

# LONDON BOROUGH OF CROYDON

<b>REPORT:</b>	<b>GENERAL PURPOSES COMMITTEE</b>	
<b>DATE OF DECISION</b>	<b>3<sup>rd</sup> April 2024</b>	
<b>REPORT TITLE:</b>	<b>Proposed Changes to the Constitution Relating to Tenders &amp; Contracts Regulations</b>	
<b>CORPORATE DIRECTOR</b>	<b>Jane West, Corporate Director of Resources &amp; Section 151 Officer</b>	
<b>LEAD OFFICER:</b>	<b>Scott Funnell, Head of Strategic Procurement &amp; Governance</b>	
<b>LEAD MEMBER:</b>	<b>Cllr Jason Cummings, Cabinet Member for Finance</b>	
<b>DECISION TAKER:</b>	<b>Full Council Following Consideration By The General Purposes Committee</b>	
<b>AUTHORITY TO TAKE DECISION:</b>	<b>The Terms of Reference for the General Purposes Committee (See Part 3 of the Constitution, Responsibility for Functions) Allow it to Conduct Periodic Reviews of the Constitution and Consider Changes to the Constitution Recommended by the Constitution Working Group and to Refer Any Proposals to Full Council for Approval.</b>	
<b>KEY DECISION?</b>	<b>NO</b>	<b>N/A</b>
<b>CONTAINS EXEMPT INFORMATION?</b>	<b>NO</b>	<b>PUBLIC</b>
<b>WARDS AFFECTED:</b>	<b>ALL</b>	

## 1 SUMMARY OF REPORT

- 1.1 The Tenders and Contracts Regulations (TCR's) form part of the Council's Constitution and set clear rules for the procurement of goods, works and services for the Council, following the requirements under Section 135 of the Local Government Act 1972
- 1.2 The Executive Mayor's Business Plan 2022-26 focusses on transforming the Council to deliver sound and sustainable services by being financially sustainable, ensuring good governance, having greater collaboration with the VCFSE sector and building closer partnerships with the local community and businesses.
- 1.3 The exit strategy from the Improvement and Assurance Panel (IAP) included a requirement for a streamlined, robust and responsive procurement function to ensure governance and central procurement resource is in line with contract criticality and value.

- 1.4 MTFSS savings for 2024 – 2026 identified a need to reduce resources across the Council, with a £290,000 saving identified for the procurement service over the next two years.
- 1.5 The current TCR's establish lengthy processes above and beyond the requirement from national procurement legislation, and from what other local authorities have established within their procurement rules.
- 1.6 The Council recognises the need to deploy its procurement resources to focus on its more strategic contracts.
- 1.7 Appendix A is a proposed version of the TCR's with the proposed changes updated within and Appendix B contains the track changes from the 2022 version of the TCR's. Appendix C contains a draft Procurement Strategy 2024-26 which details the planned improvement journey for the Council.
- 1.8 The principal changes reflect:
  - New governance thresholds and delegations for procurement processes and contract decisions as set out in the Procurement Gateway Authorisation Table within Appendix A.
  - Removal of the requirement for Contracts and Commissioning Board (CCB) to review procurement reports and to recommend decisions relating to procurement strategies, and the award, extension and variation of contracts, all such responsibilities transferring to the Chair of CCB.
  - Replacement of the London Living Wage to the Real Living Wage within clause 13 of the TCR's, and in the Glossary of Terms within Appendix A.
  - Some minor amends to update changes to specific policy items, such as reflecting the Council change to an Executive Mayor and removal of reference to EU legislation.

## **2 RECOMMENDATIONS**

For the reasons set out in the report and its appendices, the General Purposes Committee is recommended to:

- 2.1 consider the revised Tenders and Contracts Regulations (TCRs) at Appendix A and the tracked changes at Appendix B;
- 2.2 to recommend to Full Council the adoption of the revised TCRs at Appendix A and that the Monitoring Officer be authorised to update the Constitution and make any consequential changes.
- 2.3 note that changes to thresholds and delegations and replacing the London Living Wage with the Real Living Wage are an executive function of the Council; and
- 2.4 note that a further revision to the TCRs will be brought to the Constitution Working Group and the General Purposes Committee once the impact of the Procurement Act 2023 is established.

