

Meeting:	Audit and governance committee
Meeting date:	Tuesday 26 January 2021
Title of report:	Update to Finance and Contract Procedure Rules
Report by:	Chief finance officer

Classification

Open

Decision type

This is not an executive decision

Wards affected

(All Wards);

Purpose

To approve the updates to the contract procedure rules, at appendix 2, the financial procedure rules, attached at appendix 4, and the financial procedure rules guidance notes attached at appendix 6. The rules were last updated and approved by the committee in January 2020.

To ensure council financial and contract procedure rules are up to date and provide clarity of roles, accountabilities and process in order to ensure transparency about how public resources are used and to mitigate the potential for fraud.

Recommendation(s)

That:

- (a) The contract procedure rules at appendix 2, financial procedure rules at appendix 4 and financial procedure rules guidance notes at appendix 6 be approved.**

Alternative options

1. The council could continue with its current financial and contract procedure rules; however they would then not be up to date or provide clarity of roles and processes.

Key considerations

Contract procedure rules

2. The 2021 proposed updates to the contract procedure rules (CPRs) includes changes to the CPRs in light of EU Exit, an update to include contract management rules following SWAP audit recommendations and updates to the competition level thresholds in response to recommendations to reduce barriers for local, small to medium enterprises (SMEs) and voluntary, community and social enterprise sector organisations (VCSE). The updated CPRs, attached with tracked changes at appendix 1, have been updated specifically as follows:
 - a) In line with national guidance on [Public-sector procurement from 1 January 2021](#), CPRs have now been updated to reflect new procedures for above UK threshold procurements and will ensure the council is compliant with new UK publication requirements.
 - b) Contract Management rules have been updated to include a requirement for all contracts to have a named contract manager and that, having regard to the updated contract management toolkit, contracts will be managed in line with the contract management framework which:
 - i. Sets out the classification of contracts by value and risk, to one of 3 categories Tier-1 “strategic”, Tier-2 “focused /leveraged” and Tier-3 “routine”.
 - ii. Sets out a series of best practice contract management activities which are either required or recommended depending on the classification of the contract.
 - iii. Requires that a formal review of the contract is undertaken a minimum of once in the life of the contract up to once per annum depending on the contract risk.

This change is recommended following a review of contract management practices and the contract management toolkit. The change seeks to firm up the council’s contract management approach by providing officers with a minimum standard of best practice activities and by so doing assist in providing assurance of good contract management practice within the organisation.

- c) Following a review of the council’s approach to social value and to support participation of local, SME and VCSE organisations in council tender opportunities, the following changes are recommended:
 - i. Uplift the low value contracts threshold from £5k up to £25k. This will relax the requirement for officers to use the councils e-tendering portal for tenders below £25k, whilst still requiring officers to use council procurement and contract templates when engaging the market where appropriate. Officers will be required to demonstrate best value, for example, by comparisons to catalogue, standard pricing or by obtaining comparable quotes using the e-tendering portal or email. Engaging organisations which are local, SME and VCSE will be actively encouraged.
 - ii. Medium value contracts threshold updated to: above £25k up to £75k a minimum of four formal quotes must be sought and where appropriate include at least two suppliers within the county. Where suitable suppliers cannot be identified, as is current practice use of a framework or open tendering must be undertaken.
 - iii. Clarified requirement for officers to factor in sufficient lead time to plan for and appropriately run procurement activity, linking to the contracting toolkit on the intranet where guidance can be found on recommended procurement timelines.
 - iv. Inclusion of the latest [Procurement Policy Note \(PPN\) 11/20](#), for reserving below UK threshold procurements to suppliers: by location; and for SME /VCSE organisations, in consultation with Commercial Services.

- d) Introduction of a new waiver format that takes into consideration the views of commercial, legal and financial services for the accountable officer (director or assistant director) to make a judgement on the validity and justification of waiver from the contractual procedure rules. This is sometimes needed because of emergency requirement or single tender supplier, but used in the exception.
- e) Additional amendments have been made as clarification or improvement following lessons learned these include:
 - i. A section introducing the CPRs.
 - ii. Update to section "Operational or non-key decisions" to provide more clarity around decisions for contract extensions and variations.
 - iii. New section "Planning a Procurement", for sufficient lead time to be factored in for procurements and to highlight the need for officers to manage conflicts of interests where potential suppliers have provided advice on or been involved in preparation of a tender.
 - iv. Clarity in regard to the evidence of genuine emergency for urgent procurements to reflect public contract regulation requirements.
 - v. Requirement for officers with designated contract manager responsibilities to being requisitely trained.
 - vi. Mandatory introductory training for officers with procurement or contract management responsibilities.
 - vii. Clarity in regard to the signing and sealing of contracts.

