

Body: **AUDIT & GOVERNANCE COMMITTEE**

Date: **2 December 2015**

Subject: **Contract Procedure Rules**

Report Of: **Henry Branson, Senior Head of Projects, Performance and Technology**

Ward(s) All

Purpose To seek approval in principle of new contract procedure rules

Recommendation: Members are asked to approve the draft new contract procedure rules in principle and make recommendation to Full Council to adopt them into the council's constitution

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1.0 Introduction

- 1.1 The contract procedure rules (CPRs) form part of the council's constitution and determine how officers contract with external bodies. The CPRs ensure lawfulness and best practice in terms of the procurement of services, supplies or works. Clear and up-to-date CPRs play a key role in ensuring that best value is achieved for the authority and that the council is not exposed to risk.
- 1.2 Local authority procurement is an evolving area which is subject to scrutiny and challenge. The current CPRs were approved in 2009 and need to be fully revised now to ensure they reflect current law, best practice and the environment in which the council is now operating.

2.0 Contract Procedure Rules Revisions

2.1 Reasons for revisions

There are three key reasons for revising the CPRs at this time:

1. To reflect the Public Contract Regulations 2015
2. To achieve a standard set of CPRs for Eastbourne Borough Council, Lewes District Council and Eastbourne Homes Ltd.
3. To enable a modern and responsive approach to procuring works, supplies and services.

2.2 Public Contract Regulations 2015

The Public Contracts Regulations 2015 (PCR 2015) implement the 2014 EU Public Sector Procurement Directive and a range of other reforms. They largely apply to public contracts that exceed certain value thresholds. PCR 2015 came

into force earlier this year.

The PCR 2015 outline a number of standard procurement procedures for public bodies to follow. They also mandate the use of Government portals such as Contracts Finder for the advertising of certain contracts and place greater emphasis on electronic availability of procurement documents.

As is the case with previous PCRs, there are a number of exemptions and exceptions defined within the regulations which contracting authorities may choose to exercise, with appropriate care and legal advice.

The revised CPRs reflect the important changes contained with the PCR 2015.

2.3 Standardisation of CPRs

Eastbourne Borough Council (EBC) is on a path of ever closer partnership working. The 'Eastbourne Homes in Partnership' approach adopted by the Eastbourne Homes Board in 2014 saw much closer working between EBC and Eastbourne Homes Limited (EHL). This has resulted in integration of back office services, co-location at 1 Grove Road and shared management arrangements.

EBC is already sharing a range of services with Lewes District Council (LDC), in addition to shared senior management roles, and in October 2015 both EBC and LDC Cabinets approved the outline business case for wider integration of services and workforces.

It is clear that the future will entail staff working across multiple organisations to deliver shared and closely integrated services. It is therefore important that staff can work to a set of common policies, rules and procedures in key areas, and therefore the revised CPRs will be put forward for adoption by EHL and LDC as well as EBC.

2.4 Modernisation of CPRs

In order to respond effectively to the economic constraints facing local authorities, and continue to deliver the wide range of statutory and non-statutory services we do, EBC has needed to become more modern, agile and entrepreneurial, as well as working more effectively in partnership.

Our CPRs are a key enabler of this modern approach, and aspects of the current rules are now out of step with the way we need to do business. The PCR 2015 encourage a more electronic approach to procurement and this, amongst other changes, is reflected in the revised rules.

2.5 Summary of revisions

The full revised CPRs are attached as Appendix One. The most significant changes are summarised in the table below.

Current CPRs	New CPRs	Reason for Change	Controls
Different rules for EBC, LDC and EHL	One set of rules for all three organisations.	Makes compliance easier for staff working across all three organisations	Staff from all three organisations have been consulted and have agreed on the changes.
No discretion to appoint contractors direct, even for lower value procurements – three quotes always required.	Officer discretion to make direct award under £25k.	A blanket requirement for three quotes is inflexible and often inefficient, for the council and for contractors. It is appropriate to allow a level of discretion to appoint specialist or trusted contractors for lower value work. Most councils will have such a provision.	Any direct awards (i.e. without competitive quotes) must be agreed with the Accountable Officer, usually a member of the Corporate Management Team. Regular reviews of spend against aggregation rules will prevent this from being used year on year to award work to the same contractor.
Requires that contract opportunities over £50,000 are advertised.	Services and Supplies: Requires that contract opportunities over £100,000 are advertised. Works: Requires contract opportunities over £1,000,000 are advertised In all cases the advert must appear on the Government portal Contracts Finder.	An unlimited number of suppliers can respond to advertised opportunities, which can create significant extra work and delays in appointing contractors. The PCR 2015 require the use of Government portal for contracts advertised where the value is above £25,000.	At least three quotes must be sought to demonstrate best value. For works contracts below £1,000,000 the parties invited to quote must be selected from Constructionline which is a Government endorsed register for pre-qualified local and national contractors. Officers may still choose to advertise lower value contracts.
All tenders must be submitted in hard copy to the Town Hall,	Tenders can be submitted electronically via an e-tendering	To reflect the modern, agile and electronic approach to working	The e-tendering system will provide a rigorous audit trail for

<p>recorded in a tender opening book and opened with a councillor present.</p>	<p>system</p>	<p>adopted by EBC, LDC and EHL</p>	<p>every procurement and prevent tenders from being opened before the closing date</p>
<p>No mention of disposal of land</p>	<p>Clear rules stating that disposal of land via sale or lease must only happen after auction, invitation of tenders or expressions of interest following public advertisement, in at least one newspaper circulating in the District, unless specifically authorised by Cabinet</p>	<p>There is an obligation to demonstrate best value in respect of land disposals and this isn't addressed in the current rules.</p>	<p>This offers greater clarity and control than the current rules.</p>

3.0 Resource Implications

- 3.1 The goal of the revised CPRs is that they are applied consistently across EBC, LDC and EHL, thus making it easier for staff working across the organisations to carry out compliant procurements. Less staff time will be spent learning different CPRs in each organisation.

A training and awareness programme will be developed for staff who are likely to carry out procurement exercises to ensure they understand and can apply the new rules. The new CPRs refer to further guidance being available in a Contract Manual. LDC has an existing manual and EHL has some existing guidance on good practice. A new Contract Manual will be developed for use by all three organisations reflecting the new Regulations and CPRs.

4.0 Legal Implications

- 4.1 The new CPRs have been drafted by the Legal team and are compliant with EU law, including the new PCR 2015.

The CPRs form an important part of the council's constitution. Changes of substance to the constitution will only be approved by the full Council after consideration of the proposal by the Monitoring Officer and, where appropriate, the Audit and Governance Committee.

Members of the Audit and Governance Committee are therefore asked to recommend the draft new CPRs for approval by full Council.

5.0 Summary

- 5.1 The existing CPRs were approved in 2009 and although some amendments were made in 2015 to reflect essential changes from the PCR 2015, they are now out of step with aspects of the modern approach taken in the PCR 2015 to elements of procurement, as well as the council's increasingly entrepreneurial and partnership approach to service delivery. The new rules provide for a lawful approach to procurement, at the same time as allowing the council to take advantage of contemporary procurement options and providing a consistent approach to procurement at EBC, LDC and EHL.

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Appendix One: Revised Contract Procedure Rules