

Procurement Process and Policy Updates

For Audit and Governance Committee on Tuesday 14th March 2023

Summary

Lead Member: Christopher Hall, Cabinet Member for Finance and Performance

Lead Director: Lee Colyer, Director of Finance, Policy and Development

Head of Service: Jane Fineman, Head of Finance, Procurement and Parking

Report Author: Dan Hutchins, Procurement Manager

Classification: Public document (non-exempt)

Wards Affected: All

Approval Timetable	Date
Management Board	23 rd November 2022
Constitution Review Working Party	7 th December 2022
Audit & Governance Committee	14 th March 2023
Full Council	5 th April 2023

Recommendations

Officer / Committee recommendations as supported by the Cabinet Member:

1. That the Audit and Governance Committee approve the proposed changes to the Constitution in relation to the Contract Standing Orders.
2. That the Audit and Governance Committee approve that the Head of Legal Partnership and Monitoring Officer be authorised to make the necessary amendment to the Constitution to give effect to the recommendation at paragraph 1 above.
3. That the Audit and Governance Committee recommends that the proposed changes to the constitution be approved by Full Council at the meeting scheduled for 5th April 2023.

1. Introduction and Background

- 1.1 The current Contract Standing Orders (CSOs) in the Constitution were last updated in July 2017, and since then we have seen legislative changes in procurement due to Brexit – with more substantial changes to legislation to be introduced in 2023 or possibly 2024 (The Procurement Bill 2022 is currently going through Parliament).
- 1.2 We have therefore undertaken a review of the current CSOs and are seeking the approval of the Audit and Governance committee for our proposed changes in order to bring them up to date.
- 1.3 We are required to advertise any contract with a value of or above £213,477 (supply and service contracts), and £5,336,937 (public works contracts) in accordance with Find a Tender Service (FTS) regulations. The FTS regulations replaced the Official Journal of the European Union (OJEU) regulations following the UK's exit from the European Union.
- 1.4 All contracts above FTS thresholds must follow a prescribed process as laid out by the Public Contracts Regulations 2015. Public sector bodies can set their own constitutional procurement strategies for below threshold contracts providing they still advertise their opportunities to enable sufficient competition.
- 1.5 Whilst reviewing the legislative position to ensure that our Constitution is compliant and up to date, we have taken the opportunity to review the operational effectiveness of our current thresholds in order to ensure that our processes are as efficient as possible for officers. In undertaking this review we have considered the current processes and needs of both TWBC, and our partner authority Maidstone Borough Council (MBC), in order to provide a well balanced approach to our Procurement operations.

2. Current Thresholds

2.1 The current contract thresholds and wording in the constitution are as follows:

Contract Value (total lifecycle cost)*	Procedure
Less than £15k	2 quotations required, one of which should be from a suitable local company (if feasible)
£15k - £99,999	4 quotations required, at least one of which should be from a local company (if feasible)
£100k – OJEU**	Full tendering activity with advertising on Contracts Finder & Kent Business Portal
On or above OJEU** threshold	Fully compliant OJEU** process

*The total lifecycle cost of the contract **MUST** include any extension period offered, regardless of whether it is taken up or not.

**** OJEU has since been replaced by FTS**

Proposed Changes

2.2 The proposed changes to the contract thresholds and wording in the Constitution are as follows:

Contract Value (total lifecycle cost)	Procedure
Less than £5k	1 quotation requested and received, which MUST be from a suitable local company. If a local company is not used, the procuring officer must provide evidence as to a lack of suitable companies locally, or why best value could not be achieved by using a local supplier.
£5k - £9,999	2 quotations requested and at least one received which should be from a local company (if feasible)
£10k – £24,999	3 quotations requested and at least one received which should be from a local company (if feasible)
£25k - £99,999	3 quotations requested and at least one received which should be from a local company (if feasible). Mandatory consultation with Procurement to agree sourcing plan.
£100k – FTS threshold	Full tender process. Mandatory consultation with Procurement to agree sourcing plan.
On or above FTS threshold	Fully compliant FTS process Mandatory consultation with Procurement to agree sourcing plan.

3. Other Proposed Changes

- 3.1 As well as the proposed changes to contract thresholds, there are a number of updates to wording within the CSOs.
- 3.2 A full draft of the proposed changes is provided as Appendix A to this report, and an executive summary of the proposed changes is provided as Appendix B.

4. Options Considered

- 4.1 The options considered are as follows:
- 4.2 **Option 1: Amend the Constitution and revise contract thresholds** - Amend the Constitution with the required legislative updates, and change the thresholds for procurement processes to the levels recommended in section 2.2 of this report.

- 4.3 **Option 2: Legislative updates only** - Amend the Constitution with the required legislative updates, and retain the current thresholds for procurement processes.
- 4.4 **Option 3: Do nothing** - Retain the current CSOs in their entirety.

