



**Governance and Audit
Committee**

Tuesday, 21 January 2024

Subject: Contract Procedure Rules update 2025

Report by:

Director of Corporate Services and Section 151
Officer

Contact Officer:

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Purpose / Summary:

To present the draft revised Contract Procedure
Rules to Governance and Audit Committee for
approval and recommendation to Council at the
Council meeting on the 27 January 2025.

RECOMMENDATION

Governance and Audit Committee recommends approval of the revised Contract
Procedure Rules to Council for adoption on the 27 January 2025.

IMPLICATIONS

Legal: Risk Management is an essential and necessary function of the Council.

Financial:

There are no financial implications arising from this report however the finance team will work to ensure that all transparency data is correctly published.

Staffing: There are no staffing implications arising from this report. However, training will be provided to Members and Staff on the new policy.

Equality and Diversity including Human Rights:

There are no implications arising from this report.

Data Protection Implications:

There are no implications arising from this report.

Climate Related Risks and Opportunities:

No specific or direct climate related risks and opportunities.

Section 17 Crime and Disorder Considerations:

There are no implications arising from this report.

Health Implications:

There are no implications arising from this report.

Title and Location of any Background Papers used in the preparation of this report:

Procurement Act 2023 previous Contract Procedure Rules.

Risk Assessment:

Call in and Urgency:

Is the decision one which Rule 14.7 of the Scrutiny Procedure Rules apply?

i.e., is the report exempt from being called in due to urgency (in consultation with C&I chairman)

Yes

No

Key Decision:

A matter which affects two or more wards, or has significant financial implications

Yes

No

1.0 Introduction and scope of new legislation

- 1.1 The withdrawal of the UK from the European Union (EU) provided the opportunity for central government to introduce new legislation governing public sector procurement and contract management, as our previous regulations (as detailed in the Public Contract Regulations 2015) were the enactment of an EU Directive.
- 1.2 The resulting Procurement Act received royal ascent in 2023 (with the provisions coming into effect on 28th October 2024) and requires our processes, policies, regulations, constitution and practice to be updated. In line with normal practice, central Government are releasing guidance documents periodically to supplement the Act and as such the changes proposed at this time are not exhaustive but are reflective of the latest guidance available. Additionally, new regulations detailed in the 'Provider Selection Regime 2024' (covering health and social care) came into effect on 1st January 2024 and we are also seeking to formalise the changes required by this legislation. There have been many delays to guidance launched and information available, so this covering report is based on the latest information available.
- 1.3 As the new legislation will not operate retrospectively, the Council's existing contracts, as well as procurements which are already underway, are unaffected and will continue to operate under regulations within the Public Contract Regulations (PCR) 2015. This will require the Council to operate under both sets of regulations for some time. The current 'Light Touch Regime' will also remain for certain social, health and education services. The proposed updates to the Constitution, CPPR's and working practices all reflect this position and the changes will apply only to commercial activity which commences from the end of October 2024. The Council has carried out a significant amount of procurement work to ensure that everything that could be procured under the old regulations could be.
- 1.4 Officers have carried out a review of the procurement pipeline. In the period between January and December 2025 there are X procurements that will need to operate under the new regulations. All other procurements are too small to be significantly impacted by the new regulations.
- 1.5 The aim of the legislation is to deliver a simpler, more transparent and efficient system for public sector procurement, that benefits both businesses and the public sector whilst remaining compliant with international obligations. The key objectives of the act are detailed below:

Greater value for money

Spending less, spending well and spending wisely to maximise public benefit through having regard to a new National Procurement Policy Statement which includes national and local objectives.

Increased transparency & integrity

Enabling scrutiny of public spending throughout the commercial lifecycle with new requirements to publish data and information during the procurement and contracting stages.

Simpler and more flexible process & practices

Helping remove barriers for small businesses and social enterprises and increase efficiency through a central platform - containing all opportunities in

one place and enabling suppliers to upload their details once for all public sector procurements.

