

DECISION MAKING REPORT

Report for: Standards Committee

Item number: To be added by the Committee Section

Title: Proposed changes to the Council's Contract Standing Orders

Report authorised by : Jon Warlow Director of Finance

Lead Officer: Barry Phelps, Head of Procurement

Ward(s) affected: N/A

**Report for Key/
Non Key Decision:** Non-Key

1. Describe the issue under consideration

- 1.1. The Council Constitution defines the Council decision making procedures. It is kept under review and when necessary, amendments are proposed to Standards Committee for consideration and recommendation on to full council.
- 1.2. The previous update to Part Four of the Constitution, Section J Contract Procedure Rules was in 2016. Since then, the Brexit Freedom Bill has been implemented following the UK's withdrawal from the EU. The proposed amendments to the Contract Standing Orders (CSO) recognise the withdrawal from the EU and the relevant references contained therein
- 1.3. This report proposes changes to the constitution in the following areas:
 - 1.3.1. Amendments to Part Four of the Constitution, Section J Contract Procedure Rules and any other consequential amendments arising as a result of these;
 - 1.3.2. Removal of relevant references to EU law and legislation, updated references to current legislation, Council policy and Officer roles;
 - 1.3.3. Formalisation of existing practices and Council Policies;
 - 1.3.4. Minor drafting amendments.

2. Cabinet Member Introduction N/A

3. Recommendations

- 3.1. That Standards Committee recommends that the Council adopt the proposed revised Part Four of the Constitution, Section J Contract Procedure Rules as attached at Appendix 1.

3.2. The Standards Committee notes the following key amendments:

- 3.2.1. Part Four of the Constitution, Section J Contract Procedure Rules is renamed to Part Four of the Constitution, Section J Contract Standing Orders;
- 3.2.2. Directors to approve additional extensions or a variations to a contract that has previously been approved by Cabinet, up to an aggregated value of five hundred thousand pounds (£500,000) and that such decisions will not be treated as a key decision;
- 3.2.3. Formalising existing practice that Directors are required to report any decisions valued at one hundred thousand pounds (£100,000) or more, are reported to Cabinet;
- 3.2.4. Formalising Council Policy for contracts to include the payment of London Living Wage in contracts valued £50,000 or above;
- 3.2.5. An amendment enabling a Director (or Head of Service up to their level of delegated authority) to sign or approve any contract valued below two hundred and fifty thousand pounds (£250,000), instead of both officers as presently required;
- 3.2.6. An amendment to waiver provisions, so that waivers valued at £160,000 or above, is approved by the Head of Procurement prior to engaging the supply chain.

4. Reasons for decision

- 4.1. The CSO's have not been updated since 2016 and need updating to reflect changes in legislation, improve processes and to reflect current Council Policies.
- 4.2. The title has been amended from 'Contract Procedure Rules' to 'Contract Standing Orders' as all officers and decision reports refer to Contract Standing Orders and not Contract Procedure Rules, therefore the title has been amended to what is commonly referred to throughout the Council.
- 4.3. References to officer roles have been updated to reflect current structures within the Council. Definitions of the roles have been updated to ensure the CSO's remain current going forward by referring to 'or the most senior officer'. This avoids the need to keep amending the roles referenced in the CSO's when job titles change.
- 4.4. New legislation has replaced out of date legislation referenced in the current CSOs; therefore various amendments have been made throughout the document to remove references to old legislation, including those references to the EU brought about by Brexit, so as to ensure the CSOs remain aligned to legislative changes.
- 4.5. Definitions have been updated to ensure references in the CSOs remain consistent throughout the document.
- 4.6. To improve process efficiency by removing the need for matters to return to Cabinet (or member signings) of any amendments to contracts with relatively low values. (i.e. currently

a contract for £1m previously approved by Cabinet would need to return to Cabinet for any additional variation, even if this was just £1). Directors will therefore be able to approve contract extensions and variations on contracts previously approved by Cabinet, up to an aggregated value of five hundred thousand pounds (£500,000). This is consistent with Directors delegated authority of up to £500,000 throughout the constitution.

