



# City of Doncaster Council

## Report

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Date: 12<sup>th</sup> September 2023

To: Members of the Audit Committee

### **REVISIONS TO THE COUNCILS CONTRACT PROCEDURE RULES AND FINANCIAL PROCEDURE RULES**

#### **EXECUTIVE SUMMARY**

1. This report outlines proposed revisions to the Council's Contract Procedure Rules (CPRs) and the Financial Procedure Rules (FPRs). As these documents form part of the Constitution, they require the endorsement of the Audit Committee, prior to approval by full Council, anticipated on the 21<sup>st</sup> September. The proposed revisions are set out in detail at Appendices 1a and 2b and the aim is to:
  - a) To ensure the CPRs offer best practice contracting opportunities, deliver effective governance and are legislatively compliant.
  - b) To ensure the FPRs provide greater clarity to managers, are practical to use and ensure financial decision making is made at the appropriate level.

#### **EXEMPT REPORT**

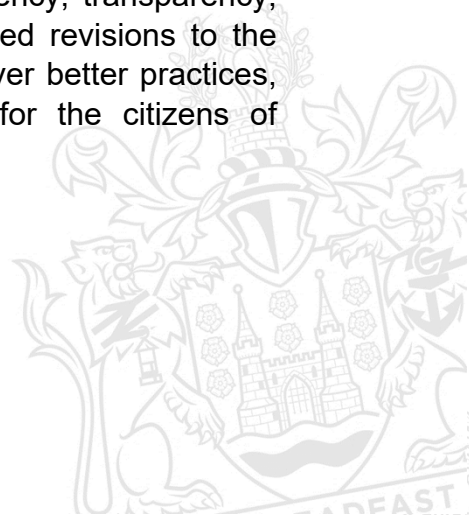
2. This report is not exempt.

#### **RECOMMENDATIONS**

3. The Audit Committee is requested to endorse the proposed revisions to Contract Procedure Rules (CPRs) and Financial Procedure Rules (FPRs), as outlined within Appendices 1 to 2 to the report prior to approval by full Council. Following approval of the revisions by full Council the revised documents be incorporated within the Council's Constitution.

#### **WHAT DOES THIS MEAN FOR THE CITIZENS OF DONCASTER?**

4. The Council's Constitution sets out how the Council operates, how decisions are made and the procedures to be followed that ensures efficiency, transparency, and accountability to the citizens of Doncaster. The proposed revisions to the Procedure Rules, outlined in this report, are intended to deliver better practices, and facilitate the Council in achieving value for money for the citizens of Doncaster.



## **BACKGROUND**

### **Revisions to the Contract Procedure Rules (CPRs)**

5. The CPRs are found in Part 4, Section 7 of the Council's Constitution. It is proposed that the CPRs are revised as per Appendix 1b. The changes are tracked in Appendix 1a.
6. Council last agreed changes to the CPRs in May 2019 and the CPR thresholds have remained unaltered since. The higher thresholds are determined by the Procurement Contract Regulations 2015 (PCR2015), these thresholds were changed in January 2022. Nationally Inflation is currently running exceedingly high (*May 2023 RPI 11.3% and CPI 8.7%*), meaning that relatively low value contracts, that would have traditionally been dealt with by way of an informal quotation or direct award process, must now be dealt with by formal quotations, this has reduced the ability for officers to demonstrate flexibility and mitigate rising costs and is having a negative impact upon resources. It is believed that increasing this threshold will have a positive impact upon the Council's contracting activity.
7. The Audit Committee receive six-monthly reports from the Head of Procurement on the Council's compliance to the CPRs. At the Audit Committee in April 2023 there was discussion on the thresholds that was a result of the report on waivers and breaches. An action was taken by the Head of Procurement to review the CPRs to ensure the threshold levels are appropriate considering the inflation situation and increasing number of contracts breaching the £25k threshold that would normally be below.
8. The changes being introduced will provide greater opportunity to encourage local suppliers to be awarded contracts through a more flexible approach.
9. Proposed changes will enhance procurement practices and allow greater flexibility in the letting of contracts. Currently officers can award via one verbal quotation contract valued up to £25,000, the proposal is to increase this to £50,000 but with protections in place for those contracts between £25,000 and £50,000. All contracts will still be registered above £5,000 in accordance with the Local Government Transparency Code and any that are awarded between £25,000 and £50,000 will have to have a Best Value Form accompanying the award to demonstrate that value for money has been sought and achieved in awarding the contract to a successful supplier. Officers will still be encouraged to obtain informal quotations below the £50,000 threshold but there will be no requirement to conduct a formal process. The benefits of this allow for:
  - a) Negotiations to take place on contracts below £50,000 as part of a process that is informal, currently a negotiated approach is difficult to implement via a formalised quotation process.
  - b) Increased flexibility for officers to award to local companies, currently officers must obtain quotations from a minimum of 3 suppliers, there may

not always be that number of local suppliers and they may need to seek quotations out of area which could lead to an award out of area.