5. Preferred Option and Reason

- 5.1 Our preference is to adopt Option 1 as outlined in section 4.2 of this report.
- 5.2 Adoption of this option, coupled with a new approvals process to be rolled out as soon as IT/Digital resolve some resourcing issues, would offer a robust and compliant set of processes - whilst making it more dynamic and less costly to the organisation to procure goods and services below £5k.
- 5.3 We would still ensure fair competition and procedural control (in fact enhancing procedural control due to the new approvals process) and minimise the risk of challenge to the Council. This option also mandates local business involvement below £5k, as well as ensuring that we continue to engage local businesses whenever feasible above this threshold.
- 5.4 Option 2 would ensure that the Constitution is compliant but would not allow for the new thresholds to be implemented. The new thresholds, as stated above, will provide a level of 'futureproofing' to our processes and have been designed with the future changes to legislation in mind.
- 5.5 Option 3 is not viable as the Constitution is already out of step with current legislation - so we have to ensure that we make changes to comply.

6. Consultation on Options

- 6.1 Consultation on the proposed changes has taken place with the following internal stakeholders: Lee Colyer, Director of Finance, Policy and Development (S151 Officer); Jane Fineman, Head of Finance, Procurement and Parking (Deputy S151 Officer); Claudette Valmond, Head of Legal Services (Monitoring Officer); Lucinda MacKenzie-Ingle, Practice Area Team Leader – Contracts and Commissioning.
- 6.2 Management Board reviewed the proposed changes at their meeting on Wednesday 23rd November 2022, and gave approval for the proposed changes to move through the political approvals cycle.
- 6.3 Constitution Review Working Party reviewed the proposed changes at their meeting on Wednesday 7th December 2022, and gave approval for the changes to move on to Audit and Governance Committee.

7. Implementation

- 7.1 Implementation of the proposed changes will take effect from 6th April 2023, subject to approval at Full Council on 5th April 2023.

8. Appendices and Background Documents

Appendices:

- Appendix A: Draft revisions and wording for Contract Standing Orders
- Appendix B: Executive summary of proposed changes

Background Documents:

- Management Board Meeting report – 23rd November 2022
- Constitution Review Working Party report - 7th December 2022

9. Cross Cutting Issues

A. Legal (including the Human Rights Act)

The Legal team have been heavily involved in this process and the proposed changes bring the Council's Constitution into line with the legislative changes that have been made to procurement processes. There are no consequences arising from the recommendation that adversely affect or interfere with individuals' rights and freedoms as set out in the Human Rights Act 1998.

Lucinda MacKenzie-Ingle, Team Leader Contracts and Commissioning MKLS 24 February 2023

B. Finance and Other Resources

The changes will allow the Procurement department to continue working cross functionally with the other departments in the organisation, as well as delivering a more efficient service to our partner authority (Maidstone BC), without increasing the burden of administration.

Dan Hutchins, Procurement Manager 24 February 2023

C. Staffing

There are no specific implications

Nicky Carter, Head of HR, Customer Service and Culture, 24 February 2023

D. Risk Management

The changes will improve the current procurement risks to the council by mandating consultation with the procurement team for any contract with a value of £25k or above. This will ensure compliance with all necessary processes and procedures.

Dan Hutchins, Procurement Manager 24 February 2023

E. Environment (inc. Biodiversity) and Sustainability

There are no specific implications for the changes to Contract Standing Orders. However, Sustainability have been heavily involved in the production of a new sustainable procurement policy, which was approved for adoption by Cabinet in February 2023.

Dan Hutchins, Procurement Manager 24 February 2023, consulted with sustainability on 24 February 2023.

F. Community Safety

There are no specific implications

Terry Hughes, Community Safety Manager, 24 February 2023

G. Equalities

Procurement processes need to take account of the diverse needs of service users. Discussions have been held with Procurement and it is recommended that an Equalities Impact Assessment is completed for any procurement process exceeding £100k in value, or any process below this threshold in which potential equalities considerations are identified. We will also review our procurement processes to ensure that equalities considerations can be a captured as appropriate to the value of the contract.

Sarah Lavallie, Corporate Governance Officer, 24 February 2023

H. Data Protection

Whilst company data does not fall under the data protection act, the personal data of individuals, such as sole traders, would be protected. The Council abides by UK data protection law, and whilst all tender documents can potentially be made public under FOIA requests, the Council would consider each on a case by case basis, to balance the rights of privacy of the individual with the public's right to know.

Dan Hutchins, Procurement Manager 24 February 2023

Previously consulted with Jane Clarke, Head of Policy & Governance, 24 November 2022

I. Health and Safety

There are no specific implications

Mike Catling, Health & Safety Advisor, 24 February 2023

J. Health and Wellbeing

There are no specific implications

Rebecca Bowers, Health Improvement Team Leader, 24 February 2023