

How does the decision contribute to the Council's Corporate Objectives?

	<u>Corporate Objective</u>	<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1	Creating a Learning Community		✓	
2	Jobs and Prosperity		✓	
3	Environmental Sustainability		✓	
4	Health and Well-Being		✓	
5	Children and Young People		✓	
6	Creating Safe Communities		✓	
7	Creating Inclusive Communities		✓	
8	Improving the Quality of Council Services and Strengthening Local Democracy	✓		

Reasons for the Recommendation:

To enable the Council to adopt new updated Contract Procedure Rules and to ensure that Audit and Governance Committee are aware of the wider work being undertaken to improve procurement processes and practice within Sefton.

Alternative Options Considered and Rejected:

The current Contract Procedure Rules (CPR) predate the Public Contract Regulations 2015 and require updating in order to be fully in line with that legislation. The current CPR do not accurately reflect the current strategic leadership structure of the Council. Therefore no alternative options have been considered.

What will it cost and how will it be financed?

(A) Revenue Costs

There are no additional costs arising directly from this report.

(B) Capital Costs

N/A

Implications:

The following implications of this proposal have been considered and where there are specific implications, these are set out below:

Financial
Legal The revised contract procedure rules fully reflect the Public Contract Regulations 2015//102. Production of this report has also been considered in line with Sections 5 and

5A of the Local Government and Housing Act 1989 and Sections 114, 114A 115 and 115B of the Local Government Finance Act 1988.

Human Resources

Equality

- | | | |
|----|--|-------------------------------------|
| 1. | No Equality Implication | <input checked="" type="checkbox"/> |
| 2. | Equality Implications identified and mitigated | <input type="checkbox"/> |
| 3. | Equality Implication identified and risk remains | <input type="checkbox"/> |

Impact of the Proposals on Service Delivery:

The proposals will result in improved procurement processes

What consultations have taken place on the proposals and when?

The review of procurement processes, rule and guidance, and the attached revised Contract Procedure Rules (CPR) have been developed by a multi-disciplinary team that includes officers from Procurement, Commissioning Support, Legal, Finance and Strategic Support.

Consultation has been undertaken across the Council, through the Strategic Leadership Board and nominated representatives of Heads of Service, on the attached revised CPR. Where appropriate, comments made have been reflected within the document attached. In particular, details comments were received from colleagues in Internal Audit and these are reflected in the attached CPR.

The Head of Corporate Resources (FD4414/16) and the Head of Regulation and Compliance (LD 3697/16) have been consulted and any comments have been incorporated into the report.

Implementation Date for the Decision

Following the Committee meeting.

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Background Papers:

There are no background papers available for inspection

Introduction/Background

1. In September 2016 the Council established a project to review and revise existing procurement processes, rules (including the published Contract Procedure Rules) and guidance, to:

- Ensure full compliance with Public Sector Contract Regulations 2015;
- Address the issues identified by audit of recent procurement exercises;
- Address any other gaps separately identified; and
- Generally improve the effectiveness of procurement by Sefton Council.

The review is also being undertaken in full cognisance of the developing Liverpool City Region (LCR) Commissioning Hub, which is referred to further below.

2. This review is being undertaken by a multi-disciplinary team led by the Head of Commissioning Support & Business Intelligence and including representatives from Procurement; Commissioning Support; Finance; Legal, Strategic Support and Learning & Development. Other officers will be included within the Project Team as necessary and as the project progresses.

3. Since the current Contract Procedure Rules (CPR) were approved in April 2014, the legislation covering public procurement has been updated, with the implementation of the Public Contracts Regulations 2015. These regulations implement changes included within updated European Union Directives relating to public procurement. The CPR included at Annex 2 to this report incorporate necessary amendments to ensure the Council's processes are legally compliant.