## 1. REASONS FOR RECOMMENDATIONS

- 3.1 New thresholds for procurement processes and contract decisions are expected to eliminate unnecessary bureaucracy, speed up contract renewals and bring the Council in line with other local authorities.
- 3.2 The current authorisation regime creates delays in the process and draws resource across the Council away from other activities.
- 3.3 A more efficient process is expected to enable the Council to focus on the more strategic contracts and reduce procurement officer involvement on low value contracts.
- 3.4 Removing specific jobs roles in the decision-making process will allow the Council to be more flexible when improving approval processes, and future proof the regulations in the event of Council re-structures or general re-naming of job roles.
- 3.5 Replacing the London Living Wage with the Real Living Wage will allow flexibility in pricing and best value for contracts that are performed outside of London.
- 3.6 Minor wording updates to the regulations will reflect the latest terminology in use without any impact upon the nature of the regulations.
- 3.6 The Procurement Act 2023 will come into effect from October 2024 and will place additional responsibilities on Local Authorities which are likely to require further amendments to the Councils TCR's. Once the Council fully understands the impact of these changes, a further revision to the TCR's will be brought to the Constitution Working Group and the General Purposes Committee.

## 2. BACKGROUND AND DETAILS

- 4.1 The Government appointed Improvement and Assurance Panel has provided the Council with an exit strategy with the following procurement related objective:

<b>Objectives</b>	<b>Actions and outcomes by March 2024</b>
A streamlined, robust and responsive procurement function with clear roles and responsibilities focused on supporting affordable service delivery across the Council's activities.	<ul style="list-style-type: none"><li>• Review existing processes to ensure governance is in line with contract criticality and value.</li><li>• Review processes in conjunction with Finance to clearly define where responsibility for tasks should sit.</li><li>• Identify further process improvements through better integration with Oracle.</li><li>• Develop an improvement plan and a suite of performance metrics and targets to allow the function's improvement to be tracked and compared with sector best practice.</li></ul>

- 4.2 The recommendations within this report are the result of a review into the existing process, which is recommending a revision to the governance process and aligning to contract criticality and value. The Council has prepared a draft procurement strategy setting out the interdependent activities that will be taken as required by the IAP exit strategy, some of which require changes to the Council constitution to implement.
- 4.3 Currently, all tenders above £9,999 are managed by the Council's procurement service. Whilst this provides a high level of control, it uses resource from the Procurement Service that could be better utilised to provide strategic and commercial support for higher value procurements. A desktop analysis demonstrated that most other Councils in London do not use procurement staff resource at the £9,999 threshold, and instead have a higher threshold.
- 4.4 Therefore it is proposed to amend the requirements of each financial banding to ensure that governance reflects contract criticality and value and to ensure a streamlined yet robust process.
- 4.5 The key items to note within each financial banding are as follows:

- **The first financial banding of £0 – £24,999.**

This first banding requires budget holder approval for tenders up to £24,999 and recommends three written competitive quotes. The procurement service will continue to have no involvement in the first banding.

The reason that £24,999 is recommended as the first ceiling for this banding is that it reflects the requirements in the new Procurement Act (due to commence in October 2024) for publication of notices above this value.

- **The second financial banding of £25,000 - £Low Value Threshold.**

This second banding requires Head of Service approval for tenders from £25,000 up to the Low Value Threshold (LVT) for supplies and services under the Public Contracts Regulations 2015. This threshold is currently £179,087 (ex-VAT) and is updated every 2 years.

For this banding, it will no longer be mandatory for procurement staff to manage procurements, and instead officers across the Council will be able to manage a process and receive quotations for simple contracts, although procurement staff will still be available to advise and support if requested.

A low value training programme will be required to be undertaken for officers ahead of them managing low value procurements, and guidance will be available in the form of toolkits and handbooks. The current checks in the system will remain to ensure that contracts are not let without following a compliant process.

- **The third financial banding of £Low Value Threshold – Key Decision**

The third banding requires Director approval for tenders from the LVT up to the Key Decision Value. A Key Decision is an executive decision which is likely to:

- (i) result in the Council incurring expenditure, or making savings, of more than £1,000,000; or
- (ii) be significant in terms of its effects on communities living or working in an area comprising two or more Wards in the Borough.

