



Cyngor Castell-nedd Port Talbot
Neath Port Talbot Council

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

Cabinet

15th January 2025

Report of the Head of Legal and Democratic Services – C. Griffiths

Matter for Decision

Wards Affected: All Wards

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL CONTRACT PROCEDURE RULES

Purpose of the Report:

1. To seek approval to implement new Contract Procedure Rules for Neath Port Talbot County Borough Council (“the Council”).

Executive Summary:

2. The current Contract Procedure Rules were drafted in 2019 and as such require updating so as to reflect the legal and policy changes that have been implemented to date which impact on the Council’s procurement activities, specifically the implementation of the Procurement Act 2023. Procedural aspects of the Council’s procurement activities also require updating at an operational level and this report aims to provide an overview of the proposed new arrangements that officers would wish to implement, subject to approval by Members.

Background:

3. The aim of the Council’s Contract Procedure Rules is to ensure the Council has standing orders and procurement procedures providing a corporate framework for the procurement of all goods, services and works for the Council. The overarching purpose being to ensure that the Council complies with all UK Government and Welsh Government legislation and policy that governs and/or relates to the procurement of goods, services and works and ensure that the Council obtains value for money and the required level of quality and performance in all contracts.

4. The public procurement landscape has changed over the last 4 years following the UK's departure from the European Union and will continue to change over the next year with substantive legislative reform through the introduction of the Welsh Government's Social Partnership and Public Procurement (Wales) Act 2023 and the UK Government's Procurement Act 2023. The Social Partnership and Public Procurement (Wales) Act 2023 focuses on social partnership and socially responsible procurement and creates a socially responsible procurement duty. The duty requires the Council to seek to improve the economic, social, environmental and cultural well-being of its area by carrying out public procurement in a socially responsible way.
5. As a result of these legislative changes to procurement rules and new policy directives from the Welsh Government, an update to our Contract Procedure Rules is now necessary. The proposed Contract Procedure Rules (contained in Appendix 1 to this Report) will also aim to address strategic decisions taken by this Council following the approval of the Council's Procurement Strategy on the 11th September 2024. Also attached at Appendix 2 is a high level summary of the Contract Procedure Rules to assist members in their consideration.
6. The overarching focus of the proposed Contract Procedure Rules are to ensure the Council:
 - (a) obtains value for money and the required level of quality and performance in all contracts let;
 - (b) conducts its procurement activity openly, transparently and, where practicable, based on standard approaches and use of common systems that appropriately minimise complexity, cost, timescales and requirements for suppliers;
 - (c) shares information for the purpose of allowing suppliers as well as others to understand the Council's Policies and decisions;
 - (d) has regard to the importance of maximising public benefit;
 - (e) treat suppliers the same unless a difference between suppliers justifies different treatment;
 - (f) complies with all legislation that governs and/or relates to the procurement of goods, services and works and the letting of concession and utility contracts;
 - (g) meets the principles of the Welsh Government's Wales Procurement Policy Statement (WPPS);
 - (h) has regard to the fact that small and medium enterprises and voluntary sector organisations may face particular barriers to participation, and must consider whether such barriers can be removed or reduced;
 - (i) achieves the organisational outcomes of the Council's Procurement Strategy and Corporate Plan;
 - (j) considers all relevant guidance issued by Welsh Government including Procurement Advice Notes and the Code of Practice on Ethical Employment in Supply Chains;
 - (k) supports the achievement of the seven well-being goals for Wales as set out in the Well-being of Future Generations (Wales) Act (2015);
 - (l) supports the achievement of social partnership, sustainable development duties

the socially responsible procurement duty under the Social Partnership and Public Procurement Act (Wales) Act 2023 to amongst other things to seek to improve the economic, social, environmental and cultural well-being of its area by carrying out public procurement in a socially responsible way and
 (m) has procurement procedures which, when followed, should protect members and officers of the Council from any allegation of acting unfairly or unlawfully in connection with any procurement by the Council.

