

Title of report: Update to Finance and Contract Procedure Rules

Meeting: Audit and Governance Committee

Meeting date: Tuesday 28 January 2025

Report by: Director of Finance

Classification

Open

Decision type

This is not an executive decision

Wards affected

(All Wards);

Purpose

To review and approve the proposed updates to the Contract Procedure Rules, the Financial Procedure Rules and the Financial Procedure Rules Guidance Notes. To ensure council financial and contract procedure rules are up-to-date following the introduction of the Procurement Act 2023 and Procurement Regulations 2024, which is new legislation due to come into effect on 24 February 2025 in order to ensure transparency about how public resources are used and controlled to mitigate the potential for fraud and ensure compliance with relevant legislation.

Recommendation(s)

That the committee review and approve the following updates as technical changes to the constitution:

- a) The Contract Procedure Rules at Appendix 1;**
- b) Financial Procedure Rules at Appendix 2**
- c) Financial Procedure Rules Guidance Notes at Appendix 3.**

Alternative options

1. The council could continue with its current financial and contract procedure rules. This is not recommended as this introduces the risk that they would not be fit-for-purpose and provide clarity of roles and processes for those charged with undertaking financial and procurement activity. Further this would mean that the contract procedure rules were not in accordance with

the new Procurement Act 2023 and Procurement Regulations 2024 which come into force on 24 February 2025.

Key considerations

2. The council's Contract Procedure Rules (CPRs) provide the policy for procurement activity across the council, setting out how contracts for goods, works, services, concessions and utilities should be put in place and managed, and detailing the record keeping and reporting requirements related to procurement activity.
3. The Financial Procedure Rules set out the framework which the council will use in managing its financial affairs. They set out levels of responsibility and give authority to the Cabinet Members and Officers and are intended to promote good practice in the use of public funds.
4. The Financial Procedures Rules give detailed guidance on how the overarching framework is implemented.
5. In line with good practice, a regular review of these rules is important to ensure that they remain up-to-date with any changes to the council's statutory responsibilities, relevant legislation, the council's constitution and/or how the council conducts its business.
6. Both the contract procedure rules and finance procedure rules were last reviewed, updated and approved by the Audit and Governance Committee on 30 January 2024.

Contract Procedure Rules

7. The 2025 updates to the CPRs are to reflect the introduction of the Procurement Act 2023 and Procurement Regulations 2024, which is new legislation due to come into effect on 24 February 2025.
8. The Local Government Act 1972 requires the Council to have standing orders governing how it enters into contracts. The CPRs satisfy this requirement. The Council is subject to UK law with regard to public procurement which requires all contract procedures to be open, fair and transparent. The CPRs provide a basis for fair competition, with clear and auditable procedures.
9. The CPRs ensure a clear and consistent approach to procurement, set the minimum standard of best practice and assurance of good contract management practice within the organisation. The amendments enable officers and members to demonstrate best value and best practice.
10. A final copy of the updated CPRs is attached at Appendix 1. The key amendments include:
 - a. The Public Contract Regulations 2015 remain in force for contracts let under the Public Contract Regulations 2015, and the Procurement Act 2023 will apply to contracts let after 24 February 2025.
 - b. When valuing contracts, the value must be a true estimation of the value, and if it can't be valued, it needs to be procured as an above threshold contract.
 - c. Changes to the way a goods, services and works contract and a concessions contract are entered into.
 - d. Legal requirement to consider Small and Medium Enterprises (SMEs) and remove or reduce any barriers to them bidding.
 - e. More emphasis on pre-market engagement to inform the procurement process.

- f. Legal requirement to publish more transparency notices throughout the process including modifications to the contract.
- g. Legal requirement to use the Central Digital Platform to publish notices and advertise opportunities.
- h. Restriction on inviting bids unless the published notice and/or associated tender documents contains sufficient information to allow suppliers to prepare such a tender and details of the goods, services or works required by the Council.
- i. Concession Contract (a right for the supplier to exploit the works or services that are the subject of the contract and where, under the contract, the supplier is exposed to a real operating risk) and Light Touch Contracts (social services and other services listed in the legislation) now have to follow the same rules on procurements for Goods, Services and Works with some exceptions.
- j. Changes to frameworks to allow for open frameworks, that can be reopened during the terms of the framework
- k. Under the Procurement Act 2023 direct awards are permissible in certain limited circumstances.
- l. Requirement to comply with the National Procurement Policy Statement.
- m. Contracts can be reserved to supported employment providers or public service mutual, in certain circumstances.
- n. Requirement to retain procurement documents for 3 years in a location accessible by other officer in the service area.
- o. For light touch procurements the legislation allows the modification of the terms of a competitive flexible procedure before the deadline for submitting tenders or final tenders, as relevant.
- p. The procurement principles have changed and are now called the procurement objectives. These are: delivering value for money, maximising public benefit, transparency and acting with integrity.
- q. The evaluation procedure has changed, and more detail is required from evaluators to give better feedback to bidders. The evaluation is aimed at obtaining the most advantageous tender, this is the tender that the council considers:
 - a) Satisfies the council's requirements and
 - b) Best satisfies the award criteria when assessed by reference to:-
 - i. the assessment methodology set out in the quote/tender, and
 - ii. if there is more than one criterion, the relative importance of the criteria set out in the quote/tender.
- r. Requirement to check the Cabinet Office Debarment List, which is a list of suppliers barred from being awarded public contracts and exclude those suppliers if they submit a bid.

