

<b>LONDON BOROUGH OF CAMDEN</b>	<b>WARDS:</b> All
<b>REPORT TITLE</b> Revision to Contract Standing Orders	
<b>REPORT OF</b> Borough Solicitor	
<b>FOR SUBMISSION TO</b> Audit and Corporate Governance Committee Council	<b>DATE</b> 5 <sup>th</sup> December 2024 20 <sup>th</sup> January 2025
<b>SUMMARY OF REPORT</b>  <p>The report sets out proposed changes to Contract Standing Orders in order to ensure full compliance with the new Procurement Act 2023 that comes into force 24 February 2025, and the NHS Provider Selection Regime which came into effect on 1 January 2024.</p> <p>Since the approval of the current version, further revisions are now required to incorporate legislative changes, internal practice and contract management updates as well as revised financial thresholds stemming from year-on-year increases in inflation.</p> <p>These proposals continue to support the We Make Camden Missions that the borough's local economy is strong, sustainable, and inclusive. They will also seek to maximise quality and enable innovation in the delivery of goods and services in the wider achievement of We Make Camden.</p> <p>This report sets out the proposed amendments to Contract Standing Orders (and includes other minor/self-explanatory changes as highlighted in the Appendix).</p> <p><b>Local Government Act 1972 – Access to Information</b></p> <p>No documents that require listing have been used in the preparation of this report.</p> <p><b>Contact Officer:</b>  Nicole Penn  Head of Procurement and Social Value  5 Pancras Square  London N1C 4AG  <a href="mailto:Nicole.penn@camden.gov.uk">Nicole.penn@camden.gov.uk</a>  020 7974 3903</p>	

## RECOMMENDATIONS

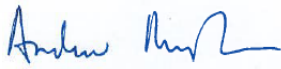
That the **Audit and Corporate Governance Committee:**

1. Recommends the proposed changes to Contract Standing Orders, shown as tracked changes on Appendix 1, to Council for agreement.

That **Council:**

1. Agrees to change the Council's Contract Standing Orders as shown as tracked changes on Appendix 1.
2. Delegates authority to the Borough Solicitor to make the requisite changes to the Council's Constitution.

Signed:



Date: 26.11.2024

## **1. Purpose of Report**

- 1.1. The Council spends approximately £460m per annum on external goods, works and services, with a variety of local, national, and international organisations and businesses. The Council is taking a more active role in the commissioning of services in the local economy and is increasingly challenged to deliver value through collaboration, innovation, and the use of technology throughout the supply chain.
- 1.2. Contract Standing Orders (CSOs) set out how the Council authorises and manages spending and contracts with other organisations. This ensures that prior to any significant expenditure there is proper consideration of whether there is a need to purchase the service, and if there is a need, that the purchase is made in a fair, open and transparent way. The current CSOs, which govern the procurement decision making process, have been in place since 2001 with revisions in 2011, 2017 and most recently in September 2023. The September paper advised that revisions in 2024 would require a further update. Since the approval of the current version of CSOs, revisions are now required due to changes in legislation and lessons learned from internal practice.
- 1.3. The Procurement Act 2023 and the Provider Selection Regime (introduced under the Health and Care Act 2022) changes how the public sector spends money, introducing new requirements for all local authorities to adhere to. The ambition is to introduce greater flexibility, less bureaucracy and make procurement processes quicker, simpler, and more commercially viable.
- 1.4. The new requirements propose changes in the way we run procurements with a focus on risk management and contract management. There is a greater transparency requirement to manage key performance indicators and performance reporting. In addition, there is a requirement to open up the market to small and medium sized enterprises (SMEs) and be more transparent with our processes.
- 1.5. Changes to CSOs are a non-executive function and the CSOs form part of the Constitution and therefore require the Audit and Corporate Governance Committee, in line with its terms of reference, to recommend any changes to Council for agreement.

