

<b>DECISION-MAKER:</b>	<b>GOVERNANCE COMMITTEE COUNCIL</b>			
<b>SUBJECT:</b>	<b>AMENDMENTS TO THE CONSTITUTION - CONTRACT PROCEDURE RULES</b>			
<b>DATE OF DECISION:</b>	15 February 2021 (Governance Committee) 24 February 2021 (Full Council)			
<b>REPORT OF:</b>	Richard Ivory, Monitoring Officer and Service Director: Legal and Business Operations			
<b><u>CONTACT DETAILS</u></b>				
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<b>STATEMENT OF CONFIDENTIALITY</b>				
N/A				
<b>BRIEF SUMMARY</b>				
<p>This report sets out proposed changes to the current Contract Procedure Rules (CPRs) and Officer Scheme of Delegation (OSD) dated May 2020.</p> <p>The changes are urgently required to support Southampton City Council (the Council or SCC) to achieve value for money from the goods, services and works it procures, reflecting immediate changes to legislation arising as a result of the ending of the European Union (Withdrawal Agreement) Act 2020's Implementation Period on 31st December 2020 and ensure Officer delegations are correctly allocated and referenced within both documents.</p> <p>Further amendments to the CPRs are likely to be required to reflect the impact of reserving procurements for below threshold contracts by supplier location and/or to Small and Medium Enterprises (SMEs) and Voluntary, Community and Social Enterprises (VCSEs) as detailed in the Government's Policy Procurement Note 11/20 (PPN 11/20) as well as the future legislative changes which may follow the Government's Green Paper "Transforming Public Procurement". These amendments will be included in future report(s) once the impact on the Council's procurement procedures have been reviewed and assessed.</p>				
<b>RECOMMENDATIONS:</b>				
<b>Governance Committee</b>				
	(i)	Consider and recommend to Council the proposed amendments to the CPRs and OSD as set out in this report.		

<b>Council</b>	
	(i) Approve the proposed amendments to the CPRs and OSD as set out in this report.
<b>REASONS FOR REPORT RECOMMENDATIONS</b>	
1.	To ensure the Constitution through the CPRs and OSD reflect recent changes to legislation and Council policies and procedures and ensure delegations are appropriately set out and approved.
<b>ALTERNATIVE OPTIONS CONSIDERED AND REJECTED</b>	
2.	An alternative option is to delay the changes until the May 2021 Constitution review. A number of these proposed changes contained in this report were originally planned for inclusion within the May 2020 Constitution review but were ultimately postponed as a result of the impact of the COVID-19 pandemic and the changing European Union (EU) environment. As the Implementation Period has now ended, it is recommended that the amendments detailed within this report are approved now to ensure the Constitution is up to date and the Council can realise the associated benefits at an earlier stage.
<b>DETAIL (Including consultation carried out)</b>	
	The paragraphs below summarise the key changes proposed to the CPRs and OSD and a brief rationale for each. Some minor changes are also proposed to rectify inconsistencies in the drafting of the CPRs and OSD.
3.	<b>Legislative changes</b> <ol style="list-style-type: none"> <li>a) Inclusion of reference to the Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 and Find a Tender Service which came into effect at the end of Implementation Period on 31<sup>st</sup> December 2020.</li> <li>b) Introduction of a definition of Small and Medium Enterprises as set out in PPN11/20, which reflects the definition used by the EU.</li> </ol>
4.	<b>Changes to CPR thresholds and procedures to better align these with legislative and guidance provisions and to support the Council in moving towards a complexity-based approach to determining routes to market</b> <ol style="list-style-type: none"> <li>a) The CPR transaction thresholds are amended as follows: <ul style="list-style-type: none"> <li>• Low Value Transaction (LVT) 0 - £4,999 (no change)</li> <li>• Medium (currently Intermediate) Value Transaction (MVT): £5,000 - £24,999 (currently £5,000 to £99,999)</li> <li>• High Value Transaction (HVT): £25,000 – PCR (Public Contract Regulations 2015) Threshold (currently £100,000 to PCR Thresholds)</li> <li>• Above PCR Thresholds (no change)</li> </ul> </li> <li>b) A separate procedure for PCR 2015 Schedule 3 - Social and other specific services under the “Light Touch regime” is introduced which requires the HVT Procedure to be followed.</li> <li>c) To support the Council’s commitment to make its procurement more accessible to local suppliers and in anticipation of the revised approach to UK</li> </ol>

