

FINANCE, AUDIT & RISK COMMITTEE
17 January 2022

***PART 1 – PUBLIC DOCUMENT**

TITLE OF REPORT: UPDATED CONTRACT PROCUREMENT RULES FOR 2022/2023

REPORT OF THE LEGAL COMMERCIAL TEAM MANAGER

EXECUTIVE MEMBER: FINANCE AND IT

COUNCIL PRIORITY: BE A MORE WELCOMING AND INCLUSIVE COUNCIL

1. EXECUTIVE SUMMARY

1.1 This report sets out the proposed changes to the Contract Procurement Rules for review and referral that, in summary, seeks to make the following changes:

- Updates to reflect the restructure and corresponding changes in the Constitution.
- Update to section 6 and section 8 which amends the Go Local threshold from £50,000 to £100,000.
- Amending the internal procurement thresholds.
- Replacing relevant terminology since the UK withdrawal from the EU and reflecting new national procurement thresholds from January 2022.

2. RECOMMENDATIONS

2.1 That Committee considers the proposed changes and recommends their adoption to Full Council.

3. REASONS FOR RECOMMENDATIONS

That the Contract Procurement Rules are part of the Constitution (under Section 20) and are revised and updated periodically as part of the Council's governance and procurement review processes, contributing to effective organisational internal control.

4. ALTERNATIVE OPTIONS CONSIDERED

4.1 The option of not updating the Contract Procurement Rules would increase the risk of the Council not adhering to the latest procurement legislation and best practise and inconsistencies with the remainder of the Constitution.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

5.1 This report and appendices are being presented to FAR Committee for consideration, prior to referral to Council. Cabinet adopted a new Procurement Strategy for 2021-2022¹, with a stated aim looking to increase the go local policy to £100,000. There have also been cross party round table liaison on the Strategy which included with relevant Executive, Deputies and opposition Councillors in November. The Executive Member

¹ [CLICK HERE for Procurement page and Strategy](#)

and Deputy have been consulted on the proposals included in this report [and the suggested approach].

6. FORWARD PLAN

- 6.1 This report does not contain a recommendation on a key Executive decision and has therefore not been referred to in the Forward Plan.

7. BACKGROUND

- 7.1 The Contract Procurement Rules are reviewed on a periodic basis to ensure they remain relevant and appropriate to the Council's needs. This review has been conducted by the Contracts & Procurement Group, led by the Legal Commercial Team Manager and Service Director - Legal and Community.

- 7.2 The Rules have not been reviewed since the UK withdrew from the European Union on the 31st December 2020, as proposed potential changes had been consulted on from December 2020 and throughout 2021. The Government published a consultation paper on procurement reform post EU (Transforming public procurement) that ran from December 2020 – 10 March 2021. It was subsequently announced in the Queen's Speech in May, that a Procurement Bill would be published in the autumn (time allowing). This was not forthcoming. The Government also published a National Procurement Policy Statement in June 2021² which referred to the consultation. The Government's response to the consultation has just been published in December 2021³.

- 7.3 There continues to be a necessary and stated aim to bring forward new primary and secondary legislation. Such legislation will be considered once the Procurement Bill is published (and its implications for these Rules and the Strategy). In the meantime, to the extent relevant to this report the Government's summaries and responses to the consultation recognised that respondents wanted a number of improvements including awarding more contracts locally to assist SMEs; putting less emphasis on price and more on the suitability of the contract deliverability; and that local priorities and outcomes was a legitimate aim (therefore relevant to the proposed changes to the Go Local and change internal thresholds proposed).

8. RELEVANT CONSIDERATIONS

- 8.1. The key changes to the Contract Procurement Rules ("procurement rules") are provided at Appendix A. A summary of key changes within the new version of the procurement rules are outlined below.

Go Local:

- 8.2. Previously, the Go Local requirement applied to all contracts valued below £50,000, to first attempt to locate those goods, services or works from a supplier located within the North Herts District Council geographical area. Following adoption of the Procurement Strategy by Cabinet, subsequent cross party round table discussions with Members and consultation with the Contracts & Procurement Group, this figure has been amended to £100,000.
- 8.3. If the increase is approved, the "Go local" policy would require any officer seeking to acquire goods or services, for council use, with an aggregate contract value below

² [CLICK HERE Procurement Policy Note 05/21 National Procurement Policy Statement](#)

³ [CLICK HERE for Government's Consultation response](#)

£100,000, to first attempt to locate those goods, services or works from a supplier located within the North Herts Council geographical area. The method of acquisition would be in accordance with the current NHC Contracts and Procurement Rules (see below). If the “Go local” requirements cannot be applied, because, for instance, there is no suitable supplier within the area, then the process would have been exhausted and considered not to be appropriate and explained as such within the usual procurement process. The overarching principle of this requirement would be that, for appropriate procurements, NHC will aim to use local suppliers for the provision of goods, services and works, having full regard for the principles of “best consideration” and others within the overall Strategy (such as commercialism, community and social benefit and in the light of the pandemic and post EU exit). Members should note, however, that the Council would still be required to publish every tender over £25,000 on the Governments Find a Tender site⁴

- 8.4. It is suggested that if Members are uncomfortable with such a suggested increase for the Go local approach this could be for a year (so for January 2022-January 2023) with that as a specific area of review for this Committee/ Council when the Rules are next reviewed, or when legislation is enacted, and further changes required (whichever is the sooner). Currently local spend level data is collected and has traditionally been in the region of 15-17%. Certain spend areas have been problematic (for example IT equipment) and increases locally and overall spend would be a potential consideration.

