

Report to County Council

CONTRACT PROCEDURES RULES

8 December 2021

1. The Contract Procedure Rules (the “Rules”) are the Contracting Authority’s (the “Council”) rules for the buying, renting and leasing of Goods, Services and Works and apply to all Relevant Contracts made by the Council. They were formally known as Contract Standing Orders.
2. The aim of these Rules is to assist Officers in achieving best practice and lawful procurement, to ensure that the Council fulfils its duty of delivering Best Value for its council tax payers and excellent outcomes for its service users.
3. The Rules also provide a basis for fair competition by providing transparent and auditable procedures to protect the Council’s reputation from any suggestion of dishonesty or corruption.
4. These Rules apply to all Officers of the Council or any companies or organisations within the Council’s control. They are part of the Council’s Constitution and therefore Officers have a duty to ensure they have fully understood them and have sufficient authority prior to commencing any procurement or contracting activity
5. The last review took place in 2013 and it was felt timely to review what were previously called Contract Standing Orders to update them both for inflation and any changes in legislation or best practice. A full record of the changes made is attached at Annex A.
6. Alongside the review of the Contract Procurement Rules, the Strategic Procurement team is also developing a Procurement Toolkit to help support those officers who are managing procurement processes. Development of the toolkit will be reported to Corporate Overview and Scrutiny Committee as it progresses.
7. The Council is also strengthening its approach to securing social value through the council’s contracts. Social value is an approach that seeks to secure additional social, economic and environmental benefits for local people and communities in everything the Council does. This will include consideration of the impact of Council contracts on climate change and carbon reduction. We aim to have a social value and strategy in place by March 2022, but in the meantime, are already working with commissioners across the council to raise awareness and begin to apply the principles of social value.
8. The Government proposes to repeal the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations and produce a single set of regulations covering all contracts. Procurement rules for healthcare services will be developed separately in consultation with the DHSC. This will have a significant impact on the Rules.
9. A new Procurement Bill was announced in the Queen’s speech though it is not clear at this stage how quickly this will progress through Parliament. For that reason we

will continue to keep the Contract Procedure Rules under review, and will bring further recommendations to the Committee in light of changes arising from the bill.

10. In the meantime, this report is seeking the committee's support for the proposed changes.
11. The changes were considered by Constitution Committee on 18 November 2021, and come with that Committee's recommendation **that Council agrees the attached Contract Procedure Rules for incorporation into the Council's Constitution.**

Annex A

Table of Key Updates and Changes to the 2015 Contract Standing Orders as at 29 September 2021

Please note the CSO reference numbers marry with the *Contract Standing Orders with Updated Changes 29 Sept 2021* ('track change') document. The CPRs V1.9 (the 'clean' document) has different numbers from section 7 (formerly entitled 'Grants'), as this section has been removed. Where relevant, the equivalent reference numbers for V1.9 are listed in brackets in blue)

CSO No.	Details of Update/Change
<p>Name change and reason for CSO update</p>	<p>Contract Standing Orders (CSOs) have been updated and re-named as Interim Contract Procedure Rules (ICPRs), and when adopted by the Council will be termed 'Contract Procedure Rules' (CPRs). The name change to 'Contract Procedure Rules' was requested by the Executive Director of Corporate Services (EDCS). The term ICPRs has been used to differentiate between the updated 2015 CSOs and the new draft Enhanced Contract Procedure Rules (ECPRs) – see below.</p> <p>It is 6 years since the CSOs were reviewed. As a result of key legislative and policy area changes, to address common issues that have since arisen, to include areas relating to procurement raised by the EDCS, and to add clarity in some areas, the ICPRs have been reviewed and updated <i>as an interim measure</i> to meet these requirements while the Procurement Transformation Plan work is undertaken, and until the results of the reform of UK public procurement legislation are published. The ECPRs, in development since last year, are more extensive than the ICPRs, and have already been benchmarked with the sector, and include standardisation of terms and proposed revisions to tendering and quote thresholds. The ICPRs incorporate thresholds proposed by the EDCS. Some areas already include requirements detailed in the Spring 2021 Green Paper consultation of the reform of UK public procurement legislation.</p> <p>Until adopted, the ECPRs will remain as a live draft enabling the legislation reform changes to be incorporated once published; this also applies to the Procurement Toolkit (also in development) as the ECPRs have been designed to operate in tandem with the Procurement Toolkit.</p>
<p>Name Changes</p>	<p>The term "Head of Commercial Services" has been amended to "Assistant Director of Strategic Procurement" and the "Head of Legal Services" has been amended to "Assistant Director of Legal Services". Also, the addition of the Director of Policy, Performance and Governance has been included at the request of the EDCS. These changes have been reflected throughout.</p>
<p>Legislation Change</p>	<p>References to EU legislation have been changed to "relevant thresholds prescribed by UK public procurement legislation"; this reflects the current 4 procurement laws and negates the need to identify each one every time legislation is referenced. The changes took effect as a result of Brexit wef 1 January 2021.</p>
<p>2.4 Scope</p>	<p>Text added to clarify that subject to the Council Scheme for Financing Maintained Schools, the CPRs apply to Council Maintained Schools.</p>
<p>3.5 Authorised</p>	<p>Re-ordered with 3.6. The term "Authorised Officer" has been clarified by linking to the key tasks that relate to undertaking procurement and contract</p>

