

Public

Birmingham City Council

Report to Full Council

12 July 2022



Subject: Proposed changes to the Council's Procurement and Contract Governance Rules

Report of: Rebecca Hellard, Strategic Director of Council Management

Relevant Cabinet Member: Councillor Mosquito, Cabinet Member for Finance and Resources

Relevant O&S Chair(s): Councillor Ahmed, Chair of Resources OSC

Report author: Steve Sandercock, Assistant Director of Procurement

Does the report contain confidential or exempt information? ☐ Yes ☒ No

If relevant, provide exempt information paragraph number or reason if confidential:

Not applicable

1 Executive Summary

- 1.1 This report seeks consideration of changes to the Council's Procurement and Contract Governance Rules and recommendation for approval by Full Council.
- 1.2 Members are reminded that the Procurement and Contract Governance Rules establishes how the Council procures, enters and manages contract with third party suppliers. In addition, the rules form part of the formal constitution of the Council and are otherwise referenced as the Council's Contract Standing Orders.

A summary of key changes are:

	Old Procurement Governance Arrangements (PGA)	New Procurement and Contract Governance Rules
Layout/ Structure	Old rules known as Procurement Governance Arrangements	Change of name to Procurement and Contract Governance Rules
		Structure changed to aid and improve flow and readability of the document

	Current PGA layout does not clearly set out processes to be followed	Improved clarity on Thresholds and processes to be followed (Table 1) and Authorisations (Table 2)
Content	Currently references Public Procurement Legislation (Public Contract Regulations 2015) e.g. procedures like Competitive Dialogue and DPS which are no longer part of plans under the new Regulations	Removal of all reference to current Public Procurement Legislation (e.g. Public Contract Regulations 2015) and procedures as these are changing in the new drafts. Terminology in the new Rules has been future proofed.
	Currently no clear process on what happens if the PGAs have not been followed as set out	Inclusion of a Breach procedure if Rules not deemed to be followed
	Reference to Single Contract Negotiations (SCN)/ Multiple Contract Negotiations (MCN)	Amalgamation of SCN/ MCNs to a Negotiated Procedure with clearer reference as to what is included and when it can be applied
	No clear process in current rules to waive the arrangements, when or how permitted	Inclusion of a Waiver procedure which will set out circumstances when a valid request to waive the process as set out in the Rules is sought
	No clear process in current rules for scenarios that may be 'Out of Scope' of the rules	Inclusion of clearer details on what is 'Out of Scope' (and the Rules do not apply) e.g. Transactions regarding the purchase or lease of property, acquisition, disposal, transfer of land, or any interest in land which includes licenses.
Content	Current PGAs are ambiguous on the process to be followed in respect of emergency arrangements	Inclusion of Emergency Process and setting out of when the Rules can be set aside on grounds of an emergency
	Current threshold of up to £10k requires 3 quotations	Revision of thresholds – in particular <ul style="list-style-type: none"> Up to £5k – proceed to purchase £5k to £25k – Quotation / tender from 3 suppliers (2 local/SME) as a preferred
		Improved clarity on the “make or buy” consideration ahead of any consideration around running a new procurement process
	Current PGAs are ambiguous on respective roles	Improved clarity on roles and responsibilities of those involved in the process (Table A)

2 Recommendations

- 2.1 That the changes presented in the updated Procurement and Contract Governance Rules (Appendix 1) be approved as part the new Contract Standing Orders for the Council and incorporated into the Council's Constitution.
- 2.2 That delegate authority be granted to the Section 151 Officer and Monitoring Officer to agree any final minor changes and edits to the Contract Standing Orders and supporting procedural notes in conjunction with the Cabinet Member for Finance and Resources.

3 Background

- 3.1 The Council need to have a set of clearly understood rules for procurement and contract activity which ultimately form the Contract Standing Orders for the Council and are part of the Council's Constitution.
- 3.2 The current rules (known as Procurement Governance Arrangements) have been subject to a thorough review undertaken during winter 2021 / spring 2022 with Overview and Scrutiny Committee.
- 3.3 Through that review of Overview and Scrutiny Committee a number of recommendations were made, and these have been updated and incorporated into the new Procurement and Contract Governance Rules presented with this report.
- 3.4 The proposed revisions to the rules will affect both Officers across the Council in how they tender and contract manage contractual arrangements and also suppliers who either currently or those who seek to provide supplies, services or works to the Council.
- 3.5 The supporting procedural notes referenced in the updated rules are not referred to Full Council as they are primarily technical guidance and supporting the principles as set out in the new rules.

4 Options considered and Recommended Proposal

- 4.1 As noted, this report provides outcomes from the overall review and is further informed by consultation with a range of key stakeholders, both internally and externally. Changes are required and as such "no change" is not an option, the options available to members are:
 - i. To approve the Procurement and Contract Governance Rules as submitted with this report for incorporation into the Council's Constitution (the recommended option)
 - ii. To recommend revisions to the proposed Procurement and Contract Governance Rules
- 4.2 Either option is appropriate, but any amendments would need to be compliant with the current (and proposed) legislative framework and operationally appropriate for the Council.

5 Consultation

5.1 In addition to the engaged work with Overview and Scrutiny there has been extensive consultation during the development of the updated rules, this including:

- i. Supplier survey
- ii. Internal survey with officers
- iii. Diverse Allies Network
- iv. Feedback sought from Extended Corporate Leadership Team
- v. Direct input from Legal Services, Finance and Audit
- vi. The Council's group of Companies, Birmingham Children's Trust and Acivico
- vii. External partners including Birmingham Chamber of Commerce

6 Risk Management

6.1 The principle risks of not adopting the proposed changes can be summarised as:

- i. Inability for the Council to be more commercial in approach
- ii. Missed opportunity to make the current process more streamlined and proportional
- iii. Risk that current Procurement Governance Arrangements will not be fit for purpose when new legislative changes are made in Spring 2023

7 Compliance Issues:

7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

7.1.1 In respect of the Corporate Plan having an effective, proportional and fit for purpose Contract Standing Order will help support the development of successful value for money, well considered and commissioned supplies, services and works, and a well enabled supply chain including how the Council engages with local and Small Medium Enterprises.

7.1.2 The intention of the changes proposed will have a positive contribution to support the themes of Bold Prosperous Birmingham and Bold Inclusive Birmingham through streamlining of process and opportunities for local / Small Medium Enterprises through our tendering arrangements.

7.2 Legal Implications

7.2.1 Section 135 of the Local Government Act 1972 requires the Council to make standing orders with respect to contracts for the supply of goods or services or for the execution of works which provide for securing competition and regulation of the manner in which tenders are invited.

7.3 Financial Implications

- 7.3.1 Any cashable savings generated as a result of procurement exercises are to the delivery of procurement related savings and be removed from Directorate where identified in addition to the existing service area savings target as set out in the MTFP.

7.4 Procurement Implications (if required)

- 7.4.1 The subject of this report sets the fundamental principles for how the Council undertakes procurement and contract management arrangements. It is a legal requirement for the Council to have formal Contract Standing Orders, which is what is proposed with the report.
- 7.4.2 The Contract Standing Orders are required to work alongside the legislative public sector procurement Regulations and the review has taken this into account.

7.5 Human Resources Implications (if required)

- 7.5.1 There are no Human Resources implications to this report

7.6 Public Sector Equality Duty

- 7.6.1 There are no equality implications arising directly from the recommendations set out in the report.

8 Background Documents

- 8.1 Overview and Scrutiny Committee Report titled “Task and Finish Group on Procurement Governance Arrangements” – dated 24 March 2022
- 8.2 Procurement and Contract Governance Rules - Appendix 1