

<b>Report to:</b>	<b>COUNCIL</b>
<b>Date:</b>	4 October 2022
<b>Executive Member:</b>	Councillor Jacqueline North First Deputy (Finance, Resources & Transformation)
<b>Reporting Officer:</b>	Kathy Roe – Director of Finance
<b>Subject:</b>	<b>CONTRACT PROCEDURE RULES</b>
<b>Report Summary:</b>	This report provides details of a review of the current Contract Procedure Rules (“CPRs”) and proposes the adoption of a new set of CPRs by each of the STAR Authority.
<b>Recommendations:</b>	<p>That Council be recommended to approve the amendments to the Contract Procedure Rules, namely:</p> <ul style="list-style-type: none"> <li>(i) To reflect updated legislation due to the UK’s exit from the European Union</li> <li>(ii) To rationalise the CPRs and, where possible, remove those parts which relate to procedural aspects in order for these to be dealt with in the Procurement Handbook</li> <li>(iii) To increase the threshold trigger for a one quote exercise for both Supplies, Services and Concessions and Works and Public Works Concessions from £4,999 to £9,999;</li> <li>(iv) To permit the modification of a contract where there are; “any other exceptional circumstances as agreed by the SRO for Legal” (9.3.1(g)). The additional ground will offer some flexibility in exceptional circumstances whilst requiring the approval of the SRO for Legal will allow for any risk to be minimised; and</li> <li>(v) To implement a simplified process where the modification is in respect of an extension to the term of a contract which was provided for in the initial procurement documents and the contract.</li> </ul>
<b>Corporate Plan:</b>	Helps meet various strands of the Corporate Plan
<b>Policy Implications:</b>	There are no direct policy implications in this report.
<b>Financial Implications:</b>	There are no direct financial implications in this report.
<b>(Authorised by the statutory Section 151 Officer &amp; Chief Finance Officer)</b>	
<b>Legal Implications:</b>	The Contract Procedure Rules (CPRs) are a legal requirement of any Council and are a critical tool to ensure that procurement of good and services is undertaken compliantly in relation to legal requirements and also transparently so that Members and residents can have the confidence that officers are ensuring that expenditure is being undertaken appropriately and represents good value.
<b>(Authorised by the Borough Solicitor)</b>	The proposed amendments have already been considered by the STaR Joint Committee and now need to be considered and approved by each of the Member Councils in order that they can be incorporated into the relevant constitutions. To ensure the effective running of procurement processes it is important for STaR that each

of the Member authorities adopts the same rules and procedures to ensure consistency and efficiency. It is also a sensible suggestion that the rules and processes are separated to allow processes to develop whilst keeping the rules clearly enshrined in the constitution.

As set out in the main body of the report this review has addressed the legislative updates which are required to reflect the changes following Brexit and are set out in the report in detail.

The amendments have also sought to 'streamline' some of the current processes, most notably in relation to the extension of contracts where the provision to extend is already permitted under the contract. A simpler process will now be adopted but will still have oversight to ensure that the contract continues to provide good value to the council.

As the report explains the council's contract modification process allows for certain changes to be made to contracts without triggering a new procurement exercise so long as the conditions set out in the Public Contracts Regulations 2015 are met. These conditions are applied by the council to all contracts which is over and above the requirement of the Regulations but is considered good practice.

A further amendment to the modification process has been included to allow for modifications to be made for "any other exceptional circumstances as agreed by the SRO for Legal". The use of this may be beneficial in exceptional circumstances but will not be used simply because there has not been effective contract management.

Another amendment of note is the raising of the limit to obtain one quote in a procurement exercise. This accords with the risk based approach which has been adopted in relation to procurement.

However officers will still be required to record their decisions in order that decisions can be audited as required in order to provide the necessary level of assurance.

#### **Risk Management:**

It is important that STAR authorities continue to have an agreed set of harmonised CPRs in order to support STAR procurement as a shared service vehicle.

A review of the CPR's at this time is important due to legislative changes following the UK's exit from the European Union. It has provided a useful opportunity to pause and reflect on practices and approach to procurement and to make additional changes which improve operational efficiency and practice.

#### **Background Information:**

The background papers relating to this report can be inspected by contacting Caroline Barlow Deputy S151 Officer at:



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## **1. INTRODUCTION**

### **Background**

- 1.1 The CPRs are standing orders made pursuant to s135 of Local Government Act 1972. Where such standing orders are made, they shall include provision for securing and regulating competition for contracts entered into. They may also include exemptions to such provisions under certain thresholds specified within the CPRs.
- 1.2 Since the establishment of STAR Procurement, it has been considered essential that all partner authorities to have a single set of CPRs in order to harmonise procurement processes and enable the shared service vehicle to deliver an effective and consistent procurement processes.
- 1.3 The Council's current CPRs have been harmonised and adopted into the Constitution of each of the STAR Authorities ("Stockport, Trafford, Tameside and Rochdale").
- 1.4 The task of developing, agreeing and adopting a set of harmonised rules was a substantial and significant piece of work which was necessary to ensure that STAR Procurement and the STAR Authorities could work together against a set of agreed rules. The harmonisation project was completed by the CPR working group which consisted of Legal and Finance Officers from each of the STAR Authorities.
- 1.5 It is important that the STAR Authorities continue to have an agreed set of harmonised CPRs in order to support STAR Procurement as a shared service vehicle.
- 1.6 A review of the CPRs at this time is important as legislative changes following the UK's exit from the European Union. It provided a useful opportunity to pause and reflect on practices and approach to procurement to ensure that efficiencies and quality can be reflected.

