

Report to:	Audit and Governance Committee	Date of Meeting:	Wednesday 15 September 2021
Subject:	Procurement – National Procurement Policy, Contract Procedure Rules and Internal Processes		
Report of:	Executive Director of Corporate Resources and Customer Services	Wards Affected:	(All Wards);
Portfolio:	Regulatory, Compliance and Corporate Services		
Is this a Key Decision:	N	Included in Forward Plan:	No
Exempt / Confidential Report:	N		

Summary:

This report presents

1. a refresh of the Contract Procedure Rules for consideration and approval
2. presents the published Modern Slavery Statement
3. provides an update of progress in respect of Social Value Activity and
4. updates on national policy direction

Recommendation(s):

Committee is asked to

- (1) Consider and approve draft Contract Procure Rules at Annex A
- (2) Note that a full rewrite of the Contract Procure Rules will take place once the updated national guidance is published and a further report will be presented for consideration.
- (3) Note that the Council's Modern Slavery Statement is published on the Council website (<https://www.sefton.gov.uk/media/1265/modern-slavery-statement.pdf>) and is refreshed annually.

Reasons for the Recommendation(s):

In light of the UK re-joining the WTO Government Procurement Agreement and the proposed national changes a refresh of the Contract Procure Rules is presented (Annex A) to Audit and Governance for consideration and approval.

Once national changes are published there will be a full rewrite of the Contract Procedure Rules.

Alternative Options Considered and Rejected: (including any Risk Implications)

NA

What will it cost and how will it be financed?

(A) Revenue Costs

There are no revenue implications

(B) Capital Costs

There are no capital implications

Implications of the Proposals:

Resource Implications (Financial, IT, Staffing and Assets):	
n/a	
Legal Implications:	
All issues are reflected within the report	
Equality Implications:	
There are no equality implications.	
Climate Emergency Implications:	
The recommendations within this report will	
Have a positive impact	N
Have a neutral impact	Y
Have a negative impact	N
Neutral impact. The content of this report is an propose a refresh to existing Contract Procedure Rules for consideration update. Individual procurement exercises will consider Climate Emergency implications.	

Contribution to the Council’s Core Purpose:

Protect the most vulnerable: The Council can use procurement activity as a tool to ensure quality services are available to support the most vulnerable.
Facilitate confident and resilient communities: The Council can use procurement activity as a tool to be more socially-inclusive.
Commission, broker and provide core services: the procurement process supports the Council in securing the best value for money and delivering wider economic, social and energy benefits.
Place – leadership and influencer: The Council can use procurement activity to boost jobs, growth and investment, and to create an economy that is more innovative, resource and energy efficient, and socially-inclusive.

Drivers of change and reform: The quality services and outcomes for local people can be improved through modern, well-managed and efficient procurement.
Facilitate sustainable economic prosperity: The Council can use procurement activity as a tool to boost jobs, growth and investment, and to create an economy that is more innovative, resource and energy efficient, and socially-inclusive.
Greater income for social investment:
Cleaner Greener; The Council can use procurement activity as a tool to be more energy efficient and address the Climate Change Emergency.

What consultations have taken place on the proposals and when?

(A) Internal Consultations

The Executive Director of Corporate Resources and Customer Services (FD.6510/21) and the Chief Legal and Democratic Officer (LD.4711/21) have been consulted and any comments have been incorporated into the report.

(B) External Consultations

Implementation Date for the Decision

Immediately following the Committee meeting.

Contact Officer:	Jan McMahon
Telephone Number:	Tel: 0151 934 4431
Email Address:	jan.mcmahon@sefton.gov.uk

Appendices:

Annex A

Background Papers:

There are no background papers available for inspection.

1. Background

1.1 In December 2020 Cabinet Office issued the 'Transforming Public Procurement' report for consultation. The stated aims of the report are to:

- Speed up and simplify procurement processes
- Placing value for money at the heart of procurement activity
- Unleash opportunities to small businesses, charities and social enterprises
- Delivery best commercial outcomes
- Minimise the burden on businesses and the public sector

1.2 In June 2021 new guidance was published that says job creation, investment in skills and opportunities for local growth should be taken into account by councils and other public bodies when awarding public contracts. The new guidance, issued to officials in local councils, central government, NHS trusts, police forces and other public organisations, says that the wider benefits of spending public money should be factored into the procurement process.

1.3 The guidance also says that, while securing the best value for money is crucial, procurement activity must not simply award contracts to the lowest bidder, especially when wider economic benefits can be proved.

Announcement:

<https://www.gov.uk/government/news/procurement-teams-must-consider-wider-benefits-of-public-spending>

Guidance: <https://www.gov.uk/government/publications/procurement-policy-note-0521-national-procurement-policy-statement>

1.4 The Strategic Leadership Board has been kept up to date with proposed changes and staff within Corporate Resources and Customer Services are working together to review the new guidance alongside ongoing work including

- reviewing the Contract Procedure Rules
- developing internal process guidance and
- implementation of the Social Value portal

1.5 In light of the above a refresh of the current Contract Procure Rules is presented (Annex A) to Audit and Governance for consideration and approval.

