

**TITLE OF REPORT: Amendments to the Contract Procedure Rules****REPORT OF: Mike Barker, Strategic Director, Corporate Services and Governance**

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**Purpose of the Report**

1. This report seeks to amend the Contract Procedure Rules to align to the Procurement Act 2023.

**Background**

2. The Procurement Act 2023 is a new piece of legislation aimed at reforming public procurement procedures in the UK and will replace the Public Contract Regulations 2015 when it comes into effect from 28<sup>th</sup> October 2024.
3. The Act is intended to make public procurement more efficient, transparent, deliver better value for money and address national and local priorities; however it is hugely burdensome for Contracting Authorities.
4. Some of the change is unknown as guidance is still being issued by Government and therefore there is a proposal for Corporate Commissioning and Procurement to undertake all tender processes and oversee all procurement activities for contracts exceeding £30,000 including VAT for an initial 12 month period until the changes are better understood.
5. A Members Seminar will be held in the next couple of months to explain the changes in more detail, however in the meantime the Council Procedure Rules must be amended to align with the new legislation with effect from 28<sup>th</sup> October 2024.

**Proposal**

6. The Contract Procedure Rules are amended to align to the new legislation.

**Recommendations**

7. It is recommended that
  - (i) The Contract Procedure Rules as set out at Appendix 2 are implemented from 28 October 2024;
  - (ii) A Members Seminar is organised as soon as possible to explain in more details the new legislation.

for the following reason(s)

- (i) To align the Contract Procedure Rules with the Procurement Act 2023;
- (ii) To provide Councillors with a greater understanding of the requirements of the new legislation and its potential impact on the Council.

## APPENDIX 1

### Policy Context

1. The Procurement Act 2023 is a new piece of legislation aimed at reforming public procurement procedures in the UK and will replace the Public Contract Regulations 2015 when it comes into effect from 28<sup>th</sup> October 2024.
2. This legislation was proposed by the previous Government and seen as an opportunity to improve and simplify procurement activity following Brexit. It is believed that the New Government are currently reviewing the new legislation and therefore there could be some last minute amendments to Government guidance issued just before its implementation.

### Background

3. Government have suggested that the Act is intended to make public procurement more efficient, transparent, deliver better value for money and address national and local priorities; however it is hugely burdensome for Contracting Authorities with an increase in number of notices to be issued through the procurement and contract management cycle and the publication of more information.
4. Some of the change is not known in detail as guidance is still being issued by Government and therefore there is a proposal for Corporate Commissioning and Procurement to undertake all tender process and oversee all procurements exceeding £30,000 including VAT for an initial 12 month period until the changes are better understood.
5. A Members Seminar will be held in the next couple of months to explain the changes in more detail, however in the meantime the Council Procedure Rules must be amended to align with the new legislation with effect from 28th October 2024.

### Consultation

6. The council has responded to consultation collectively through the North East Procurement Organisation (NEPO) during the development of the new legislation.

### Alternative Options

7. There are no alternative options that will enable the Council to remain legally compliant in terms of its procurement activity.

### Implications of Recommended Option

1. **Resources:**

- a) **Financial Implications** – The implementation of the new legislation is likely to result in an increased workload relating to procurement activities, and processes could take longer and increase the cost of procuring goods, works and services. The potential for additional costs are being considered but until all of the guidance has been released it is difficult to assess.
  - b) **Human Resources Implications** – It is proposed that 2 FTE's be seconded into the Procurement Service from elsewhere in the Council to help with the additional workload for a 12 month period.
  - c) **Property Implications** - There are no property implications resulting from this report.
2. **Risk Management Implication** - The amendments to the Contract Procedure Rules are intended to minimise the risk of procurement challenge and enable the Council to remain legally compliant.
  3. **Equality and Diversity Implications** - There are no Equality and Diversity Implications resulting from this report.
  4. **Crime and Disorder Implications** – There are no Crime and Disorder Implications resulting from this report.
  5. **Health Implications** - There are no Health Implications resulting from this report.
  6. **Climate Emergency and Sustainability Implications** - There are no Climate Emergency and Sustainability Implications resulting from this report.
  7. **Human Rights Implications** - There are no Human Rights Implications resulting from this report.
  8. **Ward Implications** - There are no Ward Implications resulting from this report.
  9. **Background Information:** The Procurement Act 2023.