## **2. Proposal and reasons**

- 2.1. Government guidance on transition from the Public Contracts Regulations 2015 (PCR 2015) to the Procurement Act 2023 (PA23) is clear that there will be a distinction between contracts procured under the old regime (PCR 2015) and contracts procured under the new regime (i.e. after 24 February 2025). Any contract, framework or Dynamic Purchase System procured under PCR 2015 will remain subject to, and be managed under, PCR 2015, and this includes any modifications made to that contract on or after 24 February 2025. We therefore need to operate under the two sets of regulations until such time as the old regime contracts expire or are terminated.

- 2.2. Contracts with a value at or below £45,000 are currently awarded by Heads of Service on the basis of the best method available which objectively demonstrates that best value has been achieved. This value was applied inclusive of VAT which does not reflect the basis of the increase from £25,000 to £45,000 which was to reflect the rises in the costs of goods and services. This figure needs to be exclusive of VAT. The rise gives increased flexibility to the decision-making process. It will also save officer time on unnecessary processes that if undertaken would not necessarily see a return on the investment put in.
- 2.3. The PA23 aims to modernise and simplify the UK's public procurement system. Its key objectives include delivering value for money, maximising public benefit, ensuring transparency, and acting with integrity. The PA23 also emphasises the importance of fair treatment for all suppliers and aims to reduce barriers for SMEs to participate in public procurement. Additionally, it introduces a Central Digital Platform to streamline processes and enhance accessibility for suppliers by acting as a supplier registration system.

#### **Proposed changes**

- 2.4. The PA23 introduces several key changes that procurement and contract managers need to adopt.
- 2.5. Award criteria: The emphasis is changing from most economically advantageous tender (MEAT) to most advantageous tender (MAT), which means we can prioritise the most advantageous tender rather than just the cheapest option.
- 2.6. Support for local businesses: The PA23 encourages the promotion of UK businesses, particularly SMEs and social enterprises. We now have a duty to consider breaking down a tender into lots and providing a reason in our tender notice for not doing so.
- 2.7. Sustainability and Social Value: There is a stronger emphasis on sustainability and social value in procurement decisions and how procurement can promote local priorities. The MAT approach encourages consideration of broader community benefits that align with We Make Camden.
- 2.8. Transparency and Key Performance Indicators: The new rules enhance transparency and require the use of key performance indicators (KPIs) to monitor contract performance. The Council must now publish at least 3 KPIs for contracts exceeding £5million. KPIs will be used to track supplier performance throughout the contract period.
- 2.9. Flexibility: The PA23 allows greater flexibility in procurement procedures, enabling the Council to adapt processes to better meet our needs, instead of

prescriptive procedures under the PCR 2015. The flexibility also allows the Council to make changes, subject to the procedures, during a tender process.

- 2.10. The Central Digital Platform: A new digital platform aimed to streamline procurement processes and improve the accessibility for suppliers.
- 2.11. There are additional changes proposed to CSOs to update the requirements needed as detailed in the PA23. The revised CSOs proposed are attached as Appendix 1.

### **NHS Provider Selection Regime**

- 2.12. The NHS Provider Selection Regime (PSR 2023), introduced under the Health and Care Act 2022, came into force on 1 January 2024 and is a set of rules for procuring health care services in England by relevant authorities, including local authorities. The PSR does **not** apply to the procurement of goods or non-health care services (unless as part of a mixed procurement). The PSR 2023 has been designed to:
  - introduce a flexible and proportionate process for deciding who should provide health care services;
  - provide a framework that allows collaboration to flourish across systems; and
  - ensure that all decisions are made in the best interest of patients and service users.
- 2.13. There are three provider selection processes that relevant authorities can follow to award contracts for health care services. These are:
  - **Direct award processes (A, B, and C)**. These involve awarding contracts to providers when there is limited or no reason to seek to change from the existing provider, or to assess providers against one another.
  - **Most suitable provider process**. This involves awarding a contract to providers without running a competitive process, because the relevant authority can identify the most suitable provider.
  - **Competitive process**. This involves running a competitive process to award a contract.
- 2.14. CSOs cannot be fully applied to these processes. Direct awards or the most suitable provider process involve no competitive process. Whilst there is a competitive process, there are no differing thresholds for advertising the opportunities, the process to be followed is the same for all contracts irrespective of their value and the process must consist of an assessment against the same five prescribed key criteria. However, for the purposes of transparency and auditing any award, modification or extension of a contract must be pursuant to the requirements set out in CSOs.

