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| <b>Meeting:</b>                        | Audit Committee                       |
| <b>Meeting date:</b>                   | 23 <sup>rd</sup> September 2024       |
| <b>Title of report:</b>                | Revised Contract Procedure Rules 2024 |
| <b>Report by:</b>                      | Cabinet Member for Finance            |
| <b>Decision Type:</b>                  | Key                                   |
| <b>Ward(s) to which report relates</b> | All                                   |

### Summary

1. This report seeks approval of revised Contract Procedure Rules.

### Recommendation(s)

2. That the Committee recommends to Full Council, at its meeting on 13<sup>th</sup> November 2024, approval of the revised Contract Procedure Rules 2024.

### Reasons for recommendation(s)

3. Amendment of the current rules is necessary to ensure that the Council will be able to comply with the Procurement Act 2023 and its associated Regulations when they come into force on 24<sup>th</sup> February 2025.

### Alternative options considered and rejected

4. No other option is available in the light of the statutory requirement.

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## **Background**

### **1. New Legislation**

1.1 Amended CPR's are required to take account of the new Procurement legislation and coming into force on 24<sup>th</sup> February 2025.

1.2 The legislation comprises the Procurement Act 2023 together with a set of Regulations. These replace the current Public Contracts Regulations formulated under EU law. These have been in force since 2015 with only minor amendment to date despite the Brexit decision in 2016 and will now be repealed.

### **2. Substantive Changes**

#### *2.1 Price and Quality Criteria*

The new Procurement Act test of MAT - Most Advantageous Tender - is a mix of price, quality and social value.

The rules and new CPR's stress that price only procurement cannot be permitted in any circumstances as it is both unlawful and contrary to Government guidance. The identification of explicit quality criteria and thresholds is critical in being able to judge whether we are getting best value from Council expenditure from the purchase of works, services, goods or equipment.

Best value remains a major issue for local authorities as it is a statutory obligation under the Local Government Act 1999. It is not a purely financial test, it is a measure of economy, efficiency and effectiveness.

#### *2.2 Social Value Criteria*

Social value is the third element in the statutory procurement criteria in accordance with the Public Services (Social Value) Act 2012. The CPR's therefore cross reference our revised Social Value Strategy.

In every procurement document there must be appropriate percentage weightings depending on the subject matter. The price/quality balance for example will be significantly different for development projects compared to soft services such as adult social care.

#### *2.3 Direct Awards and Variations*

Making direct awards and variation of contracts is now only permissible in certain narrowly defined cases. These include Act of God situations like Covid, RAAC concrete, fire or flood and where there is only a single supplier in the market. The CPR's therefore set out the full list of exemptions in summary form.

The Procurement Act 2023 has in addition tightened the controls for direct awards over £5M and for any substantial variations of contracts as to scope or value. Notices must be published informing the market in all such cases.

This gives contractors the opportunity to object and commence legal proceedings or complain to the Procurement Review Unit in the Cabinet Office if they feel disadvantaged as to the procedure adopted.

The CPR's require legal, procurement and financial approvals to be obtained for any proposed exemption. For high value matters over £500K Cabinet approval is required in the normal way.

### **3. Clarifications**

The opportunity has been taken to introduce a number of improvements to the CPR's to simplify them and provide greater clarity for Council staff.

#### *3.1 Format*

The CPR's are written in Plain English and are reduced from 21 pages of complex legalistic wording to 9 pages plus a Table.

#### *3.2 Uniform Expenditure Approvals Table*

The CPR's include uniform expenditure approvals rules. Table 1 sets out approval levels to apply across all Council departments.

This replaces the current arrangement with differently arranged tables of approval levels attached to the separate departmental schemes of delegation in the Constitution.

The levels in Table 1 reflect the table currently in the Business Growth and Infrastructure department scheme of delegations which is a clear, reasonable and easily understandable model. The Table will provide improved clarity to staff where expenditure is concerned. A written record of all expenditure approvals is retained in each department for audit purposes.

#### *3.3 Procurement Thresholds*

The information as to the operation of the thresholds is set out in the body of the rules and also in Table 1. This is designed to make them more easily accessible to staff.

There are only three thresholds and they need to be clearly understood as they are key to ensuring that there is compliant procurement.

#### *3.4. Guidance and Training*

The rules will be supplemented with a two-page guide issued on the Council's intranet to further assist staff. A comprehensive training programme will also be undertaken across all Council departments in advance of the go-live date of the new legislation.

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**Links with the Corporate Priorities:**

5. **Enterprise** - the new CPR's will enable Council to better achieve its statutory best value obligations. Competitive procurement in accordance with the CPR's will help ensure that the Local Government Act 1999 objectives of economy, efficiency and effectiveness are met to the benefit of the people of Bury.
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**Equality Impact and Considerations:**

6. Not applicable
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**Environmental Impact and Considerations:**

7. Not applicable
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**Assessment and Mitigation of Risk:**

| Risk / opportunity   | Mitigation   |
|--|--|
| The Council is required to have Contract Procedure Rules under section 135 of the Local Government Act 1972. | Failure to update them in the light of forthcoming new legislation could result in staff following non-compliant procurement procedures. This would expose the Council to the risk of legal action by contractors and suppliers and review and investigation by the Cabinet Office in the event of any complaint to its Procurement Review Unit. |

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**Legal Implications:**

8. This is a statutory obligation that must be complied with by all local authorities and it is incumbent on the Council to revise its rules in the light of new legislation and regulations.
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**Financial Implications:**

9. There are no direct financial implications from the adoption of the revised rules, but the Council must remain compliant at all times with procurement legislation and acting in accordance with the revised rules provides a clear framework for ensuring value for money is achieved.

**Background papers:**

Bury MBC Contract Procedure Rules 2024 document.

**Please include a glossary of terms, abbreviations and acronyms used in this report.**

| Term  | Meaning                  |
|-------|--------------------------|
| CPR's | Contract Procedure Rules |