

**Meeting:** Council

**Date:** 22 February 2024

**Wards affected:** All Wards

**Report Title:** Constitution Amendment – Contract Procedures

**When does the decision need to be implemented?** 01 April 2024

**Cabinet Member Contact Details:** Councillor Tyerman, Cabinet Member for Housing, Finance and Corporate Services, alan.tyerman@torbay.gov.uk

**Lead Officer Contact Details:** Amanda Barlow, Monitoring Officer and Malcolm Coe, Director of Finance

---

## 1. Purpose of Report

---

1.1 This report sets out proposed amendments to Contract Procedures to bring them in line with the new Procurement Act 2023 with which will come into effect in the 2024/2025 Financial Year and put measures in place which will enable external contracts to be procured in a more timely and efficient manner.

## 2. Reason for Proposal and its benefits

---

- 2.1 The Procurement Act 2023 is expected to come into force in October 2024. The new regulations alongside secondary legislation and the National Procurement Policy Statement will fundamentally change the way in which public procurement is undertaken.
- 2.2 A comprehensive review of current Council commercial procedures and practice, including benchmarking against the government Commercial Continuous Improvement Assessment Framework (CCIAF), has identified the current approach is hampering effective procurement and does not enable compliance with new legislative and policy requirements.
- 2.3 During the review feedback from colleagues across the Council and its wholly owned companies identified the procurement spend thresholds as one of the most significant barriers to effective and efficient procurement. Impacting on our ability to ensure best value and the engagement of local suppliers.
- 2.4 The reasons for the proposal are to:
- Support legislative and policy compliance, protecting the Council from potential legal challenge. The current Contract Procedures do not address the requirements of The Health Care Services (Provider Selection Regime) Regulations 2023 (which came into force on 01/01/2024) or the Procurement Act 2023 (expected to be in force in October 2024). The new procedures are aligned to both new pieces of legislation as well as

existing regulations, as we will still have contracts in place which were procured under the old regime;

- Ensure procurement is fit for purpose, as simple as possible, able to deliver corporate priorities of the organisation and facilitate the business of the Council. We want to be able to put contracts in place more quickly where we need to whilst still ensuring we are securing best value;
- Enable increased innovation and flexibility in commercial activity to empower our services and subsidiary companies to better understand and respond to the needs of residents and what the local marketplace has to offer. This will in turn deliver better outcomes;
- Improve and embed transparency within Torbay Council and its subsidiaries across all aspects of Procurement, Contract Management and Commissioning;
- Establish and develop a skills base across the Council, its subsidiaries and partnerships, so that we are all well equipped to deliver against local and national priorities while staying compliant with regulations; and
- Create a continuous improvement capability so the Council and its subsidiaries can innovate, respond to external changes, and adapt to the evolving service need.

2.5 The benefits of the proposal are:

- 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
- Making the way in which we spend money “everyone’s business”.

### 3. Recommendation(s) / Proposed Decision

---

- 3.1 That the new Contracts Procedures (as set out at Appendix 1) to replace the current Contracts Standing Orders be approved.

