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**CONTRACT PROCEDURE RULES**

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**Responsible Cabinet Member - Councillor Chris McEwan  
Efficiency and Resources Portfolio**

**Responsible Director - Paul Wildsmith, Director of Corporate Services**

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**SUMMARY REPORT**

**Purpose of the Report**

1. The purpose of this report is to seek members approval for changes to the Contract Procedure Rules

**Summary**

2. Revised Contract Procedure Rules were adopted by Council in 2008 and further revised on 14th May 2009. The Contract Procedure Rules were revised to increase and enhance Member's role in procurement and improve the Councils' procurement practices.
3. The Council has continued to implement changes to its contracting and procurement practice. In addition there has been a significant legislative change in December 2009 with the implementation of the Public Contract (Amendment) Regulations 2009. The Council's procurement processes have been reviewed in the light of this change of law. To ensure the Council's Contract Procedure Rules reflect procurement law and practice and the authority continues to be legally compliant it is necessary to revise the Contract Procedure Rules.
4. The revised rules have been in place for 12 months, as recent legislation has necessitated changes to the rules it seemed opportune to review how the existing rules worked in practice. Consequently we have made further amendments to the rules to make them clearer and more easily understood by officers engaged in procurement activity. Changes are described in this report and set out in the revised Contract Procedure Rules (**Appendix 1**). Although contracting is a function of Cabinet because the rules sit within the Constitution they require Council approval.

**Recommendation**

5. It is recommended that Members note the proposed changes to the Contract Procedure Rules and refer them to Council for approval.

## Reasons

6. The recommendation is supported to ensure the Council's Contract Procedure Rules reflect current legislation and that any procurement is legally compliant.

**Paul Wildsmith**  
**Director of Corporate Services**

## Background Papers

No Background papers were used in the preparation of this report

Susan White/ Cath Whitehead: Extension 2019/2306

S17 Crime and Disorder	There are no implications for the Council's S17 duty in this report
Health and Well Being	This report has no impact on the health and wellbeing of any individual
Sustainability	This report has no impact on Sustainability
Diversity	This report does not have any implications for our duties in relation to race, gender and disability
Wards Affected	This report affects all wards equally
Groups Affected	This report affects all groups equally
Budget and Policy Framework	This report does not affect the Council's budget and policy framework. The Contract Procedure Rules require approval by full Council
Key Decision	This is not a key decision
Urgent Decision	This is not an urgent decision
One Darlington: Perfectly Placed	This report does not have any direct impact on one Darlington: Perfectly Placed
Efficiency	This report does not have any direct impact on efficiencies

## MAIN REPORT

### Information and Analysis

7. Revised Contract Procedure Rules were adopted by Council in 2008 and further revised on 14th May 2009. The Contract Procedure Rules were revised to increase and enhance Member's role in procurement and improve the Councils' procurement practices.
8. The Council has continued to implement changes to its contracting and procurement practice. In addition there has been a significant legislative change in December 2009 with the implementation of the Public Contract (Amendment) Regulations 2009. The Council's procurement processes have been reviewed in the light of this change of law. To ensure the Council's Contract Procedure Rules reflect procurement law and practice and the authority continues to be legally compliant it is necessary to revise the Contract Procedure Rules.
9. The revised rules have been in place for 12 months, as recent legislation has necessitated changes to the rules it seemed opportune to review how the existing rules worked in practice. Consequently we have made further amendments to the rules to make them clearer and more easily understood by officers engaged in procurement activity.

