

Slough Borough Council

Report To:	Council
Date:	26 September 2024
Subject:	Changes to the Council's Constitution – Contract Procedure Rules and General Status Update
Chief Officer:	Sukdave Ghuman, Director of Law and Governance/Monitoring Officer
Contact Officer:	Sarah Wilson, Assistant Director – Legal and Governance
Ward(s):	All
Exempt:	NO
Appendices:	Appendix A – Draft Contract Procedure Rules

1. Summary and Recommendations

- 1.1 This report sets out proposed amendments to Part 4.6.1 Contract Procedure Rules. It also sets out minor housekeeping changes and provides members with a status update on the Constitution.

Recommendations:

Council is recommended to:

1. Approve the proposed new Part 4.6.1 – Contract Procedure Rules as set out in Appendix A for inclusion in the constitution to take effect from the 28 October 2024 or such other date as agreed by the Monitoring Officer to take account of any change to the commencement of the Procurement Act 2023.
2. Note and agree the status update on the Constitution, with agreement to minor amendment as set out in this report.

Reason:

The Council is required to prepare and keep up to date a constitution under the Local Government Act 2000. This requires that individual parts of the Constitution are subject to regular review to ensure they remain in accordance with the law and best practice.

The draft Contract Procedure Rules and status update have been reviewed by the Member Panel on the Constitution.

Commissioner Review

No comments from Commissioners on this report.

2. Report

Options considered

The Contract Procedure Rules require amendment to comply with the new Procurement Act 2023. In addition officers have reviewed the thresholds and brought them into line with best practice elsewhere.

It is good practice to regularly review parts of the Constitution and to update it to take account of any changes in law, learning and best practice.

The adoption of the revisions to the Council's Constitution recommended in this report are recommended as they are designed to improve the governance and transparency of the organisation in relation to contract management.

Contract Procedure Rules

2.1 The Procurement Act 2023 replaces the Public Contract Regulations 2015 and is due to come into force on 28 October 2024. The new legislation provides additional flexibility in relation to routes to market for large scale procurements, as well as increasing transparency throughout the commissioning cycle by requiring additional notices to be published and reporting on compliance with key performance indicators.

2.2 The main changes to the Contract Procedure Rules are as follows

Frameworks and Dynamic Markets

- Creation of longer open frameworks, allowing the re-opening to new suppliers every so often.
- New Dynamic Markets process, similar to the Dynamic Purchasing Systems but will include complex services, as well as the commodity goods and services.

Evaluation

- Incorporate stages including negotiation options.
- 'Most Economically Advantageous Tender' (MEAT) replaced with 'Most Advantageous Tender' (MAT)

New Digital Platform

- A central digital platform will be created for suppliers to register and store their details. These details can then be used for multiple bids, and suppliers can access all opportunities in one place.

Public Debarment List

- Suppliers who have committed an 'excludable offence' will be prevented from bidding for future work. Eg. bribery, corruption, conspiracy, and fraud
- Suppliers performing badly on contracts and don't rectify will be at risk of exclusion from future procurements.

Uplifting of thresholds

- Clarification on threshold for requiring Cabinet approval for approval of revenue funding procurement in relation to inclusion of VAT
- Clarification on threshold for requiring Cabinet approval for approval of revenue funding procurement in relation to inclusion of VAT
- Increased threshold for requiring a contract to be sealed.

2.3 The Member Panel on the Constitution reviewed the proposed changes. Assurance was sought that the procurement team was adequately resourced to implement the changes, including the issuing of new notices for transparency purposes. The Panel also sought assurance on the adequacy of the Agresso Platform and that officers were equipped to use the Intend Portal following Cabinet Office training.

2.4 A programme of support and training is planned for officers to ensure compliance with the new rules as well as ensure an understanding of the new flexibilities.

Status Update

2.5 A status update was shared with the Member Panel on the Constitution and discussion took place about the Council Procedure Rules review, a new Code of Practice on Good Governance for Statutory Officers to replace the existing Monitoring Officer Protocol and a recommendation from the Corporate Improvement Scrutiny Committee (CISC) in relation to creation of an additional scrutiny committee.

2.6 On the Council Procedure Rules, the Panel emphasised the need to tighten up behaviour in the chamber, whilst recognising that this was as much about meeting management and expectations as the rules. There was a request to consider options for emergency motions, with further information to be provided on the type of situation where this may be required. There was a review on the wording for exemptions for motions and whether this adequately deals with motions which may be divisive amongst communities. Officers agreed to bring back research on the history of political motions and examples of rules in other local authorities, having flagged that the review had identified similar rules in most other authorities which had been the subject of the review.

2.7 On a new Code of Practice, it was recognised that the existing Monitoring Officer Protocol had not been reviewed for some years and that it was helpful to have national best practice to cover the principles expected from all three statutory governance officers (head of paid services, s.151 officer, monitoring officer) and that this then set the culture for officers. It was also recognised that the Code needed to take account of local issues and in particular include reference to the role of the Monitoring Officer in relation to parish councils. Members specifically requested that the Code included reference to the Equality Act duties as it was felt that there was a need to strengthen diversity and inclusion at a senior level.

2.9 On the request to consider an additional scrutiny committee, the Panel received an update on the DfE commissioners report, the Centre for Governance and Scrutiny review and the recommendation from the CISC. During discussion it became apparent that some members had a belief that focusing on improvement was a barrier to scrutiny in other areas and that non scrutiny committee members may feel there was a lack of opportunity to get involved in scrutiny work if not on the committee. Officers explained that any member could be involved in a task and finish group and that topics such as concern about water pollution had been included on the work programme, evidencing that the role and remit of the committee was wide. Officers flagged that an additional committee may require additional officer resources, which were unlikely to be available and members reflected that it was likely that an additional committee would require additional resources. Officers agreed to consider more steps to publicise the opportunities for all members to be involved in scrutiny work and that further discussions were taking place to consider the benefits, risks and issues of the different options.

2.10 It is proposed that a new Code of Practice on Good Governance for Statutory Officers, a new Company /Connected Entities Protocol and an update on the review of Council Procedure Rules be brought to the next meeting of the Panel with a view to any changes coming to Council in November 2024.

2.11 The Council approved changes to the terms of reference to the Asset Disposal Cabinet Committee last year to include reporting on company governance. However it did not change the name of the Committee, creating confusion as to its wider remit. It is proposed to remove the reference to Asset Disposal, re-naming Committee as the Cabinet Committee.

3. Implications of the Recommendation

3.1 Financial implications

3.1.1 There are no financial implications directly resulting from the recommendations of this report.

3.2 Legal implications

3.2.1 The Council is required to prepare and keep up to date a constitution under the Local Government Act 2000.

3.2.2 Amendments to the Contract Procedure Rules are required to ensure compliance with the new Procurement Act 2023, once enacted.

3.3 Risk management implications

3.3.1 The changes support the Council to comply with the law and good governance.

3.4 Environmental implications

3.4.1 There are no identified environmental implications.

3.5 Equality implications

3.5.1 Explicit reference was made to the need to reference the Equality Act 2010 in an updated Code for statutory officers.

4. Background Papers

None