Procurements within this banding will be managed by the Council's procurement service and will require governance approval in the form of reports approved by the Director of the Service with inputs from relevant Council departments such as finance, legal and equalities.

All procurements above the LVT are required to be entered onto the Councils Procurement Pipeline which is presented quarterly to Cabinet.

- **The fourth financial banding of Key Decision and above**

The final banding requires Corporate Director and Lead Member approval for tenders with a value at or above the Key Decision Value.

Procurements within this banding will be managed by the Council's procurement service and will require governance approval in the form of reports approved by Lead Member and the Corporate Director of the Service with inputs from relevant Council departments such as finance, legal and equalities.

Whilst there are a similar number of pipeline entries above the LVT as there are for below, the collective value is significantly higher for above threshold entries. Therefore, there is greater strategic value to prioritising resource for this threshold band.

4.6 Other key proposed changes are as follows:

4.6.1 **Contracts and Commissioning Board (CCB)**

Currently, members of the CCB are required to review and authorise each governance report above the LVT, which adds unnecessary time into the process but little additional value. Relevant officers, such as finance, legal, equalities etc will continue to review and to input into reports, but once approved by these departments they will no longer be circulated for review by CCB and instead will proceed directly to be reviewed by the Chair of CCB to recommend to the relevant approver as indicated in the Gateway Authorisation Table.

4.6.2 **London Living Wage to the Real Living Wage**

Replacing the London Living Wage with the Real Living Wage will allow flexibility in pricing and best value for contracts that are performed outside of London, whilst retaining the requirement to pay London contracts the London Living Wage. The Real Living Wage rate is calculated based on the cost of living. There is a higher rate for workers in London to reflect the greater cost of living for people in the capital. The Real Living Wage is £12 across the UK and £13.15 in London (the LLW).

4.6.3 **Minor amendments**

The proposed changes also include some minor amendments to update changes to specific policy items, such as reflecting the Council change to an Executive Mayor model and removal of reference to EU legislation, which are no longer relevant following Brexit.

4.6.4 **Approval delegations**

It is proposed to amend the Executive Mayor's Scheme of Delegation so that approvals for contract decisions default to the relevant officer or member as set out in the Procurement Gateway Authorisation Table appendix within the revised TCRs.

Currently, the Procurement Pipeline which is approved at Cabinet each quarter recommends an approval delegation per contract decision, whereas it is more efficient to establish standard approvals based on contract criticality and value.

The Executive Mayor will always retain the option to make any individual executive decisions for contracts/ procurements or revise delegations, if considered appropriate.

The proposed change in thresholds would affect the following number of contracts and pipeline events (data correct as of February 2024):

<b>Contract Value Bands</b>	<b>Number of Pipeline entries (18 months ahead)</b>	<b>Pipeline Value (18 months ahead)</b>
£0k - <£24,999	28	£186,276
£25k - <£179,087	76	£7,362,908
£179,087+ (GPA threshold) and above	99	£1,529,672,529

#### **4.6.5 Consequential amendments to the Constitution**

The proposed changes to the TCRs will result in some consequential changes being required to the Council Constitution, including within the Financial Regulations. As such, the proposed recommendations to Full Council include the Monitoring Officer being authorised to update the Constitution and make any consequential changes.

#### **4.7 Other key improvement proposals:**

4.7.2 The draft Procurement Strategy at Appendix D includes other improvement proposals and ambitions of the Procurement Service.

4.7.3 A focus on strategic contracts, resource will be deployed on other key areas of procurement, including:

- Evaluation of the commercial options within the business case
- Supporting the development of contract management plans
- Improving performance and management information
- Delivery of key procurement policies, such as the Social Value policy, Equalities etc.

4.7.4 It is also proposed to develop a procurement governance specific template to improve the quality of governance reporting and assist with the streamlined and robust approach.

### **3. ALTERNATIVE OPTIONS CONSIDERED**

#### **5.1. Procurement Thresholds & Delegations**

To meet the procurement objectives from the Executive Mayor’s Business Plan, the IAP exit strategy and the MTFs savings plan, the following procurement operating models have been considered.

