

TRAFFORD COUNCIL

Report to: Scrutiny Committee
Date: 16 March 2022
Report for: Decision
Report of: Monitoring Officer

Report Title

CONTRACT PROCEDURE RULES (CPRs)

Summary

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.

Recommendation(s)

It is recommended that the Scrutiny Committee

- **Notes the content of the report;**
- **Notes that, in accordance with the approval process for constitutional amendments as set out in the Council’s constitution:**
 - **At the meeting of the Standards Committee to be held on 14th March 2022, a report recommending the amended CPRs will be presented and**
 - **In line with the Council’s constitution, the Standards Committee will consider the amended CPRs and if approved, will recommend them for adoption by the Council; and**
- **Subject to approval from Standards Committee, recommends adoption of the proposed CPRs to Council for adoption.**

Contact person for access to background papers and further information:

Name: Caroline Myers

Background Papers: None

1. 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 Offices 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.

2.0 **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:
 - 2.3.1 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.

- 2.3.2 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.
- 2.4 Trafford's legal team, in conjunction with representatives from the legal teams from the other STAR Councils, and STAR Procurement, have worked together over the last 12/18 months to complete a robust and substantial review of the CPRs:
 - 2.4.1 The proposed new CPRs have been agreed by all four of the legal teams at each of the STAR Authorities;
 - 2.4.2 All STAR authorities have reached final agreement on the proposed CPRs and confirmed that they will be progressing them through their governance procedures to adopt the amended CPRs into their constitutions.
- 2.5 The CPR amendments are summarised in the report and are:
 - 2.5.1 condensed into a table of proposed amendments that are provided in Appendix 1; and
 - 2.5.2 Reflected in the text of the proposed new CPRs which are attached at Appendix 2
- 2.6 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.
- 2.7 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.

2. Key Proposed CPR Amendments

2.1 Overarching Summary

The proposed CPRs include some instances of amendments and additions to the rules, in others and in order to ensure that the CPRs are “future proof” we have removed some of the operational aspects of the rules and transfer those provisions to the STAR Procurement Handbook where additional detailed guidance can be provided and updated periodically to reflect operational changes and improvements.

The 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:

- The procurement handbook is an operational guidance document which provides in depth procedural procurement detail.

The CPRs have also been updated to take account of the changes to legislation and the UK’s exit from the EU.

2.2 Procurement Thresholds

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.

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.

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.

The Director of Finance has also been consulted on this point, and there are no implications on the Finance Procedure Rules.

2.3 Modifications

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.

The current CPRs reflect the requirements as they are prescribed in the PCR in respect of modifications, which means that the principles of the PCR 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 it provide clear requirements which help to achieve consistent, transparent and reasonable practices and ensures parity between the CPRs and the Regulations.

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.

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.

3. **Next Steps**

- 3.1 Each STAR Authority will progress the proposed new CPRs through its own governance procedures and subject to the required approvals, the proposed CPRS will need to be incorporated into the Constitution of each Council.
- 3.2 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.

3.3 Trafford's constitution requires all constitutional amendments to be approved by both the Standards Committee and the Scrutiny Committee with a view to those amendments being recommended to Council for adoption.

3.4 For Trafford, the CPRs have/will be presented at the following forums either for information or for a formal decision:

Executive Member Briefing	24/02/2022
Constitutional Working Group	01/03/2022
Executive Briefing	08/03/2022
Standards	14/03/2022
Scrutiny	16/03/2022
Executive	21/03/2022
Council – Annual meeting	25/05/2022

In addition, the amended CPRs were reported to the STAR Board on 28th February and Joint Committee on 16th March.

3.5 Subject to required approvals, the Council's constitution will be updated to include the proposed CPRs.

3.6 STAR Procurement will undertake a programme of updating the Procurement Handbook to provide additional guidance as necessary.

4. **Recommendations**

It is recommended that the Scrutiny Committee:

- Notes the content of the report;
- Notes that, in accordance with the approval process for constitutional amendments as set out in the Council's constitution:
 - At the meeting of the Standards Committee to be held on 16th March 2022, a report recommending the amended CPRs will be presented and
 - In line with the Council's constitution, the Standards Committee will consider the amended CPRs and if approved, will recommend them for adoption by the Council; and

- Subject to approval from Standards Committee, recommends adoption of the proposed CPRs to Council for adoption.

Report Appendices

1. Proposed amendments
2. Proposed wording of revision to the Contract Procedure Rules