



CONSTITUTION AND STANDARDS COMMITTEE

Thursday 20th February 2025

REPORT TITLE:	REVIEW OF CONTRACT PROCEDURE RULES
REPORT OF:	DIRECTOR OF LAW AND CORPORATE SERVICES

REPORT SUMMARY

This report comprises the biennial review of the Council's Contract Procedure Rules (CPR) which regulate the way in which the Council's contracts are procured. The last review took place in June 2022.

Since that review public procurement law has been significantly changed by the Procurement Act 2023 which comes into force on 24 February 2025.

The review incorporates into the Contract Procedure Rules references to the changes that will be required when the Act becomes law

The CPR underpin the fulfilment of the Council Plan: Wirral Working Together 2023-27 in particular the aim of achieving a prosperous inclusive economy where businesses can thrive and create jobs and opportunities for all at a sustainable financial cost to the Council.

The report has no ward implications.

This is not a key decision.

RECOMMENDATION/S

The Constitution and Standards Committee is requested to approve the changes to the Contract Procedure Rules that are highlighted in the appendix to this report and recommend their adoption by the full Council as part of the Council's Constitution when the Procurement Act 2023 comes into force.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATIONS

- 1.1 The Committee is required to review the CPR every 2 years.
- 1.2 Since the last review in June 2022 Parliament has enacted the Procurement Act 2023 which has made significant changes to public procurement law which had previously been governed by regulations emanating from the European Union. Those regulations have now been replaced by UK legislation following the UK 's withdrawal from the European Union (Brexit). The CPR need to reflect those changes.
- 1.3 The changes highlighted in the Appendix are required by the new legislation and for the most part apply to the procurement of contracts that are above certain financial thresholds prescribed by the legislation. They are not therefore optional.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 Other options have been considered as reported within the minutes of the Audit and Risk Management Committee and appended report.

3.0 BACKGROUND INFORMATION

- 3.1 The Contract Procedure Rules regulate the way in which the Council procures its contracts. Their contents are constrained by statute which includes in particular compliance with the Public Contract Regulations 2015 (PCR) which preceded the Procurement Act 2023.
- 3.2 Until 1st January 2021 the PCR had to conform to the procurement rules prescribed by the European Union for the free trade area known as the Single Market. Since Brexit the UK is no longer part of the Single Market and such strict compliance is no longer necessary. The Government therefore piloted through Parliament the Procurement Act 2023 which will come into effect on 24 February 2025.
- 3.3 The changes to the CPR are identified in the Appendix. They are intended to implement the following objectives of the Procurement Act which are;
 - (a) Value for money.
 - (b) Maximising public benefits.
 - (c) Sharing information with suppliers on policies and decisions.
 - (d) Being seen to act with integrity.
 - (e) Reducing barriers to participation by small and medium and sized businesses.
- 3.4 These objectives were to a large extent mirrored by the PCR but are made more explicit in the Procurement Act and the procedures to achieve them are now more detailed and prescriptive for local authorities. Instead of a single source of authority (the PCR) there are now 4 (the Procurement Act 2023, the Procurement Regulations

2024, the Health Care Services (Provider Selection Regime) Regulations 2023 and the Government's National Procurement Policy Statement. They run into hundreds of pages. A bare summary can only be provided in this report.

3.5 VALUE FOR MONEY

- 3.5.1 The general rule is that contracts are to be procured competitively and awarded to the "Most Advantageous Tender" having regard to a combination of price and quality as set out in published award criteria. There are limited exceptions a summary of which can only be outlined below because the provisions are complex.
- 3.5.2 Direct negotiations with only one supplier are allowed in the circumstances set out in Schedule 5 of the Act e.g if the supplier has exclusive rights to land or intellectual property and there is no reasonable alternative.
- 3.5.3 A direct award is possible to a contractor on an approved list for a particular type of contract as a result of their having successfully bid to be on a Framework under which they have undertaken to carry out contracts in accordance with their submitted prices and the Framework's terms and conditions as and when requested by specified contracting authorities. There must be an objective mechanism for supplier selection e.g price; otherwise, there must be a competition between the approved suppliers for the relevant type of contract.
- 3.5.4 Contract awards without competition are possible for certain specified social welfare, education and legal services (eg. Litigation advice) under a financial threshold (£663,540 inclusive of VAT) and for health care services.
- 3.5.5 The requirements for competition cannot simply be circumvented by adding goods, services, or works to an existing contract. Variations have to comply with Section 74 or Schedule 8 of the Procurement Act e.g where the modification is not substantial being less than 10% of the value of the original contract (15% for works) and does not change the overall nature of the contract or where the criteria for valuing the variations are laid down in the original contract. These examples are not exhaustive.

3.6 MAXIMISING PUBLIC BENEFIT

- 3.6.1 The Public Services (Social Value) Act 2012 requires local authorities when procuring contracts which are above Procurement Act thresholds (£214,904 for goods and services and £5,372,600 for work inclusive of VAT) to take into account any public benefits to the local area that contractors may be encouraged to provide in addition to their contracted services. Those benefits must however be linked to the subject matter of the contracted services and be proportionate.
- 3.6.2 A common example would be an offer by a tenderer to employ an additional number of local people as apprentices.
- 3.6.3 The Contract Procedure Rules allow Social Value to be taken into account even when procuring contracts below the Procurement Act financial thresholds. It is important, however, to bear in mind, when fixing the

proportion for scoring Social Value in any procurement in comparison to Price and Quality, that small and medium sized companies may be at a disadvantage in competing with larger scale enterprises if Social Value is scored highly since they may lack the resources to be as generous as their larger competitors. This is reflected in the CPR. It is proposed that Social Value be evaluated as a minimum of 10% of the scoring criteria for contracts exceeding £100,000 rather than 15% under the current Rules.

