Meeting of:	**CABINET**
Date of Meeting:	**11 MARCH 2025**
Report Title:	**REVISED CONTRACT PROCEDURE RULES**
Report Owner / Corporate Director:	**CHIEF OFFICER - LEGAL & REGULATORY SERVICES, HR & CORPORATE POLICY**
Responsible Officer:	**RACHEL JONES - CORPORATE PROCUREMENT MANAGER**
Policy Framework and Procedure Rules:	**This report proposes revisions to the Council's Contract Procedure Rules and amendments to the Council's Scheme of Delegation of Functions in relation to Executive Functions**
Executive Summary:	**This report recommends the approval of revised Contract Procedure Rules following the implementation of the Procurement Act 2023 and approval of related amendments to the Scheme of Delegation of Functions in relation to Executive Functions.**

1. Purpose of Report

1.1 The purpose of this report is to seek approval from Cabinet:

1.1.1 for the revised Contract Procedure Rules to take effect from 1st April 2025;

1.1.2 for the Council's Scheme of Delegation of Functions in relation to Executive Functions to be amended in accordance with paragraph 3.3 of this report; and

1.1.3 to note that a report will be taken to Council regarding the required amendments to the Constitution and to seek approval to amend the Scheme of Delegation of Functions in relation to Council functions.

2. Background

2.1 The Contract Procedure Rules contain the rules and guidelines for procuring goods, services and works. They are in place to ensure compliance with legal requirements, ensure best practice is followed and best value is achieved in the use of public funds. The Contract Procedure Rules contain a requirement for their regular review and update.

2.2 On 24th February 2025 the statutory regime regulating public procurement in Wales changed with the commencement of the Procurement Act 2023 (PA 2023). Although many of the concepts and requirements of the PA 2023 broadly replicate concepts

found in the previous regime under the Public Contracts Regulations 2015 (PCR 2015), there are some significant differences, which are set out in summary below:

One set of rules - the PA 2023 replaces a number of sets of regulations. For the Council's purposes, the relevant ones are the PCR 2015 and the Concession Contracts Regulations 2016. Council officers will still need to refer to supporting secondary legislation and statutory and non-statutory guidance to ensure full compliance with the PA 2023's requirements. In particular, the Council must have regard to any Wales Procurement Policy Statement published by the Welsh Government from time to time and the Social Partnership and Public Procurement (Wales) Act 2023. The threshold for the main requirements of the PA 2023 for works, services and supplies contracts remains the same until January 2026.

New terminology - Terminology changes need to be reflected in updated procurement documentation and the Council's Contract Procedure Rules.

New procurement objectives and principles - Officers undertaking procurement must have regard to new procurement objectives and any barriers for small and medium-sized enterprises (SME) participation when undertaking above threshold procurements.

Full procurement lifecycle - There is greater emphasis on contract governance, with new obligations to publish a preliminary market engagement notice to inform the market when the Council intends to conduct or has already conducted any pre-market engagement and additional obligations to report on contract performance and contract termination (including expiry of contracts at the end of their term). In addition, the Council will need to have regard to procurement objectives when making contract management decisions as well as decisions relating to the award process.

Fewer procedures and greater flexibility - In particular the new competitive flexible procedure will allow the Council discretion to design its own procurement processes to suit its requirements. However, this will require additional time and resource and there is potentially an increased risk of challenge if the process is not properly structured to enable it to be fair, proportionate and transparent. There have been significant changes to frameworks and dynamic purchasing systems, introducing the concepts of 'Open Frameworks' (which must be re-opened at least once during the first three years, and at least every five years following that) and 'dynamic markets'.

KPIs and performance information - The Council must set and publish at least three key performance indicators (KPIs) before entering into any public contract for more than £5 million unless it considers that KPIs are not appropriate to assess the supplier's performance.

Greatly expanded notice regime - The Council will need to publish significantly more notices and information on Sell2Wales as part of the government's heightened transparency agenda. Some notices have just changed their name or are now mandatory rather than optional and some notices are entirely new. These changes need to be reflected in the CPRs.

Conflicts of Interest - The Council must consider any actual, potential or perceived conflicts of interest before commencing a procurement exercise and prepare a written

conflicts assessment. Although this document does not need to be published, the Council will be obliged to revisit and update the conflicts assessment as necessary throughout the course of the procurement and when any changes are made to contracts. The Council will have to confirm that it has done so in any relevant notices.

Wider implications for lower value contracts - 'below threshold' procurement. For (non-framework) contracts with a value over £30,000, but below the PA threshold, the Council will be obliged to:

- Consider if there are any SME barriers and how any such barriers can be removed or reduced.
- Publish a below threshold tender notice on Sell2Wales if the opportunity is to be advertised elsewhere.
- Publish a contract details notice as soon as reasonably practicable after entering into a contract.
- Abide by 30-day payment terms.

Contract modifications - Changes to existing grounds, additional grounds for modification and a new concept of 'convertible contracts' ie below-threshold contracts that, as a result of the change, will increase in value so as to exceed the financial threshold. New notice and standstill obligations will apply before any relevant modification can be made.

A new exclusion and debarment regime - The mandatory and discretionary grounds for excluding suppliers have been expanded. There is a new obligation to notify Welsh Ministers in circumstances where the Council has excluded a supplier from participating in a procurement process and suppliers may be placed on a central debarment list following investigation.

