

FINANCE AUDIT & RISK COMMITTEE

4 September 2024

*PART 1 – PUBLIC DOCUMENT

TITLE OF REPORT: UPDATED CONTRACT PROCUREMENT RULES FOR 2024 - 2025

REPORT OF: THE CONTROLS RISK & PERFORMANCE MANAGER

EXECUTIVE MEMBER: FINANCE & IT

COUNCIL PRIORITY: SUSTAINABILITY r

p

1. EXECUTIVE SUMMARY

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.

- Rewrite the existing rules, to bring the Contract Procurement Rules in line with legislative changes to take place from 28 October 2024.
- Set out our commitment to ensure we deliver value for money, maximise public benefit, share information to help suppliers understand procurement policies, act with integrity and ensure transparency in our procurement processes.

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 (CPRs) are part of the Council Constitution (under Section 20) and must be regularly reviewed and updated as part of the Council's governance and procurement review processes. This contributes to the Council's system of effective internal control.
- 3.2. The new CPRs reflect a significant update in line with the requirements of the Procurement Act 2023, incorporating detailed procedural guidance, and enhanced compliance and transparency measures. These changes aim to improve the efficiency, accountability, and effectiveness of the Council's procurement activities.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1. No alternative options have been considered. Not updating the CPRs would greatly 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 referred to in the Forward Plan.

7. BACKGROUND

- 7.1. The Procurement Act 2023 received Royal Assent on 26 October 2023, and will come into force on 28 October 2024.
- 7.2. Once implemented, the Procurement Act 2023 will repeal the Public Contracts Regulations 2015, the Concessions Contracts Regulations 2016 and the Utilities Contracts Regulations 2016, to become the law that regulates procurement in the UK.
- 7.3. The CPRs have been completely rewritten, to align with the new Procurement Act, and to ensure that they continue to be relevant and appropriate for the Council's needs. The update has been undertaken by the Contract and Procurement Group, led by the Service Director – Resources, and the Controls, Risk and Performance Manager.
- 7.4. The current approved CPRs will remain in force until the new regulations take effect. Any procurements started before the 28 October 2024 will continue to be covered by the current approved CPRs. This means that for a period of time, we will need to apply dual regulations. Any extensions or variations to contracts already in place as 28 October 2024 will remain covered by the previous Regulations. Legal will work with Officers to ensure the appropriate regulations are applied, should any contract variations be required.

8. RELEVANT CONSIDERATIONS

- 8.1. Since the Procurement Act received Royal assent in October 2023, the Government has published clear guidance on what the new Procurement Act is expected to achieve.
- Cutting red tape and supporting innovation
 - Improving transparency by creating a fully open and transparent system, meaning everyone has access to public procurement data.
 - Faster competition processes for emergency buying, allowing buyers to meet urgent needs quickly and efficiently.
 - Simplifying the process of working with the Public Sector, supporting more SME's to bid for contracts.