**CONTRACT PROCEDURE RULES**  
**(Updated from 28 October 2024)**

**1. Introduction and Interpretation**

1.1 These Rules constitute the Council's standing orders on contracts for the purpose of section 135 of the Local Government Act 1972.

1.2 The following words within the Rules shall be interpreted as follows:

1.2.1 "Act" means the Procurement Act 2023 and any subsequent amendments.

1.2.2 "Approved Electronic System" means the North East Procurement Organisation procurement portal or any other electronic system approved in writing by the Strategic Director, Corporate Services and Governance.

1.2.3 "Associated Company" means any company or limited liability partnership to which the Council may directly award contracts pursuant to the exemptions set out in the Regulations, or the Act or any corresponding provision of any successor legislation.

1.2.4 "Contract" means a contract for the provision of works, goods or services for consideration to the Council by a Third Party unless a particular Rule makes it clear that a different meaning is intended.

1.2.5 "In-house Services" means services or works which can be delivered to the Council by an existing directly employed workforce or Associated Company.

1.2.6 "Local Contractor" means any Third Party whose principal place of business is in the borough of Gateshead or with premises in the borough of Gateshead in respect of which business rates are paid to the Council.

1.2.7 "Provider Selection Regime" means the Health Care Services (provider Selection Regime) Regulations 2023 and any subsequent amendments.

1.2.8 "Regulations" means the Public Contracts Regulations 2015 (Statutory Instrument

1.2.9 Instrument 2015 No. 102) and any subsequent amendments thereto.

1.2.10 "Third Party" means any economic operator, contractor, service provider, supplier, consultant, firm, company (excluding an Associated Company) partnership or a sole trader external to the Council;

1.2.11 "Threshold" means the thresholds prescribed in Regulation 5 of the

Regulations or [Schedule 1](#) of the Act and any subsequent amendments.

- 1.3 These Rules apply to all procurement for the provision of works, goods or services by or from a Third Party. For the avoidance of doubt, these Rules do not apply to the commissioning of In-house Services, although any subcontracting arrangements are subject to these Rules
- 1.4 All procurement activity and Contracts must comply with:
  - 1.4.1 all applicable statutory provisions, including but not limited to the Act, the Regulations, and the duty to secure best value under the Local Government Act 1999;
  - 1.4.2 the Council's Constitution including the Codes of Conduct and Scheme of Delegation and Financial Procedure Rules;
  - 1.4.3 any Council Procurement Protocols or Guidance proposed by the Service Director, Corporate Commissioning and Procurement and approved by the Strategic Director, Corporate Services and Governance.

and where there is a conflict between any of the above, in order of precedence as listed.

## **2. Exceptions to these Rules**

- 2.1 Every Contract will comply with these Rules, unless:
  - 2.1.1 the Cabinet authorises an exception, or
  - 2.1.2 the matter is so urgent that it is not feasible to comply, in which case the officer concerned will report the reasons to the next meeting of the Cabinet, and the reasons for it will be recorded in the minutes of the Cabinet.
- 2.2 Rules 3 to 11 do not apply to a contract entered into by a school operating a delegated budget under the School Standards and Framework Act 1998. Schools must refer to the School Manual of Financial Procedures for Rules relating to procurement and contracting with a Third Party.