Finance procedure rules

- a) The 2021 proposed updates to the finance procedure rules (FPRs), attached at appendix 3 with tracked changes, are to:-
 - a. Clarify the approval and need to evidence the establishment and funding of a post before advertising a vacancy to remove the potential to recruit staff before this is confirmed.
 - b. Clarify the process of registering external grant funding applications in line with external funding proceed agreement process, see appendix 7.
- 3. The 2021 proposed updates to the finance procedure rules guidance notes attached, at appendix 5 with tracked changes, are as follows:-
 - a) New paragraph 27 – to avoid underspends concealing overspends elsewhere and instead require them to be held centrally.
 - b) Expand paragraph 65 - to provide clarity on the governance requirements in relation to grant funded spend plus to ensure external funding agreements over £10,000 follow the external funding proceed agreement process, see appendix 7.
 - c) Edit paragraph 76 – to provide clarity on the disposal of IT equipment.
 - d) New paragraph 82 – to confirm the process to follow when becoming an accountable body.
 - e) Expand paragraph 89 – to confirm only IT can install IT systems.
 - f) Edit paragraph 91 – there is no longer a requirement to produce an Asset Management Plan.
 - g) Expand paragraph 93 – to confirm a Royal Institute of Chartered Surveyors (RICS) red book valuation is required before purchasing land or buildings.
 - h) New paragraph 94 – to confirm leases must be let on commercial trading terms and not a waived cost in award of contract.

Community impact

4. In accordance with the adopted code of corporate governance, the council must ensure that it has an effective performance management system that facilitates effective and efficient delivery of planned services. Effective financial management, risk management and internal control are important components of this performance management system.
5. To ensure clear and transparent processes are in place to govern how resources of the council are effectively managed and supports the council's corporate plan objectives to manage finances effectively and to demonstrate one of the council's values, namely to be open, transparent and accountable.

Environmental Impact

The council provides and purchases a wide range of services for the people of Herefordshire. Together with partner organisations in the private, public and voluntary sectors we share a strong commitment to improving our environmental sustainability, achieving carbon neutrality and to protect and enhance Herefordshire's outstanding natural environment.

Whilst this is a procedural update and will have minimal environmental impacts, consideration has been made to minimise waste and resource use in line with the council's Environmental Policy. For example both procedure rules encourage the use of online facilities available rather than using a paper trail.

Equality duty

Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

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

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
6. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. As this decision relates to improving internal processes, we do not believe that it will have an impact on our equality duty.

Resource implications

7. The proposed revisions to the contract and financial procedure rules are designed to ensure that the council complies with all of the current relevant financial regulations which govern the council's financial conduct in relation to procurement and ensures that

the council follows effective local financial processes which includes deliver value for money and supporting spending resources locally.

Legal implications

8. 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 a description of the rules and procedures for the management of the council's financial affairs including: procedures for auditing and financial rules. These are the rules that officers follow in the day to day operation of the council set within this council's budget and statutory framework of local government finance.

Risk management

9. The current regulations and standing orders are out of date, in some places, and this creates potential for confusion, errors and misunderstandings. Updating the rules will attempt to deal with these issues and problems and ensure that the council continues to have sound financial management policies in place.

Risk / opportunity	Mitigation
CPRs - If local, SME and VCSE suppliers are not registering on the councils e-tendering portal, then it will limit the ability for officers to easily identify suitable suppliers to engage for procurements.	<p>During 2021, market engagement sessions will be undertaken to raise awareness to the councils e-tendering portal and provide training sessions on how to bid for opportunities with the council.</p> <p>Officers will also be made aware of other sources of supplier data through Economic Development team and Talk Communities</p>
<p>CPRs- If the threshold for low value informal tendering is raised to £25k:</p> <ul style="list-style-type: none"> • use of the e-procurement system to record and facilitate these tenders will no longer be mandatory, minimising management information centrally available for such procurements. • risk of challenge if contracts are disaggregated to keep value below competition thresholds for a preferred supplier. 	<p>This will be mitigated by:</p> <ul style="list-style-type: none"> • CPR guidance and training which already reflects requirement for officers to retain procurement records and associated information for audit purposes. • Spot checks and internal audits will be carried out retrospectively based on business world order transactions or contracts register as all contracts awarded above £5k will continue to be recorded on the contracts register.
There is a risk that officers may be unaware of the new rules	this will be mitigated by communication of the changes and a training programme for relevant officers

Consultees

10. None

Appendices

Appendix 1	Updated contract procedure rules with tracked changes
Appendix 2	Updated contract procedure rules
Appendix 3	Updated financial procedure rules with tracked changes
Appendix 4	Updated financial procedure rules
Appendix 5	Updated financial procedure rules guidance notes with tracked changes
Appendix 6	Updated financial procedure rules guidance notes
Appendix 7	External funding proceed agreement

Background papers

None identified