



North Devon Council

Report Date: Wednesday, 26 February 2025

Topic: Update to the Contract Procedure Rules (Part 4 Constitution) in light of the Procurement Act 2023

Report by: Simon Fuller, Senior Solicitor and Monitoring Officer

1. INTRODUCTION

- 1.1. Procurement law changes on 24 February 2025 with the Procurement Act 2023 (and subordinate legislation including the Procurement Regulations 2024) coming into force.
- 1.2. The Council's Contract Procedure Rules need to be updated to bring them in line with current law.

2. RECOMMENDATIONS

- 2.1. To approve the revisions to the Contract Procedure Rules (Part 4 of the Constitution) as annexed to this report.

3. REASONS FOR RECOMMENDATIONS

- 3.1. In line with the duty to ensure that the Council's Constitution is kept up to date, the changes to the Contract Procedure Rules are necessary to ensure that the procurement of contracts for goods, works and services are in line with up to date law.
- 3.2. To update the exceptions to the Contract Procedure Rules to remove the requirement to seek at least three quotes for contracts of a relevant value and adjust this so that an exception is only required from a senior officer where only a single supplier submits a compliant quote. This is in line with best practice since, while it is preferable to seek at least three quotes, it is possible to still show sufficient competition not necessitating an exemption if only two suppliers submit quotes.

4. REPORT

- 4.1. The Procurement Act 2023 (along with all relevant sub-ordinate legislation) is in force as of 24 February 2025.
- 4.2. Formerly the law (as applicable to the Council) applied in England and Wales was the Public Contracts Regulations 2015 and the Concession Contracts Regulations 2016 which derive from EU law when the country was formerly a Member State of the European Union and consistent procurement rules were applied across all Member States with minor amendments authorised. Following Brexit the previous government sought to review how public procurement was carried out and to move away from alignment with EU law. The result of this is the Procurement Act 2023.

- 4.3. The government sets out that “the Procurement Act 2023 will improve and streamline the way procurement is done and benefit prospective suppliers of all sizes, particularly small businesses, start-ups and social enterprises”.
- 4.4. From the Council’s perspective there are subtle changes rather than this being a complete revolution as to how procurement is carried out and hence the Contract Procedure Rules have been updated in line with the new law to take account of the following key themes:
- 4.4.1. Changes to terminology has required substantive updates to how processes and procedures are referred to in the Constitution, for instance, for high value procurements there were formerly six procedures which could be utilised, this has been simplified with reference to two, an open procedure and a competitive flexible procedure and this has been taken into account in our Contract Procedure Rules. The ambition for the changes in the Contract Procedure Rules is to simplify the defined terms to reference where they are clearly set out in law rather than reiterate what the law says in the Contract Procedure Rules and risk inconsistency or the terminology going out of date as procurement law develops.
- 4.4.2. The above includes how a contract is valued which is clearly provided for in legislation so it is not repeated in the Contract Procedure Rules, instead referencing the law as to how to estimate the value of a contract prior to carrying out a procurement.
- 4.4.3. There are new financial thresholds to consider, the Council’s current thresholds of £12,000 (inc VAT) to seek quotes and £120,000 (inc VAT) to seek tenders remain the same but there is a new sub-threshold between the two where a contract becomes “notifiable” and this is where a value is over £30,000 (inc VAT) where additional requirements (mainly around transparency) need to be considered and these are covered by the changes as annexed. Schedule 1 of the Procurement Act 2023 sets out the higher thresholds where the full requirements of the new law applies, being at £5,336,937 (inc VAT) for works/concession contracts and £213,477 (inc VAT) for goods and services.
- 4.4.4. Transitional arrangements – the Contract Procedure Rules provide for the fact that tenders commenced or contracts awarded before 24 February 2025 will continue to be governed by that law until they expire or are otherwise terminated.
- 4.4.5. New transparency requirements – the Contract Procedure Rules have taken account of new requirements in law including:
- 4.4.5.1. The provision of Preliminary Market Engagement Notices to notify suppliers where carrying out pre-procurement market engagement with suppliers for higher value contracts to inform how a procurement will be carried out.

- 4.4.5.2. The provision of Planned Procurement Notices where the Council wishes to notify suppliers ahead of time about an upcoming tendering process for higher value contracts.
- 4.4.5.3. Pipeline Notices if the Council expects to pay more than £100 million for relevant contracts in any year (appreciate very unlikely but covered off regardless).
- 4.4.5.4. Below Threshold Tender Notices which are needed where the Council runs a tendering exercise for any “notifiable” contract (so over £30,000 threshold referred to above).
- 4.4.5.5. Tender Notices (formerly “Contract Notices”) which are needed to commence a tendering process for contracts valued above the higher financial thresholds in the Procurement Act 2023
- 4.4.5.6. Assessment Summaries which need to be provided to each supplier that submitted an assessed tender to debrief them on how they scored (versus the winning tenderer for the unsuccessful tenderers).
- 4.4.5.7. Transparency Notices (formerly called “VEAT notices”) which need to be published in respect of any contract awarded not fully in compliance with procurement law
- 4.4.5.8. Contract Details Notices which need to be published where a below threshold contract becomes “notifiable” (the £30,000 threshold referenced above).
- 4.4.5.9. Contract Award Notices to be applied when awarding higher value contracts following a tender process, this is effectively already required under previous law but slightly different how they are applied.
- 4.4.5.10. A requirement to publish notice for higher value contracts (within 30 days of a Contract Award Notice) that the contract has commenced.
- 4.4.5.11. A requirement to publish contract documents themselves in the public domain within 90 days of the contract’s commencement where a contract is of a value over £5 million.
- 4.4.5.12. A requirement in respect of higher value contracts to set out where the Council has made a payment under a current contract, or that a sum owed by the Council became payable (this is mainly to promote prompt payment of suppliers)
- 4.4.5.13. Contract Performance Notices – this is for higher value contracts to require the Council to publish a supplier’s performance against KPIs set within a contract and also to set out where a supplier has breached a higher value contract and that breach has led to termination, award of damages or a settlement agreement.

