

## **AUDIT COMMITTEE**

**10 JANUARY 2023**

### **CONTRACT PROCEDURE RULES**

Report from: Bhupinder Gill, Assistant Director, Legal and Governance  
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#### **Summary**

This report seeks to introduce a revised set of Contract Procedure Rules to replace those that currently form Chapter 4, Part 7 of Medway Council's constitution.

#### **1. Budget and policy framework**

- 1.1. The revised Contract Procedure Rules aim to continue supporting services achieve their collective deliverables within the council's policy, budget framework and Council Plan.
- 1.2. Approval of the revised Contract Procedure Rules will be a matter for Full Council given they form part of the Constitution.
- 1.3. Following consideration by the Audit Committee, this revised Contract Procedure Rules will also be considered by the Business Support Overview and Scrutiny Committee (25 January 2023), Cabinet (7 February 2023), and Full Council (23 February 2023).

#### **2. Background**

- 2.1. The Contract Procedure Rules form Chapter 4, Part 7 of Medway Council's constitution. The rules should be periodically updated to ensure they remain fit for purpose. The last update was in 2018.
- 2.2. Whilst periodic tidying has been performed, several sections have become antiquated. The most notable being the value at which Medway's procurement board level governance applies. When originally set pre-2010, the current value of £100,000 was sizeable and followed suit with the definition of a key decision. As time has lapsed, this purchasing value has diminished and become prohibitive in nature and as contracts become larger and more sophisticated, this figure results in additional report writing with little benefit.

2.3. As such, the proposal is to increase these figures to the current value at which the Public Contracts Regulations apply as well as introduce further measures for accountability through the entire procurement process.

### 3. Options

3.1. The current Contract Procedure Rules require updating. Due to the improvements made within the service as annually reported within the Procurement Strategy, as well as national changes to procurement, the Head of Category Management has further sought to incorporate those improvements within the revised Rules.

3.2. Option 1 – Make no changes to the Contract Procedure Rules.

3.2.1. Failure to adapt to more efficient working practices and dovetail the Procurement Strategy into our approach, would prove detrimental, through stagnation, to corporate procurement activity.

3.3. Option 2 – Adopt the revised Contract Procedure Rules

3.3.1. The current Contract Procedure Rules have, in several areas, become antiquated. The revised suite simplifies the terminology used for better end user engagement, improves accountability across the various layers of the organisation as well as updates thresholds at which procurement board level governance applies to procurement activity. Note that the definition and application of a key decision has not changed.

3.3.2. The proposal is that procurement board level governance will only apply to projects valued equal to or greater than activities that would be subject to the Public Contracts Regulations 2015 for Goods/Services and the Light Touch Regime, or £500k for works projects. This is illustrated in the below table.

<b>Contract type</b>	<b>Current threshold</b>	<b>Proposed threshold</b>
Goods/Services	£100,000	£213,477
Light Touch (Health)	£100,000	£663,450
Works	£100,000	£500,000

3.3.3. Most notably and as requested through Members' engagement, of the 36 reports presented to Procurement Board in the most recent 12-month period, only five would have fallen within the difference of the current and proposed governance thresholds. Three of these were for pilot projects that, through their very nature had heavy member involvement and the remaining were low risk works projects.

3.3.4. In addition to the above governance arrangements, the rules have generally been updated to enforce more efficient and joined up working practices. As an example, the inclusion of the 'Category Management Engagement Form' is stipulated which ensure all relevant stakeholders are engaged at the point of inception for greatest benefit.