### Changes to Contract Procedure Rules

10. Changes are set out in the revised Contract Procedure Rules (**Appendix 1**). A summary of the changes is set out below, to enable Members to understand the effect of the proposed changes.
  - (a) **Brief Guide** - In order to ensure compliance with the Contract Procedure Rules (CPR) it is now clarified within the rules that disciplinary action may be brought in relation to Officers who do not comply with the CPR. This will be in accordance with the Council's existing disciplinary procedures.
  - (b) **Responsibilities** - Further clarification of Members and Officers responsibilities in relation to the Procurement Plan, this is to increase the input to the Procurement Plan for Cabinet purposes and reduce one off reports to gain authority to award a contract which is deemed non-strategic.
    - (i) Cabinet's role is amended to note that the Procurement Plan will be presented to Cabinet for approval, this will include all anticipated procurements over £75,000. The changes make clear that the report will include a risk assessment carried out by the Corporate Procurement unit to detail all high value and complex decisions.
    - (ii) Resources Scrutiny Committee's role has been further clarified detailing their monitoring role for contracts and tendering. Monitoring reports will be presented to Officers if requested by Resources scrutiny committee.
  - (c) **Relevant Contracts** - The section regarding relevant contracts has been relocated for comprehension purposes however the content remains the same.

- (d) **Exemptions** – The section relating to exemptions has been revised considerably as this was the main area of confusion for officers. We have spelt out in more detail which parts of CPR officers are exempt from and under what circumstances the exemptions can be applied. The exemptions have been brought into line with the Scheme of Delegation. Council's role to waive CPR has been clarified; CPR cannot be waived by Council when EU procedures apply. In addition a number of new exemptions have been added which reflect current practice: -
- (i) Where a tender exercise has been conducted for a contract valued below £75,000 the Borough Solicitor is able to authorise a negotiated procedure, this is to allow for situations where bids have been received from a limited market or we wish to take elements of a bid forward. This is reflective of EU Procedures.
  - (ii) A further exemption is included for contracts at the Civic Centre and Arts Centre may be negotiated and signed for by the Assistant Director of Culture this is amended to reflect the Scheme of Delegation and current practice.
- (e) **Framework Agreements** – The rules relating to frameworks have been amended to reflect both EU Directives, incorporated into national law by the recent regulations and best practice: -
- (i) The number of providers admitted to a framework agreement must now be approved by the Corporate Procurement unit; this is to ensure competition and compliance with EU procedures.
  - (ii) The rules regarding standstill periods applicable to framework agreements has been amended to note that a standstill period will apply to call-off contracts from a framework agreement in excess of the EU threshold. This has been amended to reflect current legislation.
  - (iii) Officers must enter any call-off contract placed under a framework agreement onto the Procurement Plan, this is to inform Cabinet of the spend and to gain approval to award contracts over £75,000.
- (f) **Competition Requirements** - Further details have been entered for Officer guidance: -
- (i) When calculating the total value of the contract, this is to comply with EU Procedures and to ensure that contracts are not artificially disaggregated to circumvent the CPR or EU Procedures. This was necessary to comply with recent legislation and to avoid penalties for non-compliance with EU Rules regarding advertising and award of contracts.
  - (ii) Officers should now consider when inviting quotations the benefits of inviting a local supplier to quote, this was amended to help local businesses, whilst this may be taken into consideration other factors such as value for money and expertise will also be considered.
- (g) **Invitations to Tender/Quotation** - The CPR have been amended regarding the e-tendering system currently used (NEPO) details have been incorporated regarding the

release and storage of e-tenders in line with the electronic management system.

- (h) **Evaluation, Award of Contract, and Debriefing Candidates** - The rules regarding feedback to unsuccessful tenderers and candidates have been clarified due to change in legislation. The CPR detail the feedback which must be provided and the method of providing such feedback. This is an important change to the rules due to the change in legislation.
- (i) **Contract Formalities** – A number of changes have been made to the section relating to Contract Formalities: -
  - (i) Contracts shall now be made on either the Councils standard terms and conditions or terms issued by a professional body. Should any terms other than this be issued this must be in agreement with legal services. For the purposes of the CPR the Councils Order Form shall no longer constitute a formal written contract.
  - (ii) Contract signatures in order to comply with the Scheme of Delegation the Assistant Director of Culture may now sign any contracts for performances at the Civic Centre or Arts Centre.
  - (iii) All contracts will be made in writing prior to work commencing or payments being made, this was amended in order to avoid difficulties should a dispute arise when a contract has not been signed.
- (j) **Definitions** - New definitions have been added to accord with the changes.

## **Outcome of Consultation**

- 11. No consultation outside the authority was carried out in the production of this report.