

Meeting: Review of Council Procurement Policies and Food and Music Festival

Date: 3 April 2024

Wards affected: All Wards

Report Title: Revised Contract Procedures

When does the decision need to be implemented? n/a

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1. Purpose of Report

1.1 This report sets out the key changes to Contract Procedures which were approved by Council on 22 February 2024 and will come into effect on 01 April 2024.

2. Reason for Proposal and its benefits

- 2.1 The Procurement Act 2023 is expected to come into force in October 2024 and the Health Services (Provider Selection Regime) Regulations 2023 came into force on 01 January 2024. These new regulations alongside secondary legislation and the National Procurement Policy Statement fundamentally change the way in which public procurement is undertaken.
- 2.2 Through the Council's transforming procurement programme a comprehensive review of current Council commercial procedures and practice was undertaken, the existing procedures were deemed to hamper effective procurement and would not enable ongoing compliance with new legislative and policy requirements.
- 2.3 Feedback from colleagues across the Council, its wholly owned companies and the Commercial Services team identified the prescriptive nature of Contract Procedures and in particular the procurement spend thresholds as the most significant barriers to effective and efficient procurement. Impacting on our ability to ensure best value and the engagement of local suppliers.

2.2 The revised Contract Procedures provide a framework, underpinned by policy and guidance, will deliver the following benefits:

- Creating a simpler and more flexible commercial system that better meets the Council's needs and enables the Council to meet its obligations under the existing and future regulatory framework for public procurement;
- Providing a simpler, more transparent and flexible approach to spending money that is based on what we are buying, the associated risks and optimal route to achieving best value from our spend.
- Opening up public procurement to new entrants such as small businesses and social enterprises so that they can compete for and win more public contracts. Creating greater opportunities for local businesses, small and medium enterprises and the voluntary and community sector to do business with the Council. The range of procurement options within the proposed £25,001 to regulated threshold will allow us to direct opportunities for higher value contracts to pre-selected local suppliers, which under the current system would have to go to the open market.
- Improving levels of transparency on all aspects of decision making in relation to the award of contracts – not just the decision on who we award the contract to, but also around the decision to purchase externally and the route to market chosen. Enabling how we spend public money to be properly scrutinised and for the Council to be held to account.
- Improving our decision making, procurement and contract management practices to ensure we deliver best value and best outcomes for our residents;
- Delivering consistent (but not uniform) capability which promotes innovation and community partnership;
- Enabling tougher action to be taken on underperforming suppliers and exclusion of suppliers who pose unacceptable risks, through more effective contract management and the use of mechanisms being put in place by government for this purpose; and
- Revised spend thresholds will enable staff (once trained) to put lower value / lower risk contracts in place without the need for hands-on procurement officer support, this will allow the Commercial Services Team to focus resources on the higher value / more complex contracts.
- Making the way in which we spend money “everyone’s business”.

3. Recommendation(s) / Proposed Decision

1. There is no decision required.

Background Documents

[Agenda for Overview and Scrutiny Board on Wednesday, 5 July 2023, 5.30 pm \(torbay.gov.uk\)](#)

1. Introduction

- 1.1 The current version of Contract Procedures was put in place in 2015 following the implementation of the Public Contracts Regulations 2015.
- 1.2 Contract Procedures are directly aligned to the Public Contracts Regulations, they do not provide the flexibility to enable the Council to meet its obligations under the Health Services (Provider Selection Regime) Regulations 2023 (which came into force on 01/01/2024) or the Procurement Act 2023 (which is due to come into force in October 2024).
- 1.3 A review of Contract Procedures with staff across the Council, its wholly owned companies and the Commercial Services team was undertaken as part of the Council's procurement transformation programme. a number of issues with the procedures were identified:
 - The are written from a legal perspective, with some aspects being difficult for staff to properly understand.
 - The requirements are prescriptive and inflexible, hampering the ability to put contracts in place in the most efficient or effective manner or quickly where an urgent need is identified.
 - Procurement thresholds limit options for accessing the most suitable markets for the goods, services or works being purchased and cause unnecessary delays when a contract is required quickly.
 - Opportunities to better engage with local suppliers are limited to very low value spend.
- 1.4 Following the enactment of the Procurement Act 2023 (expected in October 2023) the Public Contracts Regulations will continue to apply to all contracts put in place under that regime, meaning Contract Procedures need to be sufficiently flexible to enable compliance with both sets of regulations and also with the Health Services (Provide Selection Regime) Regulations 2023 and the secondary legislation that will be put in place to underpin the Procurement Act.
- 1.5 Some minor amendment may be required to specifically reference the Procurement Act 2023 when it is enacted.

