

REPORT TITLE: Proposed Revisions to Contract Procedure Rules March 2025

Meeting:	Corporate Governance and Audit Committee
Date:	7 March 2025
Cabinet Member (if applicable)	Not applicable
Key Decision Eligible for Call In	No No
Purpose of Report To provide information on the proposed changes to the Contract Procedure Rules due to new procurement legislation effective from 24 February 2025 and to address some inconsistencies in terminology and definitions.	
Recommendations <ul style="list-style-type: none"> Members are asked to consider the proposed changes to Contract Procedure Rules and recommend them to Annual Council for approval. Reasons for Recommendations <ul style="list-style-type: none"> The proposed changes are needed due to the implementation of the Procurement Act 2023, effective from 24 February 2025 and to address inconsistencies in terminology and definitions. 	
Resource Implications: There are no direct resource implications. Contract Procedure Rules cover all aspect of the Councils operations. The legal obligation to have CPR's is to comply with Section 135 Local Government Act 1972. The council is a public authority and a contracting authority for the purpose of, and is therefore subject to, the procurement regulations (the Procurement Act 2023 and the Public Contracts Regulations 2015).	
Date signed off by <u>Executive Director</u> & name Is it also signed off by the Service Director for Finance? Is it also signed off by the Service Director for Legal and Commissioning (Monitoring Officer)?	Rachel Spencer-Henshall – Deputy Chief Executive and Executive Director for Public Health and Corporate Resources (18/2/25) Kevin Mulvaney – Service Director Finance (18/2/25) Samantha Lawton – Service Director Legal & Commissioning (18/2/25)

Electoral wards affected: All

Ward councillors consulted: Not applicable

Public or private: Public

Has GDPR been considered?

1. Executive Summary

- 1.1 This report sets out information on proposed changes to Contract Procedure Rules from 24 February 2025
- 1.2 Contract Procedure Rules ensure that the Council is acting in line with current legislation and other developments in public law when conducting procurements.
- 1.3 The Procurement Act 2023 (the “Act”) comes into force on 24 February 2025 and the council will be subject to this new legislation for all covered procurements and regulated below threshold procurements.
- 1.4 The previous regulations (the Public Contracts Regulation 2015) will however still apply to contracts which were procured under these regulations and the CPRs therefore still include references to these regulations and procurement processes which were applicable.
- 1.5 A more fundamental review of the Contract Procedure Rules may be undertaken at the appropriate time once all supporting legislation and guidance relating to the Procurement Act 2023 (the ‘Act’) has been published by the Cabinet Office and over time as the previous regulations are eventually superseded entirely.

2. Information required to take a decision

- 2.1 The detail relating to all proposed changes is detailed in the table below;

Section of the Contract Procedure Rules	Proposed changes	
Terminology updates	The following updates to terminology have been made throughout the document to ensure consistency throughout the document and with terms used in the Act:	
	CPR May 2024	CPR February 2025
	Solicitor to the Council	Service Director Legal and Commissioning
	Chief Finance Officer	Service Director Finance
	Head of Internal Audit	Head of Risk
	Head of Corporate Property Management	Head of Corporate Landlord and Capital
	UK Procurement Rules	Procurement Rules
	Framework Agreement	Framework
	Exception	Exemption
	Supplier Selection	Conditions of Participation
INTRODUCTION	Updated to include reference to section 135 of the Local Government Act.	
Procurement Principles	This section has been updated to bring in line with the “Covered procurement: objectives” at Section 12 of the Act.	
RULE 1 – Conduct and Compliance and Waiver	1.8 Rule updated to confirm that a Service Director has authority to award a contract following a procurement.	

