



REPORT of CHIEF EXECUTIVE

to
PERFORMANCE, GOVERNANCE AND AUDIT COMMITTEE
16 JANUARY 2025

AMENDED CONTRACT PROCEDURE RULES IN LINE WITH LEGISLATION UNDER THE PROCUREMENT ACT 2023

1. PURPOSE OF THE REPORT

- 1.1 The purpose of this report is to obtain approval to put in place the new and amended Contract Procedure Rules 2025 attached at **APPENDIX A**.
- 1.2 The Councils Contract Procedure Rules have been amended to support the implementation of the new Procurement Act 2023 (the Act) which received Royal Assent in October 2024.
- 1.3 The new Act is due to go live at the end of February 2025 and the Council are required to implement the changes in legislation.

2. RECOMMENDATIONS

To the Council:

- (i) That the Contract Procedure Rules 2025 (**APPENDIX A**) are approved to ensure the Council is compliant with the Procurement Act 2023.
- (ii) That Council approve that the Constitution at pages 218 to 242 is updated with the Contract Procedure Rules 2025.

3. SUMMARY OF KEY ISSUES

- 3.1 Following Brexit taking effect in 2021, European Union (EU) Procurement law no longer applied to the UK. The Government took this as an opportunity to reform the UK's public procurement regulations. The aim of the Act is to reduce red tape and to support British business by simplifying public sector procurement, encouraging innovation and improving transparency.
- 3.2 The Act was set to come into force on 28 October 2024, however on 12 September 2024, the Government announced its intention for a proposed new implementation / go live date of 24 February 2025. Procurements that go live after that date must be conducted under the new Act.
- 3.3 The Council's procurement activity is currently governed by its Contract Procedure Rules and the Public Contracts Regulations 2015 (PCR 2015). These set out the rules and legislation that must be followed when conducting procurement exercises and they are placed within the Council constitution.

- 3.4 Once implemented as of February 2025 the Procurement Act 2023 will replace the current Public Contracts Regulations 2015 (PCR 2015). The change in the Procurement regulations necessitates the need to amend the Councils contract Procedure Rules to ensure compliance with the Act for the procurement of supplies, services, and works.
- 3.5 All new procurements over threshold carried out as of February 2025 will follow the new rules, while any contracts placed prior to this date and under the Public Contracts Regulations 2015 will remain under those rules, until they expire.
- 3.6 There will be greater scrutiny of procurements with the introduction of the Procurement Reform Unit to review Local Authority procurement activity.
- 3.7 There is also a requirement and introduction of moving from Procurement publishing a maximum of three notices at advert and award stage of a contract to a number of notices depending on the value and the requirements of the contract in question throughout the lifetime of the contract.
- 3.8 The Act fully comes into play at 'over threshold' set by the Government thresholds, which change every two years (due to change on 1 January 2025), currently £213,904 including VAT for Goods and services and £5,372,609 including VAT for Works, however best practice is to observe the Act where appropriate for all below threshold procurements that are governed by the Council's Contract Procedure Rules and the thresholds set under the Contract Procedure Rules. There are still requirements for contracting authorities to observe for below threshold procurements in terms of transparency requirements and notice publication.
- 3.9 In the Government green papers and consultations throughout the period of reviewing public procurement, the Government identified that a key driver for reform was to ensure that public contract opportunities were open to more small businesses and social enterprises to innovate contract delivery and to meet a number of the UKs targets such as net zero carbon reduction target. The Act also addresses further objectives by placing a requirement on contracting authorities to consider the barriers that a Small and medium-sized Enterprise (SME) might face in accessing opportunities, and to consider what can be done to overcome them.
- 3.10 The introduction of the Central Digital Platform (CDP) a legal requirement for buyers and suppliers will be where all UK contracting authorities publish information relating to procurement. It is also the place where identifiers are recorded and/or issued and for suppliers to input their commonly used information. It will be a fully integrated digital platform where noticing, sign-in, registration and supplier information all works together to support public sector procurement. The CDP is expected to be released as a later phase to the February go live date.
- 3.11 The Councils e-tendering solution provider Delta has been working extensively with the Cabinet office to ensure they are ready for go live in terms of the amount of transparency reporting that will be required, along with the new notices for publishing opportunities. Delta has supported throughout with training sessions and webinars to ensure users both buyers and suppliers are prepared for go live. Delta will link directly with the CDP once in place.
- 3.12 The Act's key features are:
 - Moving from the principle of Most Economically Advantageous Tender (MEAT) to Most Advantageous Tender (MAT) recognising the need to take into consideration social and environmental factors when procuring.

- The reduction of five procurement procedures to two.
 - Enhanced transparency – the introduction of multiple new procurement notices which will span the lifecycle of the procurement and the contract.
 - Contract Management features for the first time in procurement legislation with all contracts over £5m requiring a minimum of three Key Performance Indicators (KPIs) or justification of why they are not needed. All contract modifications, variations, extensions, and terminations require notices to be published.
 - Engagement with supplier markets is strongly encouraged and if the Council does not engage, then it must explain why, however there are strict rules around pre-tender market engagement and the Council should ensure that no supplier is put at a disadvantage through this process. This process does not allow authorities to obtain quotes prior to any potential tender process. A notice must be published to report on any pre-market engagement.
 - A further requirement is that the Council maintain conflict assessments right through the procurement process at certain thresholds.
- 3.13 Cabinet office support and information for suppliers has been posted on the Council's Procurement webpage and further guidance will be provided as work progresses.

4. CONCLUSION

- 4.1 The Council is required by law to amend its contract procedure rules to encompass the changes to the Procurement regulations as this is a change in the governing regulations, implementing the changes brought about by the Procurement Act 2023, and will ensure that procurement and contracting requirements are lawfully delivered.
- 4.2 The aims of the Procurement Act 2023 are to;
- Transform Public Procurement
 - Introduce flexibility in procurement processes
- 4.3 Embed transparency throughout the commercial lifecycle so that the spend of taxpayer's money can be properly scrutinised.
- 4.4 Increase visibility and accessibility of public procurement to new entrants such as small businesses and social enterprises so that they can compete for and win more public contracts.
- 4.5 The Council currently carries out the majority of procurements below the government threshold, however there is still an obligation to observe the rules and regulations to ensure the Council always remains compliant in procurements.
- 4.6 The Councils Contract Procedure Rules have been amended to support the new Procurement Act 2023. These also now include the reporting requirements for projects and title changes / reporting lines where necessary under the Councils new structure. All below thresholds previously set and agreed by Council in 2021 will remain the same.

5. IMPACT ON PRIORITIES AS SET OUT IN THE CORPORATE PLAN 2025 - 2028

- 5.1 The Contract Procedure Rules state, all purchasing, and disposal procedures must support the Council's corporate and departmental objectives, plan, and policies.
- 5.2 The Council's priorities are considered pre-procurement for each contract and applied in a proportionate and relevant manner to the subject matter of the contract.

6. IMPLICATIONS

- (i) **Impact on Customers** – None arising from this report.
- (ii) **Impact on Equalities** – None arising from this report.
- (iii) **Impact on Risk (including Fraud implications)** – There are legal, financial, and reputational risks if the council is non-compliant with the Procurement Act 2023. The Council is required to implement the changes brought about by the Procurement Act 2023, to ensure that procurement and contracting activities are legally compliant.
- (iv) **Impact on Resources (financial)** – None arising from this report.
- (v) **Impact on Resources (human)** – Greater administrative work for procurement to ensure all reporting and notices are published as required under the Act for transparency and compliance.

Background Papers:

APPENDIX A Contract Procedure Rules 2025.

Enquiries to:

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