

Item 5

REPORT TO COUNCIL

27TH JULY 2007

REPORT OF CHIEF EXECUTIVE

PORTFOLIO: STRATEGIC LEADERSHIP GROUP

ARRANGEMENTS FOR REVIEW OF THE CONSTITUTION (1)

CHANGES TO CONTRACT PROCEDURE RULES

1 SUMMARY

- 1.1 The Council's Constitution was adopted on the 24th May 2002 as part of the Council's approach to implementing the Local Government Act 2000. A number of reviews have taken place to the Constitution to ensure it is up-to-date.
- 1.2 The Constitution itself must necessarily be kept under regular review so as to ensure that it reflects existing law and its operation continues to provide an efficient and effective framework for delivering the Council's aims and objectives. This report is concerned specifically with the Council's Contract Procedure Rules (CPRs) contained in Part 4 Section G of the Constitution.
- 1.3 This report provides details of the revised Contract Procedure Rules that have been developed following meetings of a review group of departmental representatives from across the Council and advice from the Council's Monitoring Officer.

2 RECOMMENDATIONS

- 2.1 It is recommended that Council:-
 - approve the revised Contract Procedure Rules shown in Appendix 1;
 - directs the Council's Monitoring Officer to amend the Constitution accordingly, make all necessary and consequential amendments; and to publish an amended version on the Council's website;

3 CONTRACT PROCEDURE RULES

Background

- 3.1 Contract Procedure Rules provide a corporate framework for the procurement of all goods, services and works for the Council. They are an important part of ensuring value for money and ensure the correct appointment of Contractors.

The existing Contract Procedure Rules (CPRs) have been in place since adoption of

the Constitution in 2002. Since that time there have been several significant influences that have had an impact on local government procurement activity:

- (a) The launch of the National Procurement Strategy, which sets out how central government, working together with partners from the public, private and voluntary sectors, intends to improve local government procurement
- (b) The Gershon Efficiency Review, which highlighted several workstreams where local government could achieve significant gains; procurement is one of these workstreams
- (c) The drive to increase shared service provision, driven by Central Government policies Local Area Agreements
- (d) The development of Centres of Excellence to develop procurement excellence and to co-ordinate strategic procurement activity
- (e) The increasing profile of purchasing consortia, such as the Office of Government Commerce (OGC Buying Solutions) and the North East Purchasing Organisation (NEPO)
- (f) Recent guidance issued by the Chartered Institute of Public Finance and Accountancy (CIPFA).
- (g) As outlined in the Local Government White Paper “Strong and Prosperous Communities”, Government will continue to encourage cross-cutting reviews and service collaboration, and there will be increasing and changing demands on Councils budgets and departments to deliver services.

3.2 It is important to ensure that the Council’s procurement activity takes account of the national drivers mentioned above.

3.3 At a more local level, it is also important that Sedgefield BC continues to obtain value for money and propriety in the spending of public money and delivers services efficiently and effectively. It is therefore appropriate to review and improve the Council’s CPRs to further enhance the Council’s ability to procure works, goods and services more effectively.

The review of the existing CPRs also ensures that the Council is fully complying with recommended Corporate Governance arrangements issued by CIPFA and the Society of Local Authority Chief Executives (SOLACE).

The Council’s own Procurement Strategy is currently under review. The CPRs have an important role in the achievement of future Corporate and Procurement outcomes.

The revised rules are provided in full in **Appendix 1**.

Summary of Key Changes to Contract Procedure Rules

3.4 Key aspects of the changes that have been made to the contract procedure rules are detailed in the ensuing paragraphs and they cover the following broad areas of procurement:

- Financial Thresholds
- European Union Directives
- E-Procurement
- Procurement Consortia
- Engagement of Consultants
- Partnerships

A more direct comparison between the old contract procedure rules and the new procedure rules can be found in **Appendix 2**.

