

Performance and Resources Scrutiny Programme 2024

Report to: the Office of the Police, Fire and Crime Commissioner for Essex

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1.0 Purpose of Report

To advise the Board of The New Procurement Act 2023.

2.0 Recommendations

That the Board notes the report.

3.0 Executive Summary

The Act will replace the existing legislation, the Public Contracts Regulations 2015 and the Concessions Contracts Regulations 2016 and govern how contracting authorities procure goods, services and works.

4.0 Introduction/Background

The Procurement Bill received Royal Assent on 26th October 2023. It will now be referred to as the *Procurement Act 2023* (the Act) and will come into force in October 2024. The new Act is the single biggest change to public sector procurement in a generation, designed to take advantage of regulatory freedoms post Brexit and providing greater flexibility for public sector contracting authorities but also greater public transparency.

The overarching aims of the new Act are similar to previous legislation in terms of the requirement to compete contracts in a transparent, fair and proportionate manner. The major difference this time is the ability to focus on local and national priorities within the award criteria, the greater focus on social value and sustainability (to maximise public benefit), increased transparency particularly with regards pre-market engagement and contract management.

5.0 Implications (Issues)

Some of the main changes to the act include:

- Consolidation of multiple pieces of legislation into one Act.
- Terminology - a move away from EU Directive language and terms.
- Procurement Objectives - authorities must have regard to the importance of (a) delivering value for money; (b) maximising public benefit; (c) sharing information for the purpose of allowing suppliers and others to understand the authority's procurement policies and decisions; and (d) acting, and being seen to act, with integrity. Authorities must also treat suppliers the same unless a difference between the suppliers justifies different treatment.
- Less prescriptive procedures - there will be (i) Open, (ii) Competitive Flexible Procedure, and (iii) Limited Tendering (i.e. direct award). Currently there are 7 different procedures.
- Framework Agreements - introduction of the concept of an "open framework" . Open frameworks can be for a period of eight years but, amongst other things, must provide for the frameworks to be "opened" for new entrants at least once during the first three years and then at least once during each five-year period.
- Direct Award - introduction of the ground to protect life where a Minister of the Crown considers it necessary and as such introduces regulations that a direct award is permitted.
- Debarment - introduction of a debarment list. If a supplier is listed on the debarment list they are considered an "excluded supplier" , and must be excluded. Please note that this will not be at the sole discretion of the contracting authority but following investigation by the Procurement Review Unit in the Cabinet Office.
- MAT - authorities are to award a contract to the "most advantageous tender" (a move away from the former "most economically advantageous tender" /MEAT). This allows for the inclusion of wider national and local priorities as part of the value for money equation.
- Whole-lifecycle - more focus on the contract lifecycle as a whole compared to the current regime. e.g. for certain contracts, the need to set KPIs and annually publish an assessment of performance against such KPIs.

- Modifications - introduction of new modification “gateways” /” safe-harbours” including (i) materialisation of a known risk, and (ii) specific defence contract safe-harbours e.g. to enable authorities to take advantage of developments in technology.
- Transparency - additional transparency requirements e.g. publishing “pre-market engagement notices” “contract change notices” , and “contract termination notices”
- Standstill - the new regime will have an eight-working days standstill period and the automatic suspension will only be available if a claim is brought (and the contracting authority is notified) within those eight working days.

5.1 Risks/Mitigation

- 7F Commercial Services staff will undertake a minimum of 10 hours training from the Government Commercial function in readiness for the new Act as well as further deep dives. 7FCS will be responsible for implementing and applying the new Act to ensure that the objectives of the Act are being met and that procurement practice is compliant. A programme plan has been devised covering a number of workstreams to ensure all aspects are covered.
- There will be two dedicated “super users” who will ensure that all intranet sites are updated with the implications of the new rules.
- A series of briefings will be held to advise relevant stakeholders across the seven forces/PCCs.
- Sub £60k training sessions will incorporate the changes required in line with the Act.

6.0 Consultation/Engagement

All information provided has come from Central Government or Legal sources. Further consultation will be carried out across all policing bodies in the region at a strategic level to ensure local/regional priorities are captured and at a tactical level once the secondary legislation provides further detail on the application of the new legislation.

7.0 Future Work/Development and Expected Outcome

The next step will be finalising the secondary legislation which sets out the detail in relation to areas such as notices and definitions. These Regulations are undergoing a consultation process and it is expected that draft Statutory Instruments will be laid before parliament in early 2024.

There will be a six month lead-in period before the new Act comes into force. This will include a training programme delivered via the Government Commercial Function and guidance notes.

7 Force Commercial Services will continue to brief stakeholders in the run up to the go-live date.