2.3 The Social Partnership and Public Procurement (Wales) Act 2023 commenced on 1st April 2024 and places social partnership duties on Welsh Ministers and those public bodies, including the Council, which are subject to the well-being duty under the Well-being of Future Generations (Wales) Act 2015. Part 3 of the Act (which is yet to come into force but is anticipated to commence later this year) places new socially responsible procurement duties on a range of public bodies in Wales. The main provisions are set out below:

Socially responsible procurement duty - The Council must seek to improve the economic, social, environmental and cultural well-being of its area by carrying out public procurement in a socially responsible way. This will be achieved by taking action, in accordance with the sustainable development principle, aimed at contributing to the achievement of the socially responsible procurement goals listed in section 4 of the Well-Being of Future Generations Act 2015. The Council will be obliged to set and publish socially responsible procurement objectives designed to maximise its contribution to achieving these socially responsible procurement goals.

Major Construction Contracts - The Council will need to include the incorporation of model social public works clauses published by Welsh Ministers in major construction contracts (to be defined).

Outsourcing services contracts - The Council must have regard to the public services outsourcing and workforce code to be published by the Welsh Ministers and the incorporation of social public workforce clauses (as defined) which, among others, protect the terms and conditions, continuity of employment and pensions arrangements of transferring staff.

Procurement strategies - The Council must prepare and publish a procurement strategy setting out how the authority intends to carry out public procurement. The procurement strategy must be reviewed each financial year and state how the authority intends to:

- Ensure that it will carry out public procurement in a socially responsible way.
- Take all reasonable steps to meet its socially responsible procurement objectives when it carries out public procurement in relation to any prescribed contract.
- Make payments due under a contract promptly and, unless this is not reasonably practicable, no later than 30 days after an invoice (or similar claim) is submitted.

The Council's Socially Responsible Procurement Strategy 2021-2024 is currently in place and due for review and renewal.

Reporting and accountability - The Council must prepare and publish an annual report which must include:

- A summary of the public procurement exercises during the year for the award of prescribed contracts.
- A statement of the extent to which all reasonable steps were taken to meet the Council's socially responsible procurement objectives.
- A statement of what further steps it will take in future public procurement exercises to meet its socially responsible procurement objectives.
- A summary of the public procurement the authority expects to carry out in the next two financial years.

The Council must also publish a contracts register (containing prescribed information) of prescribed public contracts entered into by the authority.

3. Current situation / proposal

3.1 Following a review of the Council's Contract Procedure Rules a number of changes have been proposed to the existing Contract Procedure Rules. A copy of the revised Contract Procedure Rules is attached to this report at **Appendix 1**.

3.2 The amendments are largely limited to changes needed to ensure that the Contract Procedure Rules reflect the above statutory changes. There are also other substantive proposed changes including:

- a new exemption under 3.1.7 for Contracts for services entered into in pursuance of powers under the National Health Service and Community Care Act 1990, the Children Act 1989, Children's (Leaving Care) Act 2000 and Social Services and Well-being (Wales) Act 2014 for the benefit of an individual client (which had previously been a permitted waiver);
- the addition of a waiver at rule 3.2.12 for the urgent spend of grant funding; and
- changes to the thresholds and procedural requirements set out under rule 8 of the Contract Procedure Rules.

3.3 The following amendments are also required to the Council's Scheme of Delegation of Functions in relation to Executive Functions as set out below in tracked changes:

Scheme A (functions allocated to each Cabinet Member)

Amendment to paragraph 1.2 as shown via tracked changes:

1.2	In accordance with the values set out in the Council's Contract Procedure Rules: (a) To authorise the invitation of tenders; and (b) To accept the Most ~~Economically~~ Advantageous Tender received and enter into a Contract and any further deeds and documents which are supplemental to the Contract; (c) To enter into a Contract and/or any further deeds and documents which are supplemental to the Contract in accordance with any permitted exemption or waiver under the Council's Contract Procedure Rules.

Scheme B2 functions allocated to each Chief Officer

Amendment to paragraph 1.3 as shown via tracked changes:

1.3	In accordance with the values set out in the Council's Contract Procedure Rules: (a) To authorise the invitation of tenders and; (b) To accept the Most ~~Economically~~ Advantageous Tender received and enter into a Contract, and any further deeds and documents which are supplemental to the Contract; (c) To enter into a Contract and/or any further deeds and documents which are supplemental to the Contract in accordance with any permitted exemption or waiver under the Council's Contract Procedure Rules.

3.4 Subject to Cabinet approval a report will be taken to Council to amend the Scheme of Delegation of Functions in relation to Council functions and to amend the Constitution to incorporate the revisions to the Contract Procedure Rules.

4. Equality implications (including Socio-economic Duty and Welsh Language)

4.1 The protected characteristics identified within the Equality Act, Socio-economic Duty and the impact on the use of the Welsh Language have been considered in the preparation of this report. As a public body in Wales the Council must consider the impact of strategic decisions, such as the development or the review of policies, strategies, services and functions. This is an administrative report, therefore it is not necessary to carry out an Equality Impact assessment in the production of this report. It is considered that there will be no significant or unacceptable equality impacts as a result of this report.

5. Well-being of Future Generations implications and connection to Corporate Well-being Objectives

5.1 The well-being goals identified in the Act were considered in the preparation of this report. This is an administrative report and therefore it is considered that there will be no significant or unacceptable impacts upon the achievement of well-being goals/objectives as a result of this report.

6. Climate Change Implications

6.1 There are no climate change implications arising from this report.

7. Safeguarding and Corporate Parent Implications

7.1 There are no safeguarding and corporate parent implications arising from this report.

8. Financial Implications

8.1 There are no financial implications arising from this report.

9. Recommendations

9.1 It is recommended that Cabinet:

(i) approve the revised Contract Procedure Rules attached at **Appendix 1** to this report to take effect from 1st April 2025;

(ii) approve the amendments to the Scheme of Delegation of Functions in relation to Executive functions as set out in paragraph 3.3 of this report;

(iii) to note that a report will be taken to Council regarding the required amendments to the Constitution and to seek approval to amend the Scheme of Delegation of Functions in relation to Council functions.

Background documents
None