

**Report for:** Standards Committee

**Item number:** 9

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

**Report authorised by :** Taryn Eves, Director of Finance

**Lead Officer:** Barry Phelps, Chief Procurement Officer

**Ward(s) affected:** All

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

## **1. Describe the issue under consideration**

- 1.1. The Council's 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 July 2023. The proposed amendments to the Contract Standing Orders (CSO) are intended to align with the new Procurement Act 2023 (PA23), which is due to come into effect on 24 February 2025.
- 1.3. The PA23 introduces significant changes to that of the existing Public Contract Regulations 2015 (PCR), with enhanced transparency and new procedures consolidating multiple regulations relating to the letting of public contracts. The PA23 will cover the entire commercial lifecycle for letting and maintaining public contracts, which now needs to be considered in the CSO's.
- 1.4. The proposed amendments to the CSO's will support a new operating model for Strategic Procurement, promoting best practice across the Council and align with the PA23.
- 1.5. This report proposes changes to the constitution, key changes are summarised below:
  - 1.5.1. Amendments to Part Four of the Constitution, Section J Contract Procedure Rules and any other consequential amendments arising as a result of these;
  - 1.5.2. Alignment of the constitution with the Procurement Act 2023;
  - 1.5.3. Consideration of transitional arrangements from the PCR's to the PA23;
  - 1.5.4. Centralisation of procurements above £25,000 (twenty-five thousand pounds) into Strategic Procurement;

1.5.5. Cabinet approval to commence procurements of £500,000 (five hundred thousand pounds) and above;

1.5.6. The introduction of new practices covering:

- Disclosure of pipelines
- Disclosure of information throughout the commercial lifecycle of a contract
- The requirement to consider Social Value in our procurements above £500k
- Introduction of Dynamic Markets
- Contract management
- Termination of contracts

1.5.7. Restructure the flow of the CSO's to align with the commercial lifecycle of contracts.

1.6. Additional information on the proposed changes can be found in Appendix 2 – Summary of Proposed CSO Amendments 2025.

## **2. Recommendations**

2.1. 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 – Contract Standing Orders 2025.

2.2. The Standards Committee notes the following key amendments:

2.2.1. Alignment with the Procurement Act 2023;

2.2.2. Cabinet to approve the commencement of procurements where the contract will exceed £500,000 (five hundred thousand pounds);

2.2.3. Centralisation of procurements above £25,000 (twenty-five thousand pounds);

2.2.4. The notification of procurement pipelines to the Chief Procurement Officer and requirement to publish pipelines;

2.2.5. The formalisation of Social Value considerations aligned to the Councils pending Procurement Social Value Policy;

2.2.6. The introduction of contract management and contract termination provisions;

2.2.7. Procedural matters will be contained in the Procurement Code of Practice.

## **3. Reasons for decision**

3.1. The CSO's need updating to reflect changes in legislation (Procurement Act 2023), support the new Procurement operating model, improve processes and to reflect current Council Policies.

- 3.2. New legislation (Procurement Act 2023) comes into effect on 24 February 2025 and replaces several previous procurement regulations. The new legislation now covers the entire commercial lifecycle of letting and managing public contracts and consolidates previous procurement regimes into a single set of regulations. Therefore, various amendments have been made throughout the CSOs so as to ensure the CSOs remain aligned to these legislative changes and support the transition to the new PA23.
- 3.3. Definitions have been updated to ensure references in the CSOs remain consistent throughout the document and incorporate new terminology in the PA23.
- 3.4. The proposal to require Cabinet to approve procurements of £500,000 (five hundred thousand pounds) or more prior to commencing the procurement activity, enables members to consider the following:
  - 3.4.1. Understand what other service delivery options have been considered (i.e. in-house, hybrid etc.);
  - 3.4.2. The projected costs and timescales;
  - 3.4.3. The procurement strategy, including the route to market and the social value proposals;
  - 3.4.4. Alignment with Council priorities and policies;
- 3.5. The introduction of a centralised procurement function for above £25,000 (twenty-five thousand pounds). This is part of the procurement modernisation programme to introduce efficiencies across procurement activity. The Council will benefit from:
  - 3.5.1. Avoiding the need to train significant volumes of officers on the new Procurement Act 2023 (applies to contracts above £25,000 (net of VAT));
  - 3.5.2. Increased compliance in the procure to pay process;
  - 3.5.3. Application of best practice across procurement and contract management functions;
  - 3.5.4. Alignment of low value contracts with category strategies and consolidation of contracts to promote best value.
- 3.6. The PA23 requires the Council to publish a contract pipeline of contracts valued at £2,000,000 (two million pounds) or more which it intends to procure in the following 18 months (as a minimum). This pipeline must be published within 56 days of 01 April each year, with updates to be published as soon as practicably possible. To ensure compliance with this regulation, it is proposed this activity is managed by the Chief Procurement Officer.
- 3.7. Directors will be required to provide the Chief Procurement Officer with an updated pipeline for all contracts they intend to procure with a value exceeding £25,000 (twenty-five thousand pounds) every quarter. This is to ensure Strategic Procurement can manage the demand, ensure compliance with the transparency requirements under the Procurement Act and to capture any additional contracts of £2m (two million pounds) or above that were not previously published on the pipeline referenced in 4.6 above.
- 3.8. The introduction of Social Value provisions into the CSOs is to re-enforce the pending Procurement Social Value Policy and comply with various aspects of the PA23 and the National Procurement Policy Statement.