- c) Inflation is currently running exceedingly high meaning that contracts that would have traditionally fallen below £25,000 are now tipping over into the next threshold. This will increase the number of contracts that must go through a formal process hence increasing the resource requirements that have remained static. In addition to this, allowing flexibility will allow for better mitigations where inflation threatens to significantly increase a contract cost as a competition can lead to increased contracting costs.
- d) Allowing contracts to continue that are demonstrating value for money and effective delivery, this would need to be proven via the Best Value Form. This form would give assurance that best value was achieved and challenged appropriately.
- e) In 22/23 **51** contracts out of a total of **653** awarded were between £25,000 and £50,000 which equates to **8%**.

10. CPR Waivers are a governance tool that allows officers to award a contract without competition if the award can demonstrate the permissible waiver rationale. There are currently four rationales, the proposal is to extend this to seven with more narrative to avoid ambiguity and give decision makers and the Audit Committee better data on awards via the waiver process. The existing four rationales are still within the proposed expanded seven. Examples of the changes include:

*(c) an organisation which has won a contract for an earlier phase of work via a competitive process and where the work forms part of a serial programme that could not have been identified when the contract was let.*

This has come about over recent years and is currently captured under one of the four rationales; 'Forms part of a wider strategic programme,' but the wording above gives more detail on the exact reason. This has been an issue on occasion, for example when the Council has received additional grant funding that was not known/offered at the time the original contract was awarded then it has been covered under the current rationale but is ambiguous, new wording would be more specific.

Another example of a new waiver rationale that will reduce ambiguity is;

*(e) the use of time-limited grant funding from an external body, where the time limitations will not allow a competitive procurement process to be completed and where the grant conditions allow this.*

This is an issue and again the current rationale used that is 'emergency situation' is ambiguous, so to be more specific the above narrative will cover this situation. This has become more of an issue over recent years, grant funding conditions do not always allow for a full procurement process and gives a specific date by which the funding must be spent and if the authority

fails to do this would result in clawback of funding. The authority would assure themselves that the grant funding conditions allow for a direct award.

11. In section 17.0, the threshold when Social Value is mandatory as a minimum of 10% in the evaluation criteria has been decreased from £177,898 to £100,000. The Council have a Social Value Procurement Policy and is delivering social value gains through contracting. This amendment will further these gains and ultimately benefit the citizens of Doncaster. In June 2023, the Council have £18,585,006 social value commitments in existing contracts awarded and £2,975,561 has been delivered. Based on 22/23 contract awards, this would have increased the number of contracts captured by 56.
12. The other amendments made are of a technical and operational nature i.e., Point 19.0 where there has been a movement of ICT to the Assistant Director of Finance resulting from the Functional Realignment programme.

### **Revisions to the Finance Procedure Rules (FPR's)**

13. The FPRs are found in Part 4, Section 6 of the Council's constitution. It is proposed that the FPRs are revised as proposed in Appendix 2b. The changes are tracked in Appendix 2a.
14. The proposed changes to the FPRs fall broadly into two categories;
  - 14.a) Minor changes throughout the document to reduce ambiguity and/or to reinforce governance and ensure the procedures can be applied in practice, for example:
    - Changes to reflect that the onus is on Budget Holders to provide financial projections (FPR B.5);
    - Inserting the Key Decision definition to the glossary of the FPRs, so that the term referred to throughout is defined when the FPRs are used as a standalone document. The definition has been taken directly from the Constitution;
    - Explanation that a lease is considered to be a disposal Under Section 123 of the Local Government Act 1972 and the granting of a lease at less than best consideration is therefore dealt with as a disposal at less than best consideration, given these points may not be immediately obvious to the reader (FPR C.20 and FPR C.25);
    - Amendments to cover how additional resources for approved capital projects are dealt with (FPR B.9);
    - Clarity on approval routes for new fees and charges or changes to fees and charges, proposed in year (FPR B.16);
    - Streamlining the information required when granting funds to outside bodies to make the process more practical, with a general right for the Council to access records and financial information as and when required (FPR E.18).