Financial Thresholds

3.5 The setting of financial thresholds is an important aspect of procurement that can have a major impact on the effectiveness and efficiency of an organisation's procurement practices. Setting thresholds that are too high can increase the risk of achieving poor value for money. On the other hand, setting thresholds that are too low creates beauracracy, additional administration and reduced flexibility which can compromise the Council's ability to provide responsive customer focused services.

3.6 Consultation was widely held in determining the new thresholds which included comparisons of thresholds in operation across other local authorities and advice from CIPFA and other legal advisors. However, the determination of thresholds is ultimately a local decision for each authority based on its own financial management arrangements and risk assessments.

3.7 The following table summarises the thresholds and related procurement rules for awarding and approving contracts that are now incorporated in the revised CPRs following the outcome of the consultation:

CPR	Total Contract Value	Award Procedure	Approval
2	Above EU thresholds £144,371 for goods and services £3,611,319 for works	<input type="checkbox"/> EU procurement procedure, or where not applicable <input type="checkbox"/> Invitation to Tender by advertisement/or select list to a minimum of 4 companies	Formally consult the Solicitor to the Council and Procurement Officer

5	Less than £1,000	<input type="checkbox"/> Regard to be given for need to obtain value for money	Chief Officer
6	£1,000 - £24,999.99	<input type="checkbox"/> Minimum 3 quotations required <input type="checkbox"/> Regard to be given for need to obtain value for money	Chief Officer
7	£25,000 - £49,999.99	<input type="checkbox"/> Invitation to Tender <input type="checkbox"/> Minimum 4 companies <input type="checkbox"/> No advert required	Chief Officer
CPR	Total Contract Value	Award Procedure	Approval
8	Schemes of a Specialist Nature In excess of £25,000	<input type="checkbox"/> Invitation to Tender <input type="checkbox"/> Minimum 3 companies <input type="checkbox"/> No advert required	Chief Officer
9	Single Tender (a) In excess of £25,000	<input type="checkbox"/> Invitation to Tender <input type="checkbox"/> Single contractor <input type="checkbox"/> No advert required <input type="checkbox"/> Single Tender action not to be undertaken prior to approval	Chief Officer, Director of Resources, Monitoring Officer, in consultation with appropriate Cabinet Member
10	Negotiated Tenders (b)	<input type="checkbox"/> Negotiate tender price with existing/previous contractor <input type="checkbox"/> Negotiated Tender action not to be undertaken prior to approval	Chief Officer, Director of Resources, Monitoring Officer, in consultation with appropriate Cabinet Member
11	Selective Tendering Select Lists (c) in excess of £50,000	<input type="checkbox"/> Invitation to Tender <input type="checkbox"/> Minimum 4 companies on Select List	Chief Officer
12	Selective Tendering Ad Hoc (d) lists in excess of £50,000	<input type="checkbox"/> Invitation to Tender <input type="checkbox"/> Minimum 4 companies <input type="checkbox"/> Advert required	Chief Officer

(a) Single Tender - where the Chief Officer has decided that there is only one possible contractor or supplier suitable for a given contract

(b) Negotiated Tenders - where the Chief Officer has decided that it is economic to re-engage a contractor who previously performed successfully on a similar project, or is carrying out an existing contract within a similar location. In such cases, the Chief Officer concerned may negotiate a tender price with the selected contractor.

- (c) Select Lists - "Lists" which are kept of companies to be invited to tender for contracts for the supply of goods services or materials of specified categories, values or amounts or for the execution of specified categories of works*
- (d) Adhoc Lists – "Lists" of companies who have replied to a public contract notice published by the Council*

3.8 The review of the financial thresholds has sought to adopt best practice, increase efficiency in the procurement process and to ensure compliance with competitive arrangements. The key changes include the raising of the threshold for undertaking a formal tendering exercise from £10,000 to £25,000 backed up by a requirement to ensure that a minimum number of comparative quotes are obtained for spending between £1,000 and £25,000.

