

## MUNICIPAL YEAR 2017/2018 - REPORT NO. 83

### MEETING TITLE AND DATE:

Audit & Risk Management Committee

1<sup>st</sup> November 2017

### REPORT OF:

Executive Director of Finance,  
Resources and Customer Services

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<b>Agenda - Part: 1</b>	<b>Item: 9</b>
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### Subject:

Review of Contract Procedure Rules

**Wards:** None Specifically

**Key Decision No:** N/A

### Cabinet Member consulted:

N/A

## 1. EXECUTIVE SUMMARY

This report proposes changes to the Council's Contract Procedure Rules (CPRs), part of the Council's Constitution,

- to reflect best practice in procurement;
- reflect the new ways of working across the council and the creation of the P&C Hub.
- Ensure compliance with the Public Contracts regulations 2015.

## 2. RECOMMENDATIONS

- 2.1 To approve (as recommended by Audit Committee) the changes to the Contract Procedure Rules for inclusion within the Council's Constitution.

## 3. BACKGROUND

- 3.1 The Council may only contract with external parties within the legal framework for local authority procurement i.e. in accordance with the UK Public Contracts Regulations 2015 (as amended), the Council's Contract Procedure Rules (s135 of the Local Government Act 1972), the general duty to obtain Best Value (Local Government Act 1999) and also the European Treaty principles of equality, transparency, proportionality, non-discrimination and mutual recognition to non-discrimination of providers in member states.

3.2. To ensure that the Contract Procedure Rules continue to reflect current best practice and compliance with legal obligations a review has been undertaken. The review has consulted with nominated officers across the Council to address areas of ambiguity, omissions and changes in Council practice since 2015.

#### **4. ALTERNATIVE OPTIONS CONSIDERED**

4.1 There are no alternative options to consider as the Council is required to maintain such a set of rules. The Contract Procedure Rules are reviewed annually.

#### **5. REASONS FOR RECOMMENDATIONS**

5.1 Under section 135 of the Local Government Act 1972 a local authority is required to make standing orders for contracting of goods, works and services. There is also an obligation to include in those standing orders provisions for securing competition for contracts and regulating the way tenders are invited. The standing orders may provide that contracts of a certain value are exempt and may authorise the authority to exempt the provisions where justified by special circumstances. The contract Procedure Rules are the Council's standing orders as required under the Act.

5.2 The Contract Procedure Rules must also comply with the requirements of the EU public procurement regime which are brought into UK law by the Public Contracts Regulations 2015. The regulations make competition of certain contracts mandatory and there is no right to waive those requirements.

5.3 The proposed revisions to the Contract Procedure Rules reflect good practice and deal with a variety of issues: some are just to correct out of date or incorrect references and inconsistencies; some are to make the meaning of the rules clearer; and some are substantive changes to strengthen compliance.

5.4 These changes take into account the formation of the Procurement & Commissioning Hub and other Enfield 2017 changes around the Council and are in line with the Contract Procedure Rules review schedule.

5.5 This version of the Contract Procedure Rules aims to simplify the wording to ease understanding and compliance. With the addition of hyperlinks to supporting information and rearrangement of the order to support the steps taken in decision making and project management.

5.6 A supporting guide to the Contract Procedure Rules will be available via hyperlinks from the CPRs' to help with understanding and support officers through the procurement process.

The reasons for the proposed substantive changes are set out in the table below:

Paragraph number	Proposed Changes	Rationale/comments
<b>Index</b>	<b>Addition of an Index</b>	<b>Make the documents easier to use and find the relevant area/rule.</b>
<b>Section 1 - Introduction</b>		
Introduction	Addition of an executive summary to set out clearly at the beginning of the document the purpose of the CPR's and governance. Addition of 10 principles that should be followed.	Make it clearer from the beginning the need for the CPR's  Provide guidance early in the document to support procurement activity and simplify process to improve compliance.
Purpose 1.3	Simplified wording	Make it easier to read and understand.
Exemptions	unchanged	These support the Public Contract Regulations 2015
Requirements	Simplified wording and reference to guidance. Addition of senior management responsibility 1.14	Make it easier to read and understand.  Clarification on management responsibility
Risk & Insurance	Moved to nearer the front of the document to ensure that it is considered earlier on in the process. (moved from section 21 & 18). Brought in line with Councils risk and insurance processes. Changes to security requirements to give greater flexibility to cover risk. Addition of Business Continuity requirements.	This is to ensure that risk and insurance is considered earlier on in the process to minimise risk.  To offer other forms of security to ensure that risk is minimised/managed. Ensure that critical suppliers have Business Continuity Plans to protect the council against risk of failure.