1.6 Members of the Committee are asked to note that a full rewrite of these once the national guidance is published will be presented for approval by this committee in due course.

1.7 Members of the Committee will recall that in April 2019, a Council motion was passed for the Council to commit to helping eradicate slavery and labour exploitation and a number of principles were agreed.

"This Council commits to helping eradicate slavery and labour exploitation. As an organisation who believes and promotes ethical working standards, we will endeavour to ensure that all Council policies, procedures and practices are fully compliant with relevant slavery and labour standards legislation. We will actively seek to only use suppliers who uphold these principles. We will promote our charter by raising awareness, educating and supporting both within our organisation and those we come into contact with."

In September 2020, the Home Office introduced new measures to tackle modern slavery in supply chains which will hold businesses and public bodies accountable for tackling modern slavery. This updated guidance, explains how businesses should comply with the Modern Slavery Act 2015 and requires all large businesses to produce an annual statement for each financial year setting out the steps they have taken to prevent modern slavery in their business and supply chains.

Members of the Committee are asked to note that the Council's Modern Slavery Statement is published on the Council website (<https://www.sefton.gov.uk/media/1265/modern-slavery-statement.pdf>) and is refreshed annually.

1.8 Members of the Committee should also be aware of the progress made in respect of Social Value;

- All Procurement staff have received Chartered Institute of Purchasing and Supply Ethical Accreditation, this training ensures that Procurement staff have built their understanding of how to behave ethically and establishes a commitment to ethical behaviour. The training is renewed annually to ensure they have knowledge of up to date good practice.
- Standard Social Value questions are now embedded in strategic tenders, together with supporting information to advise Bidders what social value is and key local organisations and initiatives they can engage with to deliver social value. On occasions these social value questions have been customised with project specific outcomes attached.
- In order to support Social Value evaluation a specialist application called Social Value Portal has been procured. This tool allows bidders to put forward proposals tied into specific Themes, Outcomes and Measures which are quantifiable against nationally recognised standards. Officers are currently trialling the implementation of Social Value Portal on pilot projects. Once these are completed, Officers will review lessons learnt and roll out training to Procurement staff and Commissioners. Once Social Value Portal is live the Council will create a web portal and communication plan to support Suppliers to respond to our social value expectations. On delivery of Social Value Outcomes, Suppliers will have the facility to report their delivery to Social Value Portal who will produce a dashboard of benefits delivered.

2. Stop Gap Provisions

2.1 The Public Procurement (Amendment etc Regulations) (EU Exit) 2020 have been introduced to amend Public Contract Regulations 2015. In these regulations details are given of the '[Find a tender](#)' portal which replaces '[Tenders Electronic Daily](#)' as the advertising portal to stimulate interest in tender opportunities.

2.2 The UK has re-joined the WTO Government Procurement Agreement which ensures that for most public contracts reciprocal access must be given to EU

Counties and 20 developed nations (including USA, Canada, Japan, Australia, Israel and Switzerland).

- 2.3 The regulatory framework will be based on the principles of Non-discrimination, transparency, impartiality, supporting the public good, value for money, integrity and fair treatment of suppliers

3. Potential Impact of National Policy Change

3.1 Streamlining of regulations

- 3.1.1 At present there are a series of Regulations for different public sector organisations (e.g. Public Contract Regulations 2015, Utilities Contract Regulations 2016, Concessions Contract Regulations 2016, Defence and Security Public Contract Regulations 2011) these are proposed to be incorporated into a single set of rules for all contract awards, simplifying the processes for buyers and suppliers. This proposed approach may reduce over 350 aspects of the current Regulations.

It is anticipated that the awarding procedures will be reduced from the current 8 (Open, Restricted, Competitive Dialogue, Innovation Partnership, Competitive Procedure with Negotiation, Design Contest, Light Touch Regime, Negotiated with no prior Award) to 3 (Open procedure, Competitive Flexible Procedure, Limited Tendering Procedure).

3.2 Open procedure

- 3.2.1 Open procedure remains the most popular route to market, allowing buyers a single stage process, and this will remain largely unchanged, with no provision for two stage procurement (procurement/sourcing), or for negotiation.

3.3 Competitive Flexible Procedure

- 3.3.1 The proposed Competitive Flexible Procedure has the potential to offer significant benefits to Commissioners and Bidders. It offers greater flexibility to design procurement processes to fit with the specific requirements of the Commissioner, embeds the facility to build in stages of negotiation, allowing both parties the freedom to explore opportunities to maximise the benefits of bids, and facilitates the introduction of innovative ideas from suppliers.
- 3.3.2 The procedure is also proposed to be used in situations where an initial selection stage is needed to limit the number of Bidders, for example where a specific technical requirement is needed to bid.

In a similar manner to the Innovation Partnership, the Competitive Flexible Procedure is proposed to be adapted to procure innovative products or services using a phased approach to develop solutions (e.g. pilot phase, go live phase).

