

### Proposed Changes to Contract Procedure Rules

The Council's Constitution contains Contract Procedure Rules (CPRs) that govern how the Council procures supplies, services and works. These CPRs must comply with UK legislation. In October 2023, the Procurement Act 2023 (PA23) was passed, followed by the underlying supporting legislation the Procurement Regulations 2024 in April 2024. These will come into force on the 24 February 2024 and will apply to procurements that are commenced after this date. The PA23 replaces the current Public Contract Regulations 2015 and other procurement legislation, although the 2015 Regulations will continue to apply to procurements commenced prior to the PA23 coming into effect and will still regulate existing contracts procured under them.

The PA2023 imposes a significant number of duties and responsibilities upon contracting authorities throughout the procurement process (which also includes pre-procurement activity and contract management). The PA23 also imposes some obligations on contracts that are below the PA23 threshold. The thresholds currently remain at the same level as under the 2015 Regulations. Central government may make further regulations and changes under the PA23 as it contains specific powers to do so.

Officers have also proposed removing the fixed bands/thresholds for seeking quotations and tenders for procurements below the PA23 thresholds and, instead, introduce flexibility in procurements over £25,000 and below the PA threshold. This will enable the Procurement Team to determine which procurement method is most appropriate for each matter according to the circumstances. Consequently, this will remove the current need to seek exemptions/exceptions should a direct award be determined as appropriate.

A table of proposed amendments is set out below, and a redline version of the changes is provided.

It is intended to recommend to Committee and Council that the revised CPRs are adopted and that Council delegates authority to Director of Law & Governance and Monitoring Officer to be able to amend the CPRs to comply with emerging procurement practice and further changes in procurement legislation and guidance.

Table of amendments to CPRs

| Rule (New Numbering) | Proposed Changes                                                                                                                                  | Rationale/Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| All                  | Capitalization of defined terms<br><br>All footers removed                                                                                        | To reflect defined terms                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 1                    | Updates to the aims and scope of CPRs                                                                                                             | Under the Public Contract Regulations 2015, contracting authorities owe a duty to suppliers to uphold the principles of equal treatment, transparency, non-discrimination and proportionality when conducting a procurement. The Procurement Act expresses these concepts differently and sets out new principles and objectives. Therefore, CPRs have been updated to reflect this change. The scope of the CPRs has also been updated to reflect transactions to which CPRs will either not apply or will only partially apply. This now references contracts which are excluded under the Procurement Act 2023. |
| 2                    | Change in reference to “Procurement Legislation” rather than “Procurement Regulations” and to refer to Procurement Team consulting Legal Services | Amended to reflect that there are now multiple procurement regimes and that the Procurement Team will take advice from Legal Services where necessary                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| 3                    | Updates to Rule 3.1 to change “have been” to “will have”.<br><br>Updates to figures.<br><br>Updates to job titles                                 | To reflect that key decisions may be taken at award stage rather than pre-procurement,<br><br>To reflect that figures in the Procurement Act are inclusive of VAT.<br><br>To reflect current job titles                                                                                                                                                                                                                                                                                                                                                                                                            |

|   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|---|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|   | <p>Rule 3.6 Amendments around insurance and risk assessments</p> <p>New 3.7</p> <p>“3.7 Officers must, prior to conducting either a procurement above the Procurement Act Threshold or a regulated below Procurement Act Threshold, have regard to the fact that small and medium-sized enterprises may face particular barriers in competing for a contract and consider whether such barriers can be removed or reduced.”</p>                                                                                                                                                                                                                                                                                                                                   | <p>To reflect that the council’s update position of risk assessments and to refer to Guidance.</p> <p>To reflect that the Procurement Act requires contracting authorities to have regard to barriers that SMEs may face in competing for a contract and consider whether such barriers can be removed or reduced.</p>                                                                                                                                                                                                                                                        |
| 4 | <p>Amendments to the approach to valuing contracts</p> <p>4.3 amended to add that the Procurement Team will monitor contract spend.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | <p>To bring the drafting in line with the Procurement Act.</p> <p>To reflect internal processes</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 5 | <p>5.3 Updated to refer to the need for Officers to complete a Legal &amp; Procurement Instruction form</p> <p>New 5.4</p> <p>“Where the estimated value of a Contract is between £25,000 excl VAT and the current Procurement Act Threshold, the Relevant Procurement Team will, in consultation with the service area, determine the most appropriate method for procuring the supplies, services or works. This will consider aspects such as capability and capacity of officers in the relevant service area to manage the procurement themselves, timescales, risk and the relative maturity and state of the supplier market. The rationale for selecting a particular procurement method will be documented, recording details behind the selection.”</p> | <p>To reflect internal procedures</p> <p>This replaces the concept of fixed bands/thresholds for seeking quotations and tenders for procurements not subject to the Procurement Act and, instead, introduces flexibility in procurements over £25,000 and below the Procurement Act Threshold. This will enable the Procurement Team to determine which procurement method is most appropriate for each matter according to the circumstances. As a consequence, this will remove the current need to seek exemptions should a direct award be determined as appropriate.</p> |