3.6 European Union Directives

The procurement of goods, services and works must comply with European Union (EU) public procurement processes of inviting tenders through the Official Journal of the European Union (OJEU) where the value of goods, services and works exceeds prescribed financial thresholds. The EU thresholds were last amended in January 2006 and the revised CPRs (Rule 2) reflect the new limits, which are **£144,371 for goods and services** and **£3,611,319 for works**.

3.7 E-Procurement

E-procurement is concerned with the use of electronic methods in the purchasing process. Local authorities have been encouraged to take up e-procurement to realise financial efficiency and other benefits. The revisions to the CPRs take account of the emergence of electronic procurement such as electronic tendering (Rules 2, 23, 26, and 32).

3.8 Procurement Consortia

A consortium is a group of organisations coming together to carry out collective purchasing. Consortium working is becoming an important tool to improve value for money and achieve efficiency savings. These take two forms – 1) National Procurement Consortia and 2) Local Procurement Consortia. Much of the goods and services procured are 'common' to others and significant economies of scale can be achieved when buying through consortia. In addition, consortium procurement teams 'deal with contracts everyday' – so it avoids duplication and effort from other members of the consortium. The revised CPRs incorporate new guidance (Rule 14 and 15) relating to the procurement of goods, services and works via consortia arrangements.

3.9 Engagement of Consultants

The engagement of consultants is an increasing area of spend within local government as more challenging and innovative forms of service delivery are being

considered requiring specialisms and knowledge not normally held within Councils. The revised CPRs (Rule 21) clarify that the engagement of consultants is to be treated as a 'supply of services', which means that CPRs must be adhered to when appointing consultants.

3.10 Partnerships

Partnerships and other joint working arrangements are having a greater emphasis on the activities of the public sector. The Council cannot achieve its objectives by acting alone and is increasingly engaging with wider stakeholders and partners in delivering services. The revised CPRs contain new guidance surrounding procurement in partnerships arrangements (Rule 22) outlining the parameters for establishment and monitoring of partnerships. Specifically, the rules stipulate that in a partnership the **lead organisation's** own contract procedure rules are to be followed, providing that legal and value for money obligations are complied with.

Implementation and Training

- 3.11 To ensure that the revised CPRs are implemented and embedded effectively across the Council, a comprehensive training programme will be delivered to Directors, Heads of Service and senior managers/procurement staff. A "Plain English" guidance document, supported by a series of process flow-charts, will be prepared for reference purposes and disseminated to all departments. Additionally, support and guidance will be available via the Procurement Officer within the Financial Services Section of the Resources Department.
- 3.12 To ensure that the training is delivered to the correct audience, Management Team are requested to provide the names of officers responsible for procurement within each Department across the Council as soon as possible.
- 3.13 A Procurement Toolkit is being developed collaboratively by the Durham Procurement Partnership. This toolkit will provide access to a vast range of Procurement guidance.

4 RESOURCE IMPLICATIONS

- 4.1 The contents of this report do not contain any material resource implications other than officer time required in preparing and delivering training packages and small printing costs associated with preparing guidance documents. These can be met from existing budgeted resources.

5. CONSULTATIONS

- 5.1 The proposed amendments to the CPRs have been developed following a robust consultation process between officers with procurement responsibility from all departments of the Council and reflect the results of these consultations.
- 5.2 Account has been taken from CIPFA guidance on Contract Procedure Rules issued in 2006.

6 OTHER MATERIAL CONSIDERATIONS

Links to Corporate Objectives/Values

- 6.1 The amendments to the CPRs contribute significantly to the Councils Corporate Value to “*Be responsible with and accountable for public finances.*” Contract Procedure Rules are central to the delivery of modern local government services and also contribute to the Corporate Value to “*Achieve continuous improvement and innovation in service delivery.*”

Risk Management

- 6.2 The revision to the CPRs facilitate an improvement in the Councils existing procurement arrangements, particularly by addressing key risks around Partnerships, Procurement Consortia and e-Procurement. These are procurement issues, which have emerged since the adoption of the current CPRs and represent an area of risk to the procurement activity currently undertaken by the Council. The changes to the financial thresholds are also aimed at improving the efficiency and effectiveness of procurement practice and reducing the risk of not achieving value for money. Further details can be found in **Appendix 3**, which contains a detailed risk assessment.

