

UPDATES AND AMENDMENTS TO THE COUNCIL'S CONTRACT PROCEDURE RULES	
Executive Summary	<p>This report sets out information on proposed changes to the Contract Procedure Rules.</p> <p>The Contract Procedure Rules ensure that the Council is acting in line with current legislation and other developments in public law when conducting procurements.</p> <p>The Procurement Act 2023 comes into force on 28 October 2024, which necessitates changes to the Council's Contract Procedure rules to ensure they are fully compliant. These changes, along with other amendments to make the document more efficient and accessible are contained in the newly written Contract Procedure Rules.</p> <p>Given the extent of the changes required, and in line with the ongoing task to review the Council's Constitution as a whole, the Contract Procedure Rules have been redrafted in their entirety to ensure they are legally compliant, efficient and more accessible.</p>
Options considered	<ol style="list-style-type: none"> 1. Confirm the document in its entirety. 2. Confirm only those changes required by legislation. 3. Confirm changes required by legislation and some of the additional changes referred to. 4. Decline all changes.
Consultation(s)	<p>Consultation with members of the constitution working party members, Monitoring Officer, Procurement Officer and eastlaw, has been undertaken.</p>
Recommendations	<p>This is a recommendation to full Council to:</p> <p>(i) Approve all the proposed changes to the Contract Procedural Rules, namely by approving the newly drafted Contract Procedure Rules, at Appendix A, in their entirety.</p> <p>(ii) Approve delegation to the Monitoring Officer to make any further necessary changes to the Contract Procedure Rules if required to comply with subsequent Government guidance, policy and updated legislation.</p>
Reasons for recommendations	<p>To ensure that the Council is fully compliant with its legal requirements in relation to procurement and improve efficiency and accessibility to the procurement process.</p>
Background papers	<ul style="list-style-type: none"> • Impact Assessment Tool

Wards affected	All
Cabinet member(s)	All
Contact Officer	Jo Furner, Principal Solicitor, eastlaw

Links to key documents:	
Corporate Plan:	Underpins all corporate priorities in terms of ensuring procurement process is undertaken in a legally compliant and efficient manner to secure goods and services; but particularly supports that of being a strong, responsible and accountable Council.
Medium Term Financial Strategy (MTFS)	Likely to be neutral. Whilst some of the additional amendments will likely lead to efficiencies, those changes that are legally required may be more burdensome.
Council Policies & Strategies	Whistleblowing Policy, Counter fraud and Corruption and Bribery Policy, Data Protection Policy.

Corporate Governance:	
Is this a key decision	No
Has the public interest test been applied	N/A
Details of any previous decision(s) on this matter	N/A

1. Purpose of the report

- 1.1 To set out and seek approval for the proposed changes to the Contract Procedure Rules in accordance with the requirements of the Procurement Act 2023, scheduled to come into effect on 28 October 2024.
- 1.2 To set out and seek approval for other proposed changes to the Contract Procedure Rules which serve to make the process more accessible and efficient, including:
 - 1.2.1 CP Rules shall not apply to staff sourced through employment agencies under a corporate contract.
 - 1.2.2 CP Rules shall not apply to the following special cases:
 - 1.2.2.1 engagement of external solicitors or barristers (subject to approval of MO/DMO).

- 1.2.2.2 engagement of adjudicators/arbitrators in disputes.
- 1.2.2.3 where the council is providing goods and services/works to another.
- 1.2.3 The threshold requiring only a single quotation to be sourced is increased from £5000 to £15,000; although the quotation is required to be in writing.

2. Introduction & Background

- 2.1 Procurement Services bring together a range of specialist skills and resources to support all North Norfolk District Council service areas throughout the commissioning, procurement, and contract management cycles. It is also responsible for all procurement policy and procurement governance, which includes management of the Council's Contract Procedure Rules.
- 2.2 The Council may only contract with external parties within the legal framework for local authority procurement i.e., in accordance with the UK Public Contracts Regulations 2015 (as amended), the Council's Contract Procedure Rules (s135 of the Local Government Act 1972), the general duty to obtain Best Value (Local Government Act 1999) and by following the principles of transparency, non-discrimination and equality of treatment.
- 2.3 Under section 135 of the Local Government Act 1972 a local authority is required to make standing orders for contracting of goods, works and services. There is also an obligation to include in those standing orders provisions for securing competition for contracts and regulating the way tenders are invited. The standing orders may provide that contracts of a certain value are exempt and may authorise the authority to exempt the provisions where justified by special circumstances. The Contract Procedure Rules (CPRs) are the Council's standing orders as required under the Act.
- 2.4 Following the withdrawal from the EU, the Government have transformed public procurement with the implementation of the Procurement Act 2023 (to go live 28th October 2024) and the NHS Provider Selection Regime (went live 1st January 2024).
- 2.5 A key milestone to ensure compliance with the new legislation is a comprehensive review and amendment of the Council's Contract Procedure Rules. This report describes the outcomes of the review with recommendations for approval.

