

Report of the Chief Officer PPPU and Procurement

Report to Scrutiny Board (Resources and Council Services)

Date: 29 July 2013

Subject: Transforming Procurement and 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. Executive Board approved a refreshed procurement policy for the council at its meeting on 24 April 2013.
2. Work to implement the new approach is underway through a 2-year transition period, including a review of Contract Procedure Rules, to ensure alignment with the new approach.
3. Proposed Contract Procedure Rules have been developed, incorporating key points from the approved policy and the feedback received during its development, including feedback received from this scrutiny board at their meeting on 23 July 2012. The main topics are: Value for Money; Socially Responsible Procurement; Open, Honest and Transparent; Decision Making; and Consultation and Engagement.
4. It is proposed that the new Contract Procedure Rules will take effect from 1 September 2013, and that staff in PPPU/PU will support training and where appropriate delivery of the refreshed approach.

Recommendations

5. Members of Scrutiny Board (Resources and Council Services) are asked to comment on the proposed Contracts Procedure Rules before the Chief Officer PPPU and Procurement finalises, approves and publishes them.

1 Purpose of this report

- 1.1 To seek comments from members of Scrutiny Board (Resources and Council Services) on the proposed Contract Procedure Rules before the Chief Officer PPPU and Procurement finalises, approves and publishes them.

2 Background information

Contract Procedure Rules

- 2.1 Contract Procedure Rules (“CPRs”) set out the key responsibilities and actions that council staff must follow when undertaking procurements.
- 2.2 They support staff to meet legislative requirements, and to meet the council’s ambitions for procurement, the council’s procurement policy, and related policies and procedures. Together with a range of linked templates and toolkits, they support staff to deliver effective procurement.
- 2.3 Contract Procedure Rules are reviewed periodically to ensure they remain up to date with council policy, legislation and good public procurement practice.
- 2.4 Contract Procedure Rules need to be updated to ensure consistency with the refreshed procurement policy approved by the council’s Executive Board on 24 April 2013.

Procurement Activity

- 2.5 The council currently spends £800 million externally each year, across both revenue and capital. We use a variety of contracts, from simple purchase orders to long-term partnership agreements. Some contracts are with a single provider, others are frameworks with multiple providers.
- 2.6 The council procures a very wide range of goods, works and services, including front-line services and back-office support. Examples include foster care, home care, homelessness support, energy, vehicles, seeds, catering products, building works, highways repairs, and IT software.

Procurement Ambition

- 2.7 At the heart of the council’s procurement policy sits our ambition to deliver the best commissioning, procurement and contracting in the country, where:
- We achieve value for money for the public
 - We support the delivery of quality outcomes for service users
 - We support the wider ambitions of the council and its partners
 - Providers of all sizes and from all sectors want to deliver for Leeds
 - Procurement professionals want to work for Leeds, and
 - We are recognised nationally as a centre of excellence.

3 Main issues

3.1 Overview

- 3.1.1 The proposed Contract Procedure Rules reflect the council's refreshed procurement policy and respond to consultation feedback received during the development of the policy. Outlined below are the key issues that have been addressed; a more complete summary is attached at Appendix 2.

3.2 Value for Money

- 3.2.1 The cornerstone of the council's procurement policy and ambition, and reflected throughout the proposed Contract Procedure Rules, is securing value for money. This is referred to particularly at the procurement planning and tender evaluation stages, and continues throughout the whole lifecycle including contract management. Draft CPRs require a category plan (CPR 2.1), procurement plan (CPR 3.1.13), contract management plan (3.1.16) and exit plan (CPR 29.1). Each of these is designed to ensure that relevant value for money considerations are considered by officers (through options appraisals, combining procurements where appropriate, developing robust procurement documentation and monitoring contract performance). There are linked template documents and toolkits to help council staff to meet these requirements.

3.3 Socially Responsible Procurement

- 3.3.1 Throughout the development of the policy, and reflected in the proposed Contract Procedure Rules, feedback was received confirming that elected members wanted our procurements to reflect the council's wider ambitions, for example with respect to social value, jobs and skills, treatment of sub-contractors, and access for small and medium sized enterprises (SMEs) and third sector organisations. CPR 1.1.3 (Council Policies) and CPR 3.1.9 (Social, Environmental and Economic Impact) require council staff to take these matters into account when undertaking a procurement, and supporting toolkits are available to help them to do so.