#### 14.b) Changes in respect of External Funding:

- Amended to clarify that acceptance and/or commitment for capital funds received are subject to the key decision threshold of £1m, if it is explicit in the grant determination that the funding is capital (FPR E.9);
- Acceptance and/or commitment to funds received in year that are used to replace funding on existing approved activity (i.e. a funding swap) can be approved by the CFO and will not be subject to key decision rules (FPR E.10). This addition will enable the CFO to perform 'funding swaps' to maximise the Council's resources. The governance around activity will remain unchanged, i.e. funds will only be used on existing approved activities and the nature of the funding will not change the scope of the activity from that approved;
- Acceptance and/or commitment relating to external funding from Government, where the Council has no choice but to accept the funds and where the Council must spend or passport the funds as directed by Government can be approved by the CFO and will not be subject to key decision rules (FPR E.11). This addition is in response to situations where Government have made funding available through local authorities, such as the £150 energy rebate, and will enable the Council to comply with Government directives in a timely manner.

15. The Council's Articles are included in Part 2 of the Constitution and set out the basic rules for governing the Council's business. Article 8 "Decision Making" provides a full definition of a key decision including at Article 8.03 (iii). those instances when a decision may appear to meet the required threshold but is not to be treated as a key decision. This section of the Constitution would need to be updated as a consequence of agreeing those aspects of FPR E10 and FPR E11 detailed at paragraph 14 b above, which identify occasions when key decision rules may not apply.

#### **OPTIONS CONSIDERED**






16. There are no other options considered appropriate. The amendments outlined in the report arise from the need to update and/or enhance specific information, which the Council should incorporate within the Constitution.




#### **REASONS FOR RECOMMENDED OPTION**

17. Amendments are recommended as outlined in the report with the associated benefits. The Council must react and be proactive to situations that present and affect contracting activity with third parties.

## IMPACT ON THE COUNCIL'S KEY OUTCOMES

18.

Great 8 Priority	Positive Overall	Mix of Positive & Negative	Trade-offs to consider – Negative overall	Neutral or No implications
 <b>Tackling Climate Change</b>				✓
Comments:				
 <b>Developing the skills to thrive in life and in work</b>	✓			
Comments: Local spend can be enhanced through increasing flexibility in low value contracting opportunities.				
 <b>Making Doncaster the best place to do business and create good jobs</b>	✓			
Comments: Local spend can be enhanced through increasing flexibility in low value contracting opportunities.				
 <b>Building opportunities for healthier, happier and longer lives for all</b>	✓			
Comments: Local spend can be enhanced through increasing flexibility in low value contracting opportunities.				
 <b>Creating safer, stronger, greener and cleaner communities where everyone belongs</b>				✓
Comments:				

 <b>Nurturing a child and family-friendly borough</b>				✓
Comments:				
 <b>Building Transport and digital connections fit for the future</b>				✓
Comments:				
 <b>Promoting the borough and its cultural, sporting, and heritage opportunities</b>				✓
Comments:				
<b>Fair &amp; Inclusive</b>				✓
Comments:				

#### 19. Legal Implications [Officer Initials: SRF | Date:07.07.23]

It is considered prudent and a matter of best practice for a Council to have a strong set of both Financial Procedure Rules and Contract Procedure Rules. Legal advice has been provided on the content of the proposed documents presented to Council as part of this report. There are no specific legal implications arising from the proposed changes to Procedure Rules. In accordance with the Constitution, the proposed changes have been discussed with both the Council's Audit Committee and Elections and Democratic Structures Committee. As these are changes to the Council's Constitution, a decision of Full Council is required to agree the revisions.

#### 20. Financial Implications [Officer Initials: CT | Date: 07/07/2023]

There are no financial implications as a direct result of this report.

In respect of proposed changes to the CPRs, removing the competitive element for contracts under £50k could arguably reduce value for money, albeit on a low number

of contracts, however this is expected to be mitigated by the improved ability to negotiate and greater social value through increased awards to local contractors.

In respect of the FPRs, the proposed changes will assist staff in the proper application of the procedure rules and in some cases will provide a timelier process for administering funding on behalf of Government.

**21. Human Resources Implications [Officer Initials: \_\_ | Date: \_\_\_\_\_]**

N/A

**22. Technology Implications [Officer Initials: \_\_ | Date: \_\_\_\_\_]**

N/A

**RISKS AND ASSUMPTIONS**

23. Failure to have robust governance that enhances practice and protects could have significant risks to the Council that could be financial, reputational and legal.

**CONSULTATION**

24. Senior leadership and key stakeholders have been consulted with on the proposed changes.

**BACKGROUND PAPERS**

25. N/A

**GLOSSARY OF ACRONYMS AND ABBREVIATIONS**

26.

Contract Procedure Rules (CPRs)

Finance Procedure Rules (FPRs)

Public Contract Regulations (PCR2015)

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