3. Proposals and Options

The Procurement Act

- 3.1 The new Procurement Act 2023 is scheduled to go live on 28 October 2024. The Act brings Contract Management into legislation for the first time and increases transparency with the introduction of 17 new and additional transparency notices.
- 3.2 The Government has stated that it wants to simplify the procurement process, increase transparency, and ensure that Social Value, Climate Action, and Economic Development are more central within procurement activity. There will be a simplification to just 2 main routes to market (open and competitive flexible

procedure), but with significantly increased administrative requirements to ensure compliance with the notifications for transparency. Not only for Procurement Services but also for departments that self-serve and procurement directly and who manage contracts.

3.3 There are 17 notifications within the Procurement Act 2023, with some projects needing multiple notifications. Most of these notifications are mandatory and whilst this supports the new legislation’s transparency ambition, it also potentially raises the risk of challenge due to a greater need for accuracy. Missing information in a Notification can effect modification of the contract later.

3.4 Part two of the Act is focused on new principles and objectives that all public sector procurement must have regard to:

3.4.1 delivering value for money.

3.4.2 maximising public benefit.

3.4.3 sharing information for the purpose of allowing suppliers and others to understand the authority’s procurement policies and decisions, acting.

3.4.4 being seen to act with integrity and, equal treatment of suppliers.

3.4.5 the barriers facing SMEs, and to consider what can be done to overcome them.

3.5 Key changes from the Procurement Act 2023:

Area of Legislation	Summary of Changes
Vocabulary	<ul style="list-style-type: none"> • New language and terminology from that used in the Public Contracts Regulations 2015 e.g., Supplier not bidder. • Public Contract/covered procurement (for above threshold) • Regulated contract for below threshold. • Convertible Contract for below threshold contracts that are modified to become above threshold contracts. • Tekal is now referred to as Horizontal and Vertical arrangements with other Councils and controlled companies.
Exemptions	<ul style="list-style-type: none"> • User Choice Contracts are now within the Procurement Act, but can be directly awardable, but must follow the principles of the Procurement Act. • These contracts are to be included for notifications on payments compliance notification on 30-day payment terms, any payment made over £30k, and procurement pipeline. This means that these contracts will now need to be recorded for compliance.
Contract Modification	<ul style="list-style-type: none"> • Rules on contract management have changed. There are now changes that are permissible without notifications. Other changes (to public contracts) need notifications. • Act covers below threshold modifications also
Contract Management	<ul style="list-style-type: none"> • Contract management is now part of the Procurement Act 2023.

	<ul style="list-style-type: none"> • Contracts over £5m must have 3 KPIs published, and an annual performance report produced and published on the performance of those KPIs. • If the supplier defaults or fails to improve performance, then another notification is required. • Termination notices are required if terminating early or at natural end. • Redacted copies of the contract must be published, and re-published if modified.
Framework Agreement and Dynamic Markets	<ul style="list-style-type: none"> • Open Framework Agreements are now permissible. • Dynamics Markets offer a flexible approach to framework agreements but will be labour intensive. • Dynamic Purchasing Systems will end in October 2028.
Direct Award	<ul style="list-style-type: none"> • Direct Award is now permissible for certain circumstances. These are set out in the Exceptions section. • User Choice Contracts are now caught by the Act but can be directly awarded and are not subject to notifications but must be included in payment notifications and pipeline notifications.
Excluded, Excludable and Debarred Suppliers	<ul style="list-style-type: none"> • The Cabinet Office will maintain a list of suppliers that have been Debarred from providing Public Contracts. • There are also grounds for mandatory and discretionary exclusion of a supplier at the evaluation stage. (See table below Appendix A)
Conflict of Interest	<ul style="list-style-type: none"> • The Procurement Act asks that Conflicts of Interest are assessed throughout the procurement cycle, including at extension.
Notifications	<ul style="list-style-type: none"> • There are now 17 notifications within the new Act. (There were 3 in the previous legislation).
Pipeline Notification	<ul style="list-style-type: none"> • The Council now needs to publish a 'forward plan' or pipeline of procurements for contracts over £2m, for an 18-month period.
Payment Notification	<ul style="list-style-type: none"> • A requirement to publish payment compliance to 30-day payment terms (this is already published as part of transparency regulations) • Any payments over £30k appertaining to a Public Contract.