## **2. DEVELOPMENT AND REVIEW OF THE CPRS**

- 2.1 The CPRS only apply to procurement and contractual activity below the financial thresholds set out in the Public Contracts Regulations 2015 regulations (PCRs). The PCRs apply to all procurement and contractual activity which exceeds the thresholds.
- 2.2 The CPRs were initially reviewed and amended after the one year of operation at the request of the STAR Joint Committee with no amendments being made as a result.
- 2.3 In 2017 an interim amendment to the rules to allow for "Risk Based Sourcing" was made to the CPRs:
  - (a) Risk-Based Sourcing is when a range of risk factors determine the procurement process rather than value alone, for below threshold procurements. Therefore the procurement process is made proportionate and appropriate and allows resources to be focussed on the more complex procurements.
  - (b) This interim amendment to the thresholds has been incorporated into the proposed new CPRs.
- 2.4 In 2018, Tameside Council joined the STAR Procurement collaboration and subsequently adopted the harmonised CPRs.
- 2.5 A further review of the CPRs was initiated in 2018/2019 with a view to updating and streamlining the rules to ensure that the rules reflect both legislative and operational requirements and practices. The review was also aimed at ensuring that the rules are easily accessible and can be clearly understood and applied. Due to a range of factors, including the pandemic, the review was put on hold for a period of time. The review was re-commenced in 2021.

- 2.6 Representatives from the legal teams from the STAR Councils, and STAR Procurement, have worked together over the last 12/18 months to complete a robust and substantial review of the CPRs. The proposed new CPRs have been agreed by legal teams at each of the STAR Authorities.
- 2.7 The CPR amendments are summarised in the report and are:
- (a) condensed into a table of proposed amendments that are provided in Appendix 1; and
  - (b) reflected in the text of the proposed new CPRs which are attached at Appendix 2.
- 2.8 Each STAR Authority is required to separately progress the proposed new CPRs through their own governance arrangements with a view to securing the adoption of the proposed new CPRs.
- 2.9 The intention is for each of the STAR Authorities to simultaneously adopt the proposed new CPRs by May 2022. Until each Council has adopted the revised Rules, each STAR Authority and STAR Procurement will continue to operate on the existing harmonised CPRs.

### **3 KEY PROPOSED CPR AMENDMENTS**

#### **Overarching Summary**

- 3.1 The CPRs have been updated to take account of the changes to legislation and the UK's exit from the EU.
- 3.2 In addition, an overarching theme of the review has been to rationalise the CPRs and, where possible, remove those parts which relate to procedural aspects in order for these to be dealt with in the Procurement Handbook.
- 3.3 This helps to ensure that the CPRs are "future proof" as this is where additional detailed guidance can be provided and updated periodically to reflect operational changes and improvements.

#### **Procurement Thresholds**

- 3.4 An amendment which has been considered is to increase the threshold trigger for a one quote exercise for both Supplies, Services and Concessions and Works and Public Works Concessions from £4,999 to £9,999.
- 3.5 In considering this amendment, the following data has been used to assess the impact of the amendment:
- Over the past year, the number of contracts falling within this bracket amounts to 166 contracts or about 40 per council per annum.
  - The effect on the overall spend is £1,139,194 which is 0.0009% based on £1,200,000,000 estimated four council controllable spend of £300m each.
- 3.6 On this basis, and that it represents very little risk to the councils, the threshold has been increased to £9,999 in the proposed new CPRs.

#### **Modifications**

- 3.7 Section 9 of the current CPRs deals with modifications and the circumstances where these are permitted:
- A modification is where the parties agree to change the terms of the original agreement, for example where additional works or services have become necessary and were not included in the original procurement;
  - The CPRs set out the remits, described as grounds, within which such changes can be made.
- 3.8 The current CPRs reflect the requirements as they are prescribed in the PCR in respect of

modifications, which means that the principles of the PCRs are applicable modifications made to contracts which fall below the legislative thresholds. Although including these provisions within CPRs is not a legislative requirement, these principles remain in the new proposed CPRs as they provide clear requirements which help to achieve consistent, transparent and reasonable practices and ensures parity between the CPRs and the Regulations.

- 3.9 However, whilst it is important to set such a high standard, it is also equally important that we are not unnecessarily fettered by the requirements of the regulations where to do so would place an onerous obligation on the authority.
- 3.10 Having assessed the procedures linked to modifications and the associated risks of an amendment thereto, the proposed CPRs include the following amendments:
- an additional ground will be added to permit the modification of a contract where there are; “any other exceptional circumstances as agreed by the SRO for Legal” (9.3.1(g)). The additional ground will offer some flexibility in exceptional circumstances whilst requiring the approval of the SRO for Legal will allow for any risk to be minimised; and
  - Rule 9.3.6 now also provides for a simplified process where the modification is in respect of an extension to the term of a contract which was provided for in the initial procurement documents and the contract. In these circumstances, the SRO for the relevant service and the Director of Procurement (STAR) will be authorised to approve the modification. This will ensure that contracts with inbuilt extension periods can be extended without undue delay or burdensome bureaucracy. This change does not represent any risk to the Council.

#### **4. NEXT STEPS**

- 4.1 Each STAR Authority is progressing the proposed new CPRs through its own governance procedures.
- 4.2 The CPRs were presented at the STAR Joint Committee in March and the proposed amendments will progress to be incorporated into the Constitution of each Council.
- 4.3 STAR Procurement will undertake a programme of updating the Procurement Handbook to provide additional guidance as necessary.

#### **5. RECOMMENDATIONS**

- 5.1 As set out at the front of the report.