	<p>1.13 (Conflicts of Interest and Integrity) This section has been updated in accordance with Section 81 of the Act which requires the Council to identify and mitigate all conflicts and potential conflicts of interest at all stages of the procurement process.</p>
<p>RULE 2 – Preparation and Process</p>	<p>2.1 Information included to make it clear that the value to be used when estimating the contract value is excluding VAT.</p> <p>2.2 UK’s e-notification service will change from Find A Tender Service (FTS) and Contracts Finder to the Central Digital Platform however during the transitional period FTS and Contracts Finder will still be used for publishing notices where appropriate.</p> <p>2.3.1 Amended to reflect Section 18 of the Act which states that a Contracting Authority “must consider” whether supplies could be made under more than one contract.</p> <p>2.3.2 Clarity provided to confirm that the rule applies when the cost of Supply is below the UK Threshold.</p> <p>2.3.3 Rule included at 2.3.3 has been moved to Rule 4 and is now included at 4.10 as this rule relates to assessing the financial standing of a supplier as part of the evaluation process.</p> <p>2.3.3 New addition proposed to ensure that barriers faced by SME’s are considered and reduced for above and below threshold contracts in accordance with Sections 12 and 86 of the Act.</p> <p>2.3.9 (Estimated Value) Rule updated to clarify that the supply will be within budgetary provision.</p> <p>2.3.10 (Bonds and Guarantees) Rule updated in line with current practice to confirm that a parent guarantee will be sought whenever practical unless the Head of Risk is satisfied that a parent company guarantee is not required.</p> <p>2.5.1 (The Specification) New addition proposed to ensure that guidance is sought from the Head of Procurement prior to undertaking any market engagement activities when the estimated value of the contract may exceed the relevant UK Threshold to ensure that all preliminary market engagement is undertaken in accordance with Section 16 of the Act.</p> <p>2.7 (Award Criteria) Rule updated to confirm when Award criteria must be published and refined to specify what must be satisfied when setting the criteria in accordance with Section 23 of the Act.</p> <p>2.7 (Award Criteria) Reference to ‘Suitability Criteria’ to be changed to ‘Conditions of Participation’ in accordance with Section 22 of the Act.</p> <p>2.8 (Award Criteria) Rule revised to make it clear that the Head of Procurement must be consulted if considering conducting interviews or receiving presentations as part of the procurement process.</p>

	<p>2.11 (Data Processing) Rule updated in consultation with the Information Governance Team to bring in line with current practices. A list of all contracts that involve data processing or sharing of personal data is maintained by the Head of Procurement.</p> <p>2.12 (Data Processing) Rule updated to include reference to the requirement for Service Directors to follow all linked policies to the Council’s Information Security Policy.</p> <p>2.12.1 (Data Processing) New addition proposed to confirm when a Data Protection Impact Assessment screening exercise should be completed with advice and guidance sought from the information Governance Team.</p>
<p>RULE 3 – Procurement Process</p>	<p>Table has been updated as follows:</p> <ul style="list-style-type: none"> • Information has been provided to clarify that the value used should exclude VAT. • A requirement to encourage and invite local SMEs and/or VCSEs to quote for contracts valued up to £24,999.99 has been amended to delete “where practicable” as it is expected that this may become a requirement under the new procurement rules in due course. • References to the Goods & Services Threshold, Light Touch Regime Threshold, and Works Threshold have been added to the table. Under the Act, two-stage procurement processes (including Standing Lists) are not permitted (Section 85(1)) for procurements valued below the Goods and Services Threshold and Light Touch Regime Threshold. However, there is an exception for Works contracts exceeding the goods and services threshold (Section 85(3)). • Details on the procurement process for contracts below the Light Touch Threshold have been included to clarify the requirements for these procurements, including the option to access a Pseudo Dynamic Purchasing System for contracts that fall under this threshold. • ‘Any other permitted compliant purchasing mechanism’ included for below threshold procurement to allow for alternative compliant procurement methods to be used as further guidance is issued by the Cabinet Office. • Reference to the use of Dynamic Markets has been included as this will be a new procurement tool available under Section 34 of the Act. • Dynamic Purchasing Systems continue to be referenced throughout the CPRs as these will continue to be available to use throughout the transitional period but will be phased out by February 2029 <p>3.2 Moved to 3.9 as this rule relates to Conditions of Participation.</p> <p>3.2 (Procurement Process) Rule updated to include reference to Quotation</p>

