



Report of the Assistant Chief Executive (Corporate Governance)

Corporate Governance and Audit Committee

Date: 21st March 2011

Subject: Contract Procedure Rules

Electoral Wards Affected:

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Executive Summary

1. This paper summarises the current position in relation to the Contract Procedure Rules (CPRs) with regard to the following –

- Are they up to date?
- Are they fit for purpose?
- Are they effectively communicated?
- Are they embedded into the Council's procurement process and routinely complied with?
- Are they monitored?

2. Officers responsible for purchasing must comply with the Council's CPRs. Following CPRs will ensure Officers obtain value for money and have the peace of mind that their contracts have been entered into both legally and transparently.

3. CPRs lay down minimum requirements and, in conjunction with the CPRs Code of Practice, set out best procurement practice which, if followed by Officers, provides the best defense against allegations that a procurement exercise has been carried out incorrectly or fraudulently.

4. CPRs are reviewed annually and Directorates will be given an opportunity to comment upon their appropriateness and effectiveness, with a view to amendments being made to make the tendering process as streamlined and efficient as possible. This must be achieved without compromising the need to ensure that genuine competition is obtained in an open, fair and transparent manner.

5. The purpose behind CPRs is to ensure effective competition is obtained throughout the tendering process in an open, fair and transparent manner. Provided the rules are followed

6. Officers can be certain that they are procuring goods, works and services both legally and in accordance with good practice.

7. Once approved CPRs are published on the internet and a notice is placed upon the front page of the intranet to try and ensure that as many officers as possible become aware of them. Further, all the officers involved in the consultation process are sent a copy of the CPRs and Code of Practice so that they can circulate them to relevant officers within their Directorate.

8. It cannot be said that CPRs are totally embedded into the Council's procurement practices. As stated above a number of measures are taken to communicate CPRs and their importance to officers but there is no way of knowing how many officers actually read CPRs let alone understand them.

9. Further, whilst guidance is provided to Directorates when procuring goods, works or services above £10k (as all such procurements must be carried out using the Council's electronic tendering system) there is no way of knowing how many procurements with a value of under £100K are carried out without regard to CPRs at all.

10. The Procurement Unit seeks to embed CPRs into their procurement practices by developing a business case in the first instance to determine whether a procurement exercise should be undertaken. If it does formal tenders/quotations are obtained inviting sealed bids via the Council's electronic tendering system ("SCMS"). Bids are then evaluated according to the published evaluation criteria and the bidder that submits the most economically advantageous bid wins. The results are then published on SCMS. This process ensures transparency, equal treatment and establishes value for money for the authority. Clearly, this should happen if CPRs are being complied with and it is the ideal that the Procurement Unit wish to ensure is achieved.

11. Whilst audits are carried out on contracts procured by the Procurement Unit and Directorates by the Council's internal audit unit, which often highlights a failure to comply with some element of the CPRs, there is currently no proactive monitoring by the Procurement Unit to ascertain whether CPRs are routinely complied with.

12. In order to address this shortfall plans are currently being developed to ensure pro-active monitoring takes place. Reference has already been made in the recently published Contract Management Guidance for the need to comply with CPRs, and the use of the contracts diary and off-contract spend information to establish a process of "spot checks" for compliance with CPRs is to be introduced.

13. In conclusion, it is considered that generally CPRs are current; fit for purpose and effectively communicated. However, it cannot be said that they are totally embedded into the Council's processes and routinely complied with to a satisfactory level.

14. As part of the efficiency work being undertaken by the Procurement Unit we are seeking to ensure there is greater transparency in the way the Council spends its money and the contracts it uses. This will involve identifying and reducing the instances of "off contract spend" by Officers. We will be obtaining an independent review of such spend by Officers and it is anticipated that this will, in turn, identify areas where CPR training is required.

15. This work has recently commenced and is ongoing and it would be appropriate to provide an update to the Corporate Governance and Audit Committee in three months time so they can be kept abreast of progress made.

1.0 Purpose Of This Report

1.1 Following consideration of the Corporate Governance Statement Action Plan 2010/11 by the Corporate Governance and Audit Committee I have been asked to prepare this report to set out the current position in relation to the Council's CPRs by considering the following matters in particular –

- Are they up to date?
- Are they fit for purpose?
- Are they effectively communicated?
- Are they embedded into the Council's procurement process and routinely complied with?
- Are they monitored?