3.4 Open, Honest and Transparent

- 3.4.1 A key issue raised particularly by external consultees, was a request for higher levels of openness and transparency in the council's procurement activities. The proposed Contract Procedure Rules require the publication of a register of contracts that have been awarded (CPR 3.1.14 and CPR 4.2) and a calendar of forthcoming procurements (CPR 4.3). Results of tenders and feedback on their submissions will be available to tenderers (CPR 3.4 and CPR 19.2). The linked template tender documents that council staff are recommended to use (CPR 3.1.15 and CPR 12.1) are drafted to provide clear information to tenderers on the processes that will be followed, and include the requirement to publish tender evaluation criteria and weightings (CPR 15.1).

3.5 Decision Making

- 3.5.1 Many consultees, including this Scrutiny Board, asked for greater clarity about decision making and accountability in procurement activities. The proposed

Contract Procedure Rules set out the procurement decision making responsibilities of Directors and Chief Officers (CPR 2) and the responsibilities of the Officers that they authorise to undertake procurement on their behalf (CPR 3), including the requirement to consult elected members (CPR 3.1.3).

- 3.5.2 As Members are aware, executive decisions are categorised as Key, Significant Operational or Administrative decisions on the basis of the financial values involved and also the significance of the decision to the communities of Leeds. Different controls apply to each category of decision: Administrative decisions are subject to the least control requiring only an internal audit trail; Significant Operational decisions require recording on the Council's website but can be implemented as soon as they are taken; Key decisions must be published on the List of Forthcoming Key Decisions 28 clear days before they are taken, must have the report on which they are to be based published 5 clear working days before they are taken, must be recorded and are open to Call In.
- 3.5.3 Given the implications of categorisation, particularly with regard to Members' involvement in decision taking through prior consultation and through the Call in process it is important that the categories are correctly applied to each decision taken as part of the procurement process.
- 3.5.4 The proposed rules make it clear that the main decision to be taken is whether or not to undertake a procurement (CPR 3.1.8) and other decisions relating to the procurement flow from this. Identifying this point as the main decision maximises the scope for consultees to influence the outcome of the procurement. The decision to undertake a procurement may be an Administrative or Significant Operational or Key decision, depending on the nature and scale of the goods, works or services to be procured, and will follow the relevant process set out in the council's constitution, including publication, consultation and call-in requirements. In accordance with Article 13.6.1.b of the constitution where this decision to procure is a Key decision, decisions which flow as a direct consequence of this will not be Key decisions in themselves.
- 3.5.5 Members may wish to note that there is some overlay between the Contracts Procedure Rules, the Financial Procedure Rules and Article 13 in terms of the application of the 'direct consequence' provision. There is a clear need to ensure that all three provisions are in alignment and therefore discussions are ongoing between the Head of Governance Services, the Chief Officer PPPU and Procurement and the Head of Resources in this regard.
- 3.5.6 Specific issues arise in relation to 'direct consequence' provision in relation to contract extensions and framework agreements.
- The CPRs are not currently clear on when a Key decision is taken in relation to framework agreements although it should be noted that the definition of Key decision in the constitution does state that it relates to the decision to spend. There are three possible times when the Key decision in relation to a framework agreement could be taken: (i) at the time that the decision to procure is taken based on an estimate of spend with all future call offs being as a "direct consequence"; (ii) the decision to set up the framework and each subsequent call – off; or (iii) the Key decision is not taken until the Council

decides to call –off (on the grounds that there is no commitment to spend until an order is placed). Therefore officers are required to use their discretion based on the constitution. Members are invited to comment on which of these three points represents the most appropriate point for a Key decision to be taken.

- The proposed CPRs state that any decision to extend a contract should be dealt with as Key, Significant Operational or Administrative in accordance with the Article 13 thresholds. This is the case even though the proposed extension should have been referred to in the original decision to procure, and the potential full contract term (including the extension) used in order to evaluate the contract to apply the relevant statutory provisions. It is felt that this reflects the potential for circumstances to change between entering into the contract and extending the contract which may alter Member's positions in relation to the proposed extension. Members are asked to comment on these provisions (see CPR 21).

3.5.7 The development of a procurement calendar (CPR 4.3) and the requirement to plan procurements (CPR 3.1.13) will help to ensure that there is clarity on the timing of decisions, and will also help council staff undertaking procurements to ensure that sufficient time for consultation and decision making is built in to each procurement exercise.