- 3.9. The PA23 includes provisions relating to contract management. This includes restrictions on the extent of which contract amendments can be undertaken, the publication of contract key performance indicators and associated commentary for some contracts and the contract termination, whether for breach, non-performance or simply coming to the end of its term. Therefore, specific provisions relating to contract management have been introduced into the CSOs.
- 3.10. The CSOs have been reconfigured in parts to introduce a more consistent and logical flow to the provisions.
- 3.11. Most procedural matters have been removed from the CSOs and will be incorporated into the Procurement Code of Practice. This is to ensure the CSOs remain succinct and there is flexibility to update processes in the Code of Practice to reflect subsequent changes to the PA23 as they refine legislation over the next couple of years. Due to the scope of the PA23, there will be a significant volume of guidance required for officers, which will need to incorporate where there are exceptions for some services. It would not be practical to incorporate this into the CSOs.

#### **4. Alternative options considered**

- 4.1. **Do Nothing** – This option would mean the Council would be referencing outdated legislation in its constitution and not be consistent with the new PA23. This would likely lead the Council to breach its statutory obligations in failing to comply with current legislation and would also be a missed opportunity to amend, refine and strengthen its own internal governance processes. This option is therefore not recommended.

#### **5. Background information**

- 5.1. In July 2023, Full Council approved the current version of Part Four of the Constitution, Section J Contract Standing Orders to comply with the Brexit Freedom Bill implemented following the UK's withdrawal from the EU.
- 5.2. The Procurement Act 2023 attained Royal Ascent in October 2023 and will come into effect on 24 February 2025. The introduction of the PA23 sees a major overhaul of the current Public Contract Regulations 2015. The PA23 consolidates previous procurement regimes such as the Public Contract Regulations, concession contracts, light touch regime (care), utilities and defence regimes, into a single set of regulations.
- 5.3. The PA23 will cover the entire commercial lifecycle of the letting and management of public contracts. This includes planning, defining the requirements, undertaking the procurement process and managing of contracts through to termination of a contract.
- 5.4. Contracts valued at £25,000 (twenty-five thousand pounds) (net of VAT) will fall under the PA23. The transparency requirements consist of up to 17 notices with potentially 19 variances to be published at various points within the commercial lifecycle. Failure to comply with the transparency requirements, expose the Council to litigation from suppliers and sanctions from a newly created Procurement Reform Unit.

