

Crawley Borough Council

Report to Cabinet 24 July 2024

Procurement Act Implementation

Report of the Head of Corporate Finance – **FIN/660**

1. Purpose

- 1.1 On 28 October 2024, the biggest changes to public sector procurement for over a decade will take effect with the issue of the Procurement Act 2023. The legislation, brought in after Brexit, has a significant impact on how the council undertakes its procurement.
- 1.2 As a result of these changes the Procurement Code, which forms part of the council's Constitution, has been reviewed and updated to ensure that the council complies with the latest Legislation.
- 1.3. This report provides background information to the Procurement Code, its purpose and the key changes.

2. Recommendations

- 2.1 The Cabinet is recommended to:
 - a) Delegate authority to the Head of Corporate Finance to review and make minor modifications to the Procurement Code as and when amendments are required following a review or any subsequent change to legislation and statutory guidance are introduced. (Generic Delegation 7 will be used to enact this recommendation).
 - b) Request Full Council to approve the revised Procurement Code attached as Appendix A to this report.

3. Reasons for the Recommendations

- 3.1 The Council requires clear rules about how it conducts procurement. The Procurement Code has been updated to reflect changes in legislation. The Code needs approval so that it can be incorporated into the Council's Constitution.

4. Background

- 4.1 The current version of the Procurement Code was agreed in 2015, following the introduction of the Public Contracts Regulations 2015.

- 4.2 Since then, the Procurement Code has undergone several minor changes. In that time, Procurement has changed significantly in its importance to the council by assisting with savings, dealing with increased material and wage costs, implementing local policies and ensuring that in a time when we are increasingly publicly scrutinised for our spending that we have open and transparent procedures in place.
- 4.3 On 28th October 2024, the most significant changes to public procurement will take place with the implementation of the Procurement Act 2023. The Legislation is a direct response to the withdrawal of the United Kingdom from Europe and therefore has more of a focus to align with National UK policy.
- 4.4. The Legislation has a focus on increased Public Sector transparency through the publication of more notices during a procurement process, more tendering opportunities for Small Businesses (SMEs), a focus on better contract management, streamlined procurement processes and provides clarity on case law decisions.
- 4.5 As a result of these changes, the Procurement Code has been reviewed to ensure full compliance with this Legislation. During the update of the Code, changes have been incorporated to simplify and improve processes wherever it is permitted to do so.

5. The Purpose of the Procurement Code

- 5.1 The purpose of the Procurement Code is to establish clear rules for the procurement of all the Council's goods, works and services and assists in ensuring that there is a system of openness, integrity and accountability as required by the Local Government Act 1972 and the new Procurement Act 2023. The Procurement Code forms part of the Council's Constitution.
- 5.2 Procurement can be complex, particularly when undertaking Above Threshold procurement processes. The Procurement Code sets out legislation and rules that need to be followed, and this can seem complex because it covers all potential procurements. As many aspects of the Code will not apply to all procurement projects, it is recommended that officers undertaking a procurement exercise seek advice from the Procurement team to clarify what does apply to their specific requirement.
- 5.3 The Procurement Code is supported by the Joint Procurement Strategy 2024 - 2030 which outlines the future direction and deliverables of strategic procurement covering areas such as supporting the local economy and small businesses, sustainability, innovation, and collaborative procurement.

6. Overview of the Procurement Code Changes

- 6.1 The key principles of the Procurement Code remain the same. However, the most fundamental changes are:
- Changes to the above Threshold procurement processes, meaning that there are now three processes as opposed to five, with the aim of making the processes easier and more accessible for SMEs
 - Publication of more notices throughout the procurement process, to enable more transparency
 - Change to the definition of contract value to provide further clarity from previous European rules
 - Addition of Contract Management requirements into the processes

- Legal obligation to ensure accessibility of the Council's tenders to SMEs to ensure opportunities for smaller businesses
- New rules regarding advertising opportunities on a central government portal, aimed at streamlining the processes for businesses wanting to do business with the Council, to be launched by UK Government later 2024
- Changing of Most Economically Advantageous Tender (MEAT) to Most Advantageous Tender (MAT), reaffirming the importance of assessing quality as well as price when assessing submissions
- Addition of Conflicts of Interest Assessments which must be undertaken for all Above Threshold procurements and best practice for lower value contracts
- Changes of rules around contract variations and modifications. The regulations set new rules about varying a contract and when it is permissible.
- Change in feedback given to suppliers which are now through an Assessment Summary, and a notice is placed before the standstill period is commenced

7. Next Steps

- 7.1 A series of briefing sessions will take place in September to ensure compliance with the Procurement Act 2023. It is intended that following approval, the Procurement Code will be launched and a programme of training will be delivered to enhance the understanding of the Code. In addition our intranet pages will be updated in order to communicate the changes.

8. Description of Issue to be resolved

- 8.1 Ensuring that the Procurement Code is updated to reflect the significant changes in legislation with the introduction of the Procurement Act 2023 on the 28 October 2024.

9. Information & Analysis Supporting Recommendation

- 9.1 These changes ensure that the Procurement Code is fully compliant with the Procurement Act 2023 when it comes into force on 28 October 2024.

10. Implications

- a. The Procurement Act 2023 was brought into force with the aim of increasing transparency in processes in light of procurement practice during Covid, and to align with the aims of Government around encouraging SME and local business to stimulate local economies. It is too early to predict the impact on the Procurement Team of placing more notices throughout the above threshold procurement processes will be, however, it should be recognised that this will lengthen these procurement processes and officers should account for this by allowing sufficient notice is given to start the process.
- b. When it is launched, the central government portal should reduce the effort and time taken for suppliers to submit their bids.

11. Background Papers

None

Report author and contact officer: *Becca Williams, Procurement Manager, 01403 215050*