

<b>Report to:</b>	Cabinet	<b>Date of Meeting:</b>	12 <sup>th</sup> January 2017
<b>Subject:</b>	Review of Procurement Processes	<b>Wards Affected:</b>	All Wards
<b>Report of:</b>	Head of Commissioning Support and Business Intelligence		
<b>Is this a Key Decision?</b>	No	<b>Is it included in the Forward Plan?</b>	No
<b>Exempt/Confidential</b>	No		

### Purpose/Summary

To report to Cabinet the outcome of recent procurement processes and subsequent audit work, including revision of the Council's Contract Procedure Rules.

### Recommendation(s)

That Cabinet:

1. Endorse the work being undertaken to review the Council's procurement processes, rules and guidance.
2. Note and endorse the revised Contract Procedure Rules and the changes made.
3. Note that progress in delivering the Procurement Action Plan and a summary of all OJEU compliant processes that are undertaken for a period of 12 months will be reported by the Head of Commissioning Support and Business Intelligence to each subsequent meeting of the Audit and Governance Committee.

### 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:**

Procurement is an Executive function. In light of the importance of good procurement practice for the achievement of value for money, it is necessary to provide assurance to Cabinet as to action taken in respect of recent issues that have arisen in this regard.

**Alternative Options Considered and Rejected:**

In light of the importance of correct procurement practice to the achievement of value for money and the decision of Audit and Governance Committee to refer the revised Contract Procedure Rules to Cabinet for them to receive assurance as to action taken and to note the changes made to the Contract Procedure Rules, no alternative options were considered.

**What will it cost and how will it be financed?**

**(A) Revenue Costs**

There are no additional costs as a result of 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:

<b>Financial</b>	
<b>Legal</b> 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.	
<b>Human Resources</b>	
<b>Equality</b>	
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:**

There will be no impact upon service delivery as a result of the proposals within this report. The decision by Audit and Governance Committee to adopt the revised Contract Procedure Rules should improve the Council's procurement processes and practice and ensure ongoing compliance with legal requirements relating to procurement and contract related matters.

## **What consultations have taken place on the proposals and when?**

The Head of Corporate Resources (FD 4459/16) and the Head of Regulation and Compliance (LD 3742/16) have been consulted and any comments have been incorporated into the report.

## **Implementation Date for the Decision**

Following the expiry of the "call-in" period for the Minutes of the Cabinet Meeting

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## **Background Papers:**

The following background papers are available for inspection:

Report to Audit and Governance Committee, 7<sup>th</sup> December 2016, *Review of Procurement Processes, Rules & Guidance:*

[http://modgov.sefton.gov.uk/moderngov/documents/s70186/0013b-FD%204414%20-%20Review%20of%20Procurement%20Process\\_03.pdf](http://modgov.sefton.gov.uk/moderngov/documents/s70186/0013b-FD%204414%20-%20Review%20of%20Procurement%20Process_03.pdf)

Revised Contract Procedure Rules:

<http://modgov.sefton.gov.uk/moderngov/documents/s70710/Contract%20Procedure%20Rules%202016.pdf>

## Introduction/Background

1. In June 2016, having identified some issues with a large contract procurement exercise undertaken in 2015/16, the Council commissioned an external independent review of that particular procurement process. This independent review identified a number of control weaknesses within the process and made a series of recommendations, which were subsequently agreed by Senior Officers and a Procurement Improvement Action Plan developed. In addition a thorough investigation was also undertaken by the Council's Internal Audit Team.
2. In his *Statement of Accounts 2015/16* report to Audit and Governance Committee, on 21<sup>st</sup> September 2016, the Head of Corporate Resources advised Members that the External Auditors had substantially completed planned work in relation to their audit of the financial statements and value for money but needed to undertake some additional work on the Council's procurement processes in order to reach a conclusion. He also reported that an update would be provided to the Audit and Governance Committee upon completion of that work.
3. In his subsequent report to Audit and Governance Committee, on 7<sup>th</sup> December 2016, the Head of Corporate Resources advised Members that the additional work undertaken had identified that in respect of the Council's procurement processes "*these control weaknesses were not isolated to one area*" and consequently the Council's External Auditors had issued a "qualified 'except' for Value for Money conclusion", due to weaknesses in arrangements for procuring goods and services across the Council.
4. The Annual Audit Letter from the Council's External Auditor, presented to Audit and Governance Committee on 7<sup>th</sup> December 2016, acknowledges that the Council "*responded quickly to the findings of the review and established an action plan for improvement*" but also states that the independent review referred to in paragraph 1 identified "*an environment that lacks clearly defined responsibilities and accountability*" and reflects the weaknesses identified by the review as:
  - 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:
    - The procedure was last updated in April 2014 prior to the Public Sector Contract Regulations 2015;
    - The contract procedure rules do not refer specifically to the use of Chest or include procedural guidance about how to use the 'electronic tendering method';
    - The rules do not clearly allocate the responsibility for managing the procurement including the split between procurement and the service line;
    - The rules do not clarify the conditions for communication with suppliers during a tender process;
    - The rules do not clarify the process for approving an ITT; and
    - The rules do not clarify the process for managing ITT variations.

