

## **COUNCIL**

**23 FEBRUARY 2023**

### **CONTRACT PROCEDURE RULES**

Portfolio Holder: Councillor Adrian Gulvin, Portfolio Holder for Resources  
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.

The Audit Committee considered the report at its meeting on 10 January 2023 and its comments are set out in section 5 of the report. The Business Support Overview and Scrutiny Committee considered the report at its meeting on 25 January and its comments are set out in section 6 of the report. The Cabinet considered the report on 7 February and its comments and decision are set out in section 7 of the report.

#### **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. The revised Contract Procedure Rules were considered by the Audit Committee on 10 January 2023 and the comments of the Committee are included within this report. Following consideration at this meeting, the revised Rules were considered by Cabinet on 7 February 2023 and will be considered by Full Council on 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. Subject to Full Council approval of the revised Contract Procedure Rules, the Assistant Director, Legal and Governance will enact them when appropriate. This will be from a date no earlier than 1 April 2023. This is to allow time for training to be provided on the revised rules ahead of implementation.

### 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 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, which is inclusive of Climate Change, 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. Audit Committee – 10 January 2023

- 5.1. The revised Contract Procedure Rules were considered by the Audit Committee on 10 January 2023 and its comments are set out below:
- 5.2. This report provided a revised set of Contract Procedure Rules to replace those that currently form Chapter 4, Part 7 of Medway Council's constitution.
- 5.3. The Head of Category Management introduced the report and highlighted the proposed revised rules provided a more holistic, and user-friendly approach to the way the Council undertook procurement. The revised Contract Procedure Rules were considered to be more straight forward.
- 5.4. Members then raised comments and questions including the following:
- 5.5. **Governance of Contracts** - In response to a question regarding whether there were overarching structures or a central database to improve the governance of contract arrangements the Head of Category Management explained that the revised rules required the completion of a category management engagement form which brought Portfolio Holders and the relevant accountants in at a much earlier stage to ensure cross organisation collaboration and reduce silo working.
- 5.6. The Head of Category Management added there would be a more streamlined and tailored training programme to ensure consistency.
- 5.7. **Oversight of Large Capital Projects** – A member asked whether the rules would ensure there would be third party oversight of evaluations, prevent conflicts of interest and also whether there would be more than one evaluation for large capital projects. The Head of Category Management stated that there were several back-office mechanisms to provide assurance around evaluations..
- 5.8. The officer added that any project over the value of £25,000 tenders would be invited. The Council would have undertaken market engagement and held discussions with companies who may have considered bidding. The Council generated a great of interest in its procurement activity.
- 5.9. A member commented the revised Contract Procedure rules were a positive step forward
- 5.10. **Capital Projects** – A member commentated there were a number of Capital projects being undertaken in the coming year, some of which were contentious. The point was made that it would be helpful for Members to see all the valuations for bids submitted and that the lowest bid may not always be the best.
- 5.11. A member commented that in the tendering process that information would have been made available to Procurement Board which evaluated bids on

many factors including price and quality and often quality was the determining factor. However, tenders were commercially sensitive.

- 5.12. The member added that tail end spend was not considered by the Procurement Board. However Category Management had been very successful in reducing costs and increasing expertise.
- 5.13. **Social Value** – A member commented that the Council was trying to encourage small and medium enterprises (SME) to bid and Medway Council was performing well in awarding contracts to SMEs The Head of Category Management reported the revised rules made specific reference to social value and how the Council took that into account social value to enhance the local community through procurement activity. The officer added the Council had a central contract depository.
- 5.14. **Changes in the Contract Procedure Rules** – in response to what the principal changes were to the procedures other than reducing silo working and increasing emphasis on social value, the Head of Category Management stated the new rules brought teams together with cross organisation activity and a holistic approach to explore opportunities as an organisation.
- 5.15. **Decision:**

The Committee noted the Contract Procedure Rules, as set out in Appendix 2 to the report, and recommended their approval to Full Council after consideration by the Business Support Overview and Scrutiny Committee and Cabinet.

## 6. Business Support Overview and Scrutiny Committee

- 6.1. The Business Support Overview and Scrutiny Committee considered the report on 25 January 2023 and its comments are set out below:
- 6.2. The Head of Category Management introduced the report which set out a proposed updated set of Contract Procedure Rules to replace those set out at Chapter 4, Part 7 of Medway Council's Constitution. The revised suite simplified terminology used for better end user engagement, improved accountability across the various layers of the organisation and updated thresholds at which procurement board level governance would apply to procurement activity, which would 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.
- 6.3. Members then raised a number of questions and comments, which included:
- **Information governance issues** – reference was made to two cases where there had been issues with information governance and officers were looking into these incidents to identify any learning that could be made. It was suggested that an update on this work be provided to the next meeting of this Committee.