- 4.7. To ensure transparency and visibility of any variations or extensions agreed by Directors under CSO 3.01 d), Directors are required to report these as part of the quarterly finance report to Cabinet. In continuing the theme of transparency, the formalisation of Directors to report all decisions exceeding one hundred thousand pounds (£100,000) to Cabinet each month is incorporated into the CSOs (CSO 3.02 p)).
- 4.8. Reference to the use of Constructionline as a compliant process has been removed throughout the CSO's. This is because Constructionline has been privatised and no longer remains compliant with the Public Contract Regulations (PCRs).
- 4.9. Formalisation of the use of purchase cards (P cards) needing to comply with the CSO's to ensure the Council remains compliant with the PCRs and the Councils procurement policies and procedures (CSO 8.09).
- 4.10. Removal of reference to postal bids from the CSOs, as legislation now requires all tenders to be conducted electronically.
- 4.11. To re-enforce the Procurement Strategy previously approved by Cabinet and ensure officers comply with the delegated authority thresholds for Directors and Cabinet as stated in the constitution, CSO 9.04 drafting has been strengthened to re-enforce the use of corporate Dynamic Purchasing Systems (DPS) established by the Council. To use a non-Haringey DPS, will require the consent of the Head of Procurement to ensure compliance with the Public Contract Regulations.
- 4.12. Council has already approved a policy to pay London Living Wage (LLW) through contractual provisions, this amendment formalises this within the constitution for contracts valued at fifty thousand pounds (£50,000) or more (CSO 9.08.9). This a practical threshold for applying such conditions and ensures the Council remains eligible for LLW accreditation. The Payment of LLW can still apply to contracts below £50,000 where it is appropriate and viable to do so.
- 4.13. To ensure consistency with other delegated powers in the constitution, improve efficiency, reduce administrative burden and be more operationally practical, it is proposed that either a Director or Head of Service (with appropriate delegated authority) can approve and sign contracts valued below two hundred and fifty thousand pounds (£250,000). Currently both a Director and a Head of Service is required to sign or approve contracts (that do not require sealing) valued at two hundred and fifty thousand pounds (£250,000) or below; even if the contract was only valued at £1,000. The constitution already makes provision for a Director to award contracts up to £500,000, which is further supported by a scheme of delegation to other officers.

- 4.14. To enable contracts to be more accessible to small and medium sized enterprises who are unable to provide the Parent Company guarantees or bonds which may be cost prohibitive, the Director of finance can consider alternate forms of surety on contracts over two hundred and fifty thousand pounds (£250,000), which will also provide more commercially viable options for both the Council and the supply chain.
- 4.15. To ensure officers remain compliant with the Councils CSOs and relevant legislation, officers will require approval by the Head of Procurement of any waivers above one hundred and sixty thousand pounds (£160,000) prior to engaging the supply chain.

5. Alternative options considered

- 5.1. **Do Nothing** – This option would mean the Council would be referencing outdated legislation in its constitution.

6. Background information

- 6.1. In November 2016, Full Council approved the current version of Part Four of the Constitution, Section J Contract Procedure Rules. Since then, the Brexit Freedom Bill has been implemented following the UK's withdrawal from the EU. Therefore there is no need to fully comply with previous EU based legislation and alternate procurement related legislation amendments have been passed into law.
- 6.2. The Government intends to bring forward the Procurement Act which will be a major overhaul of the current Public Contract Regulations. The original intention was to wait for the Procurement Act to be passed into law and then redraft the CSO's to reflect new legislation; however, these reforms have been delayed several times and may not come into force for some time (2024). Therefore, it is proposed to address some of the immediate inconsistencies in the CSOs now and wait for a more fundamental review of the CSOs when the Procurement Act is passed into law.
- 6.3. Currently contracts previously awarded by Cabinet, require Cabinet (or member signing) for any contract extension or variation where there is an increase in value, even if only £1. This applies to each and every change. This can take a considerable amount of time to complete the governance process and can be an expensive use of resource for potentially low values. It is therefore proposed that Directors can approve such contract variations and extensions up to an aggregated value of five hundred thousand pounds (£500,000), to reduce the volume of contractual amendments requiring Cabinet or Member approval.
- 6.4. The Head of Procurement has consulted with legal colleagues in prioritising the changes.
- 6.5. The proposed changes have been shared with an officer working group and the members Constitutional Working Group, both of which are supportive of the amendments proposed.

7. Contribution to strategic outcomes

- 7.1. The recommendations in this report support the Your Council Priority and the Haringey Deal in 'getting the basics right' and ensuring the Council remains compliant with legislation.

8. Statutory Officers comments (Chief Finance Officer (including procurement), Head of Legal & Governance (Monitoring Officer), Equalities)

Finance

8.1. The Director of Finance notes the contents of the report and confirms there are no financial implications directly arising from this report.

Procurement

8.2. The Head of Procurement has prepared this report following consultation on the proposed changes to the Constitution with senior officers within the Council, legal services and the member Constitutional Working Group.

8.3. The Head of Procurement supports the recommendations proposed in this report and confirms the current version of the CSO's is outdated. The proposed amendments will align the CSO's with current legislation and ways of working.

Legal

8.4. The Head of Legal and Governance notes the contents of the report and sees no legal reasons preventing Members from approving the recommendations in the report.

8.5. Equality

N/A

9. Use of Appendices

9.1. Appendix 1 – Contract Standing Orders Revised July 2023 (clean copy)

9.2. Appendix 2 - Contract Standing Orders Revised July 2023 (with track changes from current version)

10. Local Government (Access to Information) Act 1985

N/A