Approval to procure	Moved to earlier in the rules. (was section 10) Updated and simplified wording. Clarification of governance	This is to ensure that approval to procure is understood to improve compliance. Speed up processes by ensuring that approval is gained at the start.
Procurement & commissioning Review Board	New section added to replace SPB board (section 6) with P&C Hub Review Board. Sets out what needs to come to the board.	This is to ensure that the P&C board function is understood and improve governance and delivery of Best Value.
Specialist procurement	Replaced section on IT procurement (section 10) to reflect Hub arrangements within the Council and to ensure that specialist areas are consulted at procurement commencement.	This is to ensure specialist Hubs and other service areas are consulted or involved in procurement and is in line with Hub strategy and relevant boards
<b>Section 2 - Calculation to value of a contract</b>		
Calculation to value of a contract	Wording simplified	This is to ensure compliance with requirements of legislation
<b>Section 3 - Procurement Thresholds</b>		
Thresholds	No Changes to the Thresholds. (moved from section 7). Simplification of wording. Addition of 'responsibility for procurement' including 'Tiering' to support procurement projects. Clarification of the use of the London Tenders Portal. Clarification on the number of quotations needed to be <b>received</b> .	This is to reflect the implementation of the P&C Hub, who will project manage all EU procurement projects to improve compliance and minimise risk of challenge. Mid-range procurement projects will receive support depending on the risk and complexity. Improve delivery of value for money and savings.
Contracts for Construction	Simplification of wording to support compliance. (moved from section 25). Clarification of authority needed.	This is to ensure compliance with regulations.

Evaluation criteria and going out to market	New section added to ensure transparency in this area.	This is to ensure that governance and transparency around evaluation is met. Improvement in best practice and reduction in challenge.
<b>Section 4 - Frameworks</b>		
Frameworks 4	Moved to its own section (moved from section 8). Additional wording to strengthen governance and use of Frameworks. Updated governance to ensure that use of frameworks is monitored and recorded	Ensure that Frameworks are considered as part of the procurement process. Updated wording to ensure that there is better governance around frameworks and their use to ensure Best Value is achieved.
<b>Section 5 - Concessions or Contracts with Income elements</b>		
	New section added. Reference to Concession Regulations 2016.	This is to ensure that concessions or nil value contracts are considered more commercially and that the council does not lose any opportunities and they remain transparent and offer equal opportunities.
<b>Section 6 - Application and Waiver of the Rules</b>		
6	(moved from section 11). Simplification of wording. Governance to reflect guidance given by Audit Committee in June 2016.	This is to ensure effective management and control on contract waivers and ensuring that effective recording of waivers is taking place. Encourage competition rather than waivers.
<b>Section 7 - Variation to Contracts</b>		
7	(moved from section 19). Updated wording to meet current Council working practices.	This is to ensure that compliance with regulations of legislation. Tighter control on variations
<b>Section 8 - Exceptions to Competitive Tendering below EU Threshold</b>		
8	Unchanged except for: Agreement needed by the Hub for the use of Frameworks (8.2) Licencing in section 8.6; for IT procurement	This is to ensure that CPR's meet legislation, but give flexibility for the Council to meet its operational needs.

<b>Section 9 - Invitations to Quote/Tender &amp; Advertising</b>		
9	Simplification of wording. Removal of paper tendering process.	This is to ensure that compliance with regulations of legislation. Strengthen use of the Tendering portal
<b>Section 10 - Receipt and Opening of Tendering and Quotes</b>		
10	Amalgamated Receipt & Opening of tender's sections from previous CPR's. Strengthening the need to use the London Tenders Portal. (sections 12 & 13 of previous CPR's) Updated process to meet new working arrangements.	As all procurements are now managed through the E-tendering Portal reference to paper processes has been removed. This is to ensure transparency and that all contracts are registered. Simplification of the documents to ease use.
<b>Section 11 - Sustainable Procurement</b>		
11	Replaces public services (social Value) Act 2012 section 5. Added wording to ensure that all officers consider if the Social Value Act (2012) applies. Adding suggestions of community benefits. Clarification on the recording of community benefits	Simplification of process to maximise the opportunities for community benefits to be included in procurements. Clarification to capture community benefit activity.
<b>Section 12 - Contract Award and Execution</b>		
12	Inserted hyperlinks to council processes. Award notification included in this section. Clarified the use of letter of acceptance	This is to ensure that Council governance is followed. This is to clarify that letters of acceptance are only to be issued by Legal and only by agreement.
<b>Section 13 - Terms and Conditions</b>		
13	Simplification of wording and format of what must be included.	This is to ensure that more standard contracts are used and they cover what is needed to protect the Council.
<b>Section 14 - Post tender negotiation</b>		
14	No change (moved from section 16)	

