

Revised Contract Standing Orders

Report of the Finance and Resources Portfolio Holder

Recommended:

That the updated Contract Standing Orders approved by Council on 24 July 2024 be brought into effect on 28 October 2024, subject to the changes set out in paragraph 6.2 of the Report (Option 4).

SUMMARY:

- The report outlines the issues arising from the Government's decision to delay implementation of the Procurement Act 2023 from 28 October 2024 until 24 February 2025, and the impact this has on the revised Contract Standing Orders approved by Council on 24 July 2024.
- The report sets out the possible options available, and recommends implementing the revised Contract Standing Orders from 28 October 2024, but with interim and permanent changes to reflect the delayed implementation of the Act.

1 Introduction

- 1.1 This report seeks approval to make minor changes to the revised Contract Standing Orders, which were due to come into effect on 28 October 2024. This is required as a result of the Government deferring implementation of the Procurement Act 2023, which has been put back to 24 February 2025.

2 Background

- 2.1 At its meeting of 24 July 2024, Council resolved as follows:-

Resolved:

1. That the updated Contract Standing Orders, as shown in the Annex to the report, be approved with effect from 28 October 2024.

2. That the Head of Legal & Democratic Services be authorised to make the required changes to the Constitution.

- 2.2 As the report (Item 12, "Changes to Contract Standing Orders") indicated, changes to the Contract Standing orders (CSOs) were required to reflect changes to procurement legislation (the Procurement Act 2023 and secondary regulations). Annex 1 to this report shows the Contract Standing Orders revised in accordance with Council's resolution of 24 July 2024.

- 2.3 At the time of the meeting, the Procurement Act was to be implemented with effect from 28 October 2024. Bringing the amended CSOs into effect on that date therefore allowed the CSOs to tie in with the changes to procurement that the Procurement Act would make from that date.
- 2.4 However, the Government announced on 12 September 2024 that the introduction of the new legislation would be postponed to 24 February 2025, to allow time for a new National Procurement Policy Statement to be introduced. The effect of the postponement is that councils will have to continue to comply with the current procurement legislation (primarily the Public Contract Regulations 2015) after 28 October 2024, and only switch to the Procurement Act 2023 on 24 February 2025 (when the Procurement Act will be in force and the 2015 Regulations superseded).
- 2.5 If the revised CSOs were to come into effect on 28 October 2024 as per the July 2024 Council resolution, some of their provisions will refer to legislation which at that point will not be in force. This report sets out the possible options for the period from 28 October 2024 until the new legislation is brought into force.
- 2.6 As well as bringing the CSOs into line with the changes to procurement legislation, the revised CSOs approved in July 2024 also updated the various thresholds which determine the procurement process to be followed in a particular case (single quote, two/three quotes, full tender, etc.). These thresholds had not been updated for some time, meaning that e.g. two or three quotes might have to be sought, when in fact (given the value of the contract) a single quote should be acceptable. At the same time, changes were made to simplify the CSOs so that officers could more easily understand and follow them.
- 2.7 The problem with letting the 24 July resolution continue is that the amended CSOs now refer to the [2023 Procurement] Act rather than the 2015 Regulations and also refer to procedures that will not now be legal until February 2025. This would result in uncertainty over the effect of the revised CSOs in the period until the new legislation is in force, where e.g. the CSOs refer to legislation and procedures which at that time do not exist.

3 Corporate Objectives and Priorities

- 3.1 Contract Standing Orders provide part of the internal governance controls that help ensure good practice and achievement of value for money in purchasing goods and services.

4 Consultations/Communications

- 4.1 The changes to CSOs are being driven by legislative change, and therefore no external consultation has taken place.

5 Options

- 5.1 In the light of the procurement legislation being deferred, the options in respect of the revised CSOs are as follows:-

- Option 1 - Rescind the July 2024 resolution with no alternative provision;
- Option 2 - Suspend date of implementation of the revised CSOs until 24 February 2025 (or if later the date when the Procurement Act 2023 is fully brought into force);
- Option 3 - Allow the revised CSOs to come into effect on 28 October 2024 in accordance with the 24 July 2024 resolution;
- Option 4 - Allow the revised CSOs to come into effect on 28 October 2024 in accordance with the 24 July 2024 resolution, but with changes to reflect the delay in implementing the Procurement Act 2024.

6 Changes Proposed (Option 4)

- 6.1 Under Option 4, the revised CSOs approved by Council in July 2024 would be brought into effect before the legislation which is referred to in the revised CSOs is in force. Accordingly, under this option changes to the revised CSOs are proposed to deal with this. Some changes will be interim, with some permanent changes.
- 6.2 The following table shows the changes proposed under this option, and whether the changes are interim (to 24 February 2025 or the date when the Procurement Act 2023 is fully brought into force if later) or permanent. For Members' reference, Annexe 1 contains the revised version of the Contract Standing Orders approved on 24 July 2024 (but without any of the recommended changes which are set out below).