4. The council identified some issues with a large contract procurement exercise undertaken in 2015/16. As a result the Council commissioned external independent consideration of that particular procurement process. This independent consideration identified a number of control weaknesses within the process. These weaknesses are reflected in the report by the Council's external auditors (Ernst and Young LLP) and were considered by the Audit and Governance Committee on 7 December 2016 and reported as follows:

- ▶ The roles of the Procurement team and the responsibilities of the Service are not clearly documented.
- ▶ There is no formal approval process for agreeing the final versions of the PQQ or ITT or any subsequent changes to documentation.
- ▶ Issues identified with the procurement guidance include:

Contract Regulations 2015;

'electronic tendering method';

the procurement including the split between procurement and the service line ;

do not clarify the process for managing ITT variations.

These recommendations are directly addressed within the changes to the attached CPR and wider work being undertaken to improve procurement processes and practice within Sefton. Additional consideration is being given by officers to both the accuracy of documents prepared by officers and to the delegations officers seek and rely upon during the procurement process. Attention is also being given to a

template report being prepared for Cabinet to authorise procurement exercises in the future.

The recommendations are directly addressed within the changes to the attached CPR and wider work being undertaken to improve procurement processes and practice within Sefton.

5. The Project Plan for the Review of Contract Processes, Rules and Guidance and the Internal Audit Report Action Plan referred above have been shared with the external auditor and the Council will continue to work closely with them to enable them to monitor and be assured about the improvements being delivered.
6. In reviewing procurement processes, rules and guidance officers have attempted to also identify and address other gaps, issues and opportunities for improvement at the same time. Some of these are captured specifically within the attached CPR and others will be addressed through other work to be completed by March 2017, including the development and delivery of: procurement project management planning documents; and a comprehensive compulsory training programme for staff involved in procurement.
7. The wider work plan consists of four main phases of activity:
 - (a) Immediate interim action in respect information management and governance and assignment of roles and responsibilities for current live procurement exercises (September 2016 – December 2016);
 - (b) review and revision of the existing processes, rules (including CPR) and guidance (September 2016 – December 2016);
 - (c) implementation of new processes, rules and guidance (including staff training) (December 2016 – March 2017); and
 - (d) Post-implementation Audit Programme (January 2017 – December 2017)

This wider work plan is and will continue to be managed by the multi-disciplinary team referred to in paragraph 2 above, reporting periodically to Strategic Leadership Board; Cabinet Member Regulatory, Compliance and Corporate Services; and Audit and Governance Committee.

8. The CPR will be subject to regular review with any subsequent amendments being brought back to Audit and Governance Committee for consideration in due course. In particular, in light of the issues referred to in paragraphs 4-7 above and the wider process improvement work still to be completed, the attached CPR will be reviewed within 6 months of adoption to ensure that they have delivered the required process and control improvements.
9. In April 2016 the Liverpool City Region Chief Executives considered a presentation on procurement as a shared service. It was agreed at that meeting that 5 Local Authorities (Halton, Knowsley, Sefton, St Helens and Wirral) and Merseytravel would proceed to develop a virtual commissioning hub. The intention of phase 1 of the approach is to scrutinise contract data across the 6 partners and form a plan of action where we can procure together. Since that date a considerable amount of work has

been undertaken to analyse contract and spend data in order to develop the proposed procurement plan.

10. Whilst considerable collaborative procurement has occurred between Merseyside authorities over a number of years, particularly through the informal Merseyside Procurement Partnership network, Members should note that the development of the virtual commissioning hub is expected to lead to an increase in collaborative procurement and a more strategic approach to that collaboration. In support of this approach and to minimise barriers to collaboration, work will also be undertaken to better align procurement processes and CPR across those authorities. Initial benchmarking work has been undertaken in relation to staffing, procurement rules/thresholds and approaches to Social Value. Opportunities will be taken, wherever possible, to raise standards of practice to “best in class” and best practice levels. Where this involves changes to Sefton’s approved rules and approaches to procurement this will be appropriately reported to Elected Members.