## **3. Procurement Principles**

- 3.1 Subject to Rule 2 and to the exceptions at Rule 5.2.6 and 5.2.7, no Contract exceeding £500,000 excluding VAT in value shall be let without prior approval of the Cabinet, such approval to be in the form of either:
  - 3.1.1 an authorisation to invite tenders in accordance with Rule 6 or to conduct some other procurement process in accordance with these rules and to award the Contract to the economic operator submitting the most advantageous tender as determined by the Service Director, Corporate Commissioning and Procurement in accordance with the stated terms of the

tender or other process and, where applicable, the Act; or

3.1.2 an authorisation subsequent to the conduct of a tendering process or other procurement process in accordance with these Rules to award the Contract to the economic operator that has submitted the most advantageous tender in accordance with the stated terms of the tender or other process and, where applicable, the Act.

3.2 All Contracts exceeding a total value of £30,000 including VAT will be procured in accordance with directions of the Service Director, Corporate Commissioning and Procurement who shall be instructed at the earliest opportunity, unless the Strategic Director, Corporate Services and Governance authorises an exception.

3.1 Regard must be had to the potential consolidation of Contracts for works, supplies or services of a similar nature which are likely to be carried out in connection with a particular projects or services in order to achieve the best value for money, and in accordance with [Schedule 3](#) of the Act.

#### **4. Restrictions on Contracts for Work That Can Be Carried out In House and for Services of a Professional or Technical Nature**

4.1 Unless Cabinet authorises an exception in writing:

4.1.1 No Contract for In-house Services may be entered into or offered for tender unless the Strategic or Service Director responsible for the delivery of that In-House Service has first been offered the opportunity to negotiate to perform the services and either

4.1.1.1 the Strategic or Service Director responsible for the In-House Service agrees in writing that the Contract should be entered into or offered; or

4.1.1.2 agreement cannot be reached on a reasonable price or timescale for the performance of the services by the Associated Company or in-house team.

4.1.2 No Contract for services of a professional or technical nature shall be entered into without prior consultation with and approval of the Strategic Director with responsibility for the relevant Service as set out in Article 13 of this Constitution and the relevant Strategic Director shall determine the scope of the services to be obtained (including the content of any service specification) and shall provide the necessary resources to ensure the provision of such professional or technical support as is necessary to enable the Contract to be entered into.

#### **5. Procurement Requirements**

5.1 Subject to Rule 2, no Contract may be made, unless:

5.1.1 tenders have been invited in accordance with Rule 6; or

- 5.1.2 Cabinet has decided that the works, supplies or services in question should be procured through a partnership arrangement, provided that the Strategic Directors of Corporate Services and Governance and Resources and Digital are satisfied with the procedures for procurement and with the terms of the contract; or
  - 5.1.3 the works, supplies or services, in question are to be purchased through a framework or other arrangement entered into by the Council; or the works, supplies or services, in question are to be purchased through any other bona fide public sector framework arrangement set up by a local authority, a government department or other public body or central purchasing body and the use of the framework arrangement has been approved by the Service Director, Corporate Commissioning and Procurement.
- 5.2 Subject to the requirements of the Act, the requirements under Rule 5.1 do not apply to a Contract:
- 5.2.1 below £30,000 including VAT in value provided that value for money can be demonstrated, using frameworks or DPS's where they exist, and where they do not exist or are not suitable, consideration has been given whether to obtain competitive quotations using the Approved Electronic System, from at least four contractors, or if this is not possible, from all capable contractors. Local Contractors who can fulfil the requirement of the Council should be invited to submit a quotation;
  - 5.2.2 for goods purchased in a public market or at auction;
  - 5.2.3 for a work of art or museum specimen;
  - 5.2.4 for goods, works or services which are obtainable only from one contractor;
  - 5.2.5 for the placement of individuals in private residential or nursing homes where the Strategic Director, Children, Adults and Families considers such a Contract to be in the best interests of an individual provided the cost of the placement is within existing budgetary provision, and has been let in accordance with the Act, or the Provider Selection Regime where applicable;
  - 5.2.6 for social care or educational services (including but not limited to domiciliary care, and day care services) to be provided to an individual or a household where the Strategic Director, Children, Adults and Families considers such a Contract to be in the best interests of an individual provided the cost of the Contract is within existing budgetary provision, and has been let in accordance with the Act or the Provider Selection Regime, where applicable;
  - 5.2.7 with OFSTED for the inspection of a school;



