

**Name of meeting: Annual Council (Reference from Corporate Governance & Audit Committee)**

**Date: 24th May 2017**

**Title of report: Changes to Contract Procedure Rules June 2017**

**Purpose of report: To consider proposed changes to Council to Contract Procedure Rules**

<b>Key Decision - Is it likely to result in spending or saving £250k or more, or to have a significant effect on two or more electoral wards?</b>	<b>Not applicable</b>
<b>Key Decision - Is it in the <a href="#">Council's Forward Plan (key decisions and private reports)?</a></b>	<b>No</b>
<b>The Decision - Is it eligible for "call in" by Scrutiny?</b>	<b>Not applicable</b>
<b>Date signed off by Director &amp; name</b>	<b>Julie Muscroft, Service Director – Legal, Governance and Commissioning</b>
<b>Is it also signed off by the Service Director for Finance, IT &amp; Transactional Services</b>	<b>N/A</b>
<b>Is it also signed off by the Service Director - Legal Governance and Commissioning?</b>	<b>04 May 2017</b>
<b>Cabinet member portfolio</b>	<b>Not applicable</b>

**Electoral wards affected: All**

**Ward councillors consulted: Not applicable**

**Public**

**The report below was considered at the meeting of Corporate Governance and Audit Committee on the 12th May 2017. The recommendations as set out at paragraph 6 were endorsed and are submitted to Council for approval.**

## **1. Summary**

- 1.1. Each year this Committee is asked to consider and recommend to Council changes to the Contract Procedure Rules (CPRs) and Financial Procedure Rules (FPRs), to reflect changed operating arrangements, requirements and needs.
- 1.2. This report sets out proposed changes to the CPRs for this Committee to consider and if agreed to recommend to Council for approval with effect from 1<sup>st</sup> June 2017 and/or with any other recommendations or necessary changes (as applicable).
- 1.3. This report uses the title definitions which are set out within the definitions section of the attached draft CPRs. The CPRs use definitions so as to distinguish between roles where more than one Service Director has responsibility.

## **2. Information required to take a decision**

- 2.1 The author of this report keeps a rolling list of issues that arise during the year and this has informed most of the changes for this year. A number of changes are concerned with clarifications and it is not proposed to draw special attention to clarifying amendments. They can be seen by way of tracked changes within the attached copy of the proposed CPRs.
- 2.2 However, narrative may be beneficial in the context of the following (the related changes to the text of the CPRs are also tracked in the accompanying draft CPRs):
  - The Council's structure has changed and so the references to Directors, Assistant Directors, and other Officers have been changed accordingly. To facilitate understanding, a diagram of the organisational structure has been included in Appendix 5.
  - Wording has been added to CPR 3.1 for contracts between £200 and £20,000 to promote the use of local suppliers, but in such a way as not to offend the EU freedoms.
  - CPR 6.5 was altered as the involvement of officers from Corporate Procurement is no longer necessary between £20,000 and £99,999 for the purposes of manifesting probity as the vast majority, if not all, tenders are now electronic and cannot be tampered with. However, the draft CPR

requires the two service based officers who open the tenders to be independent of the procurement as a safeguard.

- The reference to Quick Quote in CPR 7.1 and elsewhere have been removed as that system is no longer used.
- Following a request by the West Yorkshire Trading Standards regarding the potential for including external bodies as equivalent to internal departments which must be used compulsorily in CPR 8.12, the consultees of this report considered CPRs 8.3.4, 8.10 and 8.12. CPR 8.3.4 seems to enable what Trading Standards was asking for on a case by case basis providing that it remains a local authority (Trading Standards is part of Wakefield Council). However, ongoing mandated use of an external supplier for particular supplies would normally be done through 8.10 and it would seem better to use that rule than CPR 8.12, which is inward facing. However, in order to provide flexibility to mandate use of a supplier without a competitive process, CPR 8.10 needed amendment (to remove the requirement for a competitive process). In order to ensure that risks are properly taken into account where there is no competition an appropriately detailed written risk assessment should be undertaken. The Head of Procurement would keep a central list of the Supplies which are mandated with copies of the risks assessments and the reasoning for the mandating as part of its departmental administration. It is not proposed to amend CPR 8.12.
- It was felt that there is potential for overlap between CPR 10 and FPR 20, as, for example, a disposal by gift resembles a grant. CPR 10.2 has been introduced to allow the Head of Internal Audit to determine which rule applies. CPRs 10.8-10.10 have expanded on valuation as experience this year has shown that officers were confused about how to value concessions. Also the requirements regarding execution of Income Contracts and Concessions have been consolidated into CPR 12.
- It was decided that some flexibility over the requirement to hold a competition each time a contract to let a business opportunity (such as letting the right to place an advertising billboard on a roundabout) is procured should be introduced. Wording has been introduced to CPR 10.4 to allow the Head of Procurement to approve deviation from the competitive requirements based on a detailed business case.
- The Head of Procurement requested that we look at raising the threshold which determines when Legal Services would be involved in contract award procedures. We are currently at the higher end of the range of most other local authorities, which in Lancashire, Greater Manchester and