	<p>public sector procurement arising from the end of the Implementation Period, the process to be undertaken under the MVT and HVT is as follows:</p> <ul style="list-style-type: none"> <li>• MVT – seek a minimum of three quotes, two of which should be from local suppliers where possible, unless the Council’s Procurement Teams determine there are grounds for requesting tenders.</li> <li>• HVT – formal tender procedure, seek a minimum of three responses or - when determined by the Council’s Procurement Teams that that its appropriate for requirement in question - seek three quotes, two of which should be from local suppliers where possible.</li> </ul>
5.	<p><b>New Rule 1.3 within CPRs to support decision-making</b></p> <p>Introduction of a new Rule 1.3 to address the decision-making process for matters which cannot be undertaken in accordance with the procedures specified within these Rules, such as exemption requests for values which exceed the PCR Thresholds.</p>
6.	<p><b>Changes in terminology and Rule ordering to make the CPRs more user friendly and clarify responsibilities</b></p> <ul style="list-style-type: none"> <li>• “Intermediate Value Transaction Procedure” replaced with “Medium Value Transaction Procedure”;</li> <li>• “Procuring Officer” replaced with “Requesting Officer”;</li> <li>• “Procurement Service” replaced with “Procurement Team”;</li> <li>• “Request for contract” or “request for quote” replaced with “Request for Procurement”;</li> <li>• New definition of Requesting Officer introduced;</li> <li>• “Outcome specifications” included and</li> <li>• Reordering of the Rules and introduction of a “Glossary” section.</li> </ul>
7.	<p><b>Reflecting policies</b></p> <p>To support our commitment to make Council procurement more accessible to local suppliers in accordance with the Southampton Wealth Building initiative, the Social Value and Green City Procurement Policy and the SCC First Policy, the CPRs now require:</p> <ol style="list-style-type: none"> <li>a) In-house delivery of a need to be considered in accordance with the SCC First Policy before considering using an external supplier and</li> <li>b) Social value to be considered as evaluation criteria where it is appropriate to do so.</li> </ol>
8.	<p><b>Clarifying responsibilities</b></p> <p>To ensure that the SCC First policy is appropriately governed and procurements above £5k are managed by the Procurement Teams:</p> <ol style="list-style-type: none"> <li>a) The “Compliance with the Rules” section is enhanced to clarify that for all procedures (except LVT), Procurement Team should be engaged as part of defining the need;</li> </ol>

	<ul style="list-style-type: none"> <li>b) The CPRs clarify that Officers must seek procurement advice from the Procurement Teams and that Procurement Teams shall seek advice from Legal Services where necessary and</li> <li>c) The CPRs clarify that an appropriate evaluation model still needs to be determined for LVT but does not require the involvement of the Procurement Teams.</li> </ul>
9.	<p><b>Simplify arrangements and responsibilities for approving, maintaining and reviewing the model forms of contracts</b></p> <ul style="list-style-type: none"> <li>a) Removal of the Service Director – Finance and Commercialisation from the responsibility to approve model forms of contracts;</li> <li>b) Replacement of Service Director – Digital and Business Operations with the Head of Procurement and Supplier Management as having joint responsibility with the Service Director – Legal and Business Operations for approving, maintaining and reviewing the model forms of contracts and</li> <li>c) Removing the reference to the review taking place every two years and replacing with an “as required” basis.</li> </ul>
9.	<p><b>Other CPR changes</b></p> <ul style="list-style-type: none"> <li>a) Clarification that past or current performance may only contribute towards a Best Value determination when considering framework usage to ensure that this does not solely prevent use of a framework and</li> <li>b) Reference to a common report, based on PCRs Reg 84 requirements, which is to be used for reporting at the end of all MVT and HVT projects.</li> </ul>
10.	<p><b>Changes to OSD</b></p> <ul style="list-style-type: none"> <li>a) Deletion of the delegations for the Service Director - Legal and Business Operations to determine the procurement route and inclusion of a replacement delegation to rest with the Head of Procurement and Supplier Management.</li> <li>b) Inclusion of delegations to allow the Service Director - Legal and Business Operations to approve the model forms of conditions of contract and in conjunction with the Head of Procurement and Supplier Management, keep a list of and review all model forms of conditions of contract;</li> <li>c) Amendments to references to Head of Supplier Management to the Head of Procurement and Supplier Management for consistency and</li> <li>d) Replacement of references to OJEU with PCR to reflect the end of the EU Implementation Period.</li> </ul>
<b>RESOURCE IMPLICATIONS</b>	
<b><u>Capital/Revenue</u></b>	
7.	None.

<b><u>Property/Other</u></b>	
8.	None.
<b>LEGAL IMPLICATIONS</b>	
9.	Local Government Act 2000 requires the Council to keep its Constitution up to date. The CPR changes referred to within section 3 have been made to align Council procurement procedures with legislation.
<b><u>Other Legal Implications:</u></b>	
10.	None.
<b>RISK MANAGEMENT IMPLICATIONS</b>	
11.	None.
<b>POLICY FRAMEWORK IMPLICATIONS</b>	
12.	None.

<b>KEY DECISION?</b>	No
<b>WARDS/COMMUNITIES AFFECTED:</b>	None.
<b><u>SUPPORTING DOCUMENTATION</u></b>	
<b>Appendices</b>	
1.	Appendix 1 – Proposed CPR amendments (published on-line with the agenda)
2	Appendix 2 - Proposed OSD amendments (published on-line with the agenda)

**Documents In Members' Rooms**

1.	
<b>Equality Impact Assessment</b>	
<b>Do the implications/subject of the report require an Equality and Safety Impact Assessment (ESIA) to be carried out.</b>	No
<b>Data Protection Impact Assessment</b>	
<b>Do the implications/subject of the report require a Data Protection Impact Assessment (DPIA) to be carried out.</b>	No
<b>Other Background Documents</b>	
<b>Other Background documents available for inspection at:</b>	
<b>Title of Background Paper(s)</b>	N/A