3.4 Limited Tendering Procedure

- 3.4.1 The Limited Tendering Procedure is proposed to replace the Negotiation with no prior Award procedure. Whilst it is intended to manage spend areas of an

emergency nature where the requirement could not have been anticipated (e.g. no suitable tenders received, artistic or technical reasons, exclusive rights, extreme/unpredicted urgency etc) it is not an excuse for direct award due to poor planning. The current guidance to produce a Voluntary Ex Ante Transparency notice (VEAT) to confirm the reason for award with no prior competition is proposed to be replaced by a Contracts notice (except in urgency/crisis) and a ten day standstill period before Contract award.

3.5 Frameworks

- 3.5.1 Frameworks may change, with a proposal to increase the typical Framework period from 4 years (typically) to a maximum of 8 years, with requirements to reopen the Framework at least once (after 3 years) allowing Commissioners to benefit of ensuring the approach captures opportunities for new suppliers to join the framework.

3.6 Dynamic Purchasing Systems +

- 3.6.1 Dynamic Purchasing Systems (DPS+) are proposed to be extended beyond commonly used goods and services, offering the benefit over Frameworks of suppliers being able to join the DPS at any time.

3.7 Pre-qualification

- 3.7.1 Pre-qualification processes could be transformed with the proposal to investigate the feasibility of a centralised single digital platform for supplier registration (similar to parts of the traditional Pre-Qualification Questionnaire), allowing Procurement staff access to this basic information on demand, and streamlining tendering processes.

There is also a proposal for the Government to create a monitoring system to evaluate performance against Contract KPIs and options to permit exclusion from procurements in the event of significant and persistent poor performance in the previous 3 years.

3.8 Evaluation criteria

- 3.8.1 The previous award criteria Most Economically Advantageous Tender (MEAT) is proposed to be replaced by Most Advantageous Tender (MAT) encouraging Commissioners to consider broader factors when assessing value for money, such as social value (economic, social and environmental outcomes).
- 3.8.2 Sefton is well positioned to support this approach when the Council has fully integrated the benefits of the [Social Value Portal](#), allowing us to capture, evaluate and report social value outcomes effectively.

3.9 Legal challenges

- 3.9.1 The route to hearing legal challenges may reduce with the proposed introduction of a tailored fast track system, and specialist procurement tribunal with a procurement only judge. Challenges potentially could reduce as damages

potentially can be capped at x 1.5 of bid costs, which should impact the number of speculative Bidder claims.

3.10 Training

- 3.10.1 There will be some initial costs in familiarisation of new processes for Commissioners and Buyers, this will include a refresh of all sourcing documents to maximise the potential benefits offered, and some additional governance will be required to manage Competitive Flexible Procedure, but examples of good practice have already been established from the previous Competitive Procedure with Negotiation and Innovation Partnership. Negotiation training for evaluators maybe required in order to exploit the freedoms of the new procedure.
- 3.10.2 A new Cabinet Office support unit is intended to be created to improve capability and practices for Contracting Authorities, so we would anticipate some resources would be available to assist with the transition to the new processes. This unit would also have the power to monitor and intervene where it saw inappropriate Procurement practice in a manner similar to the current Public Procurement Review Service.

4. Potential Risks

4.1 Light Touch Regime

- 4.1.1 With the proposed elimination of the Light Touch Regime many contracts maybe drawn into the scope of the three new procedures, whilst this would not be an issue from a sourcing approach (as Competitive Flexible Procedure can be modelled similar to Light Touch Regime), the report does not detail if these areas of spend remain on the current Light Touch Regime threshold £663,540 or reduced to the Open Procedure threshold £189,330.

4.2 Competitive Flexible Procedure

- 4.2.1 The Competitive Flexible Procedure does introduce a higher level of risk of legal challenge if procurements have not been run in alignment with the new regulations. In particular with the introduction of negotiation phases there is an increased risk of unfair treatment, and effective governance will be critical.

4.3 Greater transparency

- 4.3.1 The requirement for greater transparency of award decisions will eliminate the requirement for a standstill letter. Throughout the procurement there will be requirements to share key decision documents and the Contract Award (Article 84) Report, plus feedback on the results of the evaluation panel will need to be published for all bids (with exemptions for commercially sensitive information). This reporting will put additional burdens on Procurement teams, and potentially could increase the risk of legal challenge if evaluation reports are not drafted accurately. This risk will be mitigated by effective assessment of bids by

evaluation panels. The Procurement team will be able to create evaluation workshops to assist evaluation panels.

- 4.3.2 The Government also proposes to put a stronger emphasis on Contracting Authorities publishing contracting data throughout the contracting lifecycle, this will include details of pipeline notices for future procurements (at least 18 months ahead but ideally 3 to 5 years ahead), pre market engagement notices, details of contracts awarded and amended, awards from Frameworks and DPS+. A timescale is proposed to be established so that e-procurement related portals (such as [Proactis / The Chest](#)) can meet any obligations.