

Brighton & Hove City Council

Audit, Standards & General Purposes Committee

Agenda Item 37

Subject: Contract Standing Orders

Date of meeting: Audit, Standards & General Purposes Committee – 28th
January 2025
Full Council – 30th January 2025

Report of: Director of Property & Finance

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Ward(s) affected: All Wards

Key Decision: No

For general release

1. Purpose of the report and policy context

- 1.1 The introduction of the Procurement Act 2023 (PA23) and associated regulations (The Procurement Regulations 2024) requires significant changes to the Council's Contract Standing Orders (CSOs). This report sets out the changes required and includes as Annexes a copy of the new CSOs and an Appendix to the CSOs for approval by Full Council.

2. Recommendations

Audit, Standards & General Purposes Committee

- 2.1 That Audit, Standards & General Purposes Committee notes the proposed changes to Contract Standing Orders and recommends the updated Contract Standing Orders at Annex 1 to full Council for approval.

Full Council

- 2.2 That full Council approves the proposed new Contract Standing Orders at Annex 1 with effect from 24th February 2025.
- 2.3 That full Council delegates authority to the Council's Monitoring Officer to amend the council's Constitution to incorporate the proposed Contract Standing Orders when the new Procurement Act 2023 comes into effect,

and to make amendments to Appendix 1 of the new Contract Standing Orders as legislative, technical or organisational changes require.

3. Context and background information

- 3.1 The Procurement Act 2023 (PA23) comes into effect on 24th February 2025. There will be a transition period between the old and new regulations, which will involve the two regimes running in parallel. The Procurement Act goes beyond Procurement teams and will result in changes for contract managers, finance teams, service commissioners, legal teams and reporting teams.
- 3.2 Aside from the details concerning changes to the process of running tenders, including the reduction of 7 procedures down to 3, there are some key elements of the regulations that will affect areas of the council beyond procurement.
- **Transparency Notices:** There were 4 notices under Procurement Contract Regulations (PCR2015) but will be 15 under Procurement Act (PA23), noting not all are mandatory and/or applicable to all procurements.
 - **Contract Management:** There is a significantly increased focus on contract management, governance, and supplier performance. Some of the transparency notices relate to contract management and payments, for example, contracts >£5M require annual publication of performance against a minimum of 3 KPIs. There will be a need to manage contracts and record data, including facilitating contract termination notices.
 - **Procedures:** 3 Procedures are identified in the new regulations (Open, Competitive Flexible, Direct Award).
 - **Most Advantageous Tender:** Under the PCR2015 regulations, public contracts must be awarded on the principle of Most Economically Advantageous Tender (M.E.A.T.). PA23 changes that requirement to Most Advantageous Tender (M.A.T.).
 - **Preliminary market engagement:** New obligations and transparency notices are required to prevent unfair supplier advantage/disadvantage. There is a broad definition of what may be considered pre-market engagement and a need to be aware of what may constitute pre-market engagement.
 - **Conflict of interest:** Strengthened requirements for identifying and managing conflicts of interest that span the entire procurement and contract lifecycle. Robust recognition and documentation of potential/perceived Conflicts of Interest will be required.
 - **Forward planning/procurement pipeline:** A mandatory 18-month (min) Pipeline Notice of all planned procurements >£2M, published annually on the Central Digital Platform. Advance notice of planned procurements will be essential to meet this requirement.
- 3.1 The PA23 also increases the focus on the **National Procurement Policy Statement** and will introduce a **Procurement Review Unit (PRU)**. The PRU

will have enhanced powers to assess an authority's approach to all aspects of procurement, including social value.

3.2 The key changes that are proposed to the Council's Contract Standing Orders as a result of the introduction of the PA23 and in order to improve the clarity of our procurement rules can be summarised as follows:

- A simplified, **rules-based** document providing greater prescription and less room for misinterpretation or error;
- Inclusion of the new legal requirement for a **2-year** Procurement Forward Plan;
- Provision of **summary tables** to aid understanding of Procurement methods and identify the procurement legislation applicable for any given activity;
- Highlights key **Procurement Policy objectives** – for example Social Value, Sustainability, Modern Slavery – and the need to have regard to National Procurement Policy Statement and incorporate the Act's key principles (e.g. remove barriers for SME businesses);
- The use of an **Appendix** containing thresholds, links to related policies and legislation etc, to allow for easier updates when these elements change; and
- Includes defined **roles and responsibilities** for Procurement Officers, Commissioners and Contract Managers.

3.3 A copy of the current Contract Standing Orders is attached as Annex 3 and the proposed new Contract Standing Orders are attached as Annex 1.

Implementation Plan

3.4 Following approval by full Council Procurement Officers will:

- Arrange publication on the council's intranet, **The Wave**, with associated communications highlighting what Members and Officers need to know.
- Provide briefings for Members on the new CSOs, focusing on elements they need to be aware of to undertake their roles, such as the Procurement Forward Plan.
- Update and present content to **Directorate Management Teams** and **Business Improvement Managers** with options for them to subsequently:
 1. Disseminate information provided through Directorates themselves; and/or
 2. Invite Procurement Officers to existing forums to repeat the presentation of information.

