

REPORT TO EXECUTIVE

Date of Meeting: 4 February 2025

REPORT TO COUNCIL

Date of Meeting: 18 February 2025

Report of: Strategic Director of Corporate Resources

Title: Amendment to Procurement Contract Procedure Rules

Is this a Key Decision?

No

Is this an Executive or Council Function?

Council

1. What is the report about?

1.1 To approve the updates to the Procurement and Contract Procedures at Appendix A to take account of new national procurement legislation (Procurement Act 2023). These Procedures form part of the Council's Constitution and therefore need to align with the new Act.

2. Recommendations:

That Executive recommends to Council:

2.1 That the revised Procurement and Contract Procedures at Appendix A are approved and adopted with effect from 24th February 2025.

2.2 That the following revised Procurement Procedure Notes are approved and adopted with effect from 24th February 2025:

- a) Appendix B – Procurement Note Approval to Procure & Quality Assurance;
- b) Appendix C – Procurement Note Concessions;
- c) Appendix D – Late Submissions;
- d) Appendix E – Missing and Omitted Materials;
- e) Appendix F – Signing and Sealing Contracts; and
- f) Appendix G – Waivers

2.3 That any minor amendments to the Procurement and Contract Procedures and Procurement Procedure Notes are delegated to the Head of Legal and Democratic Services in consultation with the Portfolio holder.

3. Reasons for the recommendation:

3.1 To ensure the Council remains compliant with national procurement legislation and procurement good practice.

4. What are the resource implications including non financial resources

4.1 There will be a significant increase in the administrative burden as a result of a requirement to publish additional transparency notices required by the Act. This burden will primarily need to be absorbed within the procurement team resource.

There will be a small additional burden for contract managers who manage contracts valued at £5million+ as the new legislation requires annual reporting on at least three Key Performance Indicators (KPIs) throughout the lifespan of the contract.

5. Section 151 Officer comments:

5.1 This is a significant change to public procurement law. Adoption of the revised procedures will enable the Council to remain compliant. The majority of the additional administrative burden will fall on the Procurement team and it will be necessary to monitor the impact on their workload.

6. What are the legal aspects?

6.1 Section 135 (1) of the Local Government Act 1972 provides that a local authority may make standing orders with respect to the making of contracts by them or on their behalf.

The power to make standing orders in respect of making contracts is a Council function being specified a function not to be carried out by Executive in Schedule 1 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (SI 200/2853).

The amended procedures incorporate legislative changes introduced by the Procurement Act 2023 which is set to come into force on 24th February 2025.

7. Monitoring Officer's comments:

7.1 Members will note the legal aspects set out in paragraph 6 above. On the basis that the council will adhere to the new procurement and contract procedures proposed, the content of this report raises no issues of concern for the Monitoring officer.

8. Report details:

8.1 Procurement in the public sector is highly regulated and therefore contracting authorities must take account of prevailing legislation when procuring goods, works and services.

The council's current Procurement and Contract Procedure rules relate to the requirements of the Public Contract Regulations 2015 (PCR2015), which is based on EU legislation. As the United Kingdom has left the European Union, the regulations that govern how public money is spent have been updated. The new Procurement Act 2023, ("the Act") is due to come into force on 24th February 2025. The Council's Procurement and Contract Procedures at Appendix A have been updated to reflect the Act.

The Act will apply in full to procurements above contract value thresholds as follows:

UK Procurement Thresholds Type of contract	Exc. VAT (assumes standard rate of 20%)	Inc. VAT (assumes standard rate of 20%)
--------------------------------------------------	--------------------------------------------	--------------------------------------------

Goods & Services	£179,086	£214,904
Works	£4,477,174	£5,372,609
Concession Contracts	£4,477,174	£5,372,609
Light Touch Contracts	£552,950	£663,540

The Act also covers some aspects of procurement below these thresholds.

The main changes in the Act are as follows:

I. The Objectives of Public Sector Procurement

Under current Regulations we must consider the principles of equal treatment, transparency, non-discrimination, and proportionality. These same concepts continue under the new Act but are expressed differently and are now referred to as objectives. Contracting authorities must also consider:

- a. Value for money;
- b. Maximising public benefit;
- c. Sharing information (so suppliers understand our policies and decisions);
- d. Acting, and being seen to act, with integrity; and
- e. Considering whether barriers exist to the participation of SMEs and VCSEs, and if so whether they can be removed.

II. Changes of procurement processes

The current regulations include 5 prescribed processes; this is reducing to two. While the Open tendering process is largely unchanged, the other process (Competitive Flexible Procedure), allows a contracting authority to design a more bespoke tender process relevant to the requirements of a particular project.