6. The pertinent features of the proposed Contract Procedure Rules are set out below:

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| Definition of Value for Money | Rather than just being focussed primarily on cost, value for money in arrangements should be considered as the optimum combination of whole-of-life costs in terms of not only generating efficiency savings and good quality outcomes for the organisation, but also benefit to society, the economy, and the environment, both now and in the future. Cost will undoubtedly be a factor but it will require consideration of a number of issues. |
| Exemptions | There will always be some exemptions to when a competitive procurement needs to be undertaken and Rule 4 of the proposed Contract Procedure Rules sets out these objectives which are based on the exemptions set out in law. |
| Conduct | No member, employee or agent of the Council shall improperly use his or her position to obtain any personal or private benefit from any contract entered into by the Council. When undertaking a Procurement, and throughout all Procurement activities, all Officers must take all reasonable steps to identify and manage perceived and actual conflicts of interest |
| Welsh Language | Provision is included in the proposed Contract Procedure Rules to reflect the requirements of the Welsh language standards issued to the Council by the Welsh Language Commissioner with regard to situations where a tender should be published in Welsh, where a |

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| | <p>tender may be submitted in Welsh, where interviews under a tender process are to be offered in Welsh and where communications during the tender process are to be issued in Welsh</p> |
| Procurement Planning | <p>Before commencing any Procurement, the Senior Officer responsible for the proposed Procurement, must undertake (or ensure that it is undertaken) the appropriate level of preparation and planning, proportionate to the proposed value and nature of the proposed contract, taking advice where appropriate and ensuring the requirements of these Rules are complied with.</p> <p>Engagement with suppliers and other persons for the purpose of developing the Council's requirements and approach to the Procurement, designing a procedure, identifying potential suppliers, identifying likely contract terms and building capacity in the market is permitted and encouraged.</p> |
| Community Benefits/Social Value | <p>Community benefits/social value clauses within contracts are used to build a range of economic, social or environmental conditions into the delivery of a contract and the Council must maximise the social value and community benefits to be obtained through its Procurements in line with any guidance or policies created.</p> <p>All Contracts exceeding £1,000,000 must include a contractual obligation on the successful bidder to deliver community benefits/social value.</p> <p>For all contracts below the figure, the inclusion of community benefits as a contractual obligation is optional but shall be considered</p> |
| In house Provision | <p>Before any external procurement is considered, it is important to check that no existing in-house provision exists for the goods, services or works required. In-</p> |

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| | house services must be used unless agreed otherwise |
| Catalogue of Framework Agreements | A catalogue of various frameworks will be created to ensure that approved sources are used for all goods and purchasing, where possible. |
| Authority | To ensure appropriate oversight, and in line with current requirements, prior to commencing a procurement and awarding a contract, authority should be in place in the. Authority must be obtained from the relevant decision maker and the details of the decision maker are set out in Rule 15 of the proposed rules. |
| Thresholds | <p>The Wales Procurement Policy Statement (WPPS) states that the Council shall adopt the principle that procurement will be open, accessible competition. It states that “public bodies should adopt risk based, proportionate approaches to procurement to ensure that contract opportunities are open to all and smaller, local suppliers are not precluded from winning contracts individually, as consortia, or through roles within the supply chain”</p> <p>Ensuring smaller firms have greater visibility of the opportunity and ample opportunity to bid is also in line with the policy approaches of sustainability, seeking to increase the amount of local based procurement and local spend.</p> <p>The following thresholds will be invoked:</p> <p>Goods/Services/Works up to £10,000 - There is no requirement for a quotation or tender process for contracts under £10,000 although there is a requirement for the officer to obtain value for money for the Council.</p> <p>Goods/Services between £10,000 and £30,000 - require a minimum of 3 written quotations from competitive sources are</p> |