CSO No.	Details of Update/Change
Officer	management. Reference to receiving delegated authority under the Scheme of Delegation to undertake these tasks has been retained.
3.7 Contract Management	The section has been updated to include a reference to “contract management” to highlight to Directors that when they assign responsibilities to Officers to undertake procurements and/or contract management, these Officers have the necessary skills, competencies and knowledge to undertake them. This includes attendance at relevant internal and external training courses such as procurement, finance, risk, business continuity and GDPR.
4.1 Best Value	Definition of Best Value has been added.
5 Exemptions	Addition of the requirement for Direct Contract Awards over £25,000 to be authorised by the Director of Policy, Performance and Governance after considering a written report by an appropriate Director. The maintaining of a register of these direct awards and the annual reporting of them to the Audit and Governance Committee is also provided for.
7 Grants	Removal of the section. Grants are now included in the Finance Procedures.
8 (7 in V1.9) Framework Agreements and Dynamic Purchasing Systems	Framework agreements and Dynamic Purchasing Systems (DPSs) are commonly in use in the public sector, often established by central buying organisations for other named public bodies to procure from. Before carrying out a procurement process, emphasis has been made on Authorised Officers assessing whether any existing frameworks, DPSs or contracts (established either by central buying organisations or the council) are a suitable way to procure as a quicker and compliant option where Best Value can be demonstrated.
9.1 & 9.2 (8.1&8.2 in V1.9) Estimated Total Contract Value 9.5 a – e (8.5 a - e in V1.9) 9.8 (8.8 in V1.9) Direct Contract Awards	<p>The rules for calculating the estimated total value of a contract, including contract extensions, lots, and direct contract awards has been added to comply with UK public procurement legislation. To mitigate risk, specific mention has been made of circumstances which contravene procurement legislation e.g. if attempts are made to circumvent the law by under estimating contract value, disaggregation of requirements or splitting contracts to avoid application of the law.</p> <p>Revised Thresholds proposed</p> <p>This details the circumstances, permitted in law relating to direct contract awards.</p>
10. (9 in V1.9) Localism	<p>Addition of the provision of localism in procurements where Authorised Officers may use ‘reasonable endeavours’ to obtain a quote from a Gloucestershire based supplier. This provision has been added in recognition of the Council’s efforts to promote social value as part of its Economic Recovery Plan and to support Gloucestershire based SMEs.</p> <p>The requirement to follow guidance issued by the Assistant Director of Strategic Procurement has been removed as the requirement already exists in CPR 17.</p>

CSO No.	Details of Update/Change
11.1 – 11.8 Framework Agreements and DPSs (10.1-10.8 in V1.9)	Removal of Select Lists which are no longer in use. With increasing use of framework agreements and DPSs as options to procure, the key legal requirements applicable to their use have been included to reflect this.
12.1 Schools Standards & Framework Act 1998 (11.1 in V1.9)	Addition of text to clarify the requirements applicable to Section 48 of the School Standards & Framework Act 1998, and the thresholds for obtaining quotes for Council Maintained Schools.
13. Tendering Exercises 13.4d Receiving Tenders & Late Tenders (12 & 12.4d in V1.9)	<p>The requirements detailed in “CSO 14 Tendering Exercises” have been amalgamated into CPR 13 to provide the requirements when tendering in one place.</p> <p>The criteria for addressing areas of minor non-compliance in submitted tenders have been updated. The circumstances for accepting late tenders have also been updated, and the roles of Principal Lawyer and Legal Services Business Partner included with authority to make decisions regarding accepting late tenders. Addition of these roles manages an identified resilience risk by having more than one individual authorised to act on behalf of the Assistant Director of Legal Services in these circumstances.</p>
14. Contracts Register (13 in V1.9)	The requirement to publish all purchases exceeding £5,000 ex VAT on Contracts Register to comply with the Local Government Transparency Code 2015 has been added.
15.7 Liquidated Damages (14.7 in V 1.9)	Reference to liquidated damages has been removed in agreement with Legal Services as this is more appropriate to sit within contract clauses.
15.8 & 15.9 Contract Sealing (14.8 & 14.9 in V1.9)	Inclusion of the contract sealing threshold proposed by the Monitoring Officer.

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