Annex 1 – Summary of Key Changes to Contract Procedure Rules

i) <u>Added to CPR's</u>		
Point	Comment	Reason / Benefit
a	Content added at 1.2 Officer Responsibilities regarding determining Roles and Responsibilities and link added to a document to be used for this purpose held in the procurement area of the Council's Intranet	Required under improvement action plan derived from the audit of 2015/16 audits of procurement processes.
b	Content added at 1.2 Officer Responsibilities advising Officers to consider which Disciplines should be brought into a procurement exercise	Required under improvement action plan derived from the audit of 2015/16 audits of procurement processes.
c	Content added at 1.2 Officer Responsibilities advising Officers to consider Information Management, including Communication Control, within a procurement exercise	Required under improvement action plan derived from the audit of 2015/16 audits of procurement processes.
d	Rule 2.9.2.(c) Evaluation Panel – Interview / Presentation – new rule added advising evaluation panel members on how to approach Interview / Presentation sessions where these are incorporated into a procurement exercise	Ensures that such sessions are managed and that panel members are familiar with content of submissions from bidders invited to this stage and so able to make fair assessment in relation to the subject matter
e	Rule 2.9.3 (e) Evaluation Matrix – new rule added reminding Officers of the need to Moderate scores allocated ahead of any Interview / presentation session in order to ensure that any decision to form a shortlist of bidders to invite to that stage is based on accurate scoring.	Accuracy of evaluation
f	Rule 2.9.3.(f) Evaluation Matrix – new rule added advising Officers on how to manage an Interview / Presentation stage in a procurement exercise	Ensuring robust practice

g	Rule 3.2 Evaluation of Quotations added – new rule that sets out requirements surrounding below-EU ‘Quotation’ exercises across the topics of Evaluation Method, Evaluation Panel, Evaluation Matrix, Moderation, & Post Quotation Clarification	Added guidance that was not present on below-EU procurement exercises
h	Rule 1.9 Procurement Risk Assessment – new Rule added advising officers of the importance of engaging the Procurement Team at an early stage within a procurement process, and providing the intranet link for the Procurement Risk Assessment Template	Clarity on early engagement of the Procurement team
i	1.1.1 CPR review frequency added	Clarity surrounding review of CPR’s
j	1.1.1 Content added surrounding the application of the rules to procurement carried out for schools where they choose to buy the services of the procurement team.	Clarity on application of rules to schools
k	1.1.1 Reference to Lord Young reforms and the need to consider Lotting contracts added	Lotting contracts creates smaller bite sized pieces of work that SME’s can bid for
l	1.2.3. Narrative added surrounding which disciplines need to be considered for inclusion in a procurement exercise	Clarity surrounding Operational and Advisory involvement
m	1.6.1. narrative added to clarify that award criteria detailed in the pre procurement report must be adhered to and in no circumstances changed post receipt of tenders / quotations	Greater protection for the Council
n	1.9 Narrative added to inform Procurement Officers that the Procurement Risk Assessment should be uploaded to the electronic opportunities portal for the specific exercise	Greater Audit Trail
o	2.2 and 2.3 Narrative added to inform officers of explicit timescales relevant to EU Procurement Procedures	Clarity on Timescales

p	2.10.1 – narrative added to advise officers in instances where only 1 tender bid is received, and details of the provision to switch a procurement process to a Negotiation under Regulation 32 of the 2015 Public Contract Regulations have been added	Flexibility when in a situation where only 1 tender bid is received in a EU Procurement Process
q	1.2.4. – Content added to inform officers as to how the Council’s electronic opportunities portal should be used to store various documents	Creation of a robust Audit Trail

