

AGENDA SUPPLEMENT (1)

Meeting: Standards Committee

Place: Kennet Room - County Hall, Bythesea Road, Trowbridge, BA14 8JN

Date: Tuesday 2 July 2024

Time: 1.30 pm

The Agenda for the above meeting was published on 24 June 2024. Additional documents are now available and are attached to this Agenda Supplement.

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Press enquiries to Communications on direct lines (01225)713114/713115.

This Agenda and all the documents referred to within it are available on the Council's website at www.wiltshire.gov.uk

8 **Constitutional Changes** *(Pages 3 - 22)*

Proposed changes to Part 10 of the Constitution, subject to any final comments from the Constitution Focus Group.

DATE OF PUBLICATION: 28 June 2024

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**Wiltshire Council
Constitution
Part 10
Procurement and Contract
Rules**

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PART 10

PROCUREMENT AND CONTRACT RULES

SECTION A: GENERAL

1. Introduction

- 1.1 These Procurement and Contract Rules (the “Rules”) apply to the acquisition of all goods, services and/or works on behalf of the Council (see definition of Procurement).
- 1.2 The Rules must be read in conjunction with the Procurement Manual, which gives detailed instructions and guidance in their implementation.
- 1.3 All Legislation must be complied with. Any change to the relevant Legislation must be observed until the Rules are revised. If the Rules or the Procurement Manual conflict in any way with the Legislation in force in England, then that Legislation takes precedence.

2. Definitions

In the Rules, the following words and phrases have the following meanings:

Above Threshold	Procurement activity that takes place at or above the financial Threshold
Below Threshold	Procurement activity that takes place below the financial Threshold
Contract	Any Contract relating to the provision of goods, services and/or works which is subject to the Rules. Please see the relevant section of the Procurement Manual relating to different types of contracts
Direct Award	The award of a Contract directly to a Supplier without competition as set out in relevant Legislation and/or policy
Financial Regulations	The Financial Regulations set out in the Council’s Constitution as updated from time to time, which provide financial controls around commitments including Contracts
Legislation	The Procurement Act 2023, Public Contracts Regulations 2015, Concessions Contracts Regulations 2016 or Utilities Contracts Regulations 2016 as applicable or any other relevant UK or European Law

Modification of a Contract	The modification of a contract as set out in relevant Legislation and/or policy
Procurement	The process by which goods, services and/or works of any value or type are acquired on behalf of the Council. Such process commences with the initial planning and completes at the end of the Contract liability period or the end of the useful life of goods or works procured
Procurement Manual	The Council's Procurement Manual as updated from time to time and approved by the Director responsible for Procurement in consultation with the relevant Cabinet Member
Procurement Pipeline	The anticipated Procurement activity scheduled to take place in the next 18 months for Above Threshold and Below Threshold Procurements (as detailed in the Procurement Manual) to be created, maintained and shared in accordance with the Procurement Manual
Procurement Team	The Council's centralised Procurement function
Relevant Stakeholders	Any person or groups of people internally or externally who can be affected by or affect the goods, services and/or works
Scheme of Sub-delegation	Delegation by Corporate Directors to officers in their service areas to exercise on their behalf powers delegated to them under Part 3B of the Constitution as updated from time to time
Supplier	A supplier contracted to provide goods, services and/or to undertake works
Threshold	The relevant Threshold value in the applicable Legislation and policy

3. Objectives

- 3.1 The Procurement Team will provide a timely and efficient service whilst conducting Procurements in a manner which has regard to the importance of:
- 3.1.1 delivering value for money;
 - 3.1.2 maximising public benefit;
 - 3.1.3 sharing information for the purpose of allowing Suppliers and others to understand the Council's Procurement policies and decisions;
 - 3.1.4 ensuring the Council acts, and is being seen to act, with integrity; and
 - 3.1.5 equal treatment of Suppliers.

4. Responsibilities

4.1 Each Director shall:

- 4.1.1 ensure all officers of the service area comply with the following:
 - The Procurement Act 2023 (for Procurements commenced after this Act comes into force on 28th October 2024)
 - The Public Contracts Regulations 2015, Concessions Contracts Regulations 2016 or Utilities Contracts Regulations 2016 as applicable (for Procurements commenced prior to the Procurement Act 2023 coming into force);
 - all other applicable Legislation;
 - The Rules and the Procurement Manual;
 - All other relevant parts of the Council's Constitution including the Parts relevant to Financial Regulations and decision making;
- 4.1.2 be responsible for all Procurements undertaken for the service area;
- 4.1.3 be responsible for ensuring all Procurement activity will follow the relevant and appropriate decision making process as set out in the Procurement Manual;
- 4.1.4 be responsible for the Procurement Pipeline for their service area including taking responsibility for corporate Contracts where appropriate.
- 4.1.5 assess the ability to join up spending / Contracts across other service areas to secure efficiencies and value for money;
- 4.1.6 in conjunction with the Procurement Team, the Finance Team and Legal Services, ensure that training on the Rules and the Procurement Manual is provided to all staff of the service area; and
- 4.1.7 ensure that all officers refer to the latest versions of all documents referred to in the Rules.