4. Analysis and consideration of alternative options

4.1 The Contract Standing Orders require changing to reflect new legislation therefore maintaining the previous CSOs is not a viable option. It is

necessary to bring the Council's rules relating to procurement in line with the new legal framework.

5. Community engagement and consultation

5.1 Officers have been consulted via working groups, stakeholder reviews and briefings at Directorate Management meetings etc.

- **Resources Directorate Management Team** have discussed the changes numerous times, including October and December 2024.
- **Corporate Leadership Team** have discussed the changes numerous times, including October and December 2024.
- **Lead Member** for procurement and Contract Management has been engaged with briefings in September and December 2024 and January 2025.
- **BHCC Legal** Services have worked with Procurement to develop the document.
- This report has been shared with the **Audit, Standards & General Purposes Committee** for comment prior to full Council approval. Any comments from the Committee will be shared with full Council by way of sharing an extract of the Committee's minutes with full Council.

6. Financial implications

6.1 There are no direct financial implications arising from this report. However, as noted elsewhere, the proposed changes to Contract Standing Orders are important for maintaining compliance with the new regulations and therefore for minimizing the risk of potential legal challenges or fines which can result in significant financial loss and/or resource implications, for example, needing to re-run a complex procurement process following legal challenge.

Finance officer consulted: Nigel Manvell

Date consulted: 3/1/25

7. Legal implications

7.1 The legal implications are incorporated in the body of the report. The new Procurement Act and associated Regulations, when in force, will substantially change the procurement processes and procedures which the Council must follow. The Council's own rules relating to the management of procurements and contracts must therefore be updated to reflect the new legislative framework. Full Council is the body with responsibility for approving the Contract Standing Orders. Where possible, it is good practice to take proposed Constitutional changes to the Audit, Standards & General Purposes Committee for comment before they are considered by full Council.

Name of lawyer consulted: Elizabeth Culbert

Date consulted (6/1/25):

8. Equalities implications

- 8.1 There are no equality impacts arising directly from this report. However, the council's equality duty and equality impacts are considered in relation to each individual procurement undertaken.

9. Sustainability implications

- 9.1 The council has adopted the Orbis Environmentally Sustainable Procurement Policy with its Orbis Partners Surrey County Council and East Sussex County Council.
- 9.2 Each council is committed to ensuring their operations are environmentally sustainable and resilient to future change. The councils recognise that a healthy and properly functioning natural environment is the foundation of a thriving economy, employment stability, prospering communities and personal wellbeing.
- 9.3 Environmentally sustainable procurement is the commissioning, purchase and management of goods, works and services in a way that reduces or negates negative environmental impacts within the supply chain. This policy considers four interconnected focus areas of environmentally sustainable procurement:
- Climate change mitigation and adaptation;
 - Prevention of pollution;
 - Sustainable resource use and consumption; and
 - Protection and restoration of biodiversity.
- 9.4 As a result of this policy, environmental considerations will be built into the procurement and delivery of goods, works and services through specifications, tender questions, evaluation criteria, key performance indicators and clauses of contracts.
- 9.5 Emissions from goods, works and services procured by the council form part of the "scope 3" emissions of the authority. Where possible, the council is seeking to decarbonise these in line with council specific carbon reduction targets. In addition, the council has committed to improve biodiversity, recover natural capital or enhance the natural environment. The procurement of goods, works and services have been identified as a Strategic Priority to drive significant carbon reductions and improve the natural environment.

10. Health and Wellbeing Implications:

- 10.1 Social Value can provide additional benefit to the community of Brighton and Hove through a variety of means. Brighton and Hove City Council (BHCC) embeds Social Value throughout its commissioning and procurement activities to ensure that the social, environmental and economic impacts of procurements are considered. Social Value considerations are built into procurement processes through:
- Designs and specifications;

- Tender questions;
 - Key performance indicators; and
 - Clauses of contracts.
- 10.2 BHCC has a policy of allocating at least 10% of its quality evaluation weighting to Social Value in its tenders. This applies where relevant and proportionate, but the council also seeks to increase that percentage where possible.
- 10.3 Working with suppliers is key to delivering the aims of the Social Value policy. We will check and measure their performance. We will also encourage them to deliver outcomes that support our Social Value Framework principles.

Other Implications

11. Procurement implications

- 11.1 The procurement implications are set out in the body of the report. The proposed changes to Contract Standing Orders will ensure that the authority remains compliant with procurement regulations and changes and is able to run efficient and compliant procurement processes, minimizing the risk of potential legal challenges, fines or associated reputational damage.

12. Crime & disorder implications:

- 12.1 N/A

13. Conclusion

- 13.1 The Procurement Act 2023 goes live on 24th February 2025. It is essential that the Council's Contract Standing Orders are updated to reflect legislative changes.
- 13.2 Recent changes to the Authority's governance structure also require updates to the CSOs.

Supporting Documentation

ANNEXES

1. **ANNEX 1** - Brighton & Hove City Council – Proposed New Contract Standing Orders- January 2025.
2. **ANNEX 2** - Brighton & Hove City Council – Proposed New Contract Standing Orders- January 2025 – Appendix 1.
3. **ANNEX 3** – Current version of the CSOs