ii) <u>Modified within CPR’s</u>		
Point	Comment	Reason / Benefit
a	General terminology and spelling check / correction	Housekeeping
b	Within Glossary of Terms the narrative under Pre Qualification Questionnaire (PQQ) has been modified to inform officers that use of PQQ’s is no longer permitted in below EU Spend threshold procurements	Compliance with 2015 Public Contract Regulations
c	Role Titles updated	Synchronisation with current Sefton management structure
d	Reference to 2006 Public Contracts Regulations updated to reference to 2015 Public Contracts Regulations	Compliance with current legislation
e	All EU Spend Threshold figures updated	Reflection of current threshold figures published by the EU Commission in January 2016
f	Section 1.2.3. Surety – This rule originally required Officers involved in procuring construction contracts valued at above £1,000,000.00 to consider a	The tender documents can make specific and accurate reference to any performance bond

	risk assessment and a recommendation made as part of the tender evaluation/acceptance procedure, i.e. after the tender period. This has been amended to require this activity to be carried out prior to tendering	requirements and bidders will be aware of this prior to bidding.
g	Rule 1.5.1. Contracts Register – This rule advised officers that procurement opportunities published on the Council’s opportunities portal will have the details promoted to the Council’s contract’s register	This has been modified to clarify that this will be the case where the contract value is £5000 or above, to synchronise with the Governments Transparency Agenda
h	Rule 1.6.3. Debrief Intention & Award - this rule advises officers of the requirements around Mandatory Standstill following an EU Procurement Process.	This has been expanded to encourage Officers to be mindful of the need to only communicate with bidders or their representatives in writing via the Council’s electronic opportunities portal, to have written responses quality checked for accuracy and content , too seek opinion from the Council’s legal team, and to escalate to a Senior Officer for opinion.
i	Rule 1.7.4 Authorisation of Variations – this rule has been amended to advise Officers to consult the Legal team in respect of proposed contract variations	To allow the Legal team to advise on whether the Variation is permissible i.e. it does not constitute a ‘material change’, and if permissible enable the Legal to account for the Variation in any related sealed contract document package.
j	Rule 1.8 Waiver of Contract Procedure Rules – this rule had been amended to advise Officers to seek advice from the Legal team, the Finance Team, The Procurement team or any other specialist team, when necessary. Waivers are to be forwarded to the Officer’s Head of Service. Heads of Service are advised to email a copy of the completed Waiver request to the Procurement team for archiving	Caters for the Chief Executive’s desire that Waivers are not considered at Strategic Leadership Board, but instead dealt with at Head of Service level, and the resulting decision recorded by the Procurement team.
k	Rule 2.1.4 – this rule introduces the possibility of carrying out soft market testing. The content has been improved and informs officer that if employed this must be conducted in a way that competition isn’t distorted. If a Procurement process is then required, a level playing field between bidders	Compliance with the 2015 Public Contracts Regulations

	must be maintained.	
l	Rule 2.9.1 (b) Evaluation and Award – this rule has been modified to advise Officers that should the Price element of a tender evaluation involve a Price Model, Basket of Goods, or Basket of Works, then consideration should be given, ahead of commencing the procurement exercise, to publishing that detail within the procurement document. Where it is felt inappropriate to publish the detail then officers should consider lodging that detail with the Legal team for the duration of the bidding period and only access the detail once the bidding period has closed. Where a Price Model, Basket of Goods or Basket of Works is employed in the Price Element of an Evaluation, the content MUST NOT be changed once bids are received.	Required under improvement action plan derived from the audit of 2015/16 audits of procurement processes.
m	Rule 2.9.3. (c) this rule addresses the scoring of bids. Content has been added to impress upon Officers the need to adhere to the scoring scheme published within the procurement document when scoring bids and not introduce the likes of half marks for which there is no scoring narrative.	Not exposing the Council to risk of challenge, through ensuring that we do what we say we'll do in the procurement document
n	1.1.1 Basic Principals – additional narrative added surrounding CPR's not applying to sale, leasing or purchase of land	Request from Legal
o	1.10.1 (a) the value band for which a Pre Procurement Report must be taken to Head of Service changed to £5000 - £150,000. Reference to Scheme of Delegation removed. Diagrammatic illustration updated also	Request from Legal
p	The following terms added to the Glossary : Open Procedure, Restricted Procedure, Best and Final Offer (BAFO), E-Procurement, SME, Advanced Request for Quotation, Social value.	Greater clarity surrounding terms used in the rules
q	1.1.10 Extra Narrative added to Contract sealing document package list	Clarity on where authorisation to award a contract comes from
r	1.6.2. Narrative surrounding non acceptance of bids amended to detail the need to document and record the reason/s why	Greater protection for the Council