2.0 Background Information

2.1 The Council is required to have CPRs in relation to contracts entered into by it for the supply of goods or materials or for the execution of works in accordance with section 135 of the Local Government Act 1972. The rules have been drafted to promote good purchasing practice, provide public accountability and deter corruption.

2.2 Officers responsible for purchasing must comply with the Council's CPRs. They lay down minimum requirements and, in conjunction with the CPRs Code of Practice, set out best procurement practice which, if followed by Officers, provides the best defense against allegations that a procurement exercise has been carried out incorrectly or fraudulently.

2.3 The Procurement Unit draft up and publish the Council's CPRs on an annual basis (May) following consultation with officers from all Directorates. The current CPRs were adopted by the Council on the 10th May 2010 and consultation with Directorates is due to commence within the next two weeks.

3.0 Main Issues

Are CPRs up to date?

3.1 As detailed above CPRs are reviewed annually and Directorates are given an opportunity to comment upon their appropriateness and effectiveness, with a view to amendments being made to make the tendering process as streamlined and efficient as possible. This must be achieved without compromising the need to ensure that genuine competition is obtained in an open, fair and transparent manner.

3.2 This review process has ensured that CPRs remain legal and reflect current procurement practices both within the Procurement Unit itself and across those Directorates who carry out their own tendering exercises. Further, it ensures that a consistent approach to tendering is undertaken throughout the authority.

3.3 It should be noted that not all comments made by Directorates can be taken on board as to do so would render the procurement process illegal.

Are they fit for purpose?

- 3.4 As stated above the purpose behind CPRs is to ensure effective competition is obtained throughout the tendering process in an open, fair and transparent manner. Provided the rules are followed Officers can be certain that they are procuring goods, works and services both legally and in accordance with good practice.
- 3.5 CPRs require that formal written tenders/quotations are obtained for all contracts with a value of £10,000 or more. Below this value, 3 written quotes should be obtained unless it can be shown that value for money is obtained without doing so. Contracts over £10,000 but below £100,000 require that formal written quotations from at least 3 organisations are obtained and contracts above this figure should be subject to a formal tendering exercise inviting at least 4 organisations. All quotations/tenders should be undertaken using the Council's electronic tendering system.
- 3.6 A major role of the CPRs and Code of Practice is to ensure that Officers do not place themselves in a position where they could be accused of favoritism towards any particular bidder. This is one of the major reasons why competition is sought and it is extremely important that any Officer who has a vested or personal interest in the outcome of the exercise declare it so that they cannot be involved in any aspect of it.

Are CPRs effectively communicated?

- 3.7 Once approved CPRs are published on the internet and a notice is placed upon the front page of the intranet to try and ensure that as many officers as possible become aware of them. All the officers within the Procurement Unit and those from other Directorates involved in the consultation process are sent a copy of the CPRs and Code of Practice along with an explanatory note detailing the changes for circulation to relevant officers within their Directorate. Further, Officers are given details of where CPRs and Code of Practice can be found on the intranet/internet along with details of the Procurement Governance and Regulation Manager from whom further information about CPRs can be sought.
- 3.8 Currently, Officers within the Procurement Unit are not asked to sign a form to confirm they have read and understood CPRs as it is considered they are fully aware of their contents and embed them into their procurement practices as a matter of routine. However, as a matter of good governance such a process could be introduced from May 2011 when the new CPRs and Code of Conduct will be published.
- 3.9 The Procurement Unit also offers a full day training course on the CPRs and over the last 6 months training has been provided to a number of officers within PPPU, ICT and Highways. Further courses are planned later in the year for Aire Valley Homes and various other officers from all Directorates within the Council.
- 3.10 Various other courses such as contract management, procurement competency and financial procedure rules all make reference to the CPRs as essential bedtime reading.

Are CPRs embedded into the Council's procurement process and routinely complied with?