III. Increased transparency

Contracting authorities are required to publish a far greater number of transparency notices and information, including, redacted copies of contracts (for contracts over £5million), details of pre-market engagement, council payment performance and information on supplier performance. This will place greater administrative work on the procurement team and contract managers of high value contracts. Where Council expenditure exceeds £100million in 12-month period, there will also be a requirement to publish a forward pipeline of upcoming procurement activity; at present, this requirement will not apply to Exeter City Council.

IV. One Single Central Digital Platform

Supplier information which is common across procurements is to be held on one central Government digital platform called "Find a Tender". It will be mandatory for suppliers to pre-register on this platform if they wish to bid for above threshold contracts. The Government

anticipates that this will reduce the level of administration for suppliers. This same platform will be where all transparency notices are to be published.

V. Contract management and reporting

Contracts over £5million in value, captured by the new Act, will be required to have at least three key performance indicators and performance against these must be monitored and published annually via the Government's central digital platform. Officers will set up a Procurement and Contract Management Board to oversee contract management.

VI. Frameworks/Dynamic Markets

The ability to set up and use pre-existing Framework agreements still exists but has been extended to include a new Open Framework which has greater flexibility. All frameworks, Dynamic Purchasing Systems established under current procurement legislation will end in February 2029. A new Dynamic Market process replaces current Dynamic Purchasing Systems, but at present Dynamic Markets are not expected to be available for under UK threshold procurements.

VII. Conflicts of Interest

There will be a requirement to keep detailed written records of conflicts and/or potential conflicts of interest for public contracts throughout an entire procurement cycle, including pre-tender and contract management phases of the cycle.

VIII. New areas of emphasis

The Act encourages contracting authorities to give greater consideration to pre-market engagement before starting any tender process to reduce failed procurements by ensuring that suppliers understand buyer requirements and contracting authorities understand the market.

Procurement exercises that are currently in progress or that have been awarded will remain subject to the requirements of the existing PCR2015 procurement regime.

Change to Authorisation points

The authorisation points within the revised Procurement and Contract Procedures with Appendix A have been simplified as detailed in the table below. Senior Management Board (SMB) will advise Heads of Service when reports need to be brought to Executive/Council for further approval, but members will still see and consider all relevant reports as they do under the current Procedures.

Authorisation Levels - Goods, Works, and Services	Authorisation Points
Total Contract Value Below £100,000	<p>The Responsible Officer with budget responsibilities in the Service area with the agreement of the Head of Service, will be responsible for taking a proportional approach to justifying the spend and holding all supporting documentation for audit and reporting purposes.</p> <p>For Contracts in excess of £5k the Responsible Officer must provide details of the Contract as required in the Contracts Register Entry form to the Procurement Team so that these can be published in line with transparency legislation.</p>
£100,000 to UK Procurement Threshold for Goods and Services £500,000 to £499,999 for Works	Appropriate Head of Service / SMB Member in conjunction with the Procurement Manager
Above UK Procurement Threshold for Goods and Services £500,000 and over for Works	SMB Member and Portfolio holder authorisation in conjunction with the Procurement Manager.

Summary of the Implications for Exeter City Council

Once bedded in, the new legislation is expected to make it easier for smaller suppliers to do business with Exeter City Council, particularly in relation to under threshold contracts. Bidding for over threshold contracts will also be easier, as suppliers will not need to provide the same core business information each time they bid for public contracts.

While procurement will still be heavily regulated, the new legislation will give greater freedom for officers to design a procurement process in a way that suits their requirements. This will be beneficial for more complex requirements.

The new transparency requirements will mean that both the public and suppliers have even greater transparency about how the Council spends its money and who it spends it with. The measures being introduced will also help to ensure larger Council contracts are managed in a more robust manner, this in turn will maximise value for money from key contracts over their entire term. Where applicable, poor supplier performance will also be more visible due to the new transparency requirements.

The recommendation therefore is that these revised Procurement and Contract Procedures reflecting the changes and new terminology in national procurement legislation are adopted in time for the implementation of the Procurement Act 2023; currently expected to come into force on 24th February 2025.

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

9.1 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?

10.1 Failure to adopt the revised procedures would leave the Council at risk of challenge from suppliers or chastisement from the Government's new Procurement Review Unit.

Adoption the procedures also ensures that all officers have the necessary guidance to avoid inadvertently putting the authority at risk of breaching relevant legislation.

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: 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

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?

13.1 No, as failure to update the Procurement and Contract Procedures could result in the authority being in breach of the Act.

Strategic Director for Corporate Resources - David Hodgson

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

Background papers used in compiling this report:-

None

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