|   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                              |
|---|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|   | <p>5.5 Existing clause deleted</p> <p>New 5.5<br/> “The Head of Commercial and Procurement Services will maintain a record of all contracts below the Procurement Act Threshold that have been awarded directly to a Supplier ( such record to contain the date of the contract, the nature of the contract, the value and duration of the contract, the name of the Supplier and the relevant service area) and will provide a copy of this record to the Director of Law &amp; Governance and Monitoring Officer at least every 6 months, and where otherwise requested to do so by Director of Law &amp; Governance and Monitoring Officer.”</p> <p>5.6 Amended to reflect that the Procurement Thresholds will be revised every even year</p> | <p>Now covered under Rule 10.</p> <p>To allow for the monitoring of below Procurement Act Threshold direct awards given the removal of the exemption/exception procedures in the existing CPRs.</p> <p>To reflect the provisions of the Procurement Act.</p> |
| 6 | 6.2 Drafting updated with regard to pre-qualification                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | To reflect the provisions of the Procurement Act                                                                                                                                                                                                             |
| 7 | 7.1 deleted                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | To reflect that formal request for quotations and invitations to tender are not always used in low value procurements or direct awards.                                                                                                                      |
| 8 | 8.1 Amended to apply to all procurements                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | To reflect internal processes                                                                                                                                                                                                                                |

|    |                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                              |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    | 8.2 Drafting updated to include reference to the Most Advantageous Tender (MAT)                                                                                                                                                                                                                                                                                                                                                                               | To reflect the shift in the Procurement Act to Most Advantageous Tender (MAT) from Most Economically Advantageous Tender (MEAT). This transition is more of a change of emphasis than substance. It provides reassurance that the council can take a broader view of what can be included in evaluation of tenders in assessing value for money.                             |
| 9  | <p>9.3 Amendment to payment terms</p> <p>9.5 Added reference to deeds being executed under seal</p> <p>9.6 New provision</p> <p>“Any Contract that will result in a public facing website/mobile app where the Council or a Supplier on its behalf is presenting information relating to the Council or services the Council offer, must comply with the Public Sector Bodies (Websites and Mobile Applications) (No. 2) Accessibility Regulations 2018.”</p> | <p>To reflect the provisions of the Procurement Act</p> <p>To provide clarity</p> <p>This provision reflects the requirement for compliance with the Accessibility Regulations. It is considered prudent to include this in order to draw this to the attention of officers involved in procuring contracts for website/mobile apps.</p>                                     |
| 10 | <p>Revised Rule 10</p> <p>“10.1 A Contract may be awarded by calling-off a third-party Framework providing the following criteria are met:</p> <p>(i) Legal Services have reviewed the framework documentation, confirmed that the Framework is</p>                                                                                                                                                                                                           | <p>To reflect the introduction of Dynamic Markets by the Procurement Act and to provide internal governance around the use of third-party framework agreement.</p> <p>References to Dynamic Purchasing Systems remain because, although new Dynamic Purchasing Systems are not provided for in the Procurement Act, existing Dynamic Purchasing Systems under the Public</p> |

