

Report of Procurement Manager

Report to the Chief Officer – Financial Services

Date: 20th June 2018

Subject: Revised Contract Procedure Rules

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. The council's contract procedure rules (CPRs) were last updated in June 2016. CPRs were updated in line with EU procurement thresholds at the beginning of the year and have now completed their annual review and refresh.
2. The UK voted to leave the EU on Thursday 23 June 2016. This revision to the CPRs does not make any allowance for this decision.

Recommendations

3. The Chief Officer – Financial Services is recommended to approve the revised CPRs and approve that they will come into effect on 1st July 2018.

1 Purpose of this report

- 1.1 The Chief Officer – Financial Services has responsibility for updating the CPRs on a periodic basis to ensure that they reflect current legislation, best practice and Council policy. The last version of the CPRs was approved in June 2016.
- 1.2 The Chief Officer – Financial Services is requested to approve the revised CPRs.
- 1.3 The revised CPRs are attached to this report at Appendix 1

2 Background information

- 2.1 The council's contract procedure rules are reviewed on a periodic basis. The following have been consulted on the contents of these CPRs:

- Category teams within Procurement and Commercial Services;
- Procurement/Commissioning officers within Directorates;
- The Corporate Procurement Group;
- Internal audit

- 2.2 Responses to the consultation were considered by officers within the commercial team.

3 Main issues

Consultation response

- 3.1 Responses to the consultation were considered by the Procurement Manager and amendments have been made to the CPRs accordingly. A draft of the revised CPRs has been shared with officers that were consulted and the feedback received has been resoundingly positive.

Summary of amendments

- 3.2 The amended CPRs are attached as Appendix 1.
- 3.3 The major amendments made to CPRs are –

- References to the Chief Procurement Officer have been changed to the Chief Financial Services Officer. The definition of Chief Financial Services Officer has been expanded to include “any Officer within Procurement and Commercial Services who carries out the functions of the Chief Financial Services Officer under these CPRs”.
- The importance of following CPRs has been made clear and that a failure to comply with CPRs may result in disciplinary action.

- The CPR relating to “Exclusive Supplier” has been deleted as it was considered to be confusing being that there is a requirement to use “existing contractual arrangements” where in place.
- CPRs 7.1 and 8.2 have been amended such that officers need to consider whether the procurement would be of interest to local suppliers and/or third sector organisations and, if it would, at least 2 of the organisations invited to tender must be local suppliers and/or third sector organisations.
- The discretion to raise the threshold of £10K to £25K on a case by case basis has been re-introduced at CPR 7.2. At consultation with Officers, this was probably the most sought after amendment.
- It has been made clear at CPR 8.6 and 9.7 that all open opportunities under these rules must be published on both Yortender and Contracts Finder. Further, at CPR 7.4, 8.7 and 9.8 it has been made clear that all completed procurements must be registered on YORtender and Contracts Finder
- CPR 7.3, 8.4 and 9.5 have been introduced so that where the Chief Officer considers there is genuinely no competition such that only a particular organisation or provider can meet the Council’s specific requirements (e.g. when commissioning a piece of art) a waiver of CPRs need not be obtained. However, the lack of competition must be formally evidenced and approved by the relevant Chief Officer before the contract is entered into.
- CPR 10.2 has been extended to include the situation where the Council is entering into a contract with another public sector body in accordance with Regulation 12 of the Public Contracts Regulations 2015.
- The EU Thresholds for procuring goods, works and services have been amended to reflect the current levels which came into force on the 1st January 2018.
- CPR 14.1.8 has been expanded to make it clear that tenders under £100K must be opened and receipted in such a way that the transparency and probity of the process cannot be called into question.
- CPR 18.3 and a new Appendix 1 has been introduced to ensure compliance with the IR35 legislation.
- CPR 27.1 has been amended to make it clear that a waiver report is only permitted in exceptional circumstances only.

Brexit

- 3.4 Procurement and Commercial Services will continue to monitor the impact that the decision to leave the EU will have on procurement practice and legislation. As at the date of this report the general consensus of opinion within procurement circles is that even if the UK does not reach a trade agreement with the EU, or any agreement does not require the UK to align itself with EU procurement rules, the UK government has indicated an intention to join the Agreement on Government Procurement (GPA). The GPA is a plurilateral agreement within the framework of the World Trade Organisation, so any procurement legislation would need to remain compliant with the GPA. The EU procurement rules themselves are based upon the GPA so it is anticipated that any amendments to the procurements rules would not be significant in any event.

4 Corporate Considerations

4.1 Consultation and Engagement

Please see the list of consultees set out at the background section.

4.2 Equality and Diversity / Cohesion and Integration

An equality impact assessment screening has been completed that shows that there are no implications for equality and a full equality impact assessment is not required.

CPRs seek to ensure that, regardless of value, the purchase of goods, works or services by the Council is undertaken in an open and transparent way thereby giving all organisations, including SMEs etc, the same opportunity to participate in tendering exercises for goods, works or services.

4.3 Council policies and City Priorities

These updated CPRs reflect good procurement practice which in turn supports the Best Council Plan 2018/19 – 2020/21 by using procurement activity to help achieve the Council's wider objectives of tackling poverty, improving health and wellbeing, boosting housing growth and regeneration, increasing productivity and enhancing transport and infrastructure etc.

4.4 Resources and value for money

These updated CPRs continue to introduce positive change without putting an unreasonable and disproportionate burden on council resources. In addition complying with good procurement practice ensures the council is spending money wisely and achieving value for money.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 The new CPRs ensure that the Council is acting in line with current legislation and other developments in public law when conducting procurements.
- 4.5.2 There are no restrictions on access to information associated with this report.
- 4.5.3 This report is recommending a significant operational decision and therefore is not subject to call-in.
- 4.5.4 The Chief Officer – Financial Services is authorised to take this decision pursuant to the sub-delegation scheme of the Director of Resources and Housing. Article 12 of the Council's constitution gives the Director of resources powers to amend the CPRs, this is reflected in the sub-delegations to officers and within the sub-delegation scheme of the Director of Resources and Housing as "setting the councils policies and procedures for managing procurement and purchasing."
- 4.5.5 These CPRs fulfil the council's obligation to put standing orders for purchase in place in accordance with s135 of the Local Government Act 1972.

4.6 Risk Management

- 4.6.1 The new CPRs will improve the Council's risk management when conducting procurements.

5 Conclusions

- 5.1 The new CPRs continue to contribute to the process of bringing the Council's procurement rules, processes and procedures in line with current legislation, best practice and policy.

6 Recommendations

- 6.1 The Chief Officer – Financial Services is recommended to approve the revised CPRs and approve that they will come into effect on 1st July 2018.

7 Background documents¹

- 7.1 None.

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.