
Meeting: General Purposes Committee Consultation Call
Subject: Review of Contract Procurement Rules
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Meeting Date: Wednesday, 30 October 2024

1. Purpose of the Report:

- 1.1 To report to General Purposes Committee ("GPC") on proposed amendments to be made to the Contract Procurement Rules ("the Rules") governing Transport for the North ("TfN")'s procurement processes which are set out in the Constitution.
- 1.2 For GPC to note that the reason for the proposed amendments is due to legislative changes; namely the introduction of the Procurement Act 2023 which is currently anticipated to come into force from 24 February 2025.

2. Recommendations:

- 2.1 That GPC notes the key provisions of the new legislation which will affect the Rules, and that TfN Executive has in hand the necessary arrangements to comply.
- 2.2 That GPC notes that the Monitoring Officer will exercise delegated authority to amend the Rules to align with the new legislation and prior to publication of the revised Constitution, members will be sighted with a red line version of the amendments to the same.
- 2.3 That GPC notes that the changes to the Rules are due to legislative changes, undertaking minor amendments and improving reference to existing legislation.

3. Main Issues:

- 3.1 TfN's procurement processes are key to the delivery of many services. It is therefore important that the Rules provide an appropriate governance framework for procurement which meets both legal and service requirements.
- 3.2 The proposed amendments to the Rules will be made prior to the "go live" date of the Procurement Act 2023 ("the Act") which has been set as 24 February 2025. Within the operating environment of TfN, the Act relates to the purchase of goods and services for both below and above the current value of £213,477 (inclusive of VAT) ("the UK Procurement Threshold").
- 3.3 The Act includes transitional arrangements which will be incorporated into the Rules relating to contracts which have commenced before the Act's "go live" date. These contracts will follow the Public Contracts Regulations 2015; any contracts after the "go live" date will follow the new regime.
- 3.4 In making the amendments to the Rules, TfN will have to incorporate the following procurement legislative changes in respect of purchases of services and goods below and above the UK Procurement Threshold.

a) New Transparency requirements

The new transparency requirements will increase the number of notices that TfN will be obliged to publish during a procurement and contract lifecycle. The table below (Table 1) provides an overview of the required notices for both below and over threshold. Table 1 identifies whether the notice requirements are mandatory, optional or best practice. It will be the

responsibility of the Procurement Manager to draft and publish the required notices, supported by relevant processes and checklists. It is anticipated that the additional notices will increase administrative tasks, but based on experience, and TfN's procurement pipeline, we judge these can be managed by the Procurement Manager.

There are other notices required by the new Act. However, these are not detailed in the table below because, based on previous procurements and the procurement pipeline, they are not relevant to TfN. Officers have noted these other notices and if they do become applicable in the future, officers will ensure that the legislative requirements are followed.

For further information on the notices, including details on the requirements for the individual notices, please refer to Appendix 1.

(Table 1)

Below Threshold	Above Threshold
Pre-Procurement	
Preliminary Market Engagement Notice (M)	Preliminary Market Engagement Notice (M)
Planned Procurement Notice (O/BP)	Planned Procurement Notice (O/BP)
Procure	
Tender Notice (M)	Tender Notice (M)
	Transparency Notice (M)
Contract Award Notice (M)	Contract Award Notice (M)
	Contract Details Notice (M – Contracts for over £5m)
Procurement Termination Notice (M)	Procurement Termination Notice (M)
Contract Management / Termination	
Contract Performance Notice (M – Poor Supplier Performance / Breach of Contract)	Contract Performance Notice (M – KPIs for contracts over £5m & Poor Supplier Performance / Breach of Contract).
Contract Change Notice (M)	Contract Change Notice (M)
Contract Termination Notice (M)	Contract Termination Notice (M)
Contract Payment Notice (M – Quarterly Payments of over £30,000)	Contract Payment Notice (M – Quarterly Payments of over £30,000)
Payments Compliance Notice (M)	Payments Compliance Notice (M)

M = Mandatory

O = Optional

BP = Best Practice

3.5 b) New Procedures

New contracts (above and below threshold) can be procured via:

- (1) an open procedure
- (2) a competitive flexible procedure
- (3) a direct award (only allowed under certain circumstances)
- (4) a framework agreement or a dynamic market.

Generally, the Act reduces and simplifies the number of tendering procedures. For example, previously, there were a number of competitive tendering procedures, such as open, two-stage, competitive dialogue, and competitive with negotiation. The Act reduces these down to two, i.e. open procedure and competitive flexible procedure.

Determining the best and most appropriate route to market will be the responsibility of the Procurement Manager alongside the Contract Manager through early engagement, supported by processes and checklists to ensure compliance. Legal Services will also be consulted in this process and engagement maintained throughout, as is our routine practice now.

The new procedures are not expected to affect TfN as the majority of services procured already by TfN are by way of the open procedure or via framework agreements.

3.6 c) Extension of the Procurement Life Cycle

Under the current procurement regulations, the transparency requirements mainly focus on the procurement exercise. Under the Act, the procurement life cycle has been extended to include pre-procurement through to contract management and termination. These sections are not only supporting and part of the transparency agenda but aim to encourage better planning.

The contract performance notices within the Act relate primarily to contracts with a value over £5 million and as a result, it is highly unlikely, given the value of contracts at TfN, that these notices will be required.

However, in the event any contract management notices are required, it will be the responsibility of the Procurement Manager to ensure that processes are in place to manage the whole contract lifecycle, supported by checklists and effective contract management.

3.7 The work that the Procurement Manager is undertaking in consultation with Legal Services will ensure that TfN is able to effectively and efficiently implement the new Act and comply with the legislative requirements.

3.8 The Procurement Manager and Legal Services will also deliver training on the amended Rules to the applicable officers in the organisation.

4. Corporate Considerations:

Financial Implications

4.1 There are no financial implications.

Resource Implications

4.2 There are no direct resourcing implications as result of this report or any of the likely proposed changes to the Rules. Additional administration duties are expected to be absorbed within current resources.

Legal Implications

4.3 The Rules meet the requirements set out in section 135 of the Local Government Act 1972 for TfN to have standing orders covering how it enters into contracts.

The Constitution states that the Monitoring Officer has delegated authority to "make minor amendments to TfN's Constitution, following consultation with the Chief Executive, in order to give effect to changes to job or officer group titles, to reflect legislative changes and to improve layout, to improve reference to existing legislation, improve operational processes provided no financial thresholds are increased, or correct typographical errors".

In this instance the Monitoring Officer has delegated authority following consultation with the Chief Executive to make the changes as the changes to be made reflect the legislative changes arising from the new Procurement Act 2024.

Risk Management and Key Issues

- 4.4 Risk will be managed by the Procurement Manager. In line with amendments to TfN's Constitution, TfN's relevant policies, processes and checklists will be amended to ensure compliance with the Act.

Environmental Implications

- 4.5 There are no environmental implications from these matters.

Equality and Diversity

- 4.6 There are no equality or diversity implications which will result in a negative impact on individuals who have protected characteristics as defined in the Equality Act 2010.

Consultations

- 4.7 Not applicable

5. Background Papers:

- 5.1 None

6. Appendices:

- 6.1 Appendix 1: Table of Transparency Notices

Glossary of terms, abbreviations and acronyms used

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|--------|----------------------------|
| a) GPC | General Purposes Committee |
| b) TfN | Transport for the North |