

REPORT TO EXECUTIVE

Date of Meeting: 30 November 2021

REPORT TO COUNCIL

Date of Meeting: 14 December 2021

Report of: Director Finance

Title: Updates to procurement and contract procedures

Is this a Key Decision?

No

Is this an Executive or Council Function?

Council

1. What is the report about?

To approve the updates to the procurement and contract procedures, at Appendix A and the updated procedural note at Appendix B. The rules were last updated and approved by the committee in July 2018. To ensure council contract procedure rules are up to date and provide clarity of roles, accountabilities and process in order to ensure transparency about how public resources are used and to mitigate the potential for fraud.

2. Recommendations:

It is recommended that the Executive note and Council approves:-

- (1) the revised Procurement and Contract Procedures in Appendix A;
- (2) the revised Procedural Note – Exemptions in Appendix B; and
- (3) that the Director Finance in conjunction with the relevant Portfolio Holder is authorised to make minor changes to the Contract Procedure Rules as defined below and that any changes be reported to Members as part of the wider update on progress:

- Changes in statutory framework, such as references to new or updated legislation;
- Changes in titles, names or terminology; and
- Changes consequential to other constitutional changes already made.

3. Reasons for the recommendation:

As a public sector organisation Members will be aware that as part of the wide constitutional governance the need to have clear rules around carrying out procurement arrangements and entering into third party contracts is essential. This both helps ensure probity and transparency in how the Council undertakes such activities but also ensuring legislative compliance, in particular with the Public Contracts Regulations 2015.

Whilst an important governance tool for the Council to operate under it also seeks to provide public transparency around the Council's approach especially to external

organisations and suppliers who are interested in seeking opportunities to contract with the Council.

4. What are the resource implications including non financial resources?

As with any form of governance framework, there is a balance to be had around the administration to implement it and ensuring that the approaches put forward are proportional to the needs and the associated risks. The Procedures look to proportionately strike this balance

5. Section 151 Officer comments:

There are no financial implications contained in the report. It is good practice to ensure that the Council's procedures are up to date and reflect the latest requirements.

6. What are the legal aspects?

The council must prepare and keep up to date a constitution in accordance with s37 of the Local Government Act 2000. The minimum requirements for the content are set out in The Local Government Act 2000 (constitutions) (England) Direction 2000 which includes a description of the rules and procedures for the management of the council's financial affairs including: procedures for auditing and financial rules. These are the rules that officers follow in the day to day operation of the council set within this council's budget and statutory framework of local government finance.

7. Monitoring Officer's comments:

This report raises no issues for the Monitoring Officer, although attention is drawn to paragraph 6 above.

8. Report details:

Key considerations Procurement and Contract procedures.

The 2021 proposed updates to the Procurement and Contract procedures (PCPs) predominantly includes changes to the PCPs in light of EU Exit and other updates as detailed below. The updated PCPs, attached with highlighted changes at Appendix A, have been updated specifically as follows:

- a) All references to Official Journal of the European Union (OJEU) and thresholds now refer as applicable to the Government Procurement Agreement (GPA).
- b) In line with national guidance on Public-sector procurement from 1 January 2021, PCPs have now been updated to reflect new procedures for above UK threshold procurements and will ensure the council is compliant with new UK publication requirements.
- c) References to State Aid are updated to the new Subsidy Control Bill of June 2021.
- d) Inclusion of the latest Procurement Policy Note (PPN) 11/20, for reserving below UK threshold procurements to suppliers: by location; and for SME /VCSE organisations, in consultation with Procurement.

- e) Update to the exemption form which includes the requirement for it to be used when making a direct award under a framework agreement.
- f) Additional amendments have been made as clarification or improvement, these include:
 - Updated hyperlinks to policies and legislation
 - Reflect changes in officer roles and job titles
 - Expressly iterate the requirement to sign contracts before they commence

9. How does the decision contribute to the Council's Corporate Plan?

The proposed revisions to the contract procedure rules are designed to ensure that the council complies with all of the current relevant financial regulations which govern the council's financial conduct in relation to procurement and ensures that the council follows effective local financial processes which includes delivering value for money and supporting spending resources locally. In doing so it supports the corporate priorities of 'providing value for money services' and 'leading a well-run council'.

10. What risks are there and how can they be reduced?

The current regulations are out of date, in some places, and this creates potential for confusion, errors and misunderstandings. Updating the rules will attempt to deal with these issues and problems and ensure that the council continues to have sound financial management policies in place including clear guidance for officers when carrying out any procurement and transparency for suppliers about how the Council procures goods and services.

This transparency will help us to mitigate against the risk of procurement challenge from suppliers which has been showing an increasing trend over the last 6 months. As businesses struggle post-brexit and post-pandemic and with an overhaul of the current remedies directive (which facilitate supplier challenges) on its way, suppliers seem to be more open to taking their opportunity to challenge at this time.

11. Equality Act 2010 (The Act)

11.1 Under the Act's Public Sector Equalities Duty, decision makers are required to consider the need to:

- eliminate discrimination, harassment, victimisation and any other prohibited conduct;
- advance equality by encouraging participation, removing disadvantage, taking account of disabilities and meeting people's needs; and
- foster good relations between people by tackling prejudice and promoting understanding.

11.2 In order to comply with the general duty authorities must assess the impact on equality of decisions, policies and practices. These duties do not prevent the authority from reducing services where necessary, but they offer a way of developing proposals that consider the impacts on all members of the community.

11.3 In making decisions the authority must take into account the potential impact of that decision in relation to age, disability, race/ethnicity (includes Gypsies and Travellers), sex and gender, gender identity, religion and belief, sexual orientation, pregnant women and new and breastfeeding mothers, marriage and civil partnership status in coming to a decision.

11.4 In recommending this proposal no potential impact has been identified on people with protected characteristics as determined by the Act because the public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. As this decision relates to improving internal processes, we do not believe that it will have an impact on our equality duty.

12. Carbon Footprint (Environmental) Implications:

12.1 The council provides and purchases a wide range of services for the people of Exeter. Together with partner organisations in the private, public and voluntary sectors we share a strong commitment to improving our environmental sustainability, achieving carbon neutrality and to protect and enhance Exeter's outstanding natural environment. Whilst this is a procedural update and will have minimal environmental impacts, consideration has been made to minimise waste and resource use in line with the council's environmental aspirations. For example both procedure rules encourage the use of online facilities available rather than using a paper trail.

13. Are there any other options?

The council could continue with its current financial and contract procedure rules; however they would then not be up to date or provide clarity of roles and processes.

Director Finance, David Hodgson

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Local Government (Access to Information) Act 1972 (as amended)

Appendices:

Annex A - Procurement and Contract Procedures
Annex B - Revised Procedural Note – Exemptions
Background papers used in compiling this report:-

None

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