4.2 The Head of Procurement shall:

- 4.2.1 ensure the appropriate Procurement process is followed and conducted in line with the Rules, the Procurement Manual and relevant Legislation.
- 4.2.2 Regularly review Procurement governance, considering any relevant audit reports, changes in Legislation, advice from Relevant Stakeholders and Council policies.
- 4.2.3 Review all Procurement-related Cabinet Reports and ensure such Cabinet Reports are approved by the Corporate Director responsible for Procurement, prior to submission to the Cabinet.

4.3 The Procurement Team shall in conjunction with Legal Services ensure that all standard Procurement templates are reviewed and updated as necessary.

4.4 Legal Services shall in conjunction with the Procurement Team ensure

that all model Contracts are reviewed and updated as necessary.

PART 10

PROCUREMENT AND CONTRACT RULES

SECTION B: PROCUREMENT PROCEDURE

5. All Procurements

- 5.1 At the outset of each Procurement the requirement (the scope of the goods, services and/or works) must be defined and authority sought from the relevant officer to commence the Procurement.
- 5.2 At the earliest opportunity:
 - 5.2.1 And ideally at least 12 months in advance of the intended Contract start date, the Procurement Team must be consulted;
 - 5.2.2 Legal Services must be instructed where it is reasonably foreseeable that deviation from the Council's standard template Contracts might be required and/or where it is unclear which form of Contract is suitable for the Procurement; and
 - 5.2.3 Any other Relevant Stakeholder(s) must be consulted.
- 5.3 Where consideration is being given to signing a third party's terms and conditions advice from Legal Services must be sought.
- 5.4 Where there is an existing and appropriate contractual arrangement consideration of its use must be given as part of the assessment of the range of available options as set out in the Procurement Manual.
- 5.5 Contracts which are subject to the Rules can only be signed and/or sealed as set out in Part 8.

6. Above Threshold Procurement

- 6.1 All officers must comply with paragraph 5 above and this paragraph 6 for all Above Threshold Procurements.
- 6.2 The process by which Above Threshold Procurements should be undertaken is set out in the Procurement Manual and may be updated from time to time.
- 6.3 In all instances officers must contact the Procurement Team to commence Procurement activity in accordance with the Procurement Manual.
- 6.4 Under no circumstances should Procurement activity be undertaken or Contracts entered into without the support of the Procurement Team.

6.5 Modifications or Direct Awards

- 6.5.1 Modifications to Contracts can only be made in accordance with the Legislation.
- 6.5.2 The processes set out in the Procurement Manual must be adhered to.
- 6.5.3 Authorisation from Corporate Director responsible for Procurement or the Director responsible for Legal Services will be required (as set out in the Procurement Manual) where the need for a Modification or Direct Award:
 - falls outside of the above and arises for reasons which are outside of the control of the Council; and/or
 - there remains residual risk.

7. Below Threshold Procurement

- 7.1 All officers must comply with paragraph 5 above and this paragraph 7 for all Below Threshold Procurements.
- 7.2 In all instances officers must contact the Procurement Team to commence Procurement activity in accordance with the Procurement Manual.
- 7.3 Under no circumstances should Procurement activity be undertaken or Contracts entered into without the support of the Procurement Team.

7.4 Modifications or Direct Awards

- 7.4.1 Modifications to Contracts can only be made in accordance with the Procurement Manual
- 7.4.2 The processes set out in the Procurement Manual must be adhered to.
- 7.4.3 Authorisation from Corporate Director responsible for Procurement or the Director responsible for Legal Services will be required (as set out in the Procurement Manual) where the need for a Contract or Direct Award:
 - falls outside of the above and arises for reasons which are outside of the control of the Council; and/or
 - there remains residual risk.