	<p>3.2.1 (Procurement Process) Reference to the use of Dynamic Markets has been included in accordance with Section 34 of the Act.</p> <p>3.5 (Conditions of Participation) Rule updated to comply with Section 85 of the Act to confirm that for below threshold procurements a qualification stage must not be used (except in the case of Works contracts valued at above the supplies and services UK Threshold but below the works UK Threshold) in accordance with Section 85 of the Act.</p> <p>3.6 (Conditions of Participation) Rule updated to ensure that the Council's standard procurement documentation is used to assess the Conditions of Participation when operating a procurement with a value above the UK Threshold.</p> <p>3.7 (Conditions of Participation) Rule updated to ensure that the Conditions of Participation are proportionate to the procurement in accordance with Section 22 of the Act.</p> <p>3.8 (Conditions of Participation) Moved from 3.2 and reworded in accordance with Section 22 of Act</p>
<p>RULE 4 – Tender Receipt and Evaluation</p>	<p>4.4 Rule updated following consultation with the Head of Risk to refer to Tenders not received through the eProcurement Portal to bring in line with current practice as a full audit trail is maintained of all Tenders submitted via the eProcurement Portal.</p> <p>4.9 New addition proposed to comply with Section 26 of the Act; requirement for the Head of Procurement to check the excluded or excludable status of the parties involved in the procurement process, and whether they are on the debarment list.</p> <p>4.11 Rule previously included at 2.3.3 has been moved and is now included here as this rule relates to assessing the financial standing of a supplier as part of the evaluation process.</p> <p>4.13 Rule updated in accordance with Section 19 of the Act to confirm that tenderers will be required to demonstrate that it will be able to perform the contract for the price offered where tenders appear to be abnormally low.</p> <p>4.17.4 (Clarifications, Presentations and Interviews) Rule updated to refer to the compliance check in line with current practice.</p> <p>4.16 (Clarifications, Presentations and Interviews – previous version) Rule moved to 4.19 to make the Rule easier to understand and follow.</p> <p>4.18 (Clarifications, Presentations and Interviews – new version) Rule updated to refer to the procurement process.</p>

	<p>4.19 (Clarifications, Presentations and Interviews) Rule previously included at 4.16 has been moved here and updated to reflect current practice and transparency.</p>
<p>RULE 5 – Standing Lists, Dynamic Purchasing Systems, Dynamic Markets and Frameworks: Creation and Usage</p>	<p>Rule title updated throughout this Rule to include the new Dynamic Markets as per Section 35 of the Procurement Act.</p> <p>5.2 (Standing Lists) Rule updated to include ‘subject to Procurement Rules’ as standing lists are no longer available for most below threshold contracts except for Works contracts valued over the Goods and Services threshold.</p> <p>5.12 (Council Frameworks, Dynamic Purchasing Systems and Dynamic Markets) Rule updated to allow for Open Frameworks to be established in accordance with Section 49 of the Act.</p> <p>5.12.1 (Council Frameworks, Dynamic Purchasing Systems and Dynamic Markets) New addition proposed regarding operation of an Open Framework in accordance with Section 49 of the Act.</p> <p>5.13 (Council Frameworks, Dynamic Purchasing Systems and Dynamic Markets – previous version) Rule removed to reflect current practices in the Procurement Team.</p> <p>5.13 (Council Frameworks, Dynamic Purchasing Systems and Dynamic Markets – new version) Rule updated to include Dynamic Markets and related terminology i.e. the parts of the Dynamic Market, rather than categories as per the Dynamic Purchasing Systems under the Public Contracts Regulations 2015.</p> <p>5.17 (Council Frameworks, Dynamic Purchasing Systems and Dynamic Markets – previous version) Rule removed as a repetition of Rule 5.1.</p> <p>5.16.1 (Use of Third-Party Procurement Facilities) Rule updated to confirm that any third-party Framework used must be setup in accordance with the Procurement Rules.</p>
<p>RULE 6 – Exemptions from Competition</p>	<p>6.1.7 Rule updated to bring in line with the Direct Award Provision set out at Schedule 5 of the Act.</p> <p>6.1.9 and 6.1.10 New additions proposed to bring in line with the Direct Award Provision set out at Schedule 5 of the Act.</p> <p>Trial Purchases title removed to make the document easier to follow.</p> <p>6.3.1 Rule updated to confirm that it should be considered alongside Rule 6.3 and to clarify that it must be applied after any trial conducted in accordance with Rule 6.3.</p> <p>6.10 (Mandatory Suppliers, Frameworks, Dynamic Purchasing Systems or Dynamic Markets) Rule updated to refer to subsidy control</p>

