

SUBJECT:	PROCUREMENT ACT 2023 & CONTRACT PROCEDURE RULES
DIRECTORATE:	CHIEF EXECUTIVE AND TOWN CLERK
REPORT AUTHORS:	CAROLYN WHEATER – CITY SOLICITOR, HEATHER CARMICHAEL PROCUREMENT MANAGER

1. Purpose of Report

- 1.1 To seek Executive approval to the new Procurement Act 2023 and the subsequent revision of the Council's Contract Procedure Rules, and in doing so to note any comments from Audit and Policy Scrutiny Committee.

To refer the changes to the contract procedure rules to Council.

2. Executive Summary

Procurement Act

- 2.1 The Procurement Act 2023 (PA23) received Royal Assent in October 2023 and is due to come into force in February 2025. The Act will supersede existing legislation governing public procurement, including the Public Contract Regulations 2015.

- 2.2 The PA23 has been designed to create a simpler, more flexible commercial system which meets the UK's needs. The aim of the Act is to provide a number of benefits to suppliers and buyers including:-

- Cutting red tape and supporting innovation
- Improving transparency by creating a fully open and transparent system, meaning everyone has access to public procurement data
- Faster competitive processes for emergency buying, allowing buyers to meet urgent needs quickly and efficiently
- Simplifying the process of working with the public sector, supporting more small to medium enterprises (SME's) to bid for contracts

- 2.3 This transformation of public procurement represents a huge change for all public bodies and is seen as a significant opportunity to make procurement processes better to deliver outcomes for the taxpayer.

2.4 Contract Procedure Rules

- 2.5 In order to comply with the PA23 the Procurement Manager has updated and refreshed the Council's Contract Procedure Rules (CPR's). These CPR's, which are required by the Local Government Act 1972, set out the rules by which the

Council spends money on the goods, services and works needed to deliver services to the residents of Lincoln.

2.6 The CPRs have seven main purposes:

- To support the delivery of the Council's Corporate Objectives
- To provide a legal framework for the Council's procurement activities
- To provide an auditable framework for the Council's procurement activities
- To help the Council obtain value for money so that in turn it may provide value for money services to the public
- To comply with the UK law governing spending of public money
- To comply with UK law as required through the Public Contract Regulations (2015) and Procurement Act 2023
- To protect staff and members of the Council from undue criticism or allegation of wrongdoing.

2.7 The revised CPR's adopt the whole procurement lifecycle approach, and the intention is that these are easier to read, make clear the requirements linked to contract values and give clarification to the limited circumstances where an exception to the normal route can be applied. The CPR's set out the Council's own rules for contracts and procurement, and are the layer below procurement legislation.

3. PA 2023

3.1 The PA23 makes significant changes to the Public Contract Regulations 2015, some of which are outlined below (though not an exhaustive list):-

3.2.1 That 'procurement' is to be seen in its widest sense, so the term now means not only the procurement process itself, but also pre-market steps in the route to award, the operation and management of the contract once awarded, and the exit whether by termination or expiry.

3.2.2 Pre-market engagement sees the introduction of two new public notices; Planned Procurement Notices and Preliminary Market Engagement Notices.

3.2.3 Competitive Tendering Procedure – moves from six procedures to the creation of one concept of competitive tendering procedure, which may be either a single stage open procedure or; 'any other competitive procedure that the authority considers appropriate,' introducing the freedom to design a procedure.

3.2.4 A new concept is introduced of 'excluded suppliers' – excluded on a mandatory ground and 'excludable suppliers' excludable on a discretionary ground.

3.2.5 Allows the modification of the term of the procurement provided the tender deadline has not passed.

3.2.6 Allows for the direct award of a contract in special/limited cases.

- 3.2.7 Introduces a new concept of an open framework which can operate for a maximum of eight years and allow new suppliers to join during the lifetime of the framework.
- 3.2.8 Reduces the standstill period after a contract has been awarded, from 10 to 8 days.
- 3.2.9 Where a contract is valued at more than £5 million, introduces a requirement to publish at least three key performance indicators (KPI's) via a contract performance notice.
- 3.2.10 Introduces Contract Change Notices which will be required for all contract amendments, except where this doesn't change the scope of the notice.
- 3.2.11 Introduces a central digital platform for suppliers to register and store their details so that they can be used for multiple bids, and be able to view all opportunities in one place.