3.5.8 CPR 27 deals with the waiver process. Members are asked to note that all waivers must be sent to the Chief Procurement Officer for monitoring purposes and that officers are instructed that a procurement decision involving a waiver of CPRs will normally be treated as a Significant Operational Decision as a minimum. Members are invited to comment on these provisions.

3.6 Consultation and Engagement

3.6.1 Elected Members, and other key consultees, identified consultation and engagement as an important area for improvement. The proposed Contract Procedure Rules include a requirement (CPR 3.1.3) for council staff to undertake consultation with elected members and other key stakeholders. The details of consultation and engagement proposed for a specific category or procurement will be set out in the required category plan (CPR 2.1), procurement plan (CPR 3.1.13), contract management plan (3.1.16) and exit plan (CPR 29.1). There are linked template documents and toolkits to help council staff to meet these requirements.

3.7 Implementation

3.7.2 It is proposed that the new Contract Procedure Rules will take effect from 1 September 2013, and that staff in PPPU/PU will support training and where appropriate delivery of the refreshed approach.

3.7.3 The proposed Contracts Procedure Rules include footnotes indicating that some elements will be phased in during the 2-year transition period, such as the publication of a complete contracts register (by April 2014) and development of category plans for all areas of the council's expenditure (by April 2015). This is

due to resource constraints and the large volume of information that needs to be gathered and checked prior to publication.

4 Corporate Considerations

4.8 Consultation and Engagement

- 4.8.1 The development of the proposed Contract Procedure Rules has formed part of the Transforming Procurement Programme. The programme has included over 250 consultation meetings with commissioning and procurement staff from across the council, and others in related roles such as audit and finance, and with representatives from the private sector and the third sector. Information was also sought from other local authorities.
- 4.8.2 In addition, the programme team reviewed over 400 published best practice documents that were available locally and nationally, from the public, private and third sectors, and reviewed recommendations contained in scrutiny reports and internal audit reports relating to the council's procurement practices.
- 4.8.3 The proposed strategy was presented to Corporate Governance and Audit Committee in February 2012 and in March 2013; specific elements have been considered at Resources and Council Services Scrutiny Board and Sustainable Economy and Culture Scrutiny Board; briefings have been held with the Executive Member for Neighbourhoods, Planning and Support Services; and all elected members were invited to a briefing in February 2013. Comments from these briefings have been incorporated into the strategy and in turn into the proposed Contract Procedure Rules and supporting documentation.
- 4.8.4 The team has not consulted the general public on the proposed changes to Contract Procedure Rules as there is no direct impact on the general public from this review.
- 4.8.5 The proposed Contract Procedure Rules require appropriate communication, consultation and engagement with elected members and other key stakeholders throughout the procurement lifecycle (CPR 3.1.3). Support in considering these matters is available through templates and toolkits and from specialist staff in the council.

4.9 Equality and Diversity / Cohesion and Integration

- 4.9.1 The Transforming Procurement Programme included equality issues as one of its workstreams and has undertaken a formal screening, which was published alongside the 24 April 2013 Executive Board report. The screening highlighted the importance of screening categories and procurements for their equality impacts and responding accordingly in line with the council's equality and diversity policies.
- 4.9.2 The proposed Contract Procedure Rules require consideration of equality matters when undertaking a procurement (CPR 3.1.9) and the key template documents that the proposed Contract Procedure Rules refer to provide specific prompts in

this respect. Support in considering these matters is available through a toolkit and from specialist staff in the council.

4.10 Council policies and City Priorities

- 4.10.1 Contract Procedure Rules are being updated to ensure they align with and support the implementation of the council's refreshed procurement policy.
- 4.10.2 The proposed Contract Procedure Rules support the council value of 'spending money wisely', and seek to ensure that the council's other values are embedded in the council's procurement activities.
- 4.10.3 The proposed Contract Procedure Rules require consideration of relevant council policies when undertaking procurement (CPR 1.1.3) and the key template documents that Contract Procedure Rules refer to provide specific prompts in this respect.