2. Options under consideration

2.1 Key changes to Contract Procedures are:

Revised Contract Procedures	Old Contract Procedures
Less detailed – sets out the framework and principles for how we will spend externally	Overly detailed and prescriptive – describes in detail how we will do everything
Detail will sit within policy and guidance, enabling us to respond more quickly to changes	Inflexible and leads to delays in making changes
Language more straightforward and easier to understand	Legalistic wording – complicated, confusing and hard to interpret
Order of information has been amended to improve flow and understanding, reducing duplication and the risk of contradiction	Order of information mirrors procurement process – resulting in duplication
3 procurement procedure thresholds, with flexibility to use the most appropriate route to market based on risk, value, complexity, market capacity and urgency: <ul style="list-style-type: none">• Up to £25,000• £25,001 to regulated threshold• Above regulated threshold	5 procurement procedure thresholds, with prescriptive options restricting choice and ability to react to market capacity or urgency of a requirement: <ul style="list-style-type: none">• Up to £4,999• £5,000 to £25,000• £25,001 to £50,000• £50,001 to regulated threshold• Above regulated threshold

2.2 There are a range of procurement procedure options available for spend between £25,000 and the regulated threshold. The option selected will be as advised by the Commercial Services team, taking into account the level of risk, value, complexity, supplier market and urgency of the contract.

2.3 These thresholds have been set following consultation with colleagues across the Council and its wholly owned companies to meet a diverse range of needs, open up greater opportunity to local SMEs, ensuring the most effective and efficient route to market is used, whilst maintaining compliance with procurement legislation.

Revised Procurement Procedure Thresholds		Old Procurement Procedure Thresholds	
Up to £25,000	<p>Where the requirement is not complex and can be assessed purely on the basis of price or price and simple quality requirements:</p> <ul style="list-style-type: none"> Obtain at least one written quote. To ensure best value quotes should be requested from a minimum of three Suppliers; Wherever possible, this should include two Torbay based Suppliers. <p>Where award of the Contract is subject to complex quality requirements one of the options from £25,001 to Threshold should be used.</p>	Up to £4,999	Obtain one written quotation. To ensure best value, good practice is to obtain more than one quote
		£5,000 to £25,000	<ul style="list-style-type: none"> Obtain quotes from Torbay based economic operators through the SupplyDevon hub, or where there are no Torbay based economic operators those that are based in Devon. Where there are no local businesses on the SupplyDevon hub capable of meeting the need request quotes either by post or email from minimum of three preselected economic operators. Wherever possible at least one of these should be a local SME or VCSE (refer to paragraph J Definitions for the definition of local). Retain written evidence to demonstrate the economic operator selected offers best value.
£25,001 to Regulated Threshold	<p>The most appropriate option from the following:</p> <ul style="list-style-type: none"> Informal or formal written quotes from at least three Suppliers by email, wherever possible this should include two Torbay based Suppliers; Informal or formal written quotes through the SupplyDevon hub, targeting Torbay based Suppliers; Request for quote from at least three Suppliers through the Council's e-tendering portal, wherever possible this should include two Torbay based Suppliers; Open invitation to tender through the Council's e-tendering portal; Call-off from an established framework or dynamic purchasing system; Call-off from an approved standing list; Direct award to a company wholly owned by the Council or jointly owned with other contracting authorities where best value is demonstrated; Direct award to another contracting authority where best value is demonstrated; Direct award where it can be clearly demonstrated that only one Supplier can meet the need (refer to the Commercial Policy and guidance for the 	<ul style="list-style-type: none"> £25,001 to £50,000 	<ul style="list-style-type: none"> Request for quote process undertaken through the SupplyDevon hub targeting Torbay based economic operators, or where there are no Torbay based economic operators those that are based in Devon. Procurement process to be run in accordance with these Procedures, using the Council's standard request for quote templates. Where there are no local businesses on the SupplyDevon hub capable of meeting the need, offer the opportunity to a minimum of three preselected economic operators. Wherever possible at least one must be a local SME or VCSE (refer to paragraph J Definitions for the definition of local). Procurement process to be run in accordance with these Procedures, using the Council's standard tender templates and through the e-tendering portal.
		£50,001 to Regulated Threshold	<ul style="list-style-type: none"> Advertised invitation to Tender using the Council's e-tendering portal and advert on Contracts Finder. Procurement process to be run in accordance with these Procedures using the