5. As a result of the independent review referred to in paragraph 1 above, a Procurement Improvement Action Plan was developed and a full review of the Council's procurement processes, rules (including the published Contract Procedure Rules) and Guidance was initiated 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.
6. The work plan for the review consists of four main phases of activity:
  - Immediate interim action in respect information management and governance and assignment of roles and responsibilities for current live procurement exercises (September 2016 – December 2016);
  - review and revision of the existing processes, rules (including CPR) and guidance (September 2016 – December 2016);
  - implementation of new processes, rules and guidance (including staff training) December 2016 – March 2017); and
  - Post-implementation Audit Programme (January 2017 – December 2017)

This work plan is being managed by a multi-disciplinary team led by the Head of Commissioning Support and Business Intelligence, reporting periodically to Strategic Leadership Board and Cabinet Member Regulatory, Compliance and Corporate Services and to reporting to each meeting of Audit and Governance Committee.

7. A first report of progress in delivering this review, together with the revised CPR, was reported by the Head of Commissioning Support and Business Intelligence to Audit and Governance Committee on 7th December 2016. Audit and Governance Committee approved the revised CPR and they have now been published and shared with all members of Strategic Leadership Board.
8. Procurement is an Executive function and In light of the importance of good procurement practice for the achievement of value for money, in agreeing the revised CPR, Audit and Governance Committee also agreed to refer the revised CPR to Cabinet for them to receive assurance as to action taken and to note the changes made. The relevant Minute from Audit and Governance Committee is included in full at Annex 1 to this report. The full report to Audit and Governance Committee can be viewed at: [http://modgov.sefton.gov.uk/moderngov/documents/s70186/0013b-FD%204414%20-%20Review%20of%20Procurement%20Process\\_03.pdf](http://modgov.sefton.gov.uk/moderngov/documents/s70186/0013b-FD%204414%20-%20Review%20of%20Procurement%20Process_03.pdf) and the CPR, which have now been published, can be viewed at: <http://modgov.sefton.gov.uk/moderngov/documents/s70710/Contract%20Procedure%20Rules%202016.pdf>.
9. As identified within the report to Audit and Governance Committee, the recommendations of the independent review are all directly addressed within the changes to the revised CPR and wider work being undertaken to improve procurement processes and practice within Sefton.
10. In addition to the execution of the Procurement Action Plan the Council will also engage with Ernst & Young's procurement specialists to independently assess the improvement actions being undertaken by the Council and the scope of a further

review of current arrangements; and reflect within future Internal Audit planning the increased risk arising from recent findings.

11. The Council has recognised and acted expediently to correct the identified control weaknesses within the procurement processes referred to above. Officers have also assessed whether there is any need for further action in respect of the particular procurement decisions taken and are satisfied that the decisions remain sound and that no further action is required in that regard.

## **Annex 1 – Minute from Audit and Governance Committee 7th December 2016**

### **31. Review of Procurement Processes, Rules and Guidance**

Report of the Head of Commissioning Support and Business Intelligence.

#### **Additional documents:**

- 2016 Contracts Procedure Rules FINAL\_02

#### **Minutes:**

Further to Minute No. 30 a above, the Committee considered the report of the Head of Commissioning Support and Business Intelligence advising the Committee of work being undertaken to review the Council's procurement processes, rules and guidance and seeking approval for revised Contract Procedure Rules produced as part of that review. The report set out the background to the matter, indicating that Procurement was an Executive function, and a summary of the key changes to Contract Procedure Rules were attached to the report at Annex 1. The revised Contract Procedure Rules were set out at Annex 2 to the report.

In relation to Annex 2 attached to the report, and the revised Contract Procedure Rules, a subsequent amendment to the rules that applied to schools that had opted to purchase the Council's Procurement service, was reported.

Members of the Committee asked about processes involved in awarding contracts and the balance between qualitative and quantitative standards. It was reported that individual tender documents and specifications set out criteria for evaluation and scoring.

RESOLVED: That

- (1) the work being undertaken to review the Council's procurement processes, rules and guidance, be noted;
- (2) subject to the following amendment, the revised Contract Procedure Rules, as set out in Annex 2 to the report, be approved:-

Section 1.1.1 of the Contract Procedure Rules – Link to the Constitution, the deletion of the 3rd paragraph, to be replaced with the following:-

“These rules will apply to all Sefton Council maintained schools, in accordance with “Fair Funding Guidance: Scheme for Financing Schools” and

- (3) as Procurement is an Executive function and in light of the importance of good procurement practice both for the achievement of value for money, and to provide assurance to the Cabinet, the revised Contract Procedure Rules be referred to the Cabinet for it to receive that assurance as to action taken and to note the changes made to the Contract Procedure Rules.