

***PART 1 – PUBLIC DOCUMENT**

TITLE OF REPORT: UPDATED CONTRACT PROCUREMENT RULES FOR 2023/2024

REPORT OF THE CONTROLS, RISK AND PERFORMANCE 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 Procurement Function moving from Legal to the Resources Directorate
- ☐ Update to section 3 to add guidance relating to the treatment of below threshold Concession Contracts.
- ☐ Clarifying Officer responsibilities with regard to posting award notices and retaining signed contracts on the E-Sourcing system
- ☐ Adding guidance on TUPE requirements.

2. RECOMMENDATIONS

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

3. REASONS FOR RECOMMENDATIONS

3.1 The Contract Procurement Rules (CPR's) are part of the Constitution (under Section 20) and must be regularly reviewed and updated as part of the Council's governance and procurement review processes, contributing to the Council's system of effective internal control.

4. ALTERNATIVE OPTIONS CONSIDERED

4.1 Not updating the CPRs would increase the risk of non-compliant Procurement at the Council which could lead to procurement challenges and increased costs.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

5.1 This report and appendices are being presented to FAR Committee for consideration, prior to recommendation to Council. The proposed changes have been approved by the Council's Contract and Procurement Group, chaired by the Service Director, Resources, and attended by the Executive Member for Finance and IT, who has responsibility for Procurement.

6. FORWARD PLAN

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

7. BACKGROUND

- 7.1 The CPRs are reviewed on a periodic basis to ensure they remain relevant and appropriate for the Council's needs. This review has been undertaken by the Contract and Procurement Group, led by the Service Director, Resources and the Controls, Risk and Performance Manager.
- 7.2 This is a light touch review to update on changes to the management of the Procurement function and other guidance for Officers to ensure that procurement requirements are met.
- 7.3 Next year, if the new Procurement Bill is published (which will have implications for these Rules and the Procurement Strategy) there may be a requirement for greater changes, as we will need to update our internal guidance to match the new Regulations in force. If the Bill is passed into law, we will have a six-month period in which to implement the changes.

8. RELEVANT CONSIDERATIONS

- 8.1. The changes to the Contract Procurement Rules are provided at Appendix A, detailing the proposed tracked changes. A summary of these proposed key changes is outlined below.

8.2 Management of the Procurement Function

Procurement previously sat under the Legal and Community Directorate from 2019 to 2022. In July 2022, the management of the procurement function transferred back to the Resources Directorate. A full-time procurement officer was appointed at the same time. Any reference to guidance on the procurement process, the procurement documents and interpretation of the rules has been updated to show that these functions now sit under Procurement.

8.3 Concession Contracts below Regulated Threshold

Section 3.10 of the rules currently states that the rules do not apply to Concession Contracts. It sets out the regulations to be followed for Concession Contracts above the regulated amount (currently £5,336,937.00), however, it does not mention what rules should be followed for Concession Contracts below this value as legislation is silent on below threshold Concession Contracts. This change seeks to address the gap in guidance for Officers.

8.4 Posting Award Notices

The current CPRs do not specify that Contract award notices need to be posted even when contracts have not been advertised. Suggested changes make it clear that even if a Framework agreement, Single Tender or Waiver route is taken, our transparency obligations mean that an award notice must be posted for Contracts over £25k in value.

8.5 Clarification on the Standstill Period

A standstill period must be observed between notifying suppliers of the outcome of a procurement and the contract award for all procurements over £100k. The proposed additional guidance gives Officers more detail on how this period should be calculated.

8.6 Requirement to upload a signed copy of Contracts over £25k into E-Sourcing

The suggested change means that the current requirement for Officers to retain a signed copy of the contract is set out in the rules as part of the Table A guidance.

8.7 TUPE requirements

There are specific rules which must be followed regarding contracts which may have TUPE implications. The rules have been updated to ensure that Officers know they will need to consult with Legal and HR, if they believe their contract will involve this.

8.8 Follow Up

At the last review of the CPRs Members requested that the impact of increasing the threshold for Go Local (from £50k to £100K) should be monitored and reported back. At the time of writing this report, our spend data shows that spend with Local Suppliers is currently at 12% of overall spend, which is slightly down on the previous year's figures. However as spend has increased on some of our larger contracts, the local spend will unfortunately reduce as a percentage of the whole. As of October 2022, out of a total of 1015 active suppliers, 233 of the suppliers were within the North Hertfordshire postcodes. This equates to 22.96% of our supplier base. We will continue to monitor and report on spend with local suppliers via the Contract and Procurement Group.

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 and Financial Regulations, 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.

9.2 The Council must comply with the Public Contracts Regulations 2015 for all procurements above the relevant thresholds. Below the thresholds, the Council's own rules will apply. The 2015 Regulations introduced some limited controls on procurements below threshold, as well as the 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 requires the Council to make standing orders with respect to the making of contracts for the supply of goods or services or for the execution of works. 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.

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.

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, victimization, 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 a works contract.

14. ENVIRONMENTAL IMPLICATIONS

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

15. HUMAN RESOURCE IMPLICATIONS

- 15.1 The structural change has already taken place moving Procurement to Finance. There may be a requirement for knowledge transfer between managers in the 2 Directorates and associated documents to be updated, such as Job Descriptions.

16. APPENDICES

- 16.1 Appendix A – Contract Procurement Rules .

17. CONTACT OFFICERS

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18. BACKGROUND PAPERS

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