## Appendices

## Appendix 1: Financial Regulations and Contract Procedures

### **Background Documents**

None

## 1. Introduction

---

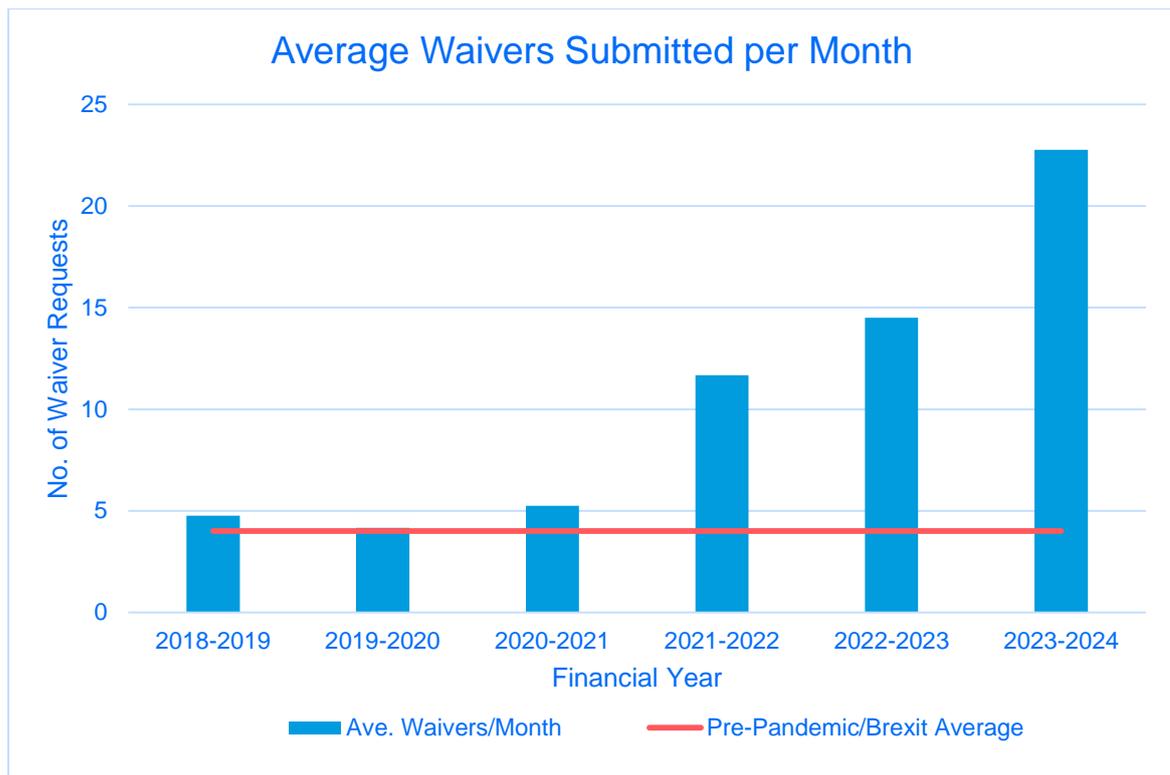
- 1.1 At the meeting of Council held on 20 July 2023 (minute 27/7/23 refers) the Council approved amendments to Article 13 requiring the Monitoring Officer to keep the Constitution under review and authorising her to make changes which were required for technical or legal reasons. The Monitoring Officer was also authorised to make other changes to the Constitution that she believes were in the best interests of the Council and/or local people provided they were made in consultation with the Leader of the Council and Group Leaders; if any of them object, the Monitoring Officer will report the matter to Council for decision.
- 1.2 These proposed changes are beyond technical or legal reasons and Liberal Democrat Group Leader has determined that the matter should come before the Council to approve, as the sovereign body.

### **Contract Procedures**

The Council's Contract Procedures are based on and facilitate compliance with the Public Contracts Regulations 2015, which are due to be replaced by the Procurement Act 2023 during the financial year 2024-2025. The new Procurement Act will improve the way procurement is undertaken, so that every pound goes further for our public services. This transformation of public procurement represents a big change for all public bodies, which between them spend £300bn per year. It will create simpler, more flexible and effective procurement.

To ensure the Council has the appropriate skills, systems and processes in place to meet its obligations under the Act and realise its benefits a Procurement Transformation Programme commenced in 2023. As part of that programme the Commercial Services Team worked with colleagues from across the Council, SWISCo and TDA to review the current approach to procurement, including the effectiveness of Contract Procedures to their alignment with the new legislation. It became clear the processes and procurement thresholds set out in Contract Procedures were overly prescriptive, limiting the options for officers to put in contracts in place in the most efficient, effective and timely manner. The approach does not consider the differences between purchasing goods, services or works, the specific needs of individual services and directorates or the way in which supply markets have altered as a result of Brexit and the pandemic. Additionally the inflexibility of current processes and thresholds has resulted in a significant increase in the number of requests to waive contract procedures to enable officers to employ a more appropriate route to market.

The chart below shows the increase in the average number of waivers submitted per month, since the pandemic and Brexit.



The level of change which will happen as a result of the Procurement Act means we cannot simply amend the current procedures. The Procedures have been subject to complete rewrite in order to support both the current and new legislation. They are designed to form an overarching framework for procurement which will be underpinned by comprehensive policy, procedure and guidance giving us the flexibility to respond quickly to making amendments necessitated by secondary legislation, case law and best practice guidance.

### ***Summary of key changes to Contract Procedures***

The existing procurement objectives of delivering value for money; maximising public benefit; transparency; fairness; proportionately and supporting the achievement of the Council's strategic priorities still form the basis of Contract Procedures.

