

Report to: Governance Committee

Date of meeting: 4 March 2025

By: Chief Operating Officer

Title: Amendment to the Constitution - Procurement and Contract Standing Orders

Purpose: Governance Committee is to consider whether to recommend to Council to amend the Constitution in relation to the Procurement and Contract Standing Orders brought about by changes to procurement legislation which came into force on 24 February 2025.

RECOMMENDATIONS

The Governance Committee is recommended to recommend to County Council to agree the following amendments to the Constitution, which relate to the Procurement and Contract Standing Orders set out in Appendices 1 and 2 of the report.

1. Background

1.1 On 24 February 2025 the Procurement Act 2023 (PA 2023) and associated regulations will replace the current Public Contract Regulations 2015 (PCR 2015). The PA 2023 will affect all Public Sector Bodies, specifically in how they procure and manage contracts.

1.2 The PA 2023 provides for a transition period, during which the PCR 2015 will remain applicable in respect of managing, extending or modifying any contracts that were awarded under that legislation.

1.3 Separately, the legislation governing the procurement of certain health care services has also changed, with the Health Care Services (Provider Selection Regime) Regulations 2023 (PSR Regulations) coming into force on 1 January 2024.

1.4 Procurement and Contract Standing Orders (PCSOs) are written into the Council's Constitution, and an update is therefore required to ensure our procurement and contract activity remains compliant with all prevailing legislation, whilst also satisfying our statutory duty to deliver best value and the priority outcome of making best use of resources.

2 Supporting information

2.1 The proposed new PCSOs and amendments are set out in Appendix 1 of the report. The proposed appendices to the PCSO document are set out in Appendix 2 of the report.

2.2 Some of the key changes in the PA 2023 which require updates to the Council's PCSOs are:

- Greater focus on opening up opportunities to small and medium enterprises (SMEs) and the voluntary, community and social enterprise sector (VCSEs);
- Heightening the importance placed on contract management, given the significantly increased focus on contract management, governance, and supplier performance;
- Embedding of transparency right through the contract lifecycle with a change in the number of procurement and contract management and performance transparency notices from six under the PCR 2015 to 15 under the PA 2023;
- Change in the number and nature of procurement procedures or "routes to market" from seven in the PCR 2015 to three in the PA 2023;
- A requirement to publish a procurement pipeline of opportunities over £2M with a minimum of 18 months forward look; and
- A requirement for public bodies to have regard to National Procurement Policy Statement.

2.3 The amendments to the former PCSOs and the reasons for recommending any such amendments are summarised below:

- Incorporation of the requirements of prevailing procurement legislation (PCR 2015, PA 2023 and the PSR Regulations) to ensure the PCSOs continue to be fit for purpose;
- Revision of thresholds to reflect legislative updates and the requirement to quote contract values that are inclusive of VAT to ensure compliance with prevailing procurement legislation;
- Addition of a delegation to the Chief Operating Officer, in consultation with the Deputy Chief Executive (DCE) and Chief Financial Officer (CFO), to make minor changes to the PCSOs in respect of legislative changes to procurement thresholds and changes to job roles, job titles and changes to departments. This is proposed to streamline and improve the Council's responsiveness to mandatory threshold changes and other organisational changes as well as to ensure proportionate governance requirements in these prescribed circumstances given the resource constraints the Council is facing;
- Updates to reflect current local policies and procedures to ensure the PCSOs are fit for purpose;
- Updates to job titles and roles to reflect organisational changes since the last version of the PCSOs were agreed;
- Removal of details of specific legislative requirements in the main body, instead referring to 'prevailing procurement legislation' (moving any relevant specifics to a separate appendix) to account for a range of applicable legislation;
- Provision of flow charts to identify which piece of procurement legislation applies depending on nature of activity (PA 2023, PCR 2015 and the PSR) to provide greater clarity and ease of use for officers;
- Updated to refer simply to 'Procurement', rather than the different teams within Procurement to make more accessible to staff outside of Procurement;
- Refinement to the forward planning process to retain the previous process that provides 'Approval to Procure' for projects for the upcoming financial year, whilst adding a Part B to satisfy the pipeline publication requirement under PA 2023;
- Simplification of thresholds and approvals; and
- Review of current processes to realise efficiencies in our ways of working, in particular the adjustments noted below.

2.4 Key proposed ESCC governance adjustments are:

Matter	Summary of Change	Guide
Legal status	As set out in paragraph 2.3 above, it is proposed that the Chief Operating Officer, in consultation with the Deputy Chief Executive and Chief Financial Officer, shall have delegated authority to make specified incidental amendments to the PCSOs.	Section 1.1
Summary Tables / Contract Signatory thresholds	All approval and signatory thresholds remain as previous PCSOs. However, work is ongoing to explore the potential to align the PCSO approval levels with financial approval levels for Oracle (the Council's Enterprise Resource Planning software). This is to ensure consistency across the Council's systems. A further report in this regard will be produced in time for the go-live of Phase 2 of the Oracle implementation.	Section 1.10 Procurement Tables A-E
Waivers	The requirements for waivers are mostly as per the previous PCSOs; however, below threshold waivers now require legal review. Whilst the new procurement rules are bedding in, legal review will provide an additional layer of governance.	Section 3.1

Novations	<p>The CFO will still approve novations, but DCE approval to be removed. This approval relates to the financial standing of the incoming supplier, which requires a judgement based on a financial assessment. The CFO is best placed to make this judgement. If agreed, this change will streamline the governance requirements relating to novation of contracts.</p> <p>This section is now split out from extensions and modifications to make clear that different approvals are required in the case of a novation.</p>	Section 7.3
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3 Conclusion and reasons for recommendations

3.1 The Government has introduced new legislation governing the procurement and management of contracts by public sector bodies and it is necessary for the Council's PCSOs (i.e. the rules governing these matters) to be updated to reflect the new legislative requirements. It should be noted that, where possible, these proposed amendments are being proposed to realise efficiencies, in circumstances where resource constraints and budget pressures are very acute. The Governance Committee is therefore recommended to recommend to County Council to agree the proposed amendments to the Constitution as set out in this report.

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