the Yorkshire counties are almost all in the range of £0-£100k. However, the Commercial team in legal services considered that the vast majority of contracts they deal with are over £160k anyway. Raising the level to match the EU threshold for goods and services would seem to make the CPR more intuitive. Also raising the level to £160k would allow for some additional pace for those contracts between £100k and £160 as there would be less consultation required. In terms of putting contracts together properly, the possibility of construction contracts being higher risk was considered. The higher risk construction contracts (e.g. with the possibility of latent defects) would usually be executed by deed and Legal Services will continue to execute Deeds whatever the value as they have the seal. Consequently it is proposed to raise the threshold to £160k. It wouldn't prevent officers entering into contracts below that value taking the view that additional support / advice was required because of the risks involved in a particular matter.

- During the year it was queried whether Kirklees Neighbourhood Housing Limited (KNH), as an external commercial company, could be allowed to sign some Council call-off contracts from frameworks. It was concluded that the right approach would be to give the Head of Legal Services the authority to give a power of attorney to third parties for this purpose when the Head of Legal Services believes it is appropriate in respect of contracts below £160k. That figure is recommended because it is the figure which the Council uses to comply with Article 8(4) of the Local Authorities (Executive Arrangements) (Modification of Enactments and Further Provisions) (England) Order 2001, which requires a contract to be “*signed by at least two officers of the authority*” and KNH officers are not officers of the authority. The benefit, where appropriate, is that pace can be increased.
- It should be noted that there are a number of senior posts whose post titles have changed or are likely to change during the coming months. Where there are specific responsibilities given to posts whose title changes they will continue and the CPRS will be updated at the appropriate time to reflect this. The previously titled Assistant Director – legal, Governance and Monitoring (now the Service Director Legal Governance and Commissioning) already has a general authorisation to make such changes to the constitution but they are repeated below for completeness in relation to these Contract Procedure Rules

### **3. Implications for the Council**

- 3.1 Early Intervention and Prevention (EIP) -None directly
- 3.2 Economic Resilience (ER) -None directly
- 3.3 Improving Outcomes for Children -None directly

- 3.4 Reducing demand of services -None directly
- 3.5 Other Implications – Legal, financial or otherwise.

Given the nature of the report Legal and financial issues are considered in the main body of the report. Although each of the sub categorisations above suggest no direct implications, the procedure rules and compliance with them are a key part to ensuring sound governance in all of the Council's operations and to ensure that all expenditure is targeted appropriately, to bring effectiveness, efficiency and value for money.

#### **4. Consultees and their opinions**

- 4.1 The Head of Internal Audit, the Head of Procurement and the Head of Legal Services have been involved. The consultees' views were taken into account and the consultees are content with the draft text which accompanies this report.

#### **5. Next steps**

- 5.1 Annual Council considers these proposals and any recommendations by this Committee; if approved, the new rules take effect from 1<sup>st</sup> June 2017.

#### **6. Officer recommendations and reasons**

- 6.1 That the recommended changes to the Contract Procedure Rules as outlined in this report be approved for recommendation to Council with effect from 1<sup>st</sup> June 2017.
- 6.2 It be noted that the Head of Legal Services may prepare additional guidance as appropriate to supplement these Contract Procedure Rules and aid compliance with appropriate European and national legislation.
- 6.3 That the Head of Legal Services be authorised to make any recommended changes or drafting changes she feels are necessary to the CPR before presenting them to Council for approval.
- 6.4 That the Head of Legal Services be authorised to amend post titles to reflect those used in practice by officers fulfilling the stated functions.

#### **7. Cabinet portfolio holder recommendation**

- 7.1 Not applicable.

#### **8. Contact officer**

Mark Barnes, Senior Legal Officer

**9. Background Papers and History of Decisions**

The Contract Procedure Rules are attached with the amendments proposed shown by track changes.

**10. Directors responsible**

Service Director – Legal, Governance & Commissioning