The proposed Contract Procedures contain less detail and are designed to provide an overarching framework setting out how the Council will undertake external spend. The detail on how we will apply Contract Procedures will sit in new policy, guidance and training materials. This approach will enable us to respond more quickly to any new government guidance, case law and secondary legislation (particularly in relation to the Procurement Act 2023).

The wording and the order in which matters are covered has changed to aid understanding and remove duplication. Whilst a number of sections have been removed, primarily relating to the detail on how the procedures will be applied, what remains is in accordance with guidance and best practice.

There is a reduction in the number of spend thresholds levels and a choice of procurement routes to market across a wider spend range. The proposed thresholds have been set

following consultation with colleagues across the Council, SWISCo and TDA 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. The table below shows the current and proposed procurement procedure thresholds:

Current Thresholds		Proposed Thresholds	
Goods / Works / Services Estimated Value of the Procurement	Procurement Process	Services <sup>1</sup> / Supplies / Works <sup>2</sup> Estimated Value of the Procurement	Procurement Procedure
Up to £4,999	<ul style="list-style-type: none"> <li>Obtain one written quotation. To ensure best value, good practice is to obtain more than one quote</li> </ul>	Up to £25,000	Where the requirement is not complex and can be assessed purely on the basis of price or price and simple quality requirements: <ul style="list-style-type: none"> <li>Obtain at least one written quote. To ensure best value quotes should be requested from a minimum of three Suppliers;</li> <li>Wherever possible, this should include two Torbay based Suppliers.</li> </ul> Where award of the Contract is subject to complex quality requirements one of the options from £25,001 to Threshold should be used.
£5,000 to £25,000	<ul style="list-style-type: none"> <li>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.</li> <li>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.</li> </ul>		
£25,001 to £50,000	<ul style="list-style-type: none"> <li>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</li> </ul>	£25,001 to Threshold	The most appropriate option identified by Commercial Services, considering risk, value, complexity, market and urgency of the Contract: <ul style="list-style-type: none"> <li>Informal or formal written quotes from at least three Suppliers by email, wherever</li> </ul>

<sup>1</sup> Including Service Concessions

<sup>2</sup> Including Works Concessions

	<p>process to be run in accordance with these Procedures, using the Council's standard request for quote templates.</p> <ul style="list-style-type: none"> <li>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).</li> </ul> <p>Procurement process to be run in accordance with these Procedures, using the Council's standard tender templates and through the e-tendering portal.</p>		<p>possible this should include two Torbay based Suppliers;</p> <ul style="list-style-type: none"> <li>Informal or formal written quotes through the SupplyDevon hub, targeting Torbay based Suppliers;</li> <li>Request for quote from at least three Suppliers through the Council's e-tendering portal, wherever possible this should include two Torbay based Suppliers;</li> <li>Open invitation to tender through the Council's e-tendering portal;</li> <li>Call-off from an established framework or dynamic purchasing system;</li> <li>Call-off from an approved standing list;</li> <li>Direct award to a company wholly owned by the Council or jointly owned with other contracting authorities where best value is demonstrated;</li> <li>Direct award to another contracting authority where best value is demonstrated;</li> <li>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 specific circumstances under which a direct award can be considered).</li> </ul>
<p><b>£50,001 to Regulated Procurement Spend Threshold</b></p>	<ul style="list-style-type: none"> <li>Advertised invitation to Tender using the Council's e-tendering portal and advert on Contracts Finder.</li> <li>Procurement process to be run in accordance with these Procedures using the Council's standard below threshold tender templates.</li> <li>Procurement process to be run in accordance with the Public Contract Regulations in certain aspects.</li> </ul>		
<p><b>Regulated Procurement Spend Threshold and Above</b></p>	<ul style="list-style-type: none"> <li>Advertised invitation to Tender, using the Council's e-tendering portal, and adverts on Find a Tender and Contracts Finder.</li> <li>Procurement process to be run in accordance with these Procedures and the Public Contract Regulations using the Council's standard above threshold tender templates.</li> </ul>	<p><b>Above Threshold</b></p>	<ul style="list-style-type: none"> <li>Advertised invitation to tender through the Council's e-tendering portal;</li> <li>Call-off from an established framework or dynamic purchasing system;</li> <li>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;</li> </ul>

			<ul style="list-style-type: none"> <li>Direct award to another contracting authority where the conditions set out in the Regulations permitting direct are met <u>and</u> best value is demonstrated.</li> </ul>
--	--	--	--

The proposal is to reduce the number of thresholds whilst increasing the procurement options available. The procurement process carried out will be determined by the Commercial Services Team, considering the value, complexity, risk and urgency of the contract, as well as the market capacity.

