

## **CABINET**

**10 JULY 2018**

### **UPDATE TO CONTRACT PROCEDURE RULES**

Portfolio Holder: Councillor Adrian Gulvin, Resources  
Report from: Perry Holmes, Chief Legal Officer  
Author: Michael Kelly, Interim Head of Category Management

#### **Summary**

The report details proposed changes to the Contract Procedure Rules (CPRs). The proposed changes will provide greater efficiencies on procurement activities within the authority by establishing a uniform means to award lower value (under £25,000) contracts. There is also a definition of High, Medium and Low risk procurements and there is clarification on the requirement to use internal resources first.

The report was presented to the Audit Committee on 27 June 2018 and its comments are set out in Section 7 of the report. This report will be submitted to Full Council on 19 July 2018.

#### **1. Budget and Policy Framework**

1.1 The Contract Procedure Rules form part of the Council's Constitution, therefore, final approval of these Rules is a matter for Full Council. In addition, the Audit Committee's terms of reference require it to consider any proposals for changes to codes of practice on tenders and contracts. The Audit Committee considered this report at its meeting on 27 June 2018 and the outcome of the discussion is detailed at section 7 of the report. This report will be submitted to Full Council on 19 July 2018.

#### **2. Background**

2.1 The Council's Contract Procedure Rules define the rules and processes to follow when spending Council budgets. The last review was approved in 2015 when the legislation, which governs public sector procurement (The Public Contracts Regulations 2015), was updated.

2.2 It is best practice to keep the Contract Procedure Rules under periodic review. Within the most recent review, an opportunity was seen to clarify High, Medium and Low risk procurements, revise the procurement process for projects valued between £5,000 and £24,999 and clearly outline how internal resources should be engaged first before engaging any external consultancy support.

### **3. Options**

3.1 It is important that the Council implements and continuously reviews effective procurement practices. The options relating to this report are as follows:

- Do nothing – the option of doing nothing would result in the same set of Contract Procedure Rules being used. The risk of this is the Contract Procedure Rules would not allow the efficiencies identified and would not be as clear as the new proposed wording.
- Implement changes – the changes proposed will allow the Category Management team to proactively manage and resource higher value and risk based procurements. Officers will be clear when they should use internal resources.

### **4. Advice and analysis**

4.1 The three main changes are outlined below.

4.1.1 A new procurement level will be introduced. At present expenditure in excess of £5,000 is made through the Category Management Team and anything below this figure remains a responsibility of the service area. The new level will see this figure rise to £25,000. This increase will enable the Category Management team to proactively manage and resource higher value (i.e. over £25,000) and higher risk procurements.

4.1.1.1 It should be noted that £25k has been chosen as the new threshold since any expenditure over this value must be published on Contracts Finder (an advertising website for all public sector contracts) and also brings our procurement processes in line with other local authorities.

4.1.1.2 Whilst increasing the threshold for devolved procurement activity, it should be noted that the Category Management team will retain an oversight of all procurement activity. This includes the introduction of a “low value quotation form” which will be available on the Kent Business Portal (the Council’s chosen e-procurement website).

4.1.2 A definition of High, Medium and Low risk procurements will be introduced. This definition will improve the decision making process.

4.1.3 A requirement to use internal resources first such as Property and Capital Projects and the Category Management team before approaching the open market will be made clear.

4.2 To successfully implement these changes, training sessions will be held to ensure corporate understanding and compliance. Based on the above analysis, the advice is to adopt the changes proposed.

### **5. Risk management**

5.1 Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic

objectives and enhance the value of services it provides to the community. The table this section considers any significant risks arising from the report.

<b>Risk</b>	<b>Description</b>	<b>Action to avoid or mitigate risk</b>	<b>Risk rating</b>
Not adopting proposed changes	Medway Council's Procurement Rules are neither updated nor reflective in required working practices.	Proposed changes are reviewed and agreed.	C2
Lack of training	There is a risk that the changes are implemented but officer working practices are not.	Category Management proposes that a corporate analysis of effected spend is undertaken and service managers approached who in turn undertaken relevant training.	D3
Lack of corporate awareness	There is a risk that a lack of understanding of the new rule will lead to inconsistencies in approach to procurement?.	Log-in notification ensuring officers approve they have read and will comply with rules.	D2

## **6. Consultation**

6.1 As this is an internal set of rules, no external consultation has been undertaken although the changes have been produced in conjunction with awareness of external legislation.