4.11 Resources and value for money

- 4.11.1 The proposed Contract Procedure Rules support categories and procurements to secure best value for money. Contract Procedure Rules support directorates to plan ahead and understand the required outcomes, risks and benefits, and the budget, 'market place', and cost drivers for their procurements. They also support directorates in contract management and contract exit.
- 4.11.2 The linked template documents and toolkits support consideration of value for money throughout the procurement lifecycle, including tools to track savings opportunities and to support resource allocation which is proportionate to the value, risk and complexity of the relevant issue or task. This also includes non-cashable savings, or cost avoidance, and securing savings and value for money improvements through appropriate contract management.
- 4.11.3 During the pilot work that was undertaken the approach has identified potential cashable savings in excess of £4m in 2011/12, £6.3m in 2012/13 and a further £4.4m in 2013/14. Targets for future years will continue to be developed as part of the annual budget cycle, and savings opportunities will be tracked on a monthly basis. This will help to ensure that the annual saving target of £5.5 million identified in the budget for 2013/14 is secured.
- 4.11.4 The costs of delivering the programme to date have been internal staffing costs. During the proposed transition period, and beyond, the costs will continue to be internal staffing costs, however the focus will move towards directorate staff and away from the central procurement function.

4.12 Legal Implications, Access to Information and Call In

- 4.12.1 The Council is obliged to have Contract Procedure Rules by Section 135 of the Local Government Act 1972 which must include provision for securing competition in the award of contracts and for regulating the manner in which tenders are invited.

- 4.12.2 The proposed Contract Procedure Rules are consistent with and support compliance with current public procurement law. The linked recommended templates and toolkits include prompts and tools to support active consideration and compliance with legal implications, access to information and call-in throughout the procurement lifecycle.
- 4.12.3 Contract Procedure Rules and the linked recommended templates and toolkits will continue to be reviewed, including any refresh necessary to accommodate anticipated changes to European Procurement Directives which are proposed to come into force in 2014 through amended UK Public Procurement Regulations.

4.13 Risk Management

- 4.13.1 The proposed Contract Procedure Rules support identification and management of the key risks in the council's procurement activities. The linked recommended templates and toolkits include prompts and tools to support consideration and active risk management of contract and procurement risks throughout the procurement lifecycle.
- 4.13.2 The key risks with respect to implementing the proposed Contract Procedure Rules are the council's capacity to resource and meet the roles and responsibilities set out, and that compliance will not be complete. Assurance processes are being developed and there will be an appropriate communications plan and training strategy to support implementation.

5 Conclusions

- 5.1 Executive Board approved a refreshed procurement policy for the council at its meeting on 24 April 2013.
- 5.2 Work to implement the new approach is underway through a 2-year transition period, including a review of Contract Procedure Rules, to ensure alignment with the new approach.
- 5.3 Proposed Contract Procedure Rules have been developed, incorporating key points from the policy and the feedback received during its development. The main issues are: Value for Money; Socially Responsible Procurement; Open, Honest and Transparent; Decision Making; and Consultation and Engagement.
- 5.4 It is proposed that the new Contract Procedure Rules will take effect from 1 September 2013, and that staff in PPPU/PU will support training and where appropriate delivery of the refreshed approach.
- 5.5 Some elements will be phased in during the 2-year transition period, such as the publication of a complete contracts register (by April 2014) and development of category plans for all areas of the council's expenditure (by April 2015).

6 Recommendations

- 6.1 Members of Scrutiny Board (Resources and Council Services) are asked to comment on the proposed Contracts Procedure Rules, particularly those identified

at section 3.5 of this report, before the Chief Officer PPPU and Procurement finalises, approves and publishes them.

7 Background documents¹

7.1 None

8 Appendices

8.1 Summary of the council's Procurement Strategy

8.2 Summary of proposed Contract Procedure Rules

8.3 Proposed Contract Procedure Rules

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.

Procurement Strategy

We will adopt a **category management approach**, where related purchasing is grouped together to take advantage of better intelligence of our buying needs and of what providers have to offer, and to support bulk buying where appropriate, in order to improve quality, savings and efficiency.

We will adopt a **whole lifecycle approach**, which starts from assessing needs and analysing options, through preparation and procurement, to mobilisation, contact management and exit, to ensure quality outcomes and value for money are achieved.

All categories will work to **common principles and rules**, but outputs will be **tailored to meet the needs** of the specific category, reflecting the service area, stakeholder needs and the market place, to ensure quality outcomes and value for money are achieved.

We will build on expertise within directorates and provide appropriate central **support and check and challenge**, ensuring lessons are learned and shared, in order to ensure continuous improvement in the council's procurement activities.

We will demonstrate clear **ownership and accountability** within our procurement activities, with structured governance, and assurance, to ensure clear, timely and auditable decision making.

