



## Review of Contract Procedure Rules

<b>Corporate Priority:</b>	Service excellence in all we do
<b>Relevant Ward Member(s):</b>	All
<b>Date of consultation with Ward Member(s):</b>	Not applicable
<b>Exempt Information:</b>	No

### 1 Summary

- 1.1 This report sets out the proposed amendments to the Council's Contract Procedure Rules for consideration.
- 1.2 The updated Contract Procedure Rules set out the principles, roles and processes involved in procurement at the Council. All procurements must comply with these Rules, the Council's Financial Procedure Rules, English law and European Law in force in England. The Rules seek to protect the Council's reputation by minimising risk of allegations of corruption, dishonesty and failure to meet legal obligations.

### RECOMMENDATION(S)

1. **That Council approves the updated Contract Procedure Rules as attached in Appendix A, with an implementation date of 1<sup>st</sup> September 2020 (to allow sufficient time for Council Officers to receive training).**

### 2 Reason for Recommendations

- 2.1 The updates contained within Appendix A reflect current best practice, legislation and the requirement for Officers to have more in-depth information around procurement processes.
- 2.2 The Council's Rules must be kept under continuous review to ensure they reflect changes in the Law and changes required that result from internal reviews on how the Council operates.

### **3 Background**

- 3.1 The Council has Contract Procedure Rules to ensure that Officers follow a consistent, fair and transparent procurement process when purchasing goods, services or works. Above a certain value set by the EU, the process is set out in statute. Below this value, Councils have Contract Procedure Rules which adhere to the EU principles of fairness and transparency.
- 3.2 Audit check compliance with the Contract Procedure Rules. If an Officer does not follow the correct procedure rules then the Council could be at risk of a challenge to the procurement process. As well as the considerable financial, reputational and organisational risk attached to poor procurement, it is the responsibility of Council Officers to ensure the appropriate use of public money and to be able to demonstrate this.
- 3.3 Over the last eight months, Welland Procurement has reviewed the current Contract Procedure Rules to ensure they reflect changes in the Law, best practice and changes required that result from internal reviews on how the Council operates. This has led to the proposed updated Contract Procedure Rules as attached in Appendix A.
- 3.4 Welland Procurement has carried out this review alongside other internal stakeholders (Legal Services, Democratic Services and the Director for Corporate Services).

### **4 Main Considerations**

- 4.1 Amendments to the current Contract Procedure Rules are within Appendix A as tracked changes to enable changes to be clearly seen.
- 4.2 Key amendments to the Contract Procedure Rules are summarised below:
  - 4.2.1 Emphasis on ensuring approvals are in place (2.9) prior to procurement process and prior to award
  - 4.2.2 Ensuring TUPE implications are considered at pre-procurement stage (2.10)
  - 4.2.3 Explanation of total value, including aggregated spend (4)
  - 4.2.4 Contract term maximum (5)
    - a) The term of a Contract should not exceed five years in total (including any potential extension options), without the written approval of the relevant Service Director. This must be gained prior to the procurement process commencing. (5.1)
  - 4.2.5 Prompt for electronic signature added (6.5, 7.12, 11.7, 12.9, 13.11, 15.11.3, 16.3)
  - 4.2.6 Definition of local amended to Borough of Melton (7.5)
  - 4.2.7 Details in relation to the clarification process during a “live” procurement process added (7.7, 8.7, 9.8, 10.9)
  - 4.2.8 Details in relation to the evaluation of Quotations (RFQs) (7.10), and tenders (8.9, 9.9, 10.12)
  - 4.2.9 Details on where signed contracts are to be stored (7.13, 8.14, 9.14, 10.17, 16.3)
  - 4.2.10 Significant process detail added for procurements over OJEU threshold (10)
  - 4.2.11 Details on where procurement documents are to be stored (7.9, 8.15, 9.15, 10.18)

