

Agenda Item 25.

TITLE	Review of proposed additions to the Procurement and Contracts Rules and Procedures
FOR CONSIDERATION BY	Audit Committee on 26 th September 2017
WARD	None Specific
DIRECTOR	Graham Ebers, Director of Corporate Services

OUTCOME / BENEFITS TO THE COMMUNITY

Enabling the consistent delivery of services to our communities in the most cost effective way by ensuring compliant procurements are undertaken.

RECOMMENDATION

The Audit Committee is asked to recommend to Council, via the Constitution Review Working Group, the changes detailed below to the Council's Procurement and Contracts Rules and Procedures (PRCP) which form part of the Council's Constitution.

SUMMARY OF REPORT

The Council's Procurement and Contracts Rules and Procedures (PCRP) were developed in response to the new Public Contracts Regulations 2015 (PCR2015) and formally adopted, as Chapter 13 of the Constitution, at the Council Meeting on 19th Nov 2015.

The proposed changes detailed below have been reviewed and approved by the S151 Officer, Monitoring Officer and the Executive Member for Finance.

There is one substantive change related to increasing the threshold for legal involvement in contracts. This currently stands at £50k but it is proposed that this is increased to £100k.

There are three minor changes that seek to clarify the procedures and to address weaknesses that have become apparent following case law.

Background

As part of the 21st Century Council we have reviewed our processes and procedures to ensure that they are efficient and effective. One of the key principles of the programme redesign work is to support self-service.

In 2016/17 Shared Legal Services (SLS) spent 1,600 hours on Contract work for WBC. Currently the PCRP requires contracts with a total value greater than £50k to be created by SLS. This threshold has been the same for the last 10 years.

The constitutional threshold for legal drafting of contracts in other Berkshire authorities are as follows:

Local Authority	Contract Value
RBWM	£100k
Reading	£100k
Bracknell Forest	£100k
West Berkshire	£50k
Slough	£50k

Detailed data is not available on the volumes of contracts that SLS have worked on but from a sample of contracts where values were easily identified, 31% of contract activity was less than 100k threshold. It is likely that the larger contracts would require more time to draft but it is clear that there are savings to be made in SLS time.

Analysis of Issues

It is proposed that increasing the threshold to contracts with a total value greater than £100k. SLS has created model contracts that do not allow changes other than commercial terms (cost and specification). These would enable managers to self-serve legal contracts. Any contracts that required a modification other than standard terms would be referred to SLS.

The PRCP would be updated with the table at 3.3.1 amended as follows:

Contract Value	Duration	Risk	Procurement Cards	Standard Purchase Order Terms	Template Contract	Formal Contract Terms (via SLS)	Suppliers' Terms
<£50k	<12mth	Low	✓	✓			By exception and only with input of Shared Legal Solutions
		Normal	✓	✓			
	>12mth	Low	n/a	✓			
		Normal	n/a	✓			
>£50k <100k	any	any	n/a	✓	✓		
>£100k	any	any	n/a	n/a			✓

Other changes to the PRCP

It is proposed that the following additions are made to the PRCP in order to clarify the procedures and to address weaknesses that have become apparent in recent case law:

1) Section 3.2 – Overview of Required Procurement Procedures

2nd paragraph: addition of "...or the use of existing frameworks from other procurement bodies..."

The use of frameworks created by other procurement bodies is a very cost effective way of procuring goods, services and works in full compliance with PCR2015. This approach was not specifically addressed in the overview section of PRCP, whilst it is referred to later in the document.

This change is intended to remove any confusion about the use of frameworks and to promote them as an effective approach to procurements.

2) Table 3.2.1 – Goods & Services and 3.2.2 – Schedule 3

Addition of a "recommended" standstill period for contract values from £50k – OJEU.

A standstill period is the most effective method of mitigating the worst potential remedies available to a court should a successful legal challenge be raised against any procurement. In PCR2015, it is only compulsory for contracts with values that exceed the relevant OJEU thresholds.

This change seeks to promote best practice by recommending that a standstill period be used, wherever possible, for contracts with values between £50k and OJEU.

Addition of a new line requiring the completion of a Reg84 Report for contracts above OJEU level.

The creation of a Regulation 84 report has always been a requirement of PCR2015. Previously the expectation has been that this report would be produced from project files and notes only if, and when, requested by the Cabinet Office or the EU Commission. Recent case law has identified the importance assigned by Courts to the creation of this report contemporaneously.

This change is intended to raise the profile of this report and ensure its production is an integral part of the procurement process rather than a separate exercise, after-the-fact.

3) **Table 3.2.3 – Works**

Addition of new lines covering the standstill period and the Reg84 Report

The absence of the standstill period from this chart in the original document was an error.

This change is intended to bring Table 3.2.3 into line with the other tables in PCRP.

FINANCIAL IMPLICATIONS OF THE RECOMMENDATION

The Council faces severe financial challenges over the coming years as a result of the austerity measures implemented by the Government and subsequent reductions to public sector funding. It is estimated that Wokingham Borough Council will be required to make budget reductions in excess of £20m over the next three years and all Executive decisions should be made in this context.

	How much will it Cost/ (Save)	Is there sufficient funding – if not quantify the Shortfall	Revenue or Capital?
Current Financial Year (Year 1)	N/A	N/A	N/A
Next Financial Year (Year 2)	N/A	N/A	N/A
Following Financial Year (Year 3)	N/A	N/A	N/A

Other financial information relevant to the Recommendation/Decision

None

Cross-Council Implications

These changes apply to the council procurement process and therefore has the ability to impact across all the council's services. The changes help to ensure that the council is maximising the use of legal resources in line with the principles of the 21st Century Council.

Reasons for considering the report in Part 2

None

List of Background Papers

Procurement and Contracts Rules and Procedures (Constitution - Chapter 13)

Contact Paul Ohsan Ellis	Service Strategy and Commissioning
Telephone No x6096	Email paul.ohsan.ellis@wokingham.gov.uk
Date 17 September 2017	Version No. 1