CPR.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 Minimal changes to the CPR to reflect Brexit and necessary changes to terminology, were considered.
- 2.2 On balance this option was rejected because it was considered that an opportunity should be taken to make minor changes to enable procurement officers to make a more efficient use of their time with regard to lower value procurements.

3.0 BACKGROUND INFORMATION

- 3.1 The Contract Procedure Rules regulate the way in which the Council procures its contracts. Their contents are constrained by statute which includes in particular compliance with the Public Contract Regulations 2015 (PCR).
- 3.2 Until 1st January 2021 the PCR had to conform to the procurement rules prescribed by the European Union for the free trade area known as the Single Market. Since Brexit the UK is no longer part of the Single Market and such strict compliance is no longer necessary. The Government is consulting upon possible changes to the PCR which are, however, unlikely to be enacted in the immediate future.
- 3.3 The changes proposed in the CPR are identified in the Appendix. They constitute the following categories.
- 3.4 **MINOR SUBSTANTIVE CHANGES**

- 3.4.1 A report in July 2021 to the Council from CIPFA on procurement recommended that Council officers should be empowered to accept single quotations under £25,000 in value without competition in order to speed up procurement process for small value low risk contracts. Paragraphs 7.1,7.5.4 to 7.5.5 ,7.5.9,8.1,9.1.1,18.5 to 18.6 and 19.2 have therefore been amended so as to remove the requirement to invite competitive quotations on the electronic tendering portal in respect of contracts between £2,000 and £25,000. Only one quotation would be required if approved by a senior commissioning officer who considered it value for money. There would be a prohibition on awarding a further contract to the same supplier within the same financial year unless it were the outcome of a competitive procurement. These safeguards are in paragraph 7.5.5. These proposed changes would enable procurement officers to make better use of their time by concentrating on higher value procurements which are increasing in volume not least because of the demands of the Council's regeneration programme. There would still be a requirement to comply with the "No Purchase Order No Pay" rule.
- 3.4.2 Paragraphs 12.2 and 13.2 have been amended to allow the Head of Procurement to delegate to his procurement officers decisions on whether to approve exceptions to the CPR and contract extensions in respect of contracts under £100,000 in value. This would allow the Head of Procurement to focus on higher value procurements where such decisions are required. The Head of Procurement is satisfied that his officers have the required skills and experience to make the necessary decisions on lower value procurements without causing any additional risk to the Council.
- 3.4.3 Paragraph 11.5.2 has been amended so as to alter guidance on minimum insurance requirements for contractors to include £10m for Public Liability in place of £5m.
- 3.4.4 Paragraphs 9.3.,10.6.3, and 10.5.2 have been changed so as to enable tenders and quotations to be amended after receipt to resolve not only arithmetical errors but also ambiguities. This should reduce the potential for disputes after the contract has been awarded.

3.5 BREXIT RELATED CHANGES.

- 3.5.1 Examples are paragraphs 3.1,7.5.4, and 10.1.1. They reflect the new UK procurement processes that have replaced those which applied when the UK was a member of the European Union.

3.6 MINOR PROCEDURAL CHANGES

- 3.6.1 An example is paragraph 10.4 which has been amended to allow procurement officers to open tenders below £500,000 in value. Tenders above this figure will continue to be opened by an officer who is independent of the procurement activity.

3.6.2 Another example is 3.2.3 which now requires the Head of Internal Audit to report breaches of the Rules to Audit and Risk Management Committee if the breach relates to a procurement of £50,000 or more in value if he considers it to be necessary for the Committee to be aware of the breach.

3.7 CHANGES IN TERMINOLOGY.

3.7.1 Examples include the references to Procurement Smart Forms and the Tendering Portal which replace less apt terminology.

4.0 FINANCIAL IMPLICATIONS

4.1 The CPR are intended to achieve value for money in the procurement of the Council's contracts

5.0 LEGAL IMPLICATIONS

5.1 As explained above, the CPR must conform to the U.K's legal framework for the procurement of public contracts.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

6.1 As explained above, the proposed amendments to the CPPR are intended to make the most efficient use of limited staffing resources in the Procurement Section at a time when the volume of contracts to be procured is increasing.

7.0 RELEVANT RISKS

7.1 The CPR are an essential means of mitigating the risk that the Council's contracts are awarded not on merit or on value for money but as a result of corruption or favouritism. The proposed changes mitigate that risk.

8.0 ENGAGEMENT/CONSULTATION

8.1 The Legal, Procurement and Internal Audit officers have worked closely together in preparing this report.

9.0 EQUALITY IMPLICATIONS

9.1 Wirral Council has a legal requirement to make sure its policies, and the way it carries out its work, do not discriminate against anyone. An Equality Impact Assessment is a tool to help council services identify steps they can take to ensure equality for anyone who might be affected by a particular policy, decision or activity.

9.2 The CPR are intended to ensure that contracts are awarded on merit and not as a result of unlawful discrimination against potential suppliers or their employers.

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

10.1 The CPR have a Social Value criterion which can be used to procure contracts which improve the environment and mitigate the adverse consequences of climate change.

11.0 COMMUNITY WEALTH IMPLICATIONS

11.1 The CPR have a Social Value criterion which can be used to award contracts which take into account economic benefits e.g. the training of apprentices as long as they are relevant to the subject matter of the contract.

REPORT AUTHOR: Colin Hughes
Solicitor: Department of Law and Governance
telephone: 0151 691 8502
email: colinhughes@wirral.gov.uk

APPENDICES

Appendix 1 Contract Procedure Rules showing the proposed amendments

BACKGROUND PAPERS

CIPFA recommendations on public procurement.

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Standards and Constitutional Oversight Committee	10 September 2020
Full Council	28 September 2020