- 4.2.12 Information relating to compliant Framework call offs (11.2), as well as other obligations that still need to be considered (approvals, contracts register, Contracts Finder)
- 4.2.13 How to set up a Framework Agreement (12) and a Dynamic Purchasing System (13)
- 4.2.14 Conflict of interest declarations to be signed (£50,000 or more mandatory, £10,000-£50,000 discretionary) (15.1.2)
- 4.2.15 How to deal with errors in tenders (15.3)
- 4.2.16 How to deal with late tender submissions (15.4)
- 4.2.17 How to deal with irregular tenders (15.5)
- 4.2.18 Modern slavery compliance (15.8)
- 4.2.19 Safeguarding provisions (15.9)
- 4.2.20 Due diligence requirements (2.12, 7.15, 8.18, 9.18, 10.21, 11.11, 15.10)
- 4.2.21 Exemptions to the Rules (16, specifically 16.2, 16.4, 16.4.2, 16.5, 16.6)
- 4.2.22 Prompt for Officers to ask suppliers to sub-contract locally (17.1.4)
- 4.3 The Contract Procedure Rules are supported by the Procurement Toolkit (available to Council Officers via the [Welland Procurement portal](#)). The Toolkit is intended to be a reference point when undertaking a procurement exercise, providing practical guidance.
  - 4.3.1 An example of an area that the Toolkit gives further guidance on is understanding social value, and how benefits can bring additional economic, environmental and social benefits to the local area and community.
- 4.4 Cabinet approved the 2020-2024 Annual Procurement Appraisal and Framework on 15<sup>th</sup> July 2020, which sets out how the Council will promote effective procurement across the Council, as well as summarising how the Council will adopt a strategic approach to sustainable procurement based on national and regional drivers, best practice and recommendations on sustainable procurement. Every aspect of the procurement process and practice must be aimed at delivering best value for the benefit of the people of the local area.
  - 4.4.1 Section 5 of the Framework set out the principles within achieving community benefits; obtaining social value and engaging local small and medium enterprises (SMEs).
  - 4.4.2 Clear aspirations have been set out within the Framework to ensure the Council is doing as much as possible to give local and SME organisations an opportunity to work with and for the Council.

## 5 Options Considered

- 5.1 To continue with the current Contract Procedure Rules. This is not recommended, as the review has highlighted areas with significant gaps in information for Officers to be able to carry out procurement processes, and details on how to deal respond to certain circumstances.

## 6 Consultation

- 6.1 The updated Contract Procedure Rules have been circulated to multiple stakeholders for input, feedback and comment. This includes Legal Services, Democratic Services, Council Directors, Tier 3 Management and LGSS Audit. Alongside the training planned for August 2020, this will ensure the amendments are understood, and that the Rules as a whole are as user friendly as possible.

## 7 Next Steps – Implementation and Communication

- 7.1 Subject to Council approval, the updated Contract Procedure Rules will come in to effect from 1<sup>st</sup> September 2020, and will be incorporated to the Constitution accordingly. They will be published on Melton Borough Council’s internet pages, as well as the Council’s intranet pages for Officers to access.
- 7.2 The deferred effective date will allow sufficient time for Council Officers to receive training.
- 7.3 The updated Contract Procedure Rules will also be rolled out to clients receiving procurement support from Welland Procurement.

## 8 Financial Implications

- 8.1 There are no financial implications associated with this report.

**Financial Implications reviewed by: Corporate Services Manager 04/06/2020**

## 9 Legal and Governance Implications

- 9.1 It is a legal requirement for the Council to have Contract Procedure Rules.
- 9.2 The adoption and approval of amendments to the Rules is a matter reserved to Council and forms part of the Constitution.

**Legal Implications reviewed by: Director for Governance and Regulatory Services**

## 10 Equality and Safeguarding Implications

- 10.1 There are no equality and safeguarding implications to consider.

## 11 Community Safety Implications

- 11.1 There are no implications to consider.

## 12 Environmental and Climate Change Implications

- 12.1 There are no implications to consider.

## 13 Other Implications (where significant)

- 13.1 There are no implications to consider.

## 14 Risk & Mitigation

Risk No	Risk Description	Likelihood	Impact
1	Updated Contract Procedure Rules are not adopted by Council Officers.  The implementation period (up until 1 <sup>st</sup> September) allows for all relevant staff to receive appropriate training, which will be refreshed on an annual basis.	Low	Critical

<b>2</b>	COVID19 Training plans have been put in place, which can be delivered face to face or via conference call facilities.	Low	Marginal
<b>3</b>	New members of staff will not be aware of the Contract Procedure Rules Welland Procurement is to be made aware of new members of staff, as well as changes to the roles of current Council Officers. Welland Procurement will then be able to offer training and guidance on the Rules.	Significant	Critical
<b>4</b>	Audit requirements will not be updated to reflect the new Contract Procedure Rules. Welland Procurement will ensure LGSS Audit receive the updated version of the Rules.	Low	Critical

		Impact / Consequences			
		Negligible	Marginal	Critical	Catastrophic
Likelihood	Score/ definition	1	2	3	4
	6 Very High				
	5 High				
	4 Significant			3	
	3 Low		2	1, 4	
	2 Very Low				
	1 Almost impossible				

## 15 Background Papers

15.1 No background papers are being relied upon in writing this report.

## 16 Appendices

16.1 Appendix A – Contract Procedure Rules

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