- 4.4.5.14. Contract Termination Notices – again for higher value contracts to require the Council to publish that such contracts have expired or have otherwise been terminated.
- 4.4.5.15. Contract Change Notices – this requires the Council to publish details of a modification to higher value contract where such modifications to a live contract increases or decreases its value or term by over 10% (15% for works contracts in terms of value).
- 4.4.6. There are requirements to encourage SME involvement, reflected in the Contract Procedure Rules, including legislative obligations to “remove barriers” to their inclusion and also to compel the Council to consider splitting a large contract into lots if it can do so.
- 4.4.7. A change in how quotes and tenders are evaluated from being which is the “most economically advantageous solution” to solely which is the “most advantageous solution”, which allows a certain amount of additional flexibility of what can be considered.
- 4.4.8. A requirement to consider the government published Debarment List of blacklisted suppliers in terms of potentially excluding them.
- 4.4.9. There are newly added provisions around ensuring that actual and potential conflicts of interest are addressed – these enhance measures already in place under the Member Code of Conduct and the Employees Code of Conduct.
- 4.4.10. There are changes in terms of contract terms used, formerly there was reference to the Council’s standard terms as having to be used save where an exception applies, but this is very easy to inadvertently breach as lower value, low risk contracts may be on supplier terms or contracts may be developed or negotiated as part of a procurement process. This is allowed for but the key point remains that the contract to be entered into should be that which is published with the procurement documentation when a procurement is commenced, albeit there is more amenability in the wording here for circumstances when this may validly not be the case. In addition to this there are implied terms (particularly around prompt payment) within the Procurement Act 2023 which must be applied.
- 4.4.11. Provision has been made of “Convertible Contracts” which are those contracts which are of a value under the higher financial thresholds in law but, when modified, become of that value and additional transparency measures are then necessary as provided in the changes to the Contract Procedure Rules.
- 4.4.12. The possibility of reserving certain contracts in particular scenarios, for instance the provision of temporary accommodation or facilities, has been added.
- 4.5. The quotes and “request for waiver” process in the Contract Procedure Rules has been reviewed. This is not a requirement of the new procurement law

but rather something which the Council has reviewed following evaluation of other Council's Contract Procedure Rules (or equivalent) including Devon County Council's (which we are using for procurement support at present). The rules formerly required the Council to seek "at least three quotes" and necessitated officers obtaining a "waiver" signed by a senior officer if they did not get three. This was to demonstrate competition and show best value but has resulted in a large number of waivers being signed off (as noted and criticised by previous audits) because often, despite efforts, the Council simply does not get three quotes back and this can then hold potentially urgent works or services up. The position has been adjusted to simplify the process so that officers must obtain quotes "from more than one supplier" (to continue to show sufficient competition and best value and acknowledging their may not be three suppliers able to do any particular task) and then a waiver is needed (along with other pre-existing scenarios as set out in the Contract Procedure Rules) if "only one compliant quote was returned".

5. RESOURCE IMPLICATIONS

5.1. None

6. EQUALITIES ASSESSMENT

6.1. It is considered that this proposal has no relevance to equalities and the protected characteristics because it is updating an existing set of Constitutional rules in line with law.

7. ENVIRONMENTAL ASSESSMENT

7.1. There are no environmental implications arising from these proposals.

8. CORPORATE PRIORITIES

8.1. What impact, positive or negative, does the subject of this report have on:

8.1.1. The commercialisation agenda:

8.1.2. Improving customer focus and/or

8.1.3. Regeneration or economic development

8.2. Despite being changes necessitated by law, the adjustments to the Contract Procedure Rules will allow procurements to be run smoothly and compliantly to avoid unnecessary delay or potential legal challenge which will support the Council's functions, the demonstration of value for money and the provision of economic development by the efficient procurement of goods, works and services which can deliver this.



9. CONSTITUTIONAL CONTEXT

9.1. The decision in respect of the recommendations in this report can be made pursuant to Article 4.5.1 of the Constitution.

10. STATEMENT OF CONFIDENTIALITY

This report contains no confidential information or exempt information under the provisions of Schedule 12A of 1972 Act.

11. BACKGROUND PAPERS

The following background papers were used in the preparation of this report: (The background papers are available for inspection and kept by the author of the report).

Part 4 Constitution – Contract Procedure Rules

12. STATEMENT OF INTERNAL ADVICE

The author (below) confirms that advice has been taken from all appropriate Councillors and Officers: Simon Fuller, Senior Solicitor and Monitoring Officer