- 5.5. The Chief Procurement Officer has consulted with internal and external legal colleagues, several focus groups representing colleagues across the Council, the Corporate Leadership Team and the Constitutional Working Group in developing the proposed amendments to the CSOs.
- 5.6. Strategic Procurement have been preparing for the transition from the current Procurement Regulations to the incoming Procurement Act 23 (PA23) for the past 9 -12 months, as part of a wider modernisation programme. This includes; a new operating model to centralise procurements above £25,000 (twenty-five thousand pounds), to ensure there is regulatory compliance with these contracts and the publishing of the relevant notices. Compliance for low value contracts has been identified as an area for improvement, this is due to officers not being familiar with the procurement processes and systems, or complying with category strategies. Centralising this activity will enable Strategic Procurement to centrally manage these issues, introduce a new e-procurement platform to improve processes and efficiencies and reduce the training requirements across the Council on the new system and PA23.
- 5.7. A significant number of procurements are undertaken on a reactive basis, or have insufficient time planned to undertake the procurement activity, which leads to increased extensions on existing contracts, whilst the procurement activity is undertaken. The introduction of Directors required to complete quarterly procurement forward plans for the following 12 months as a minimum, will assist Strategic Procurement manage demand, apply more effective category management strategies and comply with the transparency requirements under the PA23.
- 5.8. Directors will be required to seek Cabinet approval prior to commencing procurements for contracts with an anticipated value of £500,000 and above. This provides an opportunity for members to have a greater influence in the contracts being procured by the Council to ensure they align with the Council's priorities, social and environmental commitments and ensure the proposal is within the Council's affordability envelope given the current financial pressures the Council is facing.
- 5.9. The Procurement Social Value Policy will be introduced in 2025 following a two-year pilot using the National Social Value TOMs (Themes, Outcomes and Measures). Introducing these into the CSOs formalises the requirement and aligns with the requirements outlined in the National Procurement Policy Statement, which is referenced in the PA23.
- 5.10. The PA23 requires certain contracts to be actively managed and their performance reported via the central digital platform. Various audits undertaken in the past couple of years have identified inconsistencies and weaknesses in the Council's contract management activity; therefore, contract management has been introduced into the CSOs to ensure we comply with the PA23 and also to bring forward best practice in contract management. This will be addressed through adopting central government's contract management toolkit.
- 5.11. Due to the extended scope of the PA23, it is not practical to detail operational procedures in the CSOs, therefore the Code of Practice will be redrafted to capture procedures in more detail. The Code of Practice will be maintained as legislation is refined during the embedding of the PA23 without the need to update the CSOs.

## **6. Contribution to strategic outcomes**

- 6.1. The recommendations in this report enable Strategic Procurement to support departments deliver the Councils Corporate Delivery Plan, Borough Vision 2035 and other priorities through the commissioning, procurement and ongoing contract management activity to deliver best value.

## **7. Carbon and Climate Change**

- 7.1. Not applicable – The Procurement Act 2023 makes provisions for social value and environmental considerations, which is already embedded in our procurement activity and the Councils Procurement Strategy.

## **8. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director 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 Chief Procurement Officer has prepared this report following consultation on the proposed changes to the Constitution with senior officers within the Council, legal services, and members of the Constitutional Working Group.
- 8.3. The Chief Procurement Officer supports the Recommendations proposed in paragraph 3 of this report and confirms the current version of the CSO's will not comply with the new Procurement Act 2023, which comes into effect on 24 February 2025. The proposed amendments will align the CSOs with current legislation and new ways of working.
- 8.4. The Chief Procurement Officer confirms that the Council is preparing to transition to the new Procurement Act 2023.

### **Legal**

- 8.5. The Assistant Director of Legal and Governance has been consulted in the preparation of this report.
- 8.6. Under section 135 Local Government Act 1972, local authorities may make standing orders with respect to the making of contracts by them or on their behalf and shall make standing orders with respect to the making by them or on their behalf of contracts for the supply of goods, materials or for the execution of works. Standing orders should include provisions for securing competition in the award of contracts and for regulating the way tenders are invited.
- 8.7. Officers are required to adhere to the standing orders when procuring, awarding and managing public contracts. This enables the Council to comply with its statutory duties when

spending money, including relevant procurement legislation and the Best Value duty under the Local Government Act 1999.

8.8. Part 2 – Articles of the Constitution sets out the role and function of Standards Committee which includes considering amendments to the Constitution and recommending proposals to full council for approval.

8.9. The Head of Legal and Governance sees no legal reasons preventing Members from approving the recommendations in this report.

## **Equality**

N/A

## **9. Use of Appendices**

9.1. Appendix 1 – Contract Standing Orders 2025

9.2. Appendix 2 – Summary of CSO Amendments 2025

9.3. Appendix 3 – CSO 2023 vs 2025 Comparison

## **10. Local Government (Access to Information) Act 1985**

N/A