Threshold Amendments from £10,00 to £25,000:

- 8.5. The Contract Value determines which of the four levels of the Rules are applicable: one quote up to £5,000, two between £5,000 - £10,000 and three for £10,000 - £100,000/ and or appropriate competitive tender arrangements above that – noting that all contracts above £25,000 must be published on the Governments ‘Find a Tender’ site, which the Council does via its procurement software.
- 8.6. In the light of the Strategy and following consultation with the Members and the Contracts & Procurement Group, it was felt that a simplified system regarding the internal procurement thresholds would assist the local business community and also internal officers. It is also worth noting that the levels have not increased for a number of years. The proposal is that there will be one quote requirements governing goods, services and works to £25,000, three between £25,000 - £100,000 and competitive tender above that.

Terminology:

- 8.7. Key terminology has been amended to reflect the changes which have been brought about by the UK withdrawal from the European Union. References to OJEU have been replaced with Find a Tender. If contract spend is over the current WTO GPA threshold, tenders legally need to be posted on Find a Tender.

9. LEGAL IMPLICATIONS

- 9.1 Under section 10.1.5 (g) of the Finance Audit and Risk Committee’s terms of reference it has remit “to maintain an overview of the council’s constitution in respect of Contract Procurement Rules consider any major changes and make recommendations to Council for approval”. Full Council adopts and changes the Constitution and documents such as the Contract Procurement Rules that are part of the Constitution.

⁴ Publication obligations for below-threshold procurements apply to sub-central authorities and NHS Trusts where the contract value is at least £25,000⁵ net of VAT regulation 109(2) Public Contract Regulations 2012 as amended.

- 9.2 The Council must comply with the Public Contracts Regulations 2015 for all procurements above the EU thresholds. Below these thresholds, the procedures to adopt are largely for the authority to decide; the 2015 Regulations introduced some limited controls on procurements below threshold as well as authority for the Cabinet Office to introduce statutory guidance for below threshold procurements.
- 9.3 The overriding principles of transparency, non-discrimination, mutual recognition and equal treatment applies to all procurements, where there is evidence of cross-border interest, irrespective of their value. Having a robust set of Contract Procurement Rules should ensure compliance with these obligations and reduce the risk of successful legal challenge to a procurement exercise.
- 9.4 Section 135 of the Local Government Act 1972 confirms that Councils must make standing orders with respect to the making of contracts. Section 37 of the Local Government Act 2000 confirms that a Council's constitution must contain its standing orders.

10. FINANCIAL IMPLICATIONS

- 10.1 These are procedural matters that have no direct financial impact upon the Council's revenue or capital budgets.
- 10.2 Increasing the threshold at which multiple quotes are required, adds additional financial risk as (where contracts are awarded solely or mainly on price) receiving more quotes means the potential for a lower price is increased. However as detailed in the HR implications, this is off-set by a reduction in the time involved in the contracting process. It is also expected that the risk will be mitigated by: using experience to determine the best contractors to get a quote from, getting more quotes where there are concerns over the value for money being achieved (the regulations only set the minimum number required), budgetary control and management oversight.
- 10.3 Increasing the threshold to which "go local" applies also increases the financial risk. Any policy which prioritises a factor above or alongside price, could lead to increased costs. However, the change is in line with the established Council policy and would be expected to support the overall local economy.

11. RISK IMPLICATIONS

- 11.1 The process of assessing the Council's governance arrangement enables any areas of weakness to be identified and improvement actions put in place, therefore reducing the risk to the Council.
- 11.2 Adoption of the proposed amendments will contribute to the Council's internal control environment and the management of risk, as well as enhancing the effectiveness of the procurement process. Although the suggested approaches could be considered riskier, for example, in terms of fewer control mechanisms being in place for higher contract values, this is outweighed by the benefits to contract managers and local businesses. This is also balanced by a suggested review period of a year and or when new legislation is enacted.

12. EQUALITIES IMPLICATIONS

- 12.1. In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.2 The Contract Procurement Rules in themselves do not generate equalities implications, however, their application when considering specific procurements of goods and services, or works, must take full account of this legislation.

13. SOCIAL VALUE IMPLICATIONS

- 13.1 As the recommendations made in this report do not, in themselves, constitute a public service contract, the measurement of 'social value' as required by the Public Services (Social Value) Act 2012 need not be applied. However, the application of the Contract Procurement Rules must take full account of this requirement when procuring a public service contract within specified parameters as laid out in the Social Value Act. Social Value is one of several factors to be considered when purchasing goods and services, or entering into a works contract. The suggested changes to the Go local policy, however, will have potential social value benefits to the community.

14. ENVIRONMENTAL IMPLICATIONS

- 14.1. There are no known Environmental impacts or requirements that apply to this report.

15. HUMAN RESOURCE IMPLICATIONS

- 15.1 For the employees of the Council the Organisational Values and Behaviours and Employee Handbook provide further advice on the standards we expect from our staff.

16. APPENDICES

- 16.1 Appendix A – Contract Procurement Rules showing track changes.

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18. BACKGROUND PAPERS

18.1 Constitution section 20: [[CLICK HERE](#)]