3.3.5. Therefore, option 2 is the recommended option.

#### 4. Advice and analysis

- 4.1. At the core of any procurement function is the ability to achieve Value for Money, so to ensure that Medway's procurement processes remain as effective as possible, especially when considering the current cost of living crises as well as substantial cost increases to the material and labour markets, it is important that the Rules are updated.
- 4.2. Whilst the rules are otherwise a user-friendly refresher that do not dilute any existing controls or mechanisms otherwise addressed in paragraph 3.3 above, they do serve to deliver the following benefits:
  - 4.2.1. Setting an evidence-based hierarchy of exploration where existing provisions are prioritised i.e., if a service can be delivered in house, this needs to be ruled out prior to exploring external arrangements.
  - 4.2.2. Referencing the 'Category Management Engagement Form' to ensure sufficient stakeholder buy in at the start of each project and continuation into and through contract management.
  - 4.2.3. Simplifying the terminology regarding the governance process and improving the quality of the information presented for scrutiny purposes through the supporting templates used for governance purposes.
  - 4.2.4. Reinforcing the Council's ambition to deliver Social Value as part of procurement activities.
  - 4.2.5. Highlighting the roles and responsibilities of the Category Management team and making available key documentation for service activities.
- 4.3. A secondary benefit to the recommendation means a revised training programme relating to procurement can be rolled out across the organisation.
- 4.4. In addition to the above, specific reference is given to the Procurement Strategy to support sustainability and improved forward planning

#### 5. Risk management

- 5.1. Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community.

Risk	Description	Action to avoid or mitigate risk	Risk rating
<b>Continuing with a technical set of rules that are</b>	The current rules applied through interpretation and include duplication from Regulations. Whilst the	The Rules have been re-drafted as proposed to ensure	C3

Risk	Description	Action to avoid or mitigate risk	Risk rating
<b>interpreted by legacy.</b>	working practices associated are fit for purposes, the revisions are explicit.	consistent interpretation	
<b>The Rules are not updated</b>	The current Rules have been in situ for many years and the threshold for governance has not changed in as many. The philosophy of Category Management leads to larger contracts and the Public Contracts Regulations denote a higher threshold for advertising purposes.	By aligning our internal governance thresholds to those within the Regulations (apart from works that will move to at £500k), we can evidence proportionality.	D3
<b>Inability to refer new training for officers into a user-friendly set of rules.</b>	All current training is based on working practice and interpretation of the current Rules.	The proposed revisions make existing interpretation explicit, which is necessary for training officers.	C2

For risk rating, please refer to the following table:

Likelihood	Impact:
A Very high B High C Significant D Low E Very low F Almost impossible	1 Catastrophic (Showstopper) 2 Critical 3 Marginal 4 Negligible

## 6. Consultation

- 6.1. To support this approach, the Head of Category Management has conducted cross party member engagement with Cllr Gulvin, Cllr Brake and Cllr Edwards in relation to the proposed changes and has ensured their feedback, primarily concerning member and wider stakeholder engagement on future projects, has been addressed and incorporated.
- 6.2. Furthermore, through practical application and use of the Rules for a considerable period to date, soft engagement with various services plus lessons learnt have been incorporated.

## 7. Climate change implications

- 7.1. Within the proposed changes to the Contract Procedure Rules, the Procurement Strategy is referred to. Through dovetailing both elements, a consistent and accountable approach to delivery is established.

## 8. Financial implications

- 8.1. There are no direct financial implications associated to this report, but the proposed changes will support and provide greater assurances regarding procurement activity at Medway, most notably by reinforcing the benefit and purpose of contract management.

## 9. Legal implications

- 9.1. The notable changes as outlined within paragraph 9.2.
- 9.2. The revised Contract Procedure Rules include the following notable changes
  - 9.2.1. The removal of the existing GW4 and 5 processes, they have been consolidated and replaced with a new GW4 which specifically addresses contract management.
  - 9.2.2. The thresholds for when governance applies has been increased as per 3.3.3 of this report.
  - 9.2.3. Projects funded by ringfenced grants and signed off by the 151 are not subject to the GW1 process as they have already been approved.
  - 9.2.4. Reinforced intro of the Category Management engagement form that is also merged with the CAF that has been sent prior
  - 9.2.5. The Rules now refer to the Regulations rather than transcribe most of them
  - 9.2.6. The workflows are more explicit and reference further guidance always being sought from the Category Management team.
- 9.3. The contract procedure rules are a core element of the Council's constitution and provide a framework within which procurement activity is undertaken. Changes to the Council's constitution can only be approved by full Council (subject to officer delegations) .

## 10. Recommendations

- 10.1. It is recommended that Audit Committee review and provide any comments on the Contract Procedure Rules, as set out in Appendix 1 to the report, and recommend their approval to Full Council, prior to consideration by Business Support Overview Committee, Cabinet and Council.

## Lead officer contact

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## Appendices

Appendix 1 – Current Contract Procedure Rules

Appendix 2 – Revised Contract Procedure Rules