|    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                            |
|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|
|    | <p>lawfully accessible to the Council and any access agreements are entered into;</p> <p>(ii) The Framework Agreement is considered suitable taking into account the complexity and scale of the requirement, the relevant market and value for money (following consultation with the Relevant Procurement Team);</p> <p>(iii) The call-off can be undertaken in compliance with the terms and conditions of the Framework Agreement (such terms and conditions must meet the Council's requirements as set out in these Contract Procedure Rules and have been approved by Legal Services); and</p> <p>(iv) For above Procurement Act Threshold Contracts, the outcome was not decided prior to identifying the Framework.</p> <p>10.2 Contracts based on either a third-party Dynamic Purchasing System or Dynamic Market may be awarded if they comply with the relevant Procurement Legislation. Legal and Procurement advice must be sought to ensure legal compliance and the relevant access arrangements are put in place.</p> | Contracts Regulations 2015 may continue to be used until October 2028.                                     |
| 11 | Amended to provide for quotes/tenders to be submitted via the tendering portal unless otherwise agreed by the Relevant Procurement Team                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | To reflect internal processes                                                                              |
| 12 | <p>12.1 Amended to provide for Procurement Team managing the evaluation rather than being part of the evaluation.</p> <p>12.2 Deletion of final sentence in respect of corrections.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | <p>To reflect internal processes</p> <p>To avoid potential non-compliance with procurement legislation</p> |

|    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                      |
|----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    | <p>12.3 Amended to provide that officers must be satisfied that tenders above the estimated value represent value for money.</p> <p>12.4 Amendment to the procedure for dealing with abnormally low tenders.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <p>To ensure that the council complies with its best value duty</p> <p>To comply with the Procurement Act</p>                                                                                                                                                                                                        |
| 13 | 13.5 Amendment to drafting around the need for a key decision                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | To bring the drafting in line with Rule 3.1                                                                                                                                                                                                                                                                          |
| 14 | Procedures for awarding contract amended                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | To reflect the requirements of the Procurement Act and internal processes                                                                                                                                                                                                                                            |
| 15 | Deletion of reference to emergencies under the current Rule 18.2                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | The current Rule 18 is deleted in its entirety in the new version of CPRs                                                                                                                                                                                                                                            |
| 16 | No significant amendment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                      |
| 17 | <p>17.1 amended to refer to "Procurement Legislation" rather than "Procurement Regulations"</p> <p>New 17.2<br/>"Where, as a consequence of a proposed Variation, a Contract below the Procurement Act Threshold will exceed the Procurement Act Threshold, the Variation will become regulated by the Procurement Act and the Relevant Procurement Team must be consulted."</p> <p>New 17.4<br/>"Where an Authorised Officer proposes to terminate a Contract which is covered by the Procurement Act or where a Contract which is covered by the Procurement Act is due to expire, the Authorised Officer must consult with the Relevant Procurement Team in order that transparency requirements can be met."</p> | <p>To reflect that the rules around contract modifications will depend on which legislation applies. There are now multiple procurement regimes.</p> <p>To reflect the provisions of the Procurement Act.</p> <p>To ensure that the new transparency requirements as required under the Procurement Act are met.</p> |

|                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                        |
|------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| N/A                    | Current Rules 18 and 19 that deal with general exceptions and exemptions deleted                                                                                                                                                                                                                                                                                                                                                                                                                    | In light of the proposed change under Rule 5.4 and exemptions/partial exemptions now being covered under Rule 1.10 and 1.11                                                            |
| 18                     | Amended to also address potential non-compliance with the Rules.                                                                                                                                                                                                                                                                                                                                                                                                                                    | To provide for potential non-compliance to be brought to the attention of relevant officers in addition to actual non-compliance.                                                      |
| 19                     | No significant amendment                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                        |
| 20                     | <p>New 20</p> <p>“Officers and Members must comply with their respective Codes of Conduct under Part 9 of the Constitution to avoid any conflict between their own interests and that of the Council. Where required by the Relevant Procurement Team, a conflict assessment must be undertaken at the start of a procurement and shall be kept under review during the lifetime of the Contract where one is awarded. Conflict Assessments will be retained by the Relevant Procurement Team.”</p> | To reflect the requirements of the Procurement Act that conflict assessments are mandatory for some procurements and must be reviewed throughout the lifetime of any contract awarded. |
| Appendix 1 Definitions | Updated                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | To reflect current meanings, job titles and references                                                                                                                                 |
| Appendix 2 Table 1     | Authorisation tables updated                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | To reflect less onerous sign off requirements for lower value contracts.                                                                                                               |
| Appendix 2 Table 2     | Procurement thresholds and processes updated                                                                                                                                                                                                                                                                                                                                                                                                                                                        | To reflect the position set out in Rule 5.4 and the Procurement Act 2023                                                                                                               |