- 5.2.8 with Care Quality Commission under section 85 (1) of the Health and Social Care Act 2008;with Driver and Vehicle Licensing Agency and/or Driver and Vehicle Standards Agency with regard to Council owned or operated vehicles;
- 5.2.9 for the execution of mandatory works by statutory undertakers, where the statutory undertaker is the only body which can perform the works. (e.g. Northumbria Water specifically for water and sewerage infrastructure works, Northern Powergrid specifically for electricity infrastructure works, Network Rail specifically for works affecting the railway infrastructure etc.);
- 5.2.10 which forms part of a serial programme, in respect of which tender may be invited from a contractor which won the Contract for an earlier phase of the work provided that the combined value does not exceed the relevant Threshold;
- 5.2.11 which may be awarded in accordance with [Schedule 5](#) of the Act.
- 5.3 Any exemptions under Rule 5.2.1 to 5.2.12 must be recorded in writing, detailing the reasons for the application of the exemption and signed and dated by the relevant Strategic Director/ Service Director and the Service Director, Corporate Commissioning and Procurement.
- 5.4 No member of the Council will enter either orally or in writing into any Contract on the Council's behalf.

## **6. Invitations to Tender**

- 6.1 Where a Contract is to be procured by a tender, the Cabinet, or the Service Director, Corporate Commissioning and Procurement through this delegation, will adopt one of the following procedures:
  - 6.1.1 Tenders may be invited by the Service Director, Corporate Commissioning and Procurement via the Approved Electronic System in accordance with the Act.
  - 6.1.2 If the Contract value is below the relevant Threshold as set out in [Part 6](#) of the Act, tenders may be invited by the Service Director, Corporate Commissioning and Procurement ensuring that where local contractors can fulfil the requirements of the Contract, they are encouraged to participate in the tender process.

6.1.3 Where the Contract forms part of a serial programme, a tender may be invited from a contractor who won the contract for an earlier phase of the work provided the combined value does not exceed the relevant Threshold.

6.1.4 A tender may be invited from a contractor already engaged by the Council, if that is in the Council's best interest provided that the combined value does not exceed the relevant Threshold and does not conflict with [Schedule 6](#) of the Act that contains below threshold provisions.

6.2 The invitation to tender will specify that all tenders must be submitted electronically through the Approved Electronic System unless it is not appropriate in the circumstances to do so in which case the invitation to tender shall specify clearly the alternative submission method to use and the timescales must adhere with [Chapter 6, Regulation 54](#) of the Act.

## **7. Opening of Tenders**

7.1 All electronic tenders shall be held securely and unopened until after the time limit set for submitting them has expired.

7.2 All electronic tenders and all envelopes containing tenders for the same contract shall as far as possible be opened at the same time.

7.3 Any tender received after the deadline for the receipt of tenders cannot be considered, unless the other tenders have not yet been opened and the Strategic Director, Corporate Services and Governance is satisfied that:

7.3.1 in the case of an electronic tender, the tender could not have been received by the deadline for reasons outside the tenderer's control; or

7.3.2 in the case of a paper-based tender, the tender was posted in sufficient time for it to have been received by the deadline in the ordinary course of post.

## **8. Evaluation of Tenders**

8.1 All tenders must be evaluated in accordance with the provisions of the Act and all tenders and quotations must aim to secure a Contract that delivers value for money and maximises public benefit. The Service Director, Corporate Commissioning and Procurement will manage all tender evaluation processes.