- 8.2 There are a number of key changes to the procedures the Council will need to follow when the Procurement legislation comes into effect at the end of October. The main changes are outlined below.
- 8.3 **Pre Market Engagement (s.9).** The draft new CPRs strengthen the guidance on use of Pre-Market Engagement. This helps to ensure greater transparency and inclusivity in the procurements we undertake.
- 8.4 **Award and Evaluation Criteria (s.10)** This section includes guidance which reflects the move away from Most Economically Advantageous Tender (MEAT), and the move toward the more flexible award criteria of Most Advantageous Tender (MAT). This will allow the Council more flexibility in including Social Value and Environmental considerations when deciding on the outcome of a procurement.
- 8.5 **Transparency Requirements (s. 17) .** The Act introduces a higher level of transparency in procurement planning and notification to market. The Council will be required to publish a Procurement Pipeline, and an increased number of Transparency Notices to ensure that Suppliers are aware of any opportunities to contract with us at the earliest possible time. There will also be an obligation to publish contract payment notices and payment performance notices.
- 8.6 **Above Threshold Tendering Options (s. 22)** The current permitted tendering options of Competitive Procedure with Negotiation, Competitive Dialogue and Innovation Partnership will no longer exist under the new regulations. These have been replaced with a new Competitive Flexible Procedure. (s 2.2) This will allow the Council the flexibility to design a multi- stage procurement procedure, suited to the more complex procurements we undertake. However, as these procedures are more resource intensive than the traditional Open Tender, the CPRs will require Cabinet approval to be sought if more than the traditional 2 stages are proposed.
- 8.7 **Changes to Works Thresholds.** (s. 19) The tendering options for estimates, quotations, tenders and above threshold tenders have been changed in relation to works. The change is to reflect the increased cost of works and ensures that relatively low value works are able to be procured promptly, whilst still protecting the Council's interests. Estimate levels did not previously mention works, this has now been added with a proposed threshold of up to £100k. Quotation levels were previously set at between £50k - £250k. It is proposed to increase these to between £100k and £499,999. Tender levels were previously set as anything above £250k. It is proposed that this is increased to between £500k and £5,372,608 (or the current regulated level).
- 8.8 **Social Value and Environmental Considerations.** (S.19) – this has been incorporated into the Tendering Option requirements at each level of spend to ensure that officers consider for each procurement they undertake.
- 8.9 **Key Performance Indicators(S18-19)** – guidance has been added on the use of KPI's in contracts. The new regulations require that we will need to publish Supplier performance for contracts over £5m in value. Embedding the use of KPIs at the pre procurement stage will ensure that we are ready to meet that requirement.

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 overriding principles of transparency, non-discrimination, mutual recognition, and equal treatment applies to all procurements, 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.
- 9.3. 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.
- 9.4. It is anticipated that central government may issue additional guidance closer to the enforcement date of the Procurement Act 2023. The Council should be prepared to review their procurement guidance alongside the amended the Contract Procurement Rules to ensure full compliance with this forthcoming guidance. Officers should remain vigilant for any updates or clarifications that could affect the interpretation and application of the new rules.
- 9.5. During the transition to the new regulatory framework, there will be a period where dual regulations will apply. Procurements commenced prior to 28 October 2024 will continue to be governed by the existing regulations (Public Contracts Regulations 2015, etc.), whereas procurements initiated thereafter will be subject to the new Procurement Act 2023. Legal and Procurement teams will need to manage this transition carefully to avoid compliance risks and ensure that the correct legal framework is applied at all stages of the procurement process.

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. Good Risk Management supports and enhances the decision-making process, increasing the likelihood of the Council meeting its objectives and enabling it to respond quickly and effectively to change. When taking decisions, risks and opportunities must be considered.
- 11.2. The process of assessing the Council's governance arrangements enables any areas of weakness to be identified and improvement actions put in place, therefore reducing the risk to the Council.
- 11.3. The proposed draft CPRs have been updated in order to incorporate all of the new requirements under the regulations to take effect from 28 October. These have been

updated and reviewed by Procurement and Legal to ensure all areas are covered. Training for Officers on the changes to the rules will take place once the draft CPRs have been approved. This will help to ensure that the risk of non-compliance is reduced as far as possible.

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. Equal treatment of suppliers is embedded throughout the CPRs.

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 has been embedded throughout the Council's CPR's.

14. ENVIRONMENTAL IMPLICATIONS

- 14.1. There are no known Environmental impacts or requirements that apply to this report. The move from MEAT to MAT criteria will allow for the inclusion of environmental considerations in the procurement process.

15. HUMAN RESOURCE IMPLICATIONS

- 15.1 There are no HR implications relating to this report.

16. APPENDICES

- 16.1 Appendix A – Draft Section 20 – Contract Procurement Rules
Appendix B – Comparative Changes document

17. CONTACT OFFICERS

- 17.1 Ian Couper, Service Director, Resources, ian.couper@north-herts.gov.uk x4243

Rachel Cooper, Controls, Risk & Performance Manager, Rachel.cooper@north-herts.gov.uk x 4606

Rizwan Sarwar, Procurement Officer, Rizwan.sarwar@north-herts.gov.uk x4392

Isabelle Alajooz, Legal Manager & Deputy Monitoring Officer, Isabelle.alajooz@north-herts.gov.uk x 4346

Reuben Ayavoo, Policy & Communities Manager, reuben.ayavoo@north-herts.gov.uk x 4212

18. BACKGROUND PAPERS

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