Government reviews the regulated thresholds biennially, the current thresholds came into effect on 01 January 2024 with the next change due in January 2026. The current and previous thresholds are as follows:

Type of Contract	01/01/2022 – 31/12/2023	01/01/2024 – 31/12/2025	Variance
Supplies and Services	£213,477	£214,904	+£1,427
Services under the Light Touch Regime	£663,540	£663,540	£0
Works	£5,336,937	£5,372,609	+£35,672
Concessions (services and works)	£5,336,937	£5,372,609	+£35,672

Whilst the proposed thresholds have been set to meet the needs of the Council, a benchmarking exercise was undertaken in respect of neighbouring authorities.

Procedure	Devon County Council	Plymouth City Council	Cornwall Council	Somerset Council	Bournemouth, Poole & Christchurch Council	Dorset Council	Torbay Council (Proposed)
1-2 oral / written quotes	£1,000 up to £2,500 (£5,000 works)	Up to £5,000	Up to £25,000 goods, works and services	Up to £25,000	£0 up to £5,000	Up to £50,000	Up to £25,000
Invite 3 organisations to submit written quotes	Above £2,500 (£5,000 works) up to £10,000	£5,000-£25,000	Over £25,000 to £100,000 (goods & services) or £250,000 (works)		£5,000 up to £25,000	N/A	£25,001 to regulated threshold – selected route to market based on risk, value, complexity, market and urgency
Invite 3 organisations to submit formal written quotations	£10,000 to up to £100,000	Over £25,000 up to regulated threshold		Over £25,000 up to £50,000	N/A		

Invite 4 organisations to submit tenders	Above £100,000 up to regulated threshold	N/A	N/A	N/A	N/A	N/A	
Request for quote	N/A	N/A	Over £100,000 (goods & services) or £250,000 (works) to regulated threshold	Over £50,000 up to £100,000 (goods and services or £250,000 (works)	Over £25,000 to regulated threshold	£50,000 up to £99,999	
Open tender	N/A	N/A	N/A	Over £100,000 (goods & services) or £250,000 (works) to regulated threshold		£100,000 to regulated threshold	
Procurement in accordance with regulations	Above regulated threshold	Above regulated threshold	Above regulated threshold	Above regulated threshold	Above regulated threshold	Above regulated threshold	Above regulated threshold

### ***Increasing Opportunities for Local Suppliers***

Within the on-going Procurement Transformation Programme to support implementation of the Procurement Act 2023 and the proposed Contract Procedures (if approved) we will:

- Undertake meet the buyer events to engage with suppliers on the changes and the impact it will have on how we do business with them;
- Develop guidance for officers on how to engage with local suppliers, market awareness and market shaping;
- Update our internet pages and guidance for suppliers on how to do business with the Council;
- Review and update our procurement documents to make them more user friendly;
- Create and publish a procurement pipeline;
- Review how we check supplier track record, financial and legal standing to ensure our requirements do not disadvantage small businesses or voluntary and community sector organisations;
- Improve the mechanisms for capturing data, monitoring and reporting on spend with local suppliers;
- Create mechanisms to hold our contracted suppliers to account for how they manage their sub-contractors, e.g. ensuring they pay their sub-contractors within 30 days.

## 2. Options under consideration

---

- 2.1 To adopt, or not to adopt the proposed amendments to Financial Regulations and Contracts Procedures.

## 3. Financial Opportunities and Implications

---

- 3.1 The changes will enable the Council to apply procurement routes to market which consider best value as part of the contract award process.

## 4. Legal Implications

---

- 4.1 None

## 5. Engagement and Consultation

---

- 5.1 The proposals presented in this report have been circulated to the Council Leadership Group.

## 6. Purchasing or Hiring of Goods and/or Services

---

- 6.1 The proposals will support the use of appropriate routes to market when sourcing provision of goods and services.

## 7. Tackling Climate Change

---

- 7.1 Not applicable.

## 8. Associated Risks

---

- 8.1 Not adopting the proposals .

## 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 background (BME) (Please note Gypsies / Roma are within this community)			There is no differential impact.
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