3.6 The Procurement Act 2023 will not be retrospective, and therefore contracts let prior to the 28th of October 2024 will continue under the Public Contracts Regulations 2015 until they expire. Do we need existing and new or just new?

3.7 Training will be provided to staff and the intranet updated with relevant information and documents.

Other Changes

3.8 Given the new legislation requires reasonably significant amendments of the Council's Contract Procedure Rules and has occurred at time when the Council's Constitution is under review generally, this presents as an opportunity to rewrite them generally, both in terms of order and wording generally to make

them, and the requirements, more accessible to officers and members generally. This includes changes to writing style, and some reordering. For example, the requirements relating to conflicts of interest were formally included at the end of the document, but given they are now a legal requirement as opposed to good practice, they are included much earlier in the document.

3.9 Additional changes include:

- 3.9.1 CP Rules shall not apply to staff sourced through employment agencies under a corporate contract, subject to the approval of the Director or Assistant Director.
- 3.9.2 CP Rules shall not apply to the following special cases:
 - 3.9.2.1 engagement of external solicitors or barristers (subject to approval of the MO/DMO).
 - 3.9.2.2 engagement of adjudicators/arbitrators in disputes.
 - 3.9.2.3 where the council is providing goods and services/works to another.
- 3.9.3 The threshold requiring only a single quotation to be sourced is increased from £5,000 to £15,000; although the quotation is required to be in writing.

Proposed change	Justification
Disapplying CPR to agency staff/locum staff (3.9.1 above)	The definition of employment/employment contract has been restricted in the Procurement Act 2023 to include <i>only</i> employees and workers within the meaning of the Employment Rights Act 1996. Without the proposed changes to specifically disapply the procurement process to agency or locum staff, the council would have to undertake a procurement exercise, and in many cases, the cost would require that to be a formal tendering exercise, which would be contrary to the time sensitive nature of obtaining agency/locum staff. This provision would reduce the need to apply the Contract Procedure Rules altogether representing an efficiency or saving.
Special cases (3.9.2 above)	These situations are likely to arise in time sensitive situations where specialist advice is required. Presently, these are obtained relying on the exemption process, but by disapplying the provision of the Contract Procedure Rules to these matters should result in a more efficient process, reducing multiple officer involvement (presently service manager requiring service, procurement officer, Section 151 Officer and Monitoring Officer), and therefore representing an efficiency or saving.
Increasing lower threshold (3.9.3 above)	In April 2023, in response to a change in law, VAT was included in the threshold levels. At this time the Council's contract thresholds were considered and amended. With continued inflation and the inclusion of

	<p>VAT it is proposed that these thresholds should be increased to provide an effective framework.</p> <p>Save for a few very small acquisitions, officers are required to seek three written quotations for almost all that fall below the level for formal tendering process (£75,000).</p> <p>Increasing the lower limit to £15,000 removes administrative burden on officers, thereby resulting an efficiency or saving, but is not so significant that it undermines the principles underpinning the procurement rules; i.e. the general duty to obtain Best Value (Local Government Act 1999) and principles of transparency, nondiscrimination and equality of treatment. As an added safeguard, the quotation should be in writing. It is also in line with other Council's in the region.</p>
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- 3.10 Training will be provided to staff and the intranet updated with relevant information and documents.

Delegation to Monitoring Officer

- 3.11 As with most primary legislation; the Procurement Act 2023, makes provision for the making of related secondary legislation which serve to supplement the primary legislation. The Government is also in the planning stages of introducing a suite of guidance documents that will cover all aspects of the Procurement Act 2023, from transitional arrangements through to pre-market engagement, award rules, exclusions and contract modifications.
- 3.12 The coming into force of supplementary regulations and guidance may necessitate some further amendments to the Council's Contract Procedure Rules, for example to refer to the use of statutory forms, or as matters of clarification etc. To avoid the need for any such consequential changes to the Contract Procedural Rules to come before this committee it is proposed that approval for these be delegated to the Monitoring Officer. As such, any necessary changes arising from subsequent legislation and guidance can be made and put into effect quickly and efficiently.