- **Recurring contract transactions** – in response to a question about how the Council safeguard against tenderers who repeatedly fall just under the threshold for contract value limit with multiple contracts, it was confirmed that the Category Management team approve all new suppliers onto the Finance Management system and periodically ask for a report detailing if any officers have breached their original request.
- **Climate change** – reference was made to section 4.2 of the report, which did not include climate change as a listed benefit from the rules. In response officers confirmed that social value was referred to at that part of the report, which included climate change as one of the five elements that underpinned social value, however, undertook to review the section to ensure a more explicit reference to climate change.
- **Criminal Records Bureau checks (Disclosure Barring Services – DBS)** – in relation to the DBS check reference within the Contract Procedure Rules at Appendix 1, a suggestion was made that all elected Members should be subject to DBS checks, particularly given their role as Corporate Parents. Officers explained that previous rule changes had removed the legal requirement for all Councillors to be automatically subjected to DBS checks but could investigate the legalities and practicalities of introducing DBS checks for all Members following the next local elections in May 2023.

#### 6.4. The Committee:

- a) noted the comments of the Audit Committee on the draft revised Contract Procedure Rules set out in Appendix 2 to the report;
- b) reviewed and provided comments on the draft revised Contract Procedure Rules, and recommended their approval to Full Council, after consideration by Cabinet; and
- c) recommended Cabinet to instruct officers to explore the benefits and requirements of Elected Members having a DBS check, given their role as Corporate Parents and that this be considered for all Members in the next municipal year.

## 7. Cabinet

7.1. The Cabinet considered the report on 7 February 2023 and its comments and decision are set out below:

7.2. It was noted that the Business Support Overview and Scrutiny Committee had requested that Cabinet instruct officers to explore the benefits and requirements of elected Members having a DBS check. Although some support was expressed, the recommendation was not considered to be relevant to the Contract Procedure Rules report considered by Cabinet.

Decision:

7.3. The Cabinet noted the comments of the Audit Committee set out at section 5 of the report and the comments of the Business Support Overview and Scrutiny Committee set out in an addendum report.

7.4. The Cabinet recommended Full Council to approve the revised Contract Procedure Rules as set out at Appendix 2 to the report.

## 8. Risk management

8.1. 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 interpreted by legacy</b>	The current rules applied through interpretation and include duplication from Regulations. Whilst the working practices associated are fit for purposes, the revisions are explicit.	The Rules have been re-drafted as proposed to ensure consistent interpretation	C3
<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:

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

## 9. Consultation

- 9.1. 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.
- 9.2. 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.

## 10. Climate change implications

- 10.1. 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.

## 11. Financial implications

- 11.1. 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.

## 12. Legal implications

- 12.1. The notable changes as outlined within paragraph 12.2.
- 12.2. The revised Contract Procedure Rules include the following notable changes:
- 12.2.1. The removal of the existing Gateway 4 and 5 processes, they have been consolidated and replaced with a new Gateway 4 which specifically addresses contract management.
- 12.2.2. The thresholds for when governance applies has been increased as per 3.3.3 of this report.



- 12.2.3. Projects funded by ringfenced grants and signed off by the 151 are not subject to the Gateway 1 process as they have already been approved.
- 12.2.4. Reenforced intro of the Category Management engagement form that is also merged with the Contract Approval Signing Form that has been sent prior.
- 12.2.5. The Rules now refer to the Regulations rather than transcribe most of them.
- 12.2.6. The workflows are more explicit and reference further guidance always being sought from the Category Management team.
- 12.3. 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).

### 13. Recommendations

13.1. It is recommended that the Council:

- a) Notes the comments of the Audit Committee set out at section 5 of the report, the comments of the Business Support Overview and Scrutiny Committee set out at section 6 of the report and the comments and decision of the Cabinet set out at section 7 of the report.
- b) Approves the revised Contract Procedure Rules as set out at Appendix 2 to the report.
- c) Agrees to delegate authority to the Assistant Director, Legal and Governance to enact the revised contract procedure rules, when appropriate, no earlier than 1 April 2023.

#### Lead officer contact

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#### Appendices – included in Supplementary Agenda No.1

Appendix 1 – Current Contract Procedure Rules  
Appendix 2 – Revised Contract Procedure Rules

#### Background papers

None