<b>Section 15 - Working in Partnerships/Shared Services</b>		
15	Simplification of wording	Clarification of what is working in partnership and to protect the council in these situations.
<b>Section 16 - Prevention of Corruption</b>		
	<p>New section Added</p> <ul style="list-style-type: none"> <li>• hyperlinks to legislation and Council policy</li> <li>• Declaring an interest</li> <li>• Organised crime</li> </ul>	<p>This is to ensure that corruption is considered when carrying out procurement and to protect the council</p> <p>To ensure that interest is declared to support transparency.</p> <p>This is to ensure that areas of procurement that have been identified as possible areas for organised crime are considered to minimise risk to the Council.</p>
<b>Section 17 - Record Keeping</b>		
17	Simplification of wording. Amalgamated section on sealing for clarity.	This is to ensure that appropriate records of contracts are maintained.
<b>Section 18 - Claims from Contractors/Suppliers</b>		
18	Simplification of wording.	This is to ensure that it is clear where to go for advice and guidance
<b>Section 19 - Guidance and Advice</b>		
19	Addition of reference to the guide and hyperlinks to supporting guidance.	This is to ensure that contracts are properly managed and that Value for Money is being delivered.
<b>Section 20 – Contract management</b>		
20	Update to state that contracts over £100,000 have a nominated contract manager. The appropriate contract management is carried out for contracts over £250K per annum.	<p>This is to ensure that contracts are properly managed and that Value for Money is being delivered.</p> <p>The appropriate risk is managed through the contract.</p>
<b>Section 21 - IR35</b>		
21	New Section. Update following new rules form HMRC.	This is to ensure that the Council is compliant to IR35 regulations

<b>Section 22 - Consultation</b>		
22	Unchanged	
<b>Overall</b>		
	<p>Hyperlink to be added to guidance documents once CPR's have been finalised.</p> <p>Guidance in draft currently but will be available to all LBE staff through the Intranet (Enfield Eye) once the CPR's have been approved.</p>	<p>Guidance documents will be regularly updated with information to support Council Officer.</p>

## **6. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS**

### **6.1 Financial Implications**

There are no specific financial implications. Each contract has to be delivered within the available budget. The aim of all Council procurement is to obtain value for money and ensure compliance with relevant legislation.

### **6.2 Legal Implications**

The Council is required under the Local Government Act 2000 to have a Constitution, as part of that constitution the Council has the Contract Procedure Rules, which reflect applicable, current legislation such as The Public Contracts Regulations 2015. The Procurement & Commissioning Hub plays a pivotal role in ensuring compliance and works closely with Legal Services to ensure Officers within the Council are aware and understand their requirements with regards to procurement under the Contract Procedure Rules.

The proposed changes are in compliance with the Public Contracts Regulations 2015 and the European Procurement Directives.

### **6.3 Property Implications**

There are no property implications since there are separate Property Procedure Rules which control the management of Council Property.

In some instances, there may need to be a hybrid between CPR's and the Council's Property Procedure Rules relating to concessions that will require an award of a contract together with a lease of a property e.g. a café.

## **7. KEY RISKS**

- Having clear and consistent Contract Procedure Rules is essential to mitigate the risks of non-compliance with both statute and best practice.
- The current revision also addresses recent developments including the new Public Contracts Regulations.
- They will be supported by a short guide for everyday use which should reduce the risk of no-compliance at local level

## **8. IMPACT ON COUNCIL PRIORITIES**

### **8.1 Fairness for All**

The Rules ensure that the Council's procurement processes are fair, non-discriminatory and transparent

## **8.2 Growth and Sustainability**

The new rules, particularly the changes to thresholds, will enable greater access to small to medium enterprises and support local regeneration.

## **9. EQUALITIES IMPACT IMPLICATIONS**

The CPRs have been designed to reflect current EU and domestic law relating to public sector works, supplies or services contracts.

## **10. PERFORMANCE MANAGEMENT IMPLICATIONS**

The CPRs ensure that procurement is carried out in a way that complies with all legislation and ensures that best value is achieved. Consequently, this will support the delivery of excellent services by the borough since it will ensure that the goods and services are procured in an effective manner.

## **11. PUBLIC HEALTH IMPLICATIONS**

There are no specific public health implications arising from the proposals within the report

### **Appendices:**

Appendix 1 – Revised Contract Procedure Rules (Contract Procedure Rules 2017)

Appendix 2 – Draft version of the guidance documents to support the CPR's (CPR Guidance 2017)

### **Background Papers: Current Version of the Contract Procedure Rules (2015)**

<https://new.enfield.gov.uk/services/business-and-licensing/council-contracts-and-procurement/doing-business-with-us/council-contracts-and-procurement-information-contract-procedure-rules.pdf>