

Report to: **Audit and Governance Committee**

Date: **23 July 2024**

Title: **Contract Procedure Rules**

Portfolio Area: **Leader of the Council**

Wards Affected: **All**

Author: **David Fairbairn** Role: **Head of Legal Services and Monitoring Officer**

Contact: **Email: David.fairbairn@swdevon.gov.uk Tel: 01803 861359**

RECOMMENDATIONS:

That the Audit & Governance Committee RECOMMEND:

1. to Council to:

- (a) agree the draft Contract Procedure Rules as set out in Appendix B to the report; and**
- (b) subject to (a), amend the Constitution accordingly; and**

2. the Overview and Scrutiny Committee to set up a task and finish group to develop a sustainable procurement strategy to secure value for money and support local businesses.

1. Executive summary

- 1.1 In May 2024, the Head of Legal Services and Monitoring Officer reported to Council on changes that he was proposing should be made to the Council's Constitution (Min CM. 16/24 refers). The report explained that the Council would need to make further changes to the Constitution once the implementation date of the Procurement Act 2023 was confirmed. The Secretary of State has confirmed that the Act will come into force on 28 October 2024. On that date, the 2023 Act will repeal the Public Contracts Regulations 2015 which up to that date govern the award of contracts by the Council.
- 1.2 This report explains the changes introduced by the 2023 Act (see Appendix A) and requests the Committee to make appropriate recommendations to Council for the amendment of the Constitution by the adoption of revised Contract Procedure Rules (see Appendix B).

- 1.3 As an adjunct to the revision of the Contract Procedure Rules, the report also makes proposals for the development of a new sustainable procurement strategy to secure value for money and support local businesses

2. Background

- 2.1 Public Contracts Regulations 2015 and their predecessor regulations gave effect to EU procurement law. As a contracting authority, the Council must comply with the 2015 Regulations when it procures goods, services, and supplies. Since Brexit in January 2021, EU procurement law has no longer applied directly to the UK and the Government viewed this as an opportunity to reform UK's public procurement regulations to reduce red tape and to support business by simplifying public sector procurement, encouraging innovation, and improving transparency.
- 2.2 Proposals were initially set out in a green paper on transforming public procurement issued in December 2020 with the consultation on these proposals held open till 10 March 2021.
- 2.3 The number of responses received as part of the consultation delayed publication of the Government's response until December 2021. Although the Government first announced its intention for a Procurement Bill in the Queen's speech 2021, the Bill's progress through Parliament was slow and it only received Royal Assent on 23 October 2023.
- 2.4 Where there were four sets of regulations covering procurement (Public Contracts Regulations 2015, Utilities Contracts Regulations 2016, the Concessions Contracts Regulations 2016 and the Defence and Security Public Contracts Regulations 2011) previously, the Procurement Act 2023 creates one set of rules. That said, the 2023 Act provides a framework with the detail being set out in regulations.
- 2.5 The Procurement Regulations 2024 set out the detailed requirements of notices to be given by contracting authorities, to conduct their public procurement in an open, transparent, and informative manner, as well as specifying where and how these should be published. This includes requirements to advertise contracts and to publish information about the outcomes of procurement processes and management of subsequent contracts on an online system which will be provided by the Cabinet Office. This will be found at www.gov.uk/find-tender. Other aspects covered by the Regulations impose requirements as to how contracting authorities should obtain specified information from suppliers and provide further detail as to how certain organisations and contracts are to be regulated.
- 2.6 There will be transitional arrangements in place depending on when the Council starts a procurement, so if started before the

implementation date, the 2015 Regulations will apply until the contract has terminated, otherwise the 2023 Act will regulate the procurement.

- 2.7 Appendix A explains the new procurement regime and highlights the changes from the current regime.

3. Revised Contract Procedure Rules

- 3.1 The Council's Contract Procedure Rules set out the framework within which the Council will procure contracts for goods, services, and works. They form part of the Constitution that the Council must have by law. There is a duty on the Council to ensure that its constitution is up-to-date.
- 3.2 To reflect the changes made by the 2023 Act, the Council must amend its Contract Procedure Rules. Appendix B sets out draft Contract Procedure Rules for the Committee to consider and recommend to Council for adoption.
- 3.3 As most of the provisions of the 2023 Act only apply to contracts that have an estimated value that exceeds specified thresholds, there is greater flexibility as to how the Council procures lower value contracts. Subject to any procurement strategy or related policies, this flexibility might include, for example, the ability to choose to award the contract without competition, to request quotes from targeted known specific suppliers only, or to restrict the award of the contract to local suppliers, or suppliers who are small-or medium sized enterprises, or voluntary, community or social enterprises. The draft Contract Procedure Rules have been drafted to reflect the additional flexibility.

4. Proposal and Next Steps

- 4.1 The Monitoring Officer is asking the Committee to recommend Council to agree the proposed Contract Procedure Rules and to amend the Constitution.
- 4.2 Training will be given to officers to ensure that they apply the new Rules when procuring goods, services or works.
- 4.3 The Council's Delivery Plan includes the development and implementation of a sustainable procurement strategy to secure value for money and support local businesses (Action PR3.3 refers). The final recommendation proposes that as part of its policy development work, the Overview and Scrutiny Committee is asked to set up a task and finish group to develop a strategy and to make appropriate recommendations.

5. Options available and consideration of risk:

5.1 The Council has a statutory duty to comply with the requirements of the 2023 Act. Were the Council to decide not to adopt the revised Contract Procedure Rules, the risk would be any contract entered into after 28 October 2024 would not comply with the 2023 Act. Consequently, the Council would be in breach of its statutory duty and any UK supplier could apply to the High Court for an order that the contract is set aside and/or seek damages. There would be associated costs and reputational damage arising from such a legal challenge.

6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	These are set out in the report at paragraphs 2.1-2.7 and 5.1
Financial implications to include reference to value for money.	Y	The specified thresholds referred to in paragraph 3.3 of the report are the sterling equivalent of the thresholds in the WTO Government Procurement Agreement. The UK is obliged to notify the WTO every two years of the sterling equivalent and the revised threshold takes effect from 1 January of every even year. The thresholds are presently £214,904 (supply of goods or services) and £5,372,609 (works).
Risk	Y	These are set out in the report at paragraph 5.1
Supporting Corporate Strategy	Y	Having up-to-date Contract Procedure Rules supports the Council Plan by setting out transparently how the Council will award contracts, and the procedures the Council will follow.
Consultation & Engagement Strategy	N	
Climate Change - Carbon / Biodiversity Impact	N	
Comprehensive Impact Assessment Implications		
Equality and Diversity	N	
Safeguarding	N	
Community Safety, Crime and Disorder	N	

Health, Safety and Wellbeing	N	
Other implications	N	

Supporting Information

Appendices:

Appendix A: Outline of the Procurement Act 2023

Appendix B: Draft Contract Procedure Rules.

Background Papers:

There are none.