

Subject	Update to Contract Standing Orders - Procurement Act 2023	Status	For Publication
Report to	Authority	Date	12 September 2024
Report of	Chief Finance Officer		
Equality Impact Assessment	Not Required	Attached	Na
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1 Purpose of the Report

- 1.1 To obtain Authority approval for amendments to the Contract Standing Orders (Part 4d to the Constitution) as required for compliance with the provisions of the Procurement Act 2023 which come into force on 28 October 2024.
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2 Recommendations

- 2.1 Members are recommended to:
- a. Approve the amended Part 4d to the Constitution – Contract Standing Orders to take effect from 28 October 2024.**
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3 Link to Corporate Objectives

- 3.1 This report links to the delivery of the following corporate objectives:
Effective and Transparent Governance

To uphold effective governance showing prudence and propriety at all times.

- 3.2 Maintaining an up-to-date set of Contract Standing Orders as part of the Authority's Constitution, which complies with current legislation and the actual operation of procedures and controls, is an important contributor to this objective.

4 Implications for the Corporate Risk Register

- 4.1 The actions outlined in the report address the risk identified in the Corporate Risk Register that the Authority fails to meet specific regulatory requirements.

5 Background and Options

- 5.1 The Procurement Act (the Act) was passed in 2023 and its requirements will become effective from 28 October 2024.
- 5.2 The Act introduces changes to the way that public authorities are required to undertake procurement activities. The previous rules (the Public Contracts Regulations 2015) continue to apply until the Act is in force and will continue to apply to any contracts entered into prior to 28 October 2024.
- 5.3 Officers have undertaken training provided by CIPFA's Procurement Network and completed e-learning provided by the Government's Crown Commercial Services on the impact of the new Act for procurement in public authorities and have sought advice as required from the CIPFA Procurement Adviser.

Summary of Legislative Changes

- 5.4 Four sets of regulations have been combined into one.
- 5.5 There will be greater flexibility to design procurement processes. There are now just two routes for above threshold procurements:
 - a. Open Procedure
 - b. Competitive Flexible Procedure – this allows authorities to design a process that fits the needs of the procurement.
- 5.6 Additional measures to remove barriers to Small and Medium Sized Enterprises (SMEs).
- 5.7 Improved transparency measures – a *Central Digital Platform* that replaces the current *Contracts Finder* and *Find a Tender* platforms. There are additional publishing requirements for contract variations and terminations.
- 5.8 The Act strengthens the ability to remove or exclude suppliers who are unfit to deliver public contracts, for example due to previous misconduct or poor performance. A central government run debarment list will be available.
- 5.9 Greater focus on contract management – additional publishing requirements for contracts valued at over £5 million, including KPI's and annual reports on performance.

Amendments to the Authority's Contract Standing Orders

- 5.10 This report recommends making changes to the Contract Standing Orders (CSO's) within the Constitution to ensure that practices for procuring goods and services are in accordance with the Act from 28 October 2024.
- 5.11 All officers who undertake work procuring goods and services on behalf of the Authority are required to follow the Contract Standing Orders that are set out in Part 4d to the Constitution.
- 5.12 The introduction of the Act has required a review of the CSO's to ensure that Authority practices remain compliant with the law. The changes that have been made affect areas such as the values at which opportunities must be advertised and how they are advertised, transparency in procurement processes and general contract management. The specific changes are set out in a summary table below.
- 5.13 Whilst reviewing the required changes to the CSO's, the Assistant Director – Resources has also recommended a small number of changes to existing internal value thresholds – to bring these up to date, reflecting inflationary impact over a number of years and to streamline where possible and appropriate.
- 5.14 If the changes to the CSOs are approved, a programme of internal training for all officers involved in procurement activity will be delivered before the requirements of the Act become effective. The Governance Team are also developing an updated set of guidance notes that will support officers through all stages of procurement.

5.15 The draft amended CSOs are attached at Appendix A. The document highlights the substantive changes by showing deleted sections in ~~struckthrough~~ font, and newly added sections / references in red font. The amendments made are summarised in the following table.

CSO Contents	Main amendments made
General	<p>The whole of the document has been updated to refer to the Procurement Act 2023 and appropriate references within the Act. Any references to regulations that have been replaced by the Act have also been removed.</p> <p>The reference to the e-tender system has been updated from YORtender to SYPAtender. This reflects that we now use our own e-tendering platform, rather than taking part in the Yorkshire wide consortium that we were previously a part of. The reason for this change was to obtain much better value for money by having our own direct contract with the supplier – because our volume and values of procurement are substantially lower than those of the councils using YORtender.</p> <p>Any references to Contracts Finder and Find a Tender Service have been updated to refer to the new Central Digital Platform.</p>
Part 1 – Introduction	<p>A reference to the recently implemented Gateway Approval form to be used for all procurement exercises has been added.</p> <p>No other material changes.</p>
Part 2 – Scope and Compliance	<p>Updated references to the Act.</p>
Part 3 – Exemption to Competition Requirements	<p>Updated to streamline wording of the guidance and reference to the relevant sections of the Act.</p> <p>Minor updates to role titles.</p>
Part 4 – Delegated Authority	<p>Updates to references to the Act and to role titles.</p>
Part 5 – Conflicts of Interest	<p>This is a new addition to the CSO's to clearly set out the updated requirements of the Act. In particular the additional need for a Conflicts Assessment for above threshold procurements.</p>
Part 6 – Pre-procurement Requirements	<p>Additional paragraph added at 6.11 to capture requirement to assess and remove or reduce barriers to SMEs participation.</p>
Part 7 – Existing Arrangements and Frameworks	<p>No material changes.</p>
Part 8 – Nominated Sub-Contractors	<p>No material changes.</p>
Part 9 – Managing Supplier Risk	<p>Additional paragraphs 9.2 to 9.5 added to include reference to the new Debarment List and excluded suppliers.</p>
<p>Part 10 – Contract Values</p> <ul style="list-style-type: none"> Paragraph 10.1 	<p>'Purchasing up to £5k' has been amended to Low Value Procurement: Purchasing Up to £30k.</p> <p>This brings the CSOs up to date with a threshold that is now more in line with efficient and streamlined practices, and</p>

