

# BIRMINGHAM CITY COUNCIL

## PUBLIC REPORT

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| <b>Report to:</b>        | <b>COUNCIL BUSINESS MANAGEMENT COMMITTEE</b> |
| <b>Report of:</b>        | <b>CITY SOLICITOR</b>                        |
| <b>Date of Decision:</b> | <b>16 February 2016</b>                      |
| <b>SUBJECT:</b>          | <b>PROPOSED CHANGES TO THE CONSTITUTION</b>  |
| <b>Wards affected:</b>   | <b>ALL</b>                                   |

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| <b>1. Purpose of report:</b>  |
| 1.1 To advise Committee of proposed changes to the City Council's Constitution. |

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| <b>2. Decision(s) recommended:</b>  |
| 2.1 That the Committee approve the proposed changes to the City Council's Constitution set out in paragraph 3 and in the appendices to this Report. |
| 2.2 That the Committee approves inclusion of this report and appendices in the full agenda for the full Council meeting on 1 March 2016.            |

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| <b>Signature:</b>   |
| Chief Officer(s):   |
| Dated: January 2016 |

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| <b>List of Appendices:</b>   |
| <ol style="list-style-type: none"> <li>Article 12 (Officers) of the Constitution (Volume A) with tracked changes.</li> <li>Section B2 (Standing Orders relating to contracts and Procurement Governance Arrangements) of the Constitution with tracked changes.</li> </ol> |

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| <b>List of Background Documents used to compile this Report:</b> |
| None.  |

### **3. Proposals**

3.1 It is proposed that Article 12.4 and 14.3 of the City Council's Constitution be amended as follows:

(a) The scheme of delegations in section (a) (iii) under which the Procurement Governance Arrangements may be operated by the Chief Executive and Chief Officers for the approval of tender strategies and contract awards is varied as follows:-

- the minimum level is £164,176 (instead of £172,514) following the new EU thresholds which came into force on 1 January 2016; and
- the maximum level is £10,000,000 (instead of £2,500,000).

(b) A new provision is added as section (iv) and other sections renumbered so that the Chief Executive and Chief Officers may extend contracts (where no extension option exists in the contract) under the same terms and conditions in order to allow time for a new contract to be procured provided that the value of the extension does not exceed £500,000, there is no viable alternative solution and the Procurement Governance Arrangements are followed.

(c) There are consequential changes to the designation of officers so that references to:-

- the Chief Executive and the Director of Economy becomes the Chief Executive;
- the Director of Finance becomes the Strategic Director – Finance and Legal; and
- the Director of Legal and Democratic Services becomes the City Solicitor;

(d) The financial decisions in Article 12.4 (f) are to be delegated to the Strategic Director – Finance and Legal in addition to the Chief Executive.

(e) The actions of the Chief Officers in making payments in its capacity of Accountable Body under Article 12.4(g) have to be in accordance with any requirements approved by the Council as Accountable Body.

(f) Changes have also been made to Article 14.3 legal proceedings to allow for the early settlement if appropriate of any threatened or actual court proceedings.

3.2 It is also proposed that Section B2 of the Constitution (Standing Orders relating to contracts and Procurement Governance Arrangements) is amended as follows

(a) The scheme of delegations under which the Procurement Governance Arrangements may be operated by the Chief Executive and Chief Officers for the

approval of tender strategies and contract awards is varied as follows:-

- the minimum level is £164,176 ( instead of £172,514) following the new EU thresholds which came into force on 1 January 2016; and
  - the maximum level is £10,000,000 (instead of £2,500,000).
- (b) If the estimated value of a contract is expected to exceed the proposed new upper limit of £10,000,000 then the strategy report for the procurement will require approval by Cabinet. However the general principle will be applied that there will be a delegation to the appropriate Chief Officer to award a contract following the completion of the procurement and the production of an evaluation report.
- (c) The Planned Procurement Activities Report to Cabinet will set out the proposed contract length and estimated contract value. There are a proposed set of tolerances set out in the Procurement Governance Arrangements on values and contract length which if exceeded will mean that the contract award decision will need to be taken by Cabinet. It has been made clear that this Planned Procurement Activities Report is the initial consultation with Cabinet alerting members to the fact that unless they request a full report to be presented to Cabinet decision making on strategy and contract award will be undertaken in accordance with the Procurement Governance Arrangements.
- (d) There is a new mechanism to combine a contract strategy and award report where the proposal is to use a framework agreement which has been established by another contract authority. Also clarity is set out on the authority which is delegated to officers to issue orders under framework agreements provided that the financial tolerances and the rules for the allocation of orders are followed.
- (e) Provision is also made, where no other viable alternative solution exists, for a contract extension to be authorised by a Chief Officer where the contract did not provide for any or any further extension upto a value of £500,000 in order to allow for a contract to continue for the time required to complete the undertaking of a new procurement.
- (f) There are consequential changes to the designation of officers so that references to:-
- the Director of Finance becomes the Strategic Director – Finance and Legal; and
  - the Director of Legal and Democratic Services becomes the City Solicitor.