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| | <p>to be obtained unless the officer considers this inappropriate in the interests of efficient management whilst at all times ensuring that value for money is obtained for the Council</p> <p>Goods/Services over £30,000 - require advert on Sell2Wales and full competitive tender.</p> <p>Works between £10,000 and £75,000 - require a minimum of 3 written quotations from competitive sources are to be obtained unless the officer considers this inappropriate in the interests of efficient management whilst at all times ensuring that value for money is obtained for the Council</p> <p>Works over £75,000 - require advert on Sell2Wales and full competitive tender.</p> <p>Where the Council utilises a competitively sourced framework agreement or other source then there will be no requirement to following these thresholds as there has already been a competitive process to appoint those organisations to that framework.</p> |
| Electronic Tendering | From 1 st April 2025 all procurement with a value of £10,000 or above must be conducted using the Council's approved electronic system. Further training is to be implemented with officers to enable them to gain familiarity in using this system |
| Criteria for performing services to the Council | The Council shall only enter into a Contract with a Contractor if it is satisfied as to the Contractor's competencies, and they are not excluded (to determine whether someone is excluded we have to look to the legal requirements for this). |
| Transparency Notices | The Council is committed to greater transparency across its operations to enable the public to hold the Council to account. This includes commitments |

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| | relating to public procurement. Where certain activities are embarked on or awards of contract are made contrary to these Contract Procedure Rules, transparency notices will be required to be published. |
| Procurement Pipeline | A procurement pipeline of proposed contracts of an estimated value of more than £30,000 for Goods and Services or £75,000 for Works that make up the Council's procurement pipeline over the next 18 months commencing on the first day of the financial year, the first being the 1 st April 2025 will be published on an annual basis and updated quarterly. |
| Contract Management | The proposed Contract Procedure Rules establish a corporate contract register for all contracts with a value in excess of £25,000 so that the Council can further develop our record keeping for contract spend and to provide up to date lists of all externally sourced services, works and goods. The proposed Contract Procedure Rules allocate responsibility for managing the contract and ensuring that it is carried out in accordance with its terms and conditions. |
| Key Performance Indicators | At least 3 KPIs must be set for over value contracts as part of the award procedure where a contract is over the value of £1,000,000 |
| Various Requirements | <p>Linking procurement to wider corporate strategies</p> <p>Packaging contracts to make them more accessible, for examples, dividing contracts into lots.</p> <p>Streamlining procurement documentation as far as possible</p> |

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| | <p>Using social and environmental criteria and awarding contracts in a way which is not just dependent solely on price</p> <p>Restricting some tenders to “sheltered workshops” and “social enterprises” (to participate in such tenders 30% of the organisation’s work force must be “disadvantaged”)</p> <p>Continuous spend analysis and outcome monitoring</p> |
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7. Should Members approve the implementation of the proposed Contract Procedure Rules, a report will be taken to Full Council to make all members aware of the changes being implemented and to seek authority to amend the Constitution of Neath Port Talbot County Borough to include the proposed Contract Procedure Rules.
8. As part of its adoption a training programme will be implemented with commissioning and contracting officers in all directorates and a user guide/summary will be placed on the intranet for all officers to be aware of. A key summary of provisions will also be prepared that will be made available on the Council’s website highlight pertinent information in an easy read guide.
9. A programme will also be developed where the Corporate Procurement Unit will monitor compliance with the Contract Procedure Rules on a quarterly basis. For example, selecting contracts at random from the contracts register and checking procurement practices associated with them.

Financial Impacts:

10. Decisions as to the expenditure of Council funds will be made through the budget setting process in the usual way.
11. Lowering the contract value threshold to £30,000 for goods and services and maintaining the threshold of £75,000 in respect of works for advertising contracts in order to meet the Welsh Government Procurement Policy and legislation requirements in relation to the requirement for competition could have a financial impact on the Council in that a greater number of officers across all departments will be working with the e-procurement system and, if the Welsh Government determine not to continue funding for the e-procurement system, a cost

(presently undetermined) will need to be met by the Council to obtain licences for each officer to be able to use the e-procurement system. Indications at present though are that the Welsh Government are likely to fund the cost for a further 2 years.