8.2 Award criteria must be clearly set out in the tender documentation together with the weighted scoring methodology.

8.3 All other tenders for Contracts up to £500,000 excluding VAT in value may be accepted by a manager in consultation with the Service Director, Corporate Commissioning and Procurement.

## **9. Alterations**

- 9.1 Where a tenderer identifies an error in its tender after submission but before the closing date for receipt of tenders, it may submit a revised tender. In such a case only the latest tender submitted will be evaluated.
- 9.2 Where an examination of competitive tenders reveals an error or discrepancy which would affect the sum payable by or to the Council, in a tender which might otherwise be accepted, the tenderer must be given the opportunity of confirming or withdrawing its tender. Where the Strategic Director, Corporate Services and Governance is satisfied that the error or discrepancy is an arithmetical error, the tenderer may be given the opportunity to correct it.

## **10. Form and Content of Contracts**

- 10.1 No Contract above £30,000 including VAT in value shall be entered into unless the form and content has first been approved by the Strategic Director, Corporate Services and Governance or on his/her behalf pursuant to a written delegated authority and must be executed on behalf of the Council by the Strategic Director, Corporate Services and Governance or on his/her behalf pursuant to a written delegated authority.
- 10.2 Every such Contract will specify the work to be carried out, or the goods or services to be provided, the price to be paid (including any discounts), and the timetable for performing the contract.
- 10.3 All Contracts will include KPI's and have appropriate Contract Management arrangements in place, unless authorised in writing by the Service Director, Corporate Commissioning and Procurement. Where KPI's must be published for contracts where the total contract value exceeds £5m including VAT, the Service Director, Corporate Commissioning and Procurement will facilitate their publication.
- 10.4 Where a Strategic Director considers that the Council should require security for the performance of a contract above £100,000 in value, he/she will, after consulting the Strategic Director, Resources and Digital and the Strategic Director, Corporate Services and Governance, specify in the conditions of tender the nature and amount of the security (whether a bond or otherwise).

## **11. Non-Commercial Matters**

- 11.1 When dealing with any aspect of contracting the Cabinet, any committee or other body of the Council, or manager acting under delegated powers, must not take account of matters defined as 'non-commercial' by Section 17 of the Local Government Act 1988 as amended by the Equality Act 2010 and the Public Services (Social Value) Act 2012  
<http://www.legislation.gov.uk/ukpga/1988/9/section/17>.

## **12. Termination of Contracts**

- 12.1 No Contract shall be terminated early without prior consultation with and agreement in writing from the Strategic Director, Corporate Services and Governance and Strategic Director, Resources and Digital to understand the legal and financial impact of the termination and to ensure that appropriate notices are published.

## **13. Invitation and Opening of offers for the purchase of Council Land or Buildings**

- 13.1 Where Council land or buildings are to be sold by sealed offer the invitation must state that offers are to be submitted to the Chief Executive by the appointed time in the plain envelope provided, marked 'Offer' followed by the appropriate reference, and without any mark revealing the sender's or bidder's identity. Alternatively electronic tenders may be received via the approved electronic portal.
- 13.2 All electronic tenders and all envelopes containing offers will be held by the Chief Executive until they are opened.
- 13.3 All electronic tenders and all envelopes containing offers for the same property received by the appointed time will be opened together by a representative of the Strategic Director, Corporate Services and Governance and a representative of the Chief Executive.
- 13.4 Any tender containing an offer received after the appointed time will be opened in accordance with Rule 7.3 and the circumstances will be reported to the Cabinet.

## **14. Common Seal of the Council**

- 14.1 The Common Seal will be affixed to those documents which as a matter of law or in the opinion of the Strategic Director, Corporate Services and Governance should be executed as a deed. The affixing of the Common Seal will be attested by the Mayor or Deputy Mayor and by the Chief Executive, or Strategic Director, Corporate Services and Governance or on his/her behalf pursuant to a written delegated authority.