Health & Safety

There are no Health & Safety implications resulting from this report.

Equality & Diversity

There are no Equality & Diversity implications resulting from this report.

Legal & Constitutional

This report recommends a change to the Council’s Constitution, in that the existing Contract Procedure Rules are to be amended/replaced with the revised rules set out in Appendix 1 of this report.

Other Material Considerations

No other material considerations have been identified.

7 **LIST OF APPENDICES**

Appendix 1 – Revised Contract Procedure Rules

Appendix 2 – Contract Procedure Rules, showing amendments made to the current CPRs

Appendix 3 – Risk Assessment

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Wards: Not applicable

Key Decision Validation: This report does not represent a key decision.

Background Papers:

Sedgefield Borough Council – The Constitution
National Procurement Strategy for Local Government

Examination by Statutory Officers

	Yes	Not Applicable
1. The report has been examined by the Councils Head of the Paid Service or his representative	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. The content has been examined by the Councils S.151 Officer or his representative	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. The content has been examined by the Council's Monitoring Officer or his representative	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. The report has been approved by Management Team	<input checked="" type="checkbox"/>	<input type="checkbox"/>

COMPARISON OF NEW AND OLD CONTRACT PROCEDURE RULES

New CPR Ref	Description	Old CPR Ref	Description
	Introduction		Introduction
1	Contracts to Comply with Procedure Rules	1	Contracts to Comply with Procedure Rules
2	Public Notice of Contracts - European Union Directives	2	Public Notice of Contracts - EC Directives
3	Exceptions to Contract Procedure Rules <i>NEW</i>		
4	Setting up Select Lists of Contractors Summary of Competition Requirements and Financial Thresholds <i>NEW</i>	3	Lists of Tenderers Drawn Up on a Regular Basis
5	Contracts estimated to cost less than £1,000	7	Tenders Not Required in Certain Circumstances - estimated value £10,000 or less
6	Contracts estimated to cost between £1,000 and £24,999.99	5	Contracts estimated to cost between £10,000 and £25,000
7	Contracts estimated to cost between £25,000 and £49,999.99 <i>NEW</i>		
8	Schemes of a Specialist Nature - estimated contract value in excess of £25,000	6	Schemes of a Specialist Nature - estimated contract value in excess of £25,000
9	Single Tenders – estimated contract value in excess of £25,000 <i>NEW</i>		
10	Negotiated Tenders	8	Negotiated Tenders - Estimated Cost in Excess of £10,000
11	Selective Tendering – Select Lists Estimated contract value in excess of £50,000	4	Selective Tendering - Estimated contract value in excess of £25,000
12	Selective Tendering – Ad Hoc Lists Estimated contract value in excess of £50,000 <i>NEW</i>		
13	Emergency Works	9	Emergency Works
14	Use of Central Government Purchasing Arrangements or Organisations <i>NEW</i>		
15	Use of Local Purchasing Organisations <i>NEW</i>		
16	Purchase and Sale of Land/Property	10	Purchase and Sale of Land/Property
17	Sale of Vehicles, Plant, Machinery, Equipment etc.	11	Sale of Vehicles, Plant, Machinery, Equipment etc.
18	Scheme Proposal - Capital Programme	15	Scheme Proposal - Capital Programme