- 1.6 The new commercial process places additional transparency requirements on the Council for large contracts. Further information on spends KPIs and contract management will need to be recorded on a publicly available Government portal. We have no contracts that currently fall under this regime, and we anticipate letting X contracts under this regime within the next 12 months.
- 1.7 The new Act only allows for two procurement routes being open (as now) and competitive flexible where the Council can design its own process. The Council is still able to access frameworks as it has always done, and the Council can use exception processes subject to its own governance and transparency arrangements. There are also amendments to Select Lists and Dynamic Purchasing systems, but it is highly unlikely that this authority would ever procure using these methods.
- 1.8 The Act encourages better use of early market engagement prior to procurements taking place and use supplier engagement to help shape the procedure, award criteria and timetable as well as the opportunity to explore more innovative solutions with the market.
- 1.9 The Act whilst retaining value for money at the core promotes that we evaluate and favour the Most Advantageous Tender (MAT) as opposed to the previous required to award to the Most Economically Advantageous Tender (MEAT). This enables local and national priorities to be considered more easily.
- 1.10 The Act assumes that there will be a strict assessment, management and mitigation of conflicts of interest in the procurement process whether these be actual, potential or perceived. The Council will continue to seek declarations of interest at all stages of the procurement process and mitigate risks with the Monitoring Officer where needed.
- 1.11 New transparency arrangements will require us to publish a wider range of commercial information which we do not routinely publish for our largest contracts. As further guidance on this is issued Finance, Procurement and Legal Services will work together to produce this. It includes the publication of contract, changes, modifications and terminations of significant contracts. Setting out KPIs for significant contracts and recording and publishing spend data.
- 1.12 There will be new grounds for excluding other suppliers connected with the bidding supplier to stop suppliers that fail dissolving the business and setting up in a new name. There will also be a national debarment list which will include suppliers to be excluded from all future public sector activity.

2.0 **Proposed Operating Practices under the new act.**

To date Procurement Lincs and our own officers have trained all staff carrying our procurements on navigating the new procurement act, further training will be required. Contracts that cannot be let under light touch processes (i.e., the most significant contracts) have been identified, all of these procurements will be delivered by our officers and Procurement Lincs staff. We have also strengthened or conflict of interest process. The attached contract procedure rules have been drafted for approval and a toolkit will be developed to enable staff to carry out effective and efficient procurement processes supported by specialists. An Internal Audit of procurement will take place in February 2025 and its findings will be reported to the Governance and Audit Committee who will also receive bi-annual reports on both implementation of the Act and Procurement Exceptions granted.

3.0 **Detailed revisions to the Contract Procedure Rules to comply with the Act.**

Updates to the Contract Regulations include:

- The requirement to comply with the Procurement Act 2023 and the health. Care Services (Provider Selection Regime) Regulations 2023.
- The need to have regard to new Procurement Objectives as set out in Procurement Act 2023.
- That conflict of interests must be proactively monitored pre and post. procurement and declarations made accordingly.
- The existence of the new competitive flexible procedure and the change in award criteria to “Most Advantageous Tender” for procurements issued on or after the 28 October 2024.
- Reference to the new Central Debarment List and that decisions as to which suppliers may be excluded from a procurement are to be made on a case - by- case basis.
- The requirement that all contracts awarded including those awarded via an Exception Report with a value of over £5000 must be recorded on the Council's Contract Register to be held by the Commercial Team including extensions.

The opportunity of updating Contract Regulations has been used so to further enhance existing wording in the Regulations including:

- Linking conflict of interest wording expressly to both Members and Officers Codes of Conduct, Councillor involvement in Commercial Transactions and the Gift and Hospitality Protocols in Part 5 of the Constitution.
- Additional clarificatory drafting in respect of reporting requirements for exceptions.

- Emphasise the need to contact the Procurement Officers in respect of all procurement activity for the Council.