	rather than state aid following the introduction of the Subsidy Control Act 2022
RULE 7 – Record Keeping and Reporting	7.4 Rule removed as completion of a ‘Regulation 84 Report’ is not a requirement of the Act.
RULE 8 – Income Contracts & Concessions	8.3 Updated to correct reference to the FPRs relating to Grants. 8.10 (Concession Contracts) Rule updated to confirm that a procurement process must be undertaken for Concession contracts valued above the UK Threshold to comply with Procurement Regulations and the CPRs. 8.11 (Valuation) Rule updated to clarify that the estimated value of a Concession contract should be estimated in accordance with the Procurement Rules.
RULE 9 - Land	9.2 Rule updated to inclusive language. 9.4 Rule updated to refer to in person and online Land auctions to bring in line with current practice.
RULE 10 – Executing Contracts	10.1 (Supplies) Rule updated to confirm that contracts may only be awarded approved budget to meet the first-year costs and there is sufficient ongoing funding to meet the contractual cost through the anticipated life of the Contract. 10.5 (Supplies) Rule updated to refer to Dynamic Markets in accordance with Section 34 of the Procurement Act. 10.9 (Land) Rule updated to bring in line with current practices to allow for any Contract for the sale or acquisition of, or any other deed or document relating to, Land to be processed in hard copy format or electronic format. Also amended to deal with the sale of land by the council at auction.
RULE 11 – Modification and Termination of Contracts and release of bonds	Title and Rules have been updated to refer to Modification in accordance with the terminology used in the Act and the Public Contracts Regulations 2015. 11.6.1 Sub Rule has been amended to address contract modifications made under Regulation 72 of the Public Contracts Regulations 2015. This amendment pertains to existing contracts awarded under these regulations. 11.6.2 New Rule proposed to explain when contracts can be modified under the Procurement Act in accordance with Section 74 of the Act. 11.7 Rule updated to allow for Procurement oversight where a below threshold contract may become a convertible contract by modification in accordance with Section 74(1) of the Act.

	11.9 Rule reworded to reflect the Act (Schedule 8) which allows additional flexibility.																
DEFINITIONS	In addition to updates to job titles, the following updates have been made to this section:																
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Appendix 1	Threshold values updated to include the value excluding VAT.																
Appendix 2	Table updated to ensure correct cross referencing and to remove reference to Regulation 84 reports as this is no longer a requirement of the Act.																

3. Implications for the Council

3.1 Council Plan

These updated CPRs reflect good procurement practice which in turn supports the Council Plan by using procurement activity to help achieve the Council's wider objectives and outcomes.

3.2 Financial Implications

None directly

3.3 Legal Implications

The legal obligation to have CPR's is to comply with Section 135 Local Government Act 1972, the Public Contracts Regulations 2015 Provider Section Regime Regulations 2023 and the Procurement Act 2023.

3.8 Other (e.g. Risk, Integrated Impact Assessment or Human Resources)

None directly

4. Consultation

Consultation has been carried out with the Head of Risk, the Head of Corporate-Legal, the Information Governance Manager and Data Protection Officer and officers in the Procurement Team, Legal Services and Information Governance Team.

- 5. Engagement**
Changes will be communicated to stakeholders via the intranet with appropriate training and guidance offered by the Procurement Team.
- 6. Options**
 - 6.1 Options considered**
No other options - the council is required to comply with the legislation accordingly. It was also an opportunity to update other areas which were out of date e.g. job titles and ensure conformity and consistency throughout.
 - 6.2 Reasons for recommended option**
The Council is required to comply with all UK Procurement legislation.
- 7. Next steps and timelines**
Following consideration by this committee the report will proceed to Annual Council for consideration on 21 May 2025.
- 8. Contact officer**
Ruth Calladine, Head of Procurement (01484 221000, email – ruth.calladine@kirklees.gov.uk)
- 9. Background Papers and History of Decisions**
[Contract Procedure Rules 2024 – Kirklees Council](#)
[Changes to CPRs 2024 Report to Corporate Governance and Audit](#)
[Changes to CPRs 2024 Annual Council](#)
- 10. Appendices**
Appendix A - All text changes are marked by track changes.
Appendix B - Clean copy of the revised contract procedure rules with suggested amendments
Appendix C - Copy of the Procurement Act 2023
- 11. Service Director responsible**
Samantha Lawton, Service Director Legal & Commissioning
Kevin Mulvaney, Service Director Finance