New CPR Ref	Description	Old CPR Ref	Description
19	'Main Contractor' Arrangements <i>NEW</i>		
20	Nominated/Named Sub-Contractors and Suppliers	14	Nominated Sub-Contractors and Suppliers
21	Engagement of Consultants <i>NEW</i>		
22	Partnerships <i>NEW</i>		
23	Tender Envelopes and Electronic Tendering System	12	Tender Envelopes
24	Late Tenders <i>NEW</i>		
25	Attempted Alteration of Tender	18	Attempted Alteration of Tender
26	Opening of Tenders	13	Opening of Tenders
27	Acceptance of Tenders	16	Acceptance of Tenders
28	Acceptance of Tenders above an approved budget/ estimate	17	Acceptance of Tenders above an approved budget/ estimate
29	Negotiations following Receipt of Tenders <i>NEW</i>		
30	Contracts to be in Writing	19	Contracts to be in Writing
31	Signing of Contracts/Use of Common Seal of the Council	20	Signing of Contracts/Use of Common Seal of the Council
32	Contract Conditions <i>NEW</i>		
33	Contract Bond	21	Contract Specification/Contract Bond
34	Cancellation of Contracts - Inducements	23	Cancellation of Contracts - Inducements
35	Standard/Specification	22	Standard/Specification
36	Extending Existing Contracts <i>NEW</i>		
37	Expenditure in excess of approved Tender Sum / Variation and Extra Works Orders	24	Expenditure in excess of approved Tender Sum
38	Compliance with Financial Procedure Rules	25	Compliance with Financial Regulations
39	Non-Commercial Matters	26	Non-Commercial Matters
40	Review of Cash Limits	27	Review of Cash Limits
41	Lease or Credit Arrangements <i>NEW</i>		
42	Claims <i>NEW</i>		
A	Keeping of Records of Correspondence/Prices/Negotiations	A	Keeping of Records of Correspondence/Prices/
B	Capital Expenditure Approval Protocol.	B	Capital Expenditure Approval Protocol.
C	Compilation of Select Lists and selection of Contractors to be invited to tender for specific contracts	C	Compilation of Select Lists and selection of Contractors to be invited to tender for specific contracts

New CPR Ref	Description	Old CPR Ref	Description
D E	Purchase and Sale of Land/Property (Buildings) Non-Commercial Matters	D E	Purchase and Sale of Land/Property (Buildings) Non-Commercial Matters

RISK ASSESSMENT

RISK ASSESSMENT MATRIX						
Likelihood of Risk Happening	A	Very high				
	B	High		7	1,3,4,6	
	C	Significant		2	5	
	D	Low				
	E	Very low				
	F	Almost impossible				
<p>1. Write down the risks below and score them.</p> <p>2. Enter the risk number from the left hand column below into the relevant box in the matrix above.</p> <p>3. Identify the target score, enter in the matrix above and note the appropriate actions to deal with the risk in the right hand column below.</p>			4	3	2	1
			Negligible	Marginal	Critical	Catastrophic
			Impact			
<p>RED: HIGH Priority</p> <p>AMBER: MEDIUM Priority</p> <p>GREEN: Low Priority</p>						
No	Description of risk	Likelihood of risk	Impact	Overall score	Target score	Actions required to achieve the target score
1	Non-compliance with EU Procurement Directives	High	Critical	B2	F2	Ensure EU Procurement forms part of Procurement Training and that EU Thresholds are readily updated and accessible
2	Freedom of Information	Significant	Marginal	C3	D3	Ensure Procurement staff are aware of FOI and the procedures for dealing with requests
3	Failure to achieve Value for Money and efficiency savings	High	Critical	B2	D3	Increase awareness and adherence to Contract Procedure Rules through training and guidance
4	High Value of Non contracted spend	High	Critical	B2	E2	Increase awareness and adherence to Contract Procedure Rules

						through training and guidance
5	Lack of Procurement awareness, knowledge and skills	Significant	Critical	C2	D3	Increased awareness and improved knowledge and skills through training and guidance
6	Lack of aggregated and collaborative spend	High	Critical	B2	D3	Communicate importance of aggregating spend, collaboration and adherence to Contract Procedure Rules through training and guidance
7	Electronic procurement not being used	High	Marginal	B3	D3	Promote and utilise eMarketplace and eTendering

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