CSO Contents	Main amendments made
	aligned with the threshold for which contract opportunities must be published.
<ul style="list-style-type: none"> <li data-bbox="244 315 496 349">• Paragraph 10.2 <li data-bbox="244 600 544 667">• Paragraphs 10.3 to 10.5 <li data-bbox="244 707 528 775">• Paragraph 10.6 to 10.7 <li data-bbox="244 887 496 920">• Paragraph 10.8 	<p data-bbox="584 315 1378 443">The previous levels of Low to Intermediate Value (£5k to £30k) and Intermediate Value (£30k to £75k) have been combined into one: Intermediate Value Procurement £30k to £75k.</p> <p data-bbox="584 456 1350 584">This is to streamline and make the process more efficient whilst retaining the upper value threshold – and is made in line with findings from audit reviews and feedback from practical experience of officers when using the CSOs.</p> <p data-bbox="584 598 1350 696">Updated references to the Act and updated the wording regarding consideration of dividing a contract into Lots – in order to improve the clarity.</p> <p data-bbox="584 710 1342 875">Updated references to the Act and removed references to the Restricted Procedure and Other Procurement Procedures – reflecting that under the new Act, there are now only two routes: Open Procedure and Competitive Flexible Procedure.</p> <p data-bbox="584 889 1366 1016">Updated references to the Act, to SYPA tender. Inserted additional requirements to publish the redacted contract and KPIs along with annual performance reports in relation to contracts valued over £5m.</p>
Part 11 – Invitation to Tender	No changes.
Part 12 – Pre-Tender Submission Clarification	No material changes.
Part 13 – Tender Invitation and Submission	Updated to reflect the revised internal threshold (from £5k to £30k).
Part 14 – Hard Copy Tenders	No material changes.
Part 15 – Tender Opening	No material changes.
Part 16 – Managing Late Submissions	No material changes.
Part 17 – Managing Errors and Ambiguities	No material changes.
Part 18 – Post Tender Clarification and Negotiation	Wording revised to improve clarity and update references to the Act in relation to post tender negotiations.
Part 19 – Evaluating Tenders	Updated to reflect that the Act now refers to Most Advantageous Tender instead of Most Economically Advantageous Tender.

CSO Contents	Main amendments made
Part 20 – Awarding Contracts	<p>Updated to reflect that the Act now refers to Most Advantageous Tender instead of Most Economically Advantageous Tender.</p> <p>Paragraph 20.3 in relation to contracts required to be executed under seal – the threshold has been increased from £75,000 to £200,000 to reflect a more realistic and reasonable threshold to improve efficiency.</p> <p>Paragraph 20.10 – updated to reflect the revised internal threshold (from £5k to £30k) in the annual contracts awarded report.</p>
Part 21 – Records and Retention	No material changes.
Part 22 – Debriefing and Feedback	Paragraph has been fully updated to reflect the mandatory standstill period requirements under the Act – this has changed from 10 calendar days to 8 working days.
Part 23 – Contract Management	Updated to include the need to publish contract variations and terminations on the Central Digital Platform.
Part 24 - Joint Procurement	No material changes.
Part 25 – Procurement by Consultants	No material changes.
Part 26 – Purchasing Cards	No material changes.
Part 27 – Review and Amendment of Contract Standing Orders	No material changes.
Part 28 – Waivers of Contract Standing Orders	Paragraph 28.7 added to set out the requirement for a Transparency Notice to be published for direct awards of contracts above the threshold.
Definitions	Fully updated to provide definitions for new terms used throughout the CSOs and to remove the definitions relating to the previous regulations that no longer apply.
Appendices	<p>The previous 'Appendix 2 - Request to use a Procurement Procedure (not open or restricted)' has been removed as this is no longer applicable under the Procurement Act 2023 – as set out in Part 10 of the CSOs.</p> <p>The Business Case appendix has been re-named to Appendix 2 and an additional row added to enable this to be used for approval to conduct a procurement procedure in accordance with Part 10 of the CSOs.</p>

5.16 The amendments made to the Contract Standing Orders at this stage are only those required for compliance with the Procurement Act 2023 from 28 October and the small number of amendments to thresholds for the purposes of ensuring that the CSOs are up to date and appropriately streamlined. However, it is noted that the CSOs would benefit from a comprehensive review and revision exercise to improve the clarity, relevance and ease of use for officers conducting procurement exercises. This has previously been identified from internal audit review findings and partly addressed by

the introduction of the Gateway Approval form, which guides officers through each stage of the procurement process and ensures approvals are documented. It is intended to complete a further review of the CSOs wording and layout to improve the understandability and clarity in time for the next update of the Constitution in June 2025.

- 5.17 Members are asked to review and approve the amended Part 4d Contract Standing Orders attached at Appendix A to take effect from 28 October 2024.

6 Implications

- 6.1 The proposals outlined in this report have the following implications:

Financial	None
Human Resources	None
ICT	None
Legal	The updates to the Contract Standing Orders proposed in this report will ensure the Authority is compliant with current procurement legislation.
Procurement	The Contract Standing Orders govern all the procurement activity to be undertaken by the Authority in accordance with statutory requirements.

Gillian Taberner

Assistant Director – Resources & Chief Finance Officer

Background Papers	
Document	Place of Inspection
Procurement Act 2023	Procurement Act 2023 (legislation.gov.uk)