3.7 SHARING INFORMATION WITH SUPPLIERS ON DECISIONS AND POLICIES

- 3.7.1 The Procurement Act requires contracting authorities to publicise all their procurement actions so that contractors have adequate time and information to prepare their bids and also check that those actions are lawful. Examples include the following (not exhaustive).
- 3.7.2 Notices inviting tenders must give contractors sufficient time to prepare their tenders (usually at least 25 days) and must be published on national electronic portals.
- 3.7.3 Contract Award Notices must give reasons to unsuccessful tenderers for the rejection of their tenders.
- 3.7.4 Reasons must be given in Transparency Notices for awarding contracts without competition.
- 3.7.5 Reasons must be given in Contract Change Notices for variations of contracts which exceed 10% or more in value of the original contract (15% for works).
- 3.7.6 If contracts exceeding £100m in value are to be awarded in any financial year, Pipeline Notices are to be published within 56 days of the relevant financial year which set out in advance those contracts exceeding £2m which the local authority intend to procure in that year.
- 3.7.7 For contracts exceeding £5m in value local authorities must publish every 12 months the contractor's performance against at least three key performance indicators.

3.8 BEING SEEN TO ACT WITH INTEGRITY

- 3.8.1 All tenderers must be treated the same unless a difference between them justifies different treatment which must not put one supplier at an unfair advantage.
- 3.8.2 A formal Conflicts of Interests Assessment must be carried out in respect of all parties to a proposed procurement before a Tender Notice is published.
- 3.8.3 All communications with suppliers prior to contract award must be retained for at least three years and must be on the Council's electronic platform.
- 3.8.4 Suppliers can be excluded for past criminal conduct or improper behaviour on either mandatory (Schedule 6 of the Act) or discretionary (Schedule 7 of the Act) grounds. In most instances suppliers are given opportunities to make representations including the supply of evidence that the offence or other misconduct is not likely to recur. Contracts must not however be awarded to contractors on the Government Debarment Lists.

4.0 FINANCIAL IMPLICATIONS

- 4.1 The CPR are intended to achieve value for money in the procurement of the Council's contracts.

5.0 LEGAL IMPLICATIONS

- 5.1 In accordance with the Part 3B of Constitution (Committee Terms of Reference), the Constitution and Standards Committee has two main areas of responsibility, which are overseeing the operation of the Council's Constitution and for promoting and maintaining high standards of ethical conduct and probity within the Council, including the exercise of all functions of the Authority in relation to ethical standards and, in particular, those under Chapter 7 of the Localism Act 2011.
- 5.2 The Constitution and Standards Committee is charged by full Council to keep the Council's constitutional arrangements under review and to make recommendations as to amendments and improvements to the Council's Constitution, including the codes and protocols. As part of the matter of business that was the subject of the report to Audit and Risk Management Committee falls under that responsibility reserved to the Constitution and Standards Committee, the Audit and Risk Management Committee's resolution is presented as a recommendation.
- 5.3 As the decision in this matter is the subject of a recommendation from another Committee, the Constitution and Standards Committee must take into account the resolution of that Committee and give due regard to the guidance and comments made by its members. The Constitution and Standards Committee must not, however, consider itself bound by that Committee's recommendations or otherwise fetter its discretion; its Members must come to their own decision. In doing so, the Committee must satisfy itself that it has been provided with all relevant information or a suitable précis to enable it to comply with its duties and make a lawful decision.
- 5.4 Other legal considerations are as set out in the annexed report(s).

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

- 6.1 The report is for information only and does not contain any direct resource implications.

7.0 RELEVANT RISKS

- 7.1 The risks were covered in the original report submitted to the Committee.

8.0 ENGAGEMENT/CONSULTATION

- 8.1 Engagement and consultation were covered in the original report submitted to the Committee.

9.0 EQUALITY IMPLICATIONS

- 9.1 Wirral Council has a legal requirement to make sure its policies, and the way it carries out its work, do not discriminate against anyone. An Equality Impact Assessment is a tool to help council services identify steps they can take to ensure equality for anyone who might be affected by a particular policy, decision or activity.
- 9.2 The CPR are intended to ensure that contracts are awarded on merit and not as a result of unlawful discrimination against potential suppliers or their employers.

10.0 ENVIRONMENT, BIODIVERSITY AND CLIMATE IMPLICATIONS

- 10.1 There are no direct environment or climate implications from this decision.

11.0 COMMUNITY WEALTH IMPLICATIONS

- 11.1 There are no direct community wealth implications from this decision.

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APPENDICES

Appendix 1 Contract Procedure Rules showing the proposed amendments.
 Appendix 3 Minute Extract from the meeting of the Audit and Risk Management Committee held on 28 January 2025

BACKGROUND PAPERS

Government Guidance on public procurement.

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Audit and Risk Management Committee	27 June 2022