

Report of	Meeting	Date
Director (Governance)	Governance Committee	Wednesday, 27 November 2024

## Review of Contract Procedure Rules

Is this report confidential?	No
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Is this decision key?	No
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### Purpose of the Report

1. To update the Contract Procedure Rules (CPR) to ensure compliance with the Procurement Act 2023 (PA 2023).

### Recommendations

2. To review and approve the amendments to the Contract Procedure Rules.
3. To recommend the approval of the Contract Procedure Rules to Full Council to be implemented on the same date that the Procurement Act 2023 goes live.
4. To support the request that Council grants delegated authority to the Director of Governance to update any minor changes to the Contract Procedure Rules, if any subsequent changes are identified.

### Reasons for recommendations

5. Amendments to the CPR are required, due to the changes in legislation.

### Other options considered and rejected

6. To not make the changes is not an option, as the Council must be compliant ahead of the implementation date of 24 February 2025.

### Corporate priorities

7. The report relates to the following corporate priorities:

Housing where residents can live well	A green and sustainable borough
<b>An enterprising economy with vibrant local centres in urban and rural areas</b>	Healthy, safe and engaged communities

## Background to the report

8. Review of the CPR's was last undertaken in 2021. This report outlines the key changes to, and the rationale, for a revision of the Council's CPR currently.
9. The Procurement Act 2023 aims to reduce red tape and to support British business by simplifying public sector procurement, achieving value for money, encouraging innovation and improving transparency. The PA 2023 aims to transform and create simpler more flexible and effective public procurement. The Act will allow for new entrants such as small businesses and social enterprises so they can compete and win more public contracts whilst embedding transparency throughout the commercial cycle. Expenditure of taxpayers' money can be properly scrutinised.
10. The Act was due to come into force on 28 October 2024. However, on the 12 September 2024, the government announced a delay in the go live date to 24 February 2025. The reason given was to allow it to develop a new national procurement policy statement. Procurements that commence after the Procurement Act 2023 go live date must be conducted under the new Act. Procurements that start prior to the go live date will continue to be dealt with under the current rules- Public Contracts Regulations 2015.
11. The CPR's form part of the Council's constitution and to ensure compliance with the changes in legislation, it is recommended that the CPR's are amended to reflect the new Act.

## Changes to the CPR's

12. Members are referred to Appendix A which encompasses all the amendments to the CPR's. For the sake of ease and transparency, all amendments have been made in blue text with strikeouts to the current CPR's in red text. The changes are legislative in nature, to ensure compliance with the Act. Appendix B is the clean version of the CPR's, which is proposed to approve.
13. The main changes to the Contract Procedure Rules are as follow:-
  - a. Routes to market -The number of routes to market for Covered Procurements has been reduced from six to two. There is an Open Procedure which is similar to the Public Contract Regulations. Whilst the single stage open procedure has been retained the multi-stage procedures have been replaced to a single competitive tendering procedure known as the Competitive Flexible procedure which provides the ability to design and undertake a bespoke procedure most appropriate to the requirement whilst remaining compliant.
  - b. Financial Thresholds – The current financial thresholds can be found at Appendix 2, Paragraph 12 of the amended CPR's. The lowest threshold is currently £213,477 for goods and services. These thresholds for Covered Procurements are effective until 31 December 2025 and are revised every two years; the Cabinet Office will publish the new thresholds from 1 January 2026. Members will also note that the value of the contract will include the VAT element, whereas previously this was excluded. In that regard, the low value contract threshold has been increased from £25,000 to £30,000.
  - c. Evaluation - There is a requirement to incorporate stages including negotiation options. The term Most Economically Advantageous Tender' (MEAT) is replaced with 'Most Advantageous Tender' (MAT). The explicit

removal of 'economic' makes it clear that the focus for awarding contracts does not have to be the lowest price or that price/cost must always be weighted higher than non-price factors. Price will still be a relevant factor, however, there will be a requirement for consideration of a broader range of factors such as maximising public benefit, which would encapsulate environmental and social objectives.

- d. Increased transparency requirements -The current regulations require certain transparency notice publications at key points in procuring a contract e.g. at contract award stage. For most procurements there was not a requirement to publish notices until contract award, however the new PA 2023 requires contracting authorities to publish an extensive array of notices across the entire procurement life cycle from planning through to contract termination. This allows for a clearer picture of public spending, contract performance and decision-making processes.
  - e. New Digital Platform – Linked to the increase in transparency requirements, a central digital platform will be created by government for suppliers to register and store their details. Although the new digital platform is currently not live, it is understood that local authorities will be required to publish notices and other information on this platform. Training is anticipated in January 2025, although not confirmed.
  - f. Central Debarment List - The PA23 gives responsibility to Ministers of the Crown to create and maintain a publicly accessible Central Debarment List. They will add and remove suppliers to it. The aim is to prevent public funds being paid to suppliers who have acted in a way that is unacceptable. Examples of likely grounds for inclusion on the list are tax evasion, fraud, bribery, blackmail, money laundering, modern slavery and terrorism. Suppliers performing badly on contracts and don't rectify will be at risk of exclusion from future procurements.
14. Members will note that the proposed changes to the CPR's are significant, and this is to ensure compliance with the PA 2023. Of note are a couple of amendments in respect of approvals, which are important to bring to members attention. These have been included to ensure the appropriate checks and balances are in place, given the additional transparency requirements. Currently, Paragraph 5.6 of the CPR's stipulates; for all high value procurements above £100,000 approval must be sought by Cabinet or in urgent circumstances by way of Executive Member Decision (EMD) at the proposed award procedure, (including the evaluation criteria and weighting) and at the contract award stage. It is proposed that this process is strengthened, and a step is added to allow for further transparency. Thus, if an EMD has been utilised at the proposed award stage on grounds of urgency, then the decision to award the contract is for Cabinet to approve.
15. Additionally, within the waivers section at paragraph 39, it is proposed that all waivers under £100,000 would also require approval by the Executive Member– Paragraph 39.3. Currently, approval is only required from the Director of Finance, Monitoring Officer & Chief Executive. A new requirement has been added at paragraph 39.4 proposing all waivers above the £100,000 to be approved by Cabinet.
16. As part of the review in bringing these amendments forward, consultation has been undertaken with the teams involved in procuring goods and services, to ensure that they are aware of the forthcoming changes. A programme of external training is planned for officers across the council to ensure compliance with the new rules. The Procurement Team have substantially completed the Government's learning and

development programme, which is run by the Government's Commercial Function, comprising of free on demand knowledge drops and self-guided e-learning courses and virtual deep dive courses into the Act and its themes.

### **Climate change and air quality**

17. The work noted in this report does not impact the climate change and sustainability targets of the Councils Green Agenda and all environmental considerations are in place.

### **Equality and diversity**

18. There are no equality or diversity issues identified.

### **Risk**

19. By updating the CPRs in line with the changes to the PA 2023, the Council will remain compliant with current legislation.

### **Comments of the Statutory Finance Officer**

20. These procedure rules sit alongside the Financial Procedure rules in informing the necessary controls.

### **Comments of the Monitoring Officer**

21. The Council are obliged to adopt compliant contract procedure rules following changes made by the Procurement Act 2023. The proposed regulations meet the needs of the council and are legally compliant.

### **Background documents**

There are no background papers to this report

### **Appendices**

Appendix A – Revised CPR's (amendments in colour)

Appendix B -Proposed CPR's

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