4. Corporate Priorities

- 4.1 Procurement Services supports the delivery of the Corporate priorities by enabling services to commission and procure contracts that deliver council priorities, including a greener future, developing communities, meeting housing need, investing in the local economy and infrastructure, and being a strong, responsible and accountable Council.
- 4.2 Having Contract Procedure Rules that are legally and procedurally correct, accessible and efficient specifically supports the Council's corporate priority to be a strong, responsible and accountable Council.

5. Finance and Resource Implications

- 5.1 No financial/resource implications

Comments from the S151 Officer

There are no direct financial implications arising from the Contract Procurement rules. The changes will provide greater transparency for the procurement process and demonstrate value for money more clearly.

6. Legal Implications

- 6.1 Under section 135 of the Local Government Act 1972 a local authority is required to make standing orders for contracting of goods, works and services; the Contract Procedure Rules are the Council's standing orders. These must also include competition and other requirements, which are set out in the Public Contracts Regulations 2015 (for contracts entered prior to 24 October 2024) and the Procurement Act 2023. Current Contract Procedure Rules do not contain legal provisions as required by the Procurement Act 2023.

Comments from the Monitoring Officer

The Procurement Act 2023 comes into force at the end of October 2024. This Act places obligations on the Council to procure and manage contracts in a fair, transparent and appropriate manner. These changes require us to consider our own Contract Procedure Rules [CPR] and make changes required by this legislation but also consider any other appropriate changes. The proposed CPR are drafted in a logical 'timeline' manner. Training sessions, especially for key officers should be implemented this year and the legal service will assist with this provision.

7. Risks

Risks associated with changes required by legislation.

- 7.1 There no significant risks associated with approving the changes required to ensure that the Contract Procedure Rules are compliant with the forthcoming legislation.
- 7.2 Failure to approve changes required by forthcoming legislation puts the Council at significant risk; with future procurement exercises potentially being unlawful, the Council being subject to Court action to enforce duties set out in the new legislation and contracts being open to challenge, with remedies to include orders to set aside decisions or actions, award of damages etc., and may be subject to procurement investigations. These are set out in parts 9 and 10 of the Procurement Act 2023.

Risks associated with other changes.

7.3 There are no significant risks associated with approving the additional changes proposed in paragraph 1.2.

7.4 There are no significant risks with not approving the changes set out in para 1.2, however, the changes make the process for certain procurement exercises more efficient and accessible, particularly in relation to more time sensitive and specialist contracts such as provision of specialist legal advice, provision of an arbitrator, uptake of locum staff etc., or for smaller (less than £15,000) contracts.

8. Net Zero Target

8.1 There are no impacts on the Council's Net Zero Strategy and Climate Change action plan (Impact Assessment undertaken).

9. Equality, Diversity & Inclusion

9.1 With reference to the Council's Equality, Diversity and Inclusion Strategy, there are no implications to Equality, Diversity, and Inclusion in changing the Contract Procedure Rules as suggested.

10. Community Safety issues

10.1 There are no community safety issues.

11. Conclusion and Recommendations

It is imperative that the changes to the Contract Procedure Rules as required by the Procurement Act 2023 are approved to ensure the Council is compliant with its legal obligations. The additional changes proposed allow for greater accessibility and efficiency in the procurement process. Accordingly, it is recommended that all the proposed changes be approved and the new Contract Procedure Rules in the appendix are approved in their entirety and replace the existing ones.

The legislation also refers to upcoming secondary legislation (regulations), and government guidance, both of which may necessitate additional amendments to the proposed Contract Procedure Rules, and these may be required on a piecemeal basis. For efficiency purposes, approval to make such changes should be given to the Monitoring Officer rather than having to come back before this Committee.

Accordingly, it is recommended that Full Council:

- i. Approve all the proposed changes to the Contract Procedural Rules, namely by approving the newly drafted Contract Procedure Rules, at Appendix A, in their entirety.
- ii. To approve delegation to the Monitoring Officer to make any further necessary changes to the Contract Procedure Rules if required to

comply with subsequent Government guidance, policy and updated legislation.