

Birmingham City Council

Report to City Council

17 September 2024



Title:	PROPOSED CHANGES TO THE COUNCIL'S PROCUREMENT AND CONTRACT GOVERNANCE RULES
Lead Cabinet Portfolio:	Councillor Karen McCarthy, Cabinet Member for Finance
Relevant Overview and Scrutiny Committee:	Councillor Albert Bore, Chair of the Corporate and Finance Overview and Scrutiny Committee
Report Author:	Mike Smith, Head of Procurement People Category Directorate or Name of External Organisation Phone Number 07827 367139 Email: mike.smith@birmingham.gov.uk
Authorised by:	Maria Huggon, Interim Commercial & Procurement Director
Is this a Key Decision?	No
If this is a Key Decision, is this decision listed on the Forward Plan?	Not Applicable
Reason(s) why not included on the Forward Plan:	Not Applicable.
Is this a Late Report?	No
Reason(s) why Late:	Not Applicable.
Is this decision eligible for 'call in?'	No
If not eligible, please provide reason(s):	Not Applicable.

Wards: All

Does this report contain exempt or confidential information? No

Has this decision been included on the Notification of Intention to consider Matters in Private? No

Reasons why not included on the Notification: Not Applicable.

1 EXECUTIVE SUMMARY

This report seeks consideration of changes to the Council's Procurement and Contract Governance Rules and makes recommendations for approval by the City Council.

Members are reminded that the Procurement and Contract Governance Rules establishes how the Council procures, enters into and manages contracts 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.

The changes made in this revision of the Procurement and Contract Governance Rules are to accommodate two sets of new procurement legislation; namely The Procurement Act 2023 and The Provider Selection Regime (for health-related contracts).

2 COMMISSIONERS' REVIEW

2.1 Following the UK's exit from the European Union, the government took the opportunity to develop public sector procurement rules to create a more flexible approach to enable public sector bodies to achieve better value for money. The new Procurement Act will come in to force on 28th October 2024.

The proposed changes to the Council's procurement processes and governance reflect these changes. However, the re-issue of these "procurement and contract governance rules" surfaces the need for BCC to specifically:

- Ensure the Commercial and Procurement Service provide overall strategic ownership of procurement and commercial activity for the Council. This includes a range of activities detailed in the new procedures.
- Prior to commencing a procurement process and the commencement of a Tender, a Procurement Strategy Report briefly outlining the proposed activity is required.
- Contract management must be an integral part when seeking to award a new Contract. Contract management is best practice and is proven to deliver greater value to the customer.
- Utilise frameworks, either BCC specific or other appropriate/available frameworks e.g. CCS frameworks.

Commissioners require the establishment of a BCC Procurement Board to review and assess material procurements sufficiently ahead of contract end dates to allow for greater strategic and business alignment preparation. The Council must also develop and maintain a comprehensive contract register, owned by the Procurement and Commercial Service.

Commissioners support this Cabinet submission

RECOMMENDATIONS

That City Council:

- 3.1 Approves the changes presented in the updated Procurement and Contract Governance Rules (Appendix 1) as part of the new Contract Standing Orders for the Council and that they are incorporated into the Council's Constitution.
- 3.2 Approves 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.

3 KEY INFORMATION

Context

- 3.1 The Council needs 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.

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 with the latest set being approved in March 2024.

- 3.2 Amendments to the current rules are required to reflect new legislation in the form of the Procurement Act 2023 and the Provider Selection Regime (for health-related contracts), and as such are not required to be referred to Full Council for approval but can be approved by this Committee.
- 3.3 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 provide, or those who seek to provide, supplies, services or works to the Council.

Proposal and Reasons for Recommendations

- 3.4 As noted, this set of amendments is necessary to reflect the legislative changes that have been introduced.

Other Options Considered

- 3.5 The only other option would be to not update the constitution to reflect the new legislation, however this would leave the Council with a dysfunctional set of Procurement and Contract Governance Rules.

4 RISK MANAGEMENT

- 4.1 The implementation of the new Procurement and Contract Governance Rules greatly reduces the risk of non-compliance with the Council's Statutory requirements.

5 CONSULTATION

- 5.1 The Cabinet Member for Finance and officers from Legal Services have been consulted on the changes to the Constitution and in the production of this report.

5.2 IMPACT AND IMPLICATIONS

Finance

- 5.3 There are no direct Financial Implications in relation to this report. However, the new Competitive Flexible Procedure introduced by the Procurement Act 2023, will afford greater flexibility in allowing commercial discussions as part of procurement processes as appropriate.

Legal

- 5.4 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

Equalities

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

Procurement

- 5.6 The subject of this report sets out 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.
- 5.7 The Contract Standing Orders are required to work alongside the public sector procurement legislation and the review has taken this into account.
- 5.8 The Procurement Act 2023 brings wide-ranging changes, particularly in respect of:
- 5.8.1 the Council's Transparency requirements (which are now far more wide-ranging);
 - 5.8.2 greater rigour in contract management (with the identification and publication of contractual KPIs for certain contracts);

- 5.8.3 more formal approaches to preliminary market engagement;
 - 5.8.4 the use of Open frameworks and Dynamic Markets;
 - 5.8.5 greater rigour in respect of Conflicts of Interests; and
 - 5.8.6 more flexibility in how the Council can design its procurement processes.
- 5.9 The amendments to the constitution to accommodate the new Act are included, as tracked-changes, in Appendix 1, with a clean version at Appendix 2.
- 5.10 The Provider Selection Regime, which covers health related contracts, gives a greater emphasis on direct awards where appropriate to do so. The amendments to the constitution to accommodate the new Regime are included, as tracked-changes, in Appendix 1, with a clean version at Appendix 2. A Briefing Note explaining the general context and application of the Provider Selection Regime is included in Appendix 3.

People Services

There are no People Services implications in respect of this report

Climate Change, Nature and Net Zero

- 5.11 There are no Climate Change, Nature and Net Zero implications in respect of this report.

Corporate Parenting

- 5.12 There are no Corporate Parenting implications in respect of this report.

6 APPENDICES

- 6.1 Appendix 1 – The Changes to Part D of the Constitution
- 6.2 Appendix 2 – Clean version – Part D of the Constitution
- 6.3 Appendix 3 – Briefing Note – The Provider Selection Regime

7 BACKGROUND PAPERS

- 7.1 Not applicable.