3.3 Transition

- 3.4 The new PA23 will only apply to new procurements commenced from the date the Act comes into force. This means contracts let prior to 24 February 2025 will continue to be governed by previous legislation and will not be subject to the requirements of the PA23.

3.5 Notices

- 3.6 Linked to the transparency thread running through the PA23, the most significant change for public authorities contemplating entering into a contract is the number of notices that are now required to be published. As identified above, whilst not all mandatory, these notices apply even before the contract has been identified and throughout the contract period until expiry of such.
- 3.7 This a significant step change for the Procurement Manager to manage and once the contract has been awarded, for the identified contract manager to monitor, review and publish.
- 3.8 There are now a significant number of contract notices required to be published covering the following stages:
 - Planning stage
 - Procurement stage
 - Contract award and extension
 - Contract performance
- 3.9 Whilst the transparency of the above is understood, the pushing out of this increased information does have a significant draw on resources and poses an increased risk of challenge as there is so much more information available.
- 3.10 It is clear that whilst the proposed changes by the PA23 will see a reduction in the amount of 'red tape' for the market and businesses, this will not be the case for

contracting authorities such as the Council. The Act does require additional work and steps during each procurement.

3.11 Pipeline Notice

- 3.12 One of the main changes to be introduced is the publishing of a Pipeline Notice. This is seen as an important new step as contracting authorities can provide the market with information about current and future public contract opportunities by publishing a forward-looking procurement pipeline.

This is seen as a particular benefit to SME's and social enterprises as it provides them with time to plan for future work.

This is a requirement for any contract with an estimated value of more than £2 million. It is the collection of individual procurements that make up a contracting authority's procurement pipeline over the next reporting period. The 'reporting period' is 18 months, commencing on the first day of the financial year in which the notice is published.

4. Contract Management

- 4.1 Whilst there is already a procedure in place for any contract exercise to identify a Contract Manager, whose responsibility it is to monitor, and manage the contract for the length of the term and all relevant performance issues, the Act will now place additional responsibilities on that contract management. As identified above, the PA23 places additional responsibilities for the duration of the contract for the publishing of any relevant notice, once the award notices have been completed by the Procurement Manager. There will also be a requirement for relevant Assistant Director's, Service Managers or Contract Managers to identify any contracts which may need to be included in the pipeline notice

5. Contract Procedure Rules

- 5.1 As identified above the CPR's are a legal requirement and form part of the Constitution. Whilst the CPR's have been updated to reflect the necessary changes under the PA23, they also set out the process to be followed for contracts for goods, services and works and all relevant thresholds for these which sit under the PA23. They also identify that there may be occasions where they may be an exception to the normal route for entering into a contract, and these exceptions are listed and limited to those as set out.
- 5.2 They also identify that whilst there may be the necessity and the wish to use a Framework agreement, that a simplified procedure will still be required to make clear why a framework has been used.

6 Training

- 6.1 Appropriate training will be undertaken on the PA23 and the revised CPR's with Members, Corporate Management Team, Assistant Director's and Contract

Managers, over the coming months to ensure that all those who have a role in contracts are fully prepared for the Act coming into force in February.

6.2 Strategic Priorities

N/A.

7. Organisational Impacts

7.1 Finance

There will be a cost of circa £22,000 to assist with the implementation of the Act to cover training as outlined above, and to purchase a suite of documents relevant to implementing the Act. This cost is accommodated within existing budgets.

7.2 Legal Implications Including Procurement Rules

As outlined in the report.

Equality, Diversity and Human Rights

7.3 The Public Sector Equality Duty means that the Council must consider all individuals when carrying out their day-to-day work, in shaping policy, delivering services and in relation to their own employees.

It requires that public bodies have due regard to the need to:

- Eliminate discrimination.
- Advance equality of opportunity
- Foster good relations between different people when carrying out their activities.

The Procurement Act 2023 and the Council's contract procedure require the Council to conduct all contracts in a fair, transparent and non-discriminatory manner.

8. Risk Implications

8.1 If the Council does not implement the Act properly or does not update the CPR's as necessary, there will be a risk of challenge to the procurement process.

9. Recommendation

9.1 That Executive note the new Procurement Act and revision to the Contract Procedure Rules, and refer the Contract Procedure Rules to Council for approval.

Is this a key decision? No

Do the exempt information categories apply? No

Does Rule 15 of the Scrutiny Procedure Rules (call-in and urgency) apply? No

How many appendices does the report contain? 3

List of Background Papers: 1

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