- s. The definition of an urgent decision has changed, and a genuine emergency is one that is unforeseeable and not of the council's making or attributable to the actions of the council.
- t. Changes to when a contract can be modified.
- u. Contract management is now part of the legislation. Each contract must have a named contract manager with the rights skills to proactively manage the contract to ensure best value throughout the life of the contract and ensure notifications of variations and KPIs are published, where required by the legislation.
- v. Contracts over £5 million (with the exception of Light Touch Services Contracts, Concessions Contracts and Framework Agreements) must have 3 KPIs published, and an annual report produced and published on the performance of those KPIs. A redacted copy of the contract must be published, and re-published if modified.
- w. Amendment of roles from Director of Resources and Assurance to Chief Finance Officer (S151) and from Head of Strategic Finance to Deputy S151 Officer.

Financial Procedure Rules and Guidance Notes

- 11. A final copy of the latest proposed Financial Procedure Rules is attached at Appendix 2.
- 12. A final copy of the Financial Procedures Rules Guidance Notes is attached at Appendix 3. The key changes which have been made to both documents can be summarised as follows:
 - a) Amendment of role title for Section 151 officer; and
 - b) Updates to procedures in respect of the priority supplier programme.

Community impact

- 13. In accordance with the adopted code of corporate governance, the council must ensure that it has an effective performance management system that facilitates effective and efficient delivery of planned services. Effective financial management, risk management and internal control are important components of this performance management system.
- 14. To ensure clear and transparent processes are in place to govern how resources of the council are effectively managed and supports the Herefordshire Council Plan objectives to manage finances effectively and to demonstrate one of the council's values, namely to be open, transparent and accountable.

Environmental Impact

- 15. The council provides and purchases a wide range of services for the people of Herefordshire. Together with partner organisations in the private, public and voluntary sectors we share a strong commitment to improving our environmental sustainability, achieving carbon neutrality and to protect and enhance Herefordshire's outstanding natural environment.
- 16. Whilst this is a procedural update and will have minimal environmental impacts, consideration has been made to minimise waste and resource use in line with the council's Environmental

Policy. For example both sets of procedure rules encourage the use of online facilities available rather than using a paper trail.

Equality duty

17. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services.
18. The mandatory equality impact screening checklist has been completed for this decision and as it relates to improving internal processes, it has been found to have no impact for equality, as such a full Equality Impact Assessment is not required,

Resource implications

19. There are no specific resource implications from this report and the updating of the Council's rules.

Legal implications

20. The council must prepare and keep up to date a constitution in accordance with s37 of the Local Government Act 2000. The minimum requirements for the content are set out in the Local Government Act 2000 (Constitutions) (England) Direction 2000 which includes a description of the rules and procedures for the management of the council's financial affairs including: procedures for auditing and financial rules. The contract procedure rules and the finance procedure rules meet the requirements of the Local Government Act (Constitutions) (England) Direction 2000 and are the rules that officers follow in the day-to-day operation of the council as set out within this council's budget and statutory framework.

Risk management

21. The current rules require updating. Amendments to the contract procedure rules have been made to reflect the introduction of the Procurement Act 2023 and Procurement Regulations 2024, which is new legislation due to come into effect on 24 February 2025. Updating the rules clarifies what is required and supports officers and members in dealing with issues and ensures that the Council acts in a consistent manner with regard to procurement.

Risk/Opportunity	Mitigations
The Contract Procedure rules are updated incorrectly so do not reflect the legislative requirements set out in the Procurement Act 2023 and Procurement Regulations 2024 which could result in procurements breaching the regulations.	Officers responsible for updating the rules have attended training on the new legislation and the updates reflect the new regulations.
Officers and members are unaware of the updated rules which could result in breaching the regulations	A communication plan is in place, the contracting toolkit is being updated and training will be provided on the new regulations

Consultees

22. None

Appendices

Appendix 1 Contract Procedure Rules updated 2025
Appendix 2 Financial Procedure Rules updated 2025
Appendix 3 Financial Procedure Rules Guidance Notes updated 2025

Background papers

None identified

Report Reviewers Used for appraising this report:

Governance	Jenny Preece	Date 08/01/2025
Finance	Karen Morris, Judith Tramer	Date 13/01/2025
Legal	Emma-Jane Brewerton	Date 13/01/2025
Communications	Luenne featherstone	Date 09/01/2025
Equality Duty	Harriet Yellin	Date 08/01/2025
Procurement	Claire Powell	Date 13/01/2025
Risk	Jessica Karia	Date 08/01/2025
Approved by	Rachael Sanders/ Claire Porter	Date 20/01/2025