s	1.6.3. Reference to the Mandatory Standstill guide on the Council's intranet removed	The guide itself was removed from the Intranet as Procurement Officers felt that as the process of administering the mandatory standstill was undertaken by procurement officers, there was no benefit in publishing this information to other council officers
t	2.6.2. Narrative modified to inform officers that records of bids submitted are maintained in the electronic opportunities portal	Greater Audit Trail
u	2.7.1 Narrative surrounding late tenders modified to a more user friendly, less 'legal' style	More user friendly
v	2.9.1.(b) Narrative modified to clarify that evaluation criteria employed must be as per the Pre Procurement Report, The OJEU Notice and the Evaluation Matrix and must not be changed	Greater protection for the Council
w	2.9.2. narrative modified to detail that an evaluation panel must consist of two operational officers	Avoids subjectivity in evaluation
x	2.10.1 Narrative modified to clarify to officers to whom delegated authority has been given, the requirements that need to have been met when considering acceptance of tenders	Clarity
y	2.12.2 modification of narrative to advise officers to seek guidance from the appropriate personnel	Clarity
z	3.1.1. Narrative modified to inform officers that the use of Selection Questionnaires in below-EU spend threshold procurements is forbidden	Protection for the Council, adherence to Public Procurement Regulations
aa	3.2.3.(d) – Narrative modified to inform officers that evaluation panel members' individual scores and scoring notes along with modified evaluation scores and final justifying scoring notes must be uploaded to the Council's electronic opportunities portal	Greater Audit Trail

ab	1.1.8. – Narrative modified to inform officers that Social Value should be considered when forming the Procurement Project Management Plan	Early Planning
ac	1.2.3. Narrative modified to include Investment and Employment Service as one of the discipline options that officers can consider involving in a procurement process	Clarity
ad	1.2.9. Narrative modified to include Social Value Act as one act that must be complied with	Compliance with the Law
ae	1.3.2.1. Narrative modified to include reference to social value	Compliance with the Law
af	1.8.1. Narrative modified in order to reference social value	Clarity for officers considering a waiver request
ag	1.7.6. – Narrative modified emphasising the need to first create a purchase order / agreement	Commitment Audit Trail
ah	1.1.1 – Narrative added to inform officers that where external funding bodies have specific procurement requirements then practice may need to be modified in order to secure the funding	Clarity to ensure that the Council receives maximum funding benefit
ai	1.10.1 – Narrative amended to clarify that Pre Procurement Reporting also applies to Collaborative procurement where Sefton is in the lead role	Greater Audit Trail
aj	1.7.1 – link added to Financial Procedure Rules	clarity
ak	2.3.5 – Narrative amended to facilitate tenders being sent to less than 5 bidders in a restricted procedure where there is little competition	clarity
al	1.2.7. – Narrative amended to clarify that any risk assessment relating to liquidated damages must be carried out a pre procurement stage	clarity

am	1.2.11 Narrative amended to encourage officers to consider mobilisation period and obtaining TUPE related information where relevant	clarity
an	1.3.1. – Narrative amended to reflect that Procurement Officers are responsible for verifying validity of external frameworks	clarity
ao	1.3.2.3. – Narrative amended to provide clarity on officer responsibility	clarity
ap	1.2.9. – added content regarding Data Protection	Protection or the Council

Annex 2 – Revised Contract Procedure Rules