We will be **open and transparent**, with a visible and accessible contracts register and procurement calendar, robust management information, and clear tender processes and documentation, to ensure a positive and professional relationship between the council and its procurement partners, and confidence in our approach from the people of Leeds.

We will consult and engage with **stakeholders** throughout the procurement lifecycle, to ensure our procurements properly reflect need and opportunity, and take account of the wider context, including the council's plans and strategies, locality working and collaboration with others.

We will develop the procurement **skills and capacity** of our people, to ensure we deliver a world class service.

Summary of proposed Contract Procedure Rules

There are 29 sections to Contract Procedure Rules, and a list of definitions. The following paragraphs highlight the key features of each section:

- 1** Compliance – the requirement for council staff to comply with CPRs when the council is going to enter into a contract with a third party for the provision of goods, works or services.
- 2** Responsibilities of Directors and Chief Officers – particularly to have a plan for the relevant area of expenditure and to ensure that contracts are managed.
- 3** Responsibilities of Authorised Officers – including to ensure that budget is available, to use suitably skilled and experienced staff, to consult elected members and other stakeholders, to offer work to internal providers first, to plan the procurement, and to consider the wider social, environmental and economic impacts of the contract.
- 4** Responsibilities of Chief Procurement Officer – particularly to publish a register of contracts and a calendar of future procurements, and to provide support and advice.
- 5** Joint Procurement – rules to take account of joint procurement with other local authorities, for example within the city region, and other public bodies, for example health.
- 6** Estimating the Contract Value – to ensure the full cost of the contract is properly estimated before the procurement starts.
- 7** Below £10k - Low Value Procurement – a very light touch process for low value contracts.
- 8** Between £10k and £100k - Intermediate Value Procurement – an approach which recommends a competitive tender is undertaken but which allows Chief Officers to consider other approaches if these offer better value for money.
- 9** Over 100k - High Value Procurements – an approach which recommends a competitive tender is undertaken but which allows Chief Officers to consider other approaches if these offer better value for money.
- 10** Contracts that are subject to the Public Contracts Regulations – for contracts that are above the relevant thresholds a requirement to comply with the Public Procurement Regulations in full.
- 11** Pre-qualification – the process for selecting a shortlist of organisations to be invited to tender for high value procurements including a link to a good practice template.
- 12** The Invitation to Tender – the process for inviting tenders, including links to and the use of standard contract terms and conditions and other good practice templates.
- 13** Pre-Tender Submission Clarification – the process for tenderers to ask questions of the council and for the council to issue answers and updates to the tender documents before tenders are submitted.

- 14** Submission, Receipt, Opening and Registration of Tenders – the process for receiving tender submissions, including a preference for electronic submission.
- 15** Tender Evaluation – the process for evaluating tenders including a link to a good practice toolkit on setting evaluation criteria and weightings.
- 16** Errors in Tender Submissions – what can be done if errors are found.
- 17** Post Tender Clarification and Negotiation – the circumstances and processes for seeking clarification and negotiation on submitted tenders.
- 18** Awarding Contracts – the process for awarding the contract to the successful tenderer.
- 19** Debriefing and publishing – a requirement to tell all tenderers the outcome of the tender exercise and to publish details of the contract on a new publicly accessible contracts register.
- 20** Contract Management – a requirement to manage the contract once it has been awarded.
- 21** Contract Extension and Variations – the process for extending and varying contracts, including a requirement to take a formal decision.
- 22** Termination of Contract – the process for terminating a contract including a requirement to involve the PPPU/PU.
- 23** Nominated and Named Sub-Contractors – the process for including specific organisations on a tender list.
- 24** Consultants – a requirement not to employ staff through a consultancy contract, and confirmation that consultants cannot make procurement decisions on behalf of the council.
- 25** Emergencies – an ability to respond to emergencies that require urgent action which may mean that some elements of Contract Procedure Rules cannot be complied with at the time.
- 26** Record and Document Retention and Control – requirements to record and retain certain documents relating to the procurement.
- 27** Waiver of Contracts' Procedure Rules – the circumstances and processes for deciding not to follow specified Contract Procedure Rules.
- 28** Contract Disputes and Claims – the processes for pursuing or responding to contract disputes and claims.
- 29** Contract Exit – a requirement to plan and manage the end of the contract and a link to a good practice template.

Definitions