Revised Procurement Procedure Thresholds		Old Procurement Procedure Thresholds	
	specific circumstances under which a direct award can be considered).		Council's standard below threshold tender templates. <ul style="list-style-type: none"> • Procurement process to be run in accordance with the Public Contract Regulations in certain aspects.
Above Regulated Threshold	<ul style="list-style-type: none"> • Advertised invitation to tender through the Council's e-tendering portal; • Call-off from an established framework or dynamic purchasing system; • Direct award to a company wholly owned by the Council or jointly owned with other contracting authorities where the conditions set out in the Regulations permitting a direct award are met and best value is demonstrated; • Direct award to another contracting authority where the conditions set out in the Regulations permitting direct are met and best value is demonstrated. 	Above Regulated Threshold	<ul style="list-style-type: none"> • Advertised invitation to Tender, using the Council's e-tendering portal, and adverts on Find a Tender and Contracts Finder. • Procurement process to be run in accordance with these Procedures and the Public Contract Regulations using the Council's standard above threshold tender templates.

2.4 Regulated thresholds are reviewed and updated biennially by Government, the current thresholds came into effect on 01 January 2024 with the next update due in January 2026.

Type of Contract	01/01/2024 – 31/12/2025
Supplies and Services	£214,904
Services under the Light Touch Regime	£663,540
Works	£5,372,609
Concessions (services and works)	£5,372,609

3. Financial Opportunities and Implications

3.1 Financial opportunities and implications relate to achievement of best value across all external spend and mitigation of financial risk, including supplier and contract failure within external contracts.

4. Legal Implications

4.1 Changes to Council procurement and contract management processes and procedures must comply with public contracts legislation. For example the processes financial checks must be proportionate to the supplier market, nature, value and risk of the contact and cannot create barriers to participation for small and medium enterprises or new businesses.

5. Engagement and Consultation

- 5.1 Staff across the Council and its wholly owned companies have been involved in informing the changes made through the transforming procurement programme.
- 5.2 As part of the transformation procurement programme current and potential suppliers will be consulted on proposals for revised processes and documents, including new financial check processes as and when they are developed.

6. Purchasing or Hiring of Goods and/or Services

- 6.1 This report relates to processes and procedures that have been or will be put in place by the Council to support the effective procurement and management of external contracts. There is no requirement to consider social value specifically within the proposals.

7. Tackling Climate Change

- 7.1 This report relates to processes and procedures that have been or will be put in place by the Council to support the effective procurement and management of external contracts. There is no requirement to consider carbon reduction specifically within the proposals.

8. Associated Risks

- 8.1 If the proposals are not implemented there is risk that contracts will be awarded without appropriate due diligence checks being which may result in supplier or contract failure.

9. Equality Impacts - Identify the potential positive and negative impacts on specific groups

	Positive Impact	Negative Impact & Mitigating Actions	Neutral Impact
Older or younger people			There is no differential impact
People with caring Responsibilities			There is no differential impact
People with a disability			There is no differential impact
Women or men			There is no differential impact
People who are black or from a minority ethnic			There is no differential impact

background (BME) (Please note Gypsies / Roma are within this community)			
Religion or belief (including lack of belief)			There is no differential impact
People who are lesbian, gay or bisexual			There is no differential impact
People who are transgendered			There is no differential impact
People who are in a marriage or civil partnership			There is no differential impact
Women who are pregnant / on maternity leave			There is no differential impact
Socio-economic impacts (Including impact on child poverty issues and deprivation)			There is no differential impact
Public Health impacts (How will your proposal impact on the general health of the population of Torbay)			There is no differential impact

10. Cumulative Council Impact

10.1 None

11. Cumulative Community Impacts

11.1 None