- 3.11 It cannot be said that CPRs are totally embedded into the Council's procurement practices. As stated above a number of measures are taken to communicate CPRs and their importance to officers but there is no way of knowing how many officers actually read CPRs let alone understand them.
- 3.12 Directorates are allowed to conduct procurements under £100K without consulting the Procurement Unit. Where they choose to do so it is more likely than not that they will breach some element of the CPRs, probably without ever realising it.
- 3.13 Further, whilst guidance is provided to Directorates when procuring goods, works or services up to £100k (as all procurements over £10K must be carried out using the Council's electronic tendering system) there is no way of knowing how many procurements within this value are carried out without regard to CPRs at all.
- 3.14 All contracts with a value of over £100K are procured with the assistance of the Procurement Unit and the procurement professionals play a major role in ensuring that the CPRs are routinely embedded into the process.
- 3.15 The Procurement Unit seeks to embed CPRs into their procurement practices by developing a business case in the first instance to determine whether a procurement exercise should be undertaken. If it does formal tenders/quotations are obtained inviting sealed bids via the Council's electronic tendering system ("SCMS"). Bids are then evaluated according to the published evaluation criteria and the bidder that submits the most economically advantageous bid wins. The results are then published on SCMS. This process ensures transparency, equal treatment and establishes value for money for the authority. Clearly, this should happen if CPRs are being complied with and it is the ideal that the Procurement Unit wish to ensure is achieved.
- 3.16 It is acknowledged that sometimes it proves impossible to comply with CPRs, because the Council has had to act quickly, or there has been a genuine error in their non compliance, CPR 31.4 dictates that officers must prepare a report to their Chief Officer/Director, setting out their reasons and justification for not following the CPRs and Code of Practice. Out of 112 waivers/invocations sought since March 2010 only 8 reports were submitted in relation to CPR 31.4 of which 4 were on the ground of urgency; 1 on the potential loss of funding and 1 was a genuine error in the belief that CPRs didn't apply.

How are CPRs monitored?

- 3.17 Whilst audits are carried out on contracts procured by Directorates by the Council's internal audit unit, which often highlight a failure to comply with some element of the CPRs resulting in the production of a re-active report and recommendations being made for future procurements, there is currently no proactive monitoring by the Procurement Unit to ascertain whether CPRs are being complied with.
- 3.18 In order to address this shortfall plans are currently being developed to ensure proactive monitoring takes place. Reference has already been made in the recently published Contract Management Guidance for the need to comply with CPRs, and the use of the contracts diary and off-contract spend information to establish a process of "spot checks" for compliance with CPRs is to be introduced.

3.19 It is anticipated that a report will be taken to the Legal and Procurement Decisions Group on a quarterly basis detailing instances of Officers failure to comply with CPRs. This information will be used to target training towards the particular officers involved. Should persistent offenders be identified, these will be reported to the relevant Chief Officer/Director so that they can take the appropriate disciplinary action.

4.0 Implications For Council Policy And Governance

4.1 CPRs form part of the Council's constitution and establish the basic governance arrangements that must be followed when procuring goods, works and services on behalf of the Council.

5.0 Legal And Resource Implications

5.1 Failure to comply with CPRs places the Council at risk of legal challenge which may have extensive resource implications in trying to defend such a challenge. It must be remembered that an aggrieved tenderer only has to make a mere assertion that he has been discriminated against and it will then be for the Council to disprove that claim.

6.0 Conclusions

6.1 In conclusion, it is generally considered that CPRs are current, fit for purpose and effectively communicated. However, it cannot be said that they are totally embedded into the Council's processes and routinely complied with to a satisfactory level.

6.2 It is accepted that there is currently no proactive monitoring by the Procurement Unit to ascertain whether CPRs are being complied with, but plans are currently in place to address this. The need to comply with CPRs has been reiterated in the recently published Contract Management Guidance. Further, it is anticipated that the use of the contracts diary and off-contract spend information to undertake a process of "spot checks" for compliance with CPRs will begin in conjunction with the publication of the updated CPRs in May 2011.

6.3 This will be complimented with a quarterly report to the Legal and Procurement Decisions Group ("LAPD") detailing instances of Officers failure to comply with CPRs. Officers identified will be targeted for CPR training within 1 month of the report to LAPD. Should persistent offenders be identified, these will be reported to the relevant Chief Officer/Director so that they can take the appropriate disciplinary action.

6.4 As part of the efficiency work being undertaken by the Procurement Unit we are seeking to ensure there is greater transparency in the way the Council spends its money and the contracts it uses. This will involve identifying and reducing the instances of "off contract spend" by Officers. We will be obtaining an independent review of such spend by Officers and it is anticipated that this will, in turn, identify areas where CPR training is required.

6.5 This work has recently commenced and is ongoing and it would be appropriate to provide an update to the Corporate Governance and Audit Committee in three months time so they can be kept abreast of progress made.

7.0 Recommendations

- 7.1 The Corporate Governance and Audit Committee are recommended to note the contents of this report.
- 7.2 That a further report is submitted to the Corporate Governance and Audit Committee in 3 months time to update on progress made.

Background Documents Used

Contract Procedure Rules and Contract Procedure Rules Code of Practice