## **3. Options**

- 3.1. The following options were considered:
  - Option 1 – Update CSOs as set out in this report:
  - Option 2 – Do not update CSOs and maintain the current governance requirements.

- 3.2. Option 1 is the preferred option. The proposals set out in this report will enable the Council to have thresholds and approvals in place that reflect current prices/requirements thereby helping to speed up decision-making, where appropriate, whilst still maintaining sufficient oversight of all decisions. It will also enable compliance with the new procurement regulations.

#### **4. What the Key Impacts and Risks of the Intended Options Are and How They Will Be Addressed**

- 4.1. This change will save on officer time and allow them to procure more effectively at lower levels.
- 4.2. Removing the inclusive of VAT from contracts at or below £45,000 to exclusive of VAT means that the true increase from the previous threshold of £25,000 is £20,000 instead of £12,500. That means we increase the risk for achieving value for money. As before, Head of Service will need to be satisfied that the best method for procuring had been determined to provide best value. In addition, all purchasing decisions will be open to audit.
- 4.3. The only amendment to the £150,000 or below threshold for regulatory or safety requirements, is to include for the decision-making process to be shared with Procurement for transparency and audit requirements.
- 4.4. Regular review of the CSOs will allow us to amend the thresholds over time and review any necessary amendments due to legislation changes.

#### **5. Timetable for Implementation and Next Steps**

- 5.1. Should the proposed changes be agreed, the Constitution will be updated with a revised version on the Council's website. Communications will then be rolled out to all relevant internal stakeholders explaining the amendments. In addition, the range of internal officer boards that oversee and scrutinise procurement exercises will operate in accordance with the updated CSOs, and their respective Terms of Reference will be revised accordingly to ensure sufficient oversight is in place to support the amendments to CSOs. Procurement will also update their external and internal webpages as well as their own internal procurement guides and manuals.

#### **6. Consultation/Engagement**

- 6.1. No formal or statutory consultation is required in relation to the recommendations set out in this report.

#### **7. Finance Comments of the Executive Director Corporate Services**

- 7.1. The proposed change of the £45,000 threshold to be exclusive of VAT makes sense from a budgetary perspective, as Camden is able to recover VAT on most of its expenditure and the amount exclusive of VAT is what is charged to service budgets.

- 7.2. Overall, the new legislation gives the Council more flexibility to take account of non-financial considerations in its procurement processes. While this could help the Council to achieve its strategic objectives such as We Make Camden, there is a potential risk is that these non-financial considerations result in more expensive contracts. The revised procurement processes will need to continue to balance value for money, service quality and social value.
- 7.3. While they would improve transparency, the requirement to publish KPIs for contracts over £5m has the potential to be a considerable administrative burden. The Council currently has just under 40 such contracts so it would make sense wherever possible to align its corporate performance reporting with contract performance reporting.
- 7.4. The government's "new burdens doctrine" applies when local authorities get new duties as a result of legislation. It can result in additional government grant to implement new duties or to fund their ongoing costs. The Council has not yet received any new burdens funding for the PA23 and as yet none has been announced.

## **8. Legal Comments of the Borough Solicitor**

- 8.1. The comments of the Borough Solicitor have been incorporated throughout the report.

## **9. Equalities Implications**

- 9.1. Having considered whether this report raises any issues of equality it has been concluded that it does not.

## **10. Environmental Implications**

- 10.1. The proposals in this report have no environmental implications. Procurement work with service leads and commissioners to address any environmental impacts their project may have.

## **11. Appendices**

- 11.1. Appendix 1 – Revised Contract Standing Orders

**REPORT ENDS**