8. Awarding Contracts

- 8.1 All officers must follow the general process for awarding Contracts as set out in the Procurement Manual.
- 8.2 Unless the Contract involves a function reserved to Full Council, Cabinet or a Committee (see Part 3 Section B of the Constitution) and subject to rule 8.4 below, the authority to approve the award of Contracts as a result of a Procurement exercise is delegated to Corporate Directors in accordance with the Scheme of Delegation or officers within the directorate as may be authorised by the relevant Corporate Director Scheme of Sub-delegation.

8.3 Cabinet approval must be obtained for any Contract (or project that may require multiple contracts to be awarded) which involves a key decision under Part 2 “Articles of the Constitution”.

8.4 **Executing Contracts**

8.4.1 A Contract must be executed under seal where any of the following applies, unless advised otherwise by Legal Services:

- Exceeds £1m in value; or
- Is considered to be of a strategically important or politically sensitive nature and therefore required a key decision in accordance with Part 2; or
- Where the extended limitation period of 12 years would be of value.

8.4.2 Where a Contract does not require execution under seal it must only be signed by the following (and their nominees in accordance with their Scheme of Sub-Delegation):

- Solicitor to the Council; or
- Corporate Director responsible for Procurement.

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Supplier	A supplier contracted to provide goods, services and/or to undertake works
Threshold	The relevant Threshold value in the applicable Legislation and policy

Commented [BD1]: Added to ensure changes to the Procurement Manual are done so and authorised with oversight

Commented [BD2]: Added to ensure that pipeline data can be shared with relevant officers and members as requested

3. Objectives

- 3.1 The Procurement Team will provide a timely and efficient service whilst conducting Procurements in a manner which has regard to the importance of:
- 3.1.1 delivering value for money;
 - 3.1.2 maximising public benefit;
 - 3.1.3 sharing information for the purpose of allowing Suppliers and others to understand the Council's Procurement policies and decisions;
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- 4.2.2 Regularly review Procurement governance, considering any relevant audit reports, changes in Legislation, advice from Relevant Stakeholders and Council policies.
- 4.2.3 Review all Procurement-related Cabinet Reports and ensure such Cabinet Reports are approved by the Corporate Director, [responsible for Procurement Resources](#), prior to submission to the Cabinet.

4.3 The Procurement Team shall in conjunction with Legal Services ensure that all standard Procurement templates are reviewed and updated as necessary.

Commented [BD3]: Changed as requested removing direct reference to job titles

4.4 Legal Services shall in conjunction with the Procurement Team ensure that all model Contracts are reviewed and updated as necessary.

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- 5.5 Contracts which are subject to the Rules can only be signed and/or sealed as set out in Part 8.

Commented [BD4]: Added as requested

6. Above Threshold Procurement

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- 6.5.2 The processes set out in the Procurement Manual must be adhered to.
- 6.5.3 Authorisation from Corporate Director [responsible for Procurement, Resources & Deputy Chief Executive](#) or the Director [responsible for of Legal Services & Governance](#) will be required (as set out in the Procurement Manual) where the need for a Modification or Direct Award:
- falls outside of the above and arises for reasons which are outside of the control of the Council; and/or
 - there remains residual risk.

Commented [BD5]: As above reference job titles

7. Below Threshold Procurement

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 - there remains residual risk.

Commented [BD6]: As above reference job titles

8. Awarding Contracts

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- 8.2 Unless the Contract involves a function reserved to Full Council, Cabinet or a Committee (see Part 3 Section B of the Constitution) and subject to rule 8.4 below, the authority to approve the award of Contracts as a result of a Procurement exercise is delegated to Corporate Directors in accordance

with the Scheme of Delegation or officers within the directorate as may be authorised by the relevant Corporate Director Scheme of Sub-delegation.

8.3 Cabinet approval must be obtained for any Contract (or project that may require multiple contracts to be awarded) which involves a key decision under Part 2 “Articles of the Constitution”.

8.4 Executing Contracts

8.4.1 A Contract must be executed under seal where any of the following applies, unless advised otherwise by Legal Services:

- Exceeds £1m in value; or
- Is considered to be of a strategically important or politically sensitive nature and therefore required a key decision in accordance with Part 2; or
- Where the extended limitation period of 12 years would be of value.

Commented [BD7]: Have referred back to Part 2 to ensure consistency as sealing a contract based on this criteria would follow key decision in advance of the contract being awarded.

8.4.2 Where a Contract does not require execution under seal it must only be signed by the following (and their nominees in accordance with their Scheme of Sub-Delegation):

- Solicitor to the Council; ~~or, or,~~
- Corporate Director responsible for Procurement, Resources.

Commented [BD8]: As above reference job titles

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