

47. Procurement Act 2023 & Contract Procedure Rules

Carolyn Wheeler, City Solicitor and Heather Carmichael, Procurement Manager presented a report which sought comments from the Committee on the new Procurement Act 2023 and the subsequent revision of the Council's Contract Procedure Rules.

The new Act was due to come into force on 24 February 2025 and would only apply to new procurements commencing from that date. This meant that contracts let prior to that would continue under the previous legislation. It would also affect pre-contract and pre-market enquiries.

An aspect of the new legislation was to simplify the procurement process and increase transparency, however this had also made it more labour intensive. The requirement for public authorities to publish 14 notices on a dedicated Government-run platform had been introduced. The notices would set out the who, why, when and how of the procurement and contract, and each notice would apply to different stages within the process and continue throughout the contract period until expiry.

With the introduction of the Act, the Council had taken the opportunity to update the Contract Procedure Rules. These were also considered by the Committee along with the Procurement Flow Chart.

Officer training sessions on the new Act would be rolled out in due course for contract managers. Training for Members had already taken place.

The Committee discussed the report and procedure rules in detail and was provided with the following responses by Officers to questions:

- There would be no extra resources to support the administration of the new Act, however contract managers would be trained and expected to manage their own contracts with support from the Procurement Manager.
- Unauthorised sub-contracting was not considered to be a high risk when close relationships with contractors were maintained. Certain contracts contained collateral warranties to prevent sub-contracting without permission and, where relevant and required, it could be permitted with agreement by the Council.
- Following a recent piece of work, the raising of purchase orders across the Council had been increased to 76%. Officers felt this was a positive result as increasing it any further would not be practical.
- It would not be the responsibility of the Council's internal audit team to check compliance of the notices for each contract; that would fall to central government who would run the dedicated online platform.

- Suppliers local to Lincoln could not exclusively be considered for over-threshold contracts; the selection area was the Lincolnshire county boundary plus 20 miles. However, the Local Purchasing Policy would be used where possible, and the ability to add social value to a contract would not be impacted.
- Suppliers were required to register on the central government platform and in tandem with this, the Act provided a debarment function where a list of excluded suppliers was maintained which authorities had to check before making procurement decisions.
- The direct award of a contract to a particular supplier could be made to allow for continuation of service if, for example, the contractor became insolvent however, there were internal controls to support this.
- Officer workloads would be reviewed once the Act had come into force, and the number of over-threshold contracts would determine the size of workloads.
- It was unlikely that caselaw would appear any sooner than 12-18 months after the commencement of the Act.
- Under section 4 of the Contract Procedure Rules entitled Thresholds (Council set - below mandatory legal threshold), the wording for contracts worth less than £5,000 would be reviewed as it was felt the wording was unclear around recording of the contract within the Council's contract register.
- Deadlines for invitation to tender would be adhered to and submitted via the electronic portal. Mitigating circumstances for missing the deadline (such as an internet outage) would be reviewed on a case-by-case basis and Officers would be pragmatic about a genuine reason for delay. Consideration would be given to the wording in section 9.8 of the Contract Procedure Rules to assess whether these needed to be tweaked to reflect this, before being submitted to Executive.

RESOLVED that:

- The new Procurement Act 2023 and Contract Procedure Rules, and comments from the Audit Committee be noted.
- Officers be tasked to consider making the suggested amendments to the Procurement Act 2023 and Contract Procedure Rules, as appropriate.
- The Procurement Act 2023 and Contract Procedure Rules be recommended to Executive for approval.