

Meeting:	Audit and governance committee
Meeting date:	10 May 2017
Title of report:	Contract procedure rules
Report by:	Head of law and governance

Classification

Open

Key decision

This is not an executive decision.

Wards affected

Countywide

Purpose

To approve the revisions to contract procedure rules (CPRs) which will allow the council to adopt a more mature attitude to managing commercial risk and simplify the procurement process, particularly below the EU value thresholds. Thus allowing better engagement with small and medium enterprises (SMEs) and local businesses, whilst still maintaining a robust governance framework to ensure council monies are spent in a legally compliant, ethical, responsible, and fully auditable manner.

Recommendation(s)

THAT:

- (a) the revised CPR at appendix 1 be adopted for implementation with effect from annual council in May 2017, alongside the constitution;**
- (b) authority be delegated to the head of law and governance to make technical amendments (grammatical, formatting, and consistency) necessary to finalise the CPR for publication.**

Alternative options

1. None. Reviewing the CPRs to reflect legislative change and established best practice provides the necessary clarity to council officers concerned with procuring goods, works, and services to ensure that processes followed are legally and financially

compliant. Additionally, under section 135 of the Local Government Act 1972, the council must make standing orders with respect to the making of contracts for the supply of goods or materials or for the execution of works.

Reasons for recommendations

2. The updated CPRs take account of current changes to EU and domestic legislation and ensure the council's procurement processes are legally compliant and follow recognised best practice.

Key considerations

3. As part of the process of simplifying the CPRs, material which constituted guidance has been removed from the CPRs and will be available to officers via a council guidance document (appendix 2). This has the advantage of removing superfluous material from the 'rules' and providing a degree of 'future proofing' to the Constitution, as guidance can be regularly updated to reflect procedural changes and case law without a consequential need to amend the Constitution.
4. Members should be reassured that whilst the amended CPRs are simplified they provide a robust compliance framework. The amendments provide fully for appropriate financial safeguards before the commencement of any procurement activity and promote best practice legally compliant procurement, commercial flexibility and strong contract management. In addition, this must be balanced with the council's public sector duty to ensure value for money, transparency, equal treatment and non-discrimination. The revised CPRs provide a clear set of rules that address the points raised above and have been revised in conjunction with the revision of the financial regulations to ensure consistency between these two key constitutional documents.
5. Key areas of change in the CPR and associated guidance are:
 - a. Streamlined processes for procurement activity below £75,000 whilst maintaining adequate safeguards.
 - b. All open bid/tender activity above £5,000 will be via e-procurement ensuring: that the council is fully protected by a comprehensive electronic audit; and, makes it simpler for business to bid for council work – particularly SMEs – providing additional support to the 'local' agenda. The use of e-procurement also reaches the widest range of suppliers and reduces risk to the council by ensuring transparency and visibility.
 - c. Creates a threshold for sealing those non-work contracts which exceed the key decision threshold.
 - d. Introduce the use of electronic contracts and signatures for straightforward services.
 - e. Unlike the previous CPRs, the new guidance makes clear when an 'exemption to CPRs' is warranted, when exemptions/waivers can be requested.

- f. Makes clear the requirements for contract extensions and puts in place restrictions, for example extensions may only be taken up after consultation in accordance with the constitution.
 - g. Provides greater detail on the requirements of contract monitoring plus maintenance of the contracts register and its utility in informing work planning.
 - h. The revised CPRs shift the emphasis of procurement support away from low value routine procurement. Furthermore, they provide standard contract terms and conditions for use by officers which include necessary detail to ensure compliance with, but not limited to, health and safety, business continuity, data protection and human rights.
 - i. The current CPRs require approval for CPRs waivers from the solicitor to the council for any proposals that do not comply with CPRs. The revised CPRs guidance raises this level to £5,000 in order that resources can be focussed on the higher levels of expenditure. This will not negate the duty for commissioners, for example, to ensure compliance with CPRs and value for money in all expenditure.
 - j. The CPRs guidance creates good clear internal governance through a two-stage process for obtaining approval to commence procurement and approval to award contracts. This process enables directorate and the commercial services team to be given greater visibility and provides the ability to challenge procurement decisions.
 - k. Satisfies the recommendations made within recent audit reports such as: to review the process for compiling the contracts register for input into the council's contracts register in order to ensure that information covering all contracts will be captured and reported. Purchasing using a framework agreement should also be identified and recorded in the register; reviews the procurement toolkit and relevant intranet pages to provide additional guidance and advice on the use framework agreements and corporate contracts; includes current procedures for the administration, recording and approval of exemptions in the new update of the CPRs; records all contract extensions on the contracts register, even if it is only an interim arrangement.
6. There are no negative resource implications; the revised CPRs should create clarity across the organisation on delivering value for money services through best practice procurement.

Community impact

7. The CPRs set out how the council procures goods and services together with procedures which are followed to ensure that these are efficient, transparent and accountable to local people. As with the constitution, the format and content of the revised CPRs should help make these arrangements clearer to understand, and show how the public can effectively engage with them.

Equality duty

8. A public authority must, in the exercise of its functions, have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct ... prohibited by or under this Act;
 - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
9. Commissioning and procurement projects will have to undertake equalities assessments. The revised CPRs also ensure that the council can comply with its public sector equality duty under section 149 of the Equality Act 2010 and the Public Services (Social Value) Act 2012.

Financial implications

10. The CPRs are linked to the council's financial regulations which details the overall regulatory framework of local authorities as well as Herefordshire's own approach to financial management. The financial regulations are currently being refreshed in full, to be agreed by audit and governance in May 2017. They will be consistent with the CPRs in respect of the scheme of delegation for award of contract value.
11. The revision of the CPRs will allow the council to help continue to drive improved value for money from its procurement activity, which is an important part of the assessment of the council's performance. The revision of processes, along with the assessment of risk within the process, will allow the procurement function to focus the effort on those activities that will have the biggest impact for the council.

Legal implications

12. The updates to the CPRs ensure they comply with: section 135 of the Local Government Act 1972; Public Contracts Regulations 2006 (as amended); and, the Best Value duty under the Local Government Act 1999.
13. The council must prepare and keep up to date a constitution in accordance with s37 of the Local Government Act 2000. The minimum requirements for the content are set out in The Local Government Act 2000 (constitutions) (England) Direction 2000 which includes the a description of the rules and procedures for the management of contractual and legal affairs including: rules, regulations and procedures in respect of contracts and procurement including authentication of documents and rules and procedures in respect of legal proceedings brought by and against the local authority;
14. The Committee's delegation of the approval of the finance and contract procedure rules within constitution was effective on 1 January 2017 following council's decision on 16 December 2016.

Risk management

15. There is a risk associated with not adopting the new CPRs in that they support the delivery of the council's priorities in a compliant manner. The CPRs provide a robust governance framework for procurement which reduces legal, financial and compliance risk. The revised CPRs ensure that all procurement above £10,000 up to the appropriate EU value thresholds, is properly assessed prior to procuring goods,

works and services, and that the process followed and resultant contractual arrangements are proportionate to the level of assessed risk.

Consultees

16. Governance improvement working group and management board.

Appendices

Appendix 1 – contract procedure rules

Appendix 2 – contract procedure rules guidance

Background papers

- None identified.