CSO No	Change	Interim or Permanent
"Procurement Act 2023"	<p style="text-align: center;">PROCUREMENT ACT 2023</p> <p>The Procurement Act 2023 is in force from 28 October 2024 <u>24 February 2025 (or such later date as may be specified in legislation)</u>, and replaces the Public Contracts Regulations 2015. These Contract Standing Orders were amended to reflect the 2023 Act (and regulations made under the Act), which will apply to all procurements commencing after <u>the date when the Procurement Act 2023 has been fully brought into force</u> that date (other than where a Framework is used and the agreement was entered into prior to 28 October 2024 <u>that date</u>).</p>	Permanent
Definitions and Explanations:-		

Act	The Procurement Act 2023 and any regulations and other secondary legislation made under the Procurement Act 2023. The Public Contracts Regulations 2015.	Interim
Competitive Flexible Procedure	A competitive tendering procedure in accordance with the Act which is approved by the Council for the procurement. The Two Stage procedure set out in these Contract Standing Orders is deemed to be approved by the Council for this purpose, but where a Contracting Officer wishes to use a different procurement process, approval by full Council, Cabinet or under delegated authority must be obtained.	Interim (new procedure introduced under Procurement Act 2023)
Full Procurement Procedure	The procedure required by the Public Contracts Regulations where the total estimated contract value exceeds the Threshold	Permanent (retained in error at last revision)
Selection Questionnaire	A template document that is used to shortlist bidders as part of a Competitive Flexible Procedure . Two Stage Procedure. The template is available on the procurement page of the intranet.	Interim.
Threshold	The thresholds for contract values specified in Schedule 1 of the Procurement Act 2023 <u>Regulation 5 of the Public Contracts Regulations</u> (as amended from time to time).	Interim.

7 Option Appraisal

- 7.1 Option 1 would mean that the current CSOs would continue in force. This is not recommended, as it is clear that the legislation on which the current CSOs are based will be changing in the near future (24 February 2025 being the proposed revised implementation date of the Procurement Act), at which point the current CSOs would be out of date. A further report would therefore be needed in the future to amend the CSOs into line with the legislative changes. In addition, this option would mean that the out of date thresholds and the more complex format of the current CSOs are retained.
- 7.2 Option 2 would retain the more complex and out of date format of the current CSOs for the time being, but would avoid the need for a further report to update the CSOs in line with legislative changes.
- 7.3 Option 3 would result in the revised CSOs coming into effect before the new procurement legislation had been brought into force. This would result in uncertainty over the effect of the revised CSOs in the period until the new

legislation is in force, where e.g. the CSOs refer to legislation and procedures which at that time do not exist.

- 7.4 Option 4 (**recommended**) would allow the revised simplified format and updated thresholds in the revised CSOs to come into effect, and (by the use of interim and permanent changes) would plug the gaps which would otherwise exist (references to legislation, etc., as in Option 3 above).

8 Risk Management

- 8.1 An evaluation of the risks indicates that the existing controls in place mean that no significant risks have been identified at this time.

9 Resource Implications

- 9.1 There are no direct resource implications arising from the recommended option.
- 9.2 Having robust and up-to-date procedures and guidance for contracting officers to follow is an essential control in ensuring that the Council continues to achieve effectiveness and efficiency in the goods and services that it procures.

10 Legal Implications and Statutory Authority

- 10.1 The recommended option 4 will ensure that the Council's procurement processes are compliant with current and future procurement legislation.

11 Equality Issues

- 11.1 No equality issues have been identified in the preparation of this report.

12 Conclusion and reasons for recommendation

- 12.1 The July 2024 report and the revised CSOs were prepared on the basis of the information then available as to implementation of the Procurement Act 2023. As that implementation date has been postponed until February 2025, a decision is required on how the revised CSOs previously agreed should now be brought into effect.
- 12.2 Given the benefits of the revised CSOs in terms of updated thresholds and a clearer format, Option 4 is recommended, whereby the revised CSOs are brought in from 28 October 2024, but with interim and permanent changes to reflect the postponement of the 2023 Act coming into force. This will ensure the CSOs reflect the legislation applicable, and avoids the need for a further report back to Council in the future.

Background Papers (Local Government Act 1972 Section 100D)

None

Confidentiality

It is considered that this report does not contain exempt information within the meaning of Schedule 12A of the Local Government Act 1972, as amended, and can be made public.

No of Annexes:	1	File Ref:	004714
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(Portfolio: Finance and Resources) Councillor M Flood

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Report to:	Council	Date:	16 October 2024
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