## **7. Audit Committee**

7.1 The Audit Committee considered this report on 27 June 2018.

7.2 Members considered a report which detailed proposed changes to the Contract Procedure Rules (CPRs) aimed at providing greater efficiencies on procurement activities within the authority by establishing a uniform means to award lower value (under £25,000) contracts.

7.3 Regarding the £100,000 threshold for Level 3 Procurement (Medium Risk), Members asked how this compared with other unitary councils and also Kent County Council. The Chief Legal Officer undertook to look at that, commenting he considered the figure to be at an appropriate level for Members to become involved in the procurement process. As the £100,000 figure had been agreed some years ago he would also look at what the rationale for agreeing that threshold had been.

7.4 In response to a question, the Chef Legal Officer considered that the proposed changes would not involve extra work for the category management team and would allow the team to focus on higher value contracts where there was more scope for achieving significant savings. The Chief Legal Officer also clarified that the Team worked closely with service managers and the proposed changes reflected those discussions

- 7.5 A Member welcomed the proposals, commenting that there was still a requirement to achieve value for money in respect of lower value contracts under £25,000 and that internal audit was a mechanism to ensure that happened. He queried the position where officers were entering into several contracts just under £25,000 (for example to purchase stationery), which aggregated together could amount to over £100,000. The Chief Legal Officer replied that advice on this issue was given to service managers that contracts must not be artificially disaggregated to avoid the application of the CPRs or EU procurement rules. In relation to the purchase of stationery, budgets for that and similar spending had been centralised. The Council had a contract with a single stationery supplier which allowed expenditure to be controlled and this approach had resulted in significant savings.
- 7.6 In response to comments about transparency, officers advised that all expenditure over £250 was published on the Council's website and all contracts over £25,000 were listed on Contracts Finder, which was available online.
- 7.7 A Member queried how many exemptions and exceptions to CPRs had been made in the last year. The Chief Legal Officer explained this happened rarely, and would be in single figures. All requests needed to be signed off by the Chief Legal Officer who would always liaise with the Chief Finance Officer before making a decision.
- 7.8 The Committee agreed to recommend the proposed changes to the Contract Procedure rules to Council for approval.

## **8. Financial implications**

- 8.1 The proposed changes should provide efficiencies in the procurement processes undertaken across the Council and supported by the Category Management team. It will also lead to the quicker appointment of contractors. Further work will be needed to measure these efficiencies.
- 8.2 The practice of recovering internal fees for professional support for example on capital projects has a positive impact on the revenue budget.

## **9. Legal implications**

- 9.1 Medway Council's Category Management team is responsible for ensuring the way in which public funds are spent is done in a legally compliant manner. By implementing the recommended changes, the Council will better control low value spend and have greater transparency in these areas whilst using uniform Terms and Conditions as drafted by the Legal Services team.

## **10. Recommendations**

- 10.1 The Cabinet is asked to: -
- 10.1.1 consider and note the comments made by the Audit Committee on 27 June 2018, detailed in Section 7 of the report.
- 10.1.2 consider the proposed changes to the Contract Procedure rules and recommend them to Full Council for approval.

## **11. Suggested reasons for decision(s)**

11.1 The recommendation will implement a more robust suite of contract procedure rules.

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### **Appendices**

Appendix 1 – Updated Contract Procedure Rules May 2018

### **Background papers**

Medway Council's Contract Procedure Rules

[https://www.medway.gov.uk/downloads/file/2665/407\\_-\\_contract\\_procedure\\_rules](https://www.medway.gov.uk/downloads/file/2665/407_-_contract_procedure_rules)

The Public Contracts Regulations 2015

[http://www.legislation.gov.uk/uksi/2015/102/pdfs/uksi\\_20150102\\_en.pdf](http://www.legislation.gov.uk/uksi/2015/102/pdfs/uksi_20150102_en.pdf)

Medway Council's Constitution

<https://www.medway.gov.uk/info/200167/councillors/120/constitution/1>