Integrated Impact Assessment:

12. A first stage impact assessment has been undertaken to assist the Council in discharging its legislative duties (under the Equality Act 2010, the Welsh Language Standards (No.1) Regulations 2015, the Well-being of Future Generations (Wales) Act 2015 and the Environment (Wales) Act 2016, a copy of which is included at Appendix 3. The first stage assessment has indicated that a more in-depth assessment is not required for the reasons set out in Appendix 2

Valleys Communities Impacts:

13. As facilitated by the Procurement Act 2023, provision is built into the proposed Contract Procedure Rules to assist in engaging local suppliers in Council run tenders. This addresses the commitment given by this Council in our Valleys Strategy and as part of the work undertaken with the voluntary sector. A local procurement or community wealth building approach encourages the use of local suppliers in order to generate local business growth and keep money spent within the area. This approach also incorporates the principles of sustainability and ethical employment. The desired outcome is to create strong local supply chains and to build wealth in local communities.

Workforce Impacts:

14. As part of the implementation of the proposed Contract Procedure Rules training programme will be implemented with commissioning and contracting officers in all directorates and a user guide/summary will be placed on the intranet for all officers to be aware of. Officers of the Corporate Procurement Unit will also prepare template documents and guidance to assist in compliance.

Legal Impacts:

15. The Local Government Act 1972 requires the Council to make standing orders with respect to the making of contracts for the supply of goods and materials or for the execution of works. The Local Government Act 2000 requires the Council to include a copy of its standing orders in its constitution. The Local Government Act 2000 (Local Authority Constitution) (Wales) Direction 2023 requires the Council's constitution to contain the rules and regulations governing finance, contractual and legal matters including contracts and procurement rules.

16. Significant public procurement reform through the Welsh Government's Social Partnership and Public Procurement (Wales) Act 2023 (the SPPP Act) and the UK Government's Procurement Act 2023 is due to come into force in February 2025. The UK Act focuses on the processes that the Council will be required to follow in respect to the procurement of works, goods and services. The Wales specific SPPP Act makes provision for social partnership and socially responsible procurement and creates a socially responsible procurement duty. The duty requires the Council to seek to improve the economic, social, environmental and cultural well-being of its area by carrying out public procurement in a socially responsible way. The Council will do this by taking action in accordance with the sustainable development principle aimed at contributing to the achievement of the well-being goals set out in the Well-being of Future Generations (Wales) Act 2015.

Risk Management Impacts:

17. Failure to have appropriate and up-to-date Contract Procedure Rules in place could increase the likelihood of challenge from the public that there is no transparency as to how contractual arrangements are facilitated. From a corporate governance perspective, such rules are crucial to demonstrate that the Council has in place appropriate procedures and rules to achieve principles of transparency, accountability, value for money and equal opportunity all organisations who wish to contract with us.

Consultation:

18. There is no requirement for external consultation on this item

Recommendations:

19. It is recommended that having due regard to the integrated impact assessment that:
 - (a) Members approve the proposed draft of the Contract Procedure Rules included at Appendix 1 of this Report for implementation on the 28th February 2025 or such date as maybe determined appropriate by the Head of Legal and Democratic Services;
 - (b) That delegated authority be granted to the Head of Legal and Democratic Services in consultation with the Cabinet Member for Finance, Performance and Social Justice to make any amendments to the Contract Procedure Rules included at Appendix 1 to meet statutory obligations only.
 - (c) That a report be taken to Full Council for authority to be sought to amend the Constitution of Neath Port Talbot County Borough Council to include the proposed Contract Procedure Rules at Appendix 1 to this Report.

Reasons for Proposed Decision:

20. To ensure that the Council's Contract Procedure Rules are brought up-to-date so as to reflect the legal and policy changes that have been implemented since the date that the current Contract Procedure Rules were approved and which impact on the Council's procurement activities and ensure the procedural aspects of the Council's procurement activities are updated at an operational level.

Implementation of Decision:

21. The decision is proposed for implementation after being approved at Full Council in February 2025.

Appendices:

22. Appendix 1 – Proposed Contract Procedure Rules
Appendix 2 – High level summary of the Contract Procedure Rules
Appendix 3 – First Stage Integrated Impact Assessment

List of Background Papers:

23. The Constitution of Neath Port Talbot County Borough Council

Officer Contact:

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