<b>Advisory Service</b>	<b>Full Service</b>	<b>Transactional Service (current)</b>	<b>Strategic Service (recommended)</b>
No procurement threshold	>£10k procurement value threshold	>£10k procurement value threshold	LVT and above
Procurement activity is devolved with a small central strategic team advising.	Central procurement delivers all elements of the procurement process, including pre- and post-procurement activity for high and low value tenders.	Central procurement manages high and low value procurements, limited pre- or post-procurement support.	Central procurement offers strategic support for pre- and post-procurement (contract management) stages and manage high value/critical procurements.
<b>Pros:</b> low-cost central procurement service <b>Cons:</b> high value/critical procurements at greater risk of challenges and value for money opportunities missed.	<b>Pros:</b> Risk of challenges greatly reduced and value for money optimised. <b>Cons:</b> procurement resourcing costs for low value procurements disproportionate to risks mitigated and value gained.	<b>Pros:</b> Risk of challenges greatly reduced and value for money achieved during the competitive process. <b>Cons:</b> procurement resourcing costs for low value procurements disproportionate to risks mitigated and value gained.	<b>Pros:</b> Small risk of challenge. Procurement resourcing costs proportionate to value and risk. <b>Cons:</b> Some risk of challenge and some opportunities in optimising value for money (for sub-LVT procurements) missed.
Not recommended	Not recommended	Not recommended	<b>Recommended</b>

## 5.2 Removal of the requirement for Contracts and Commissioning Board (CCB) to review procurement reports and to recommend decisions relating to procurement strategies.

<b>Retain requirement for CCB to review procurement reports</b>	<b>Remove requirement for CCB to review procurement reports</b>
<b>Pros:</b> Additional reviewers may highlight areas of improvement within reports	<b>Pros:</b> Significantly accelerate approval processes and reduce unnecessary bureaucracy.
<b>Cons:</b> Multiple reviewers add little additional value yet significantly increases approval times for reports	<b>Cons:</b> Less oversight and scrutiny on an individual report level.
Not recommended	<b>Recommended</b>

## 5.3 Wage rate policy for employees assigned to Council contractors.

<b>Minimum Wage (21 years old and older) - £10.18/hr</b>	<b>National Living Wage - £10.42/hr</b>	<b>Real Living Wage - £12 across UK £13.15 in London (LLW)</b>
<b>Pros:</b> Cost savings and meets legal requirements	<b>Pros:</b> Cost savings and meets legal requirements	<b>Pros:</b> Savings for contracts performed outside of greater London
<b>Cons:</b> There is no London Weighting; does not meet the national living wage; doesn't meet the objective within the Executive Mayor's Business Plan.	<b>Cons:</b> There is no London Weighting; doesn't meet the objective within the Executive Mayor's Business Plan.	<b>Cons:</b> Contractor employees would not benefit from being paid LLW when performing service outside of greater London.
Not recommended	Not recommended	<b>Recommended</b>

## 4. CONSULTATION

6.1. Consultation has taken place with several stakeholders including Corporate Management Team (CMT), CCB, the Improvement Panel and the Constitution Working Group.

## **7. CONTRIBUTION TO COUNCIL PRIORITIES**

- 7.1 The revisions proposed in this report will contribute to the Executive Mayor's business plan concerning the provision of sound and sustainable services by being financially sustainable and ensuring good governance.
- 7.2 The proposed revisions to the TCR's will contribute to the MTFS savings plan for 2024 – 2026. The Procurement service savings over this period is £290,000.
- 7.3 The proposed revisions will meet the procurement objective in the exit strategy that the IAP requires, which is to ensure a streamlined, robust and responsive procurement function is in place.

## **8. IMPLICATIONS**

### **8.1 FINANCIAL IMPLICATIONS**

- 8.1.1 There are no direct financial costs arising from this decision. This decision will enable £290k MTFS savings on procurement staffing costs.
- 8.1.2 In addition to direct savings, this will create opportunities for contract savings through improved strategic procurement support for high value and critical contracts.
- 8.1.3 Comments approved by the Interim Head of Corporate Finance on behalf of the Director of Finance. (Date 21/03/2024)

### **8.2 LEGAL IMPLICATIONS**

- 8.2.1 Under Section 135 of the Local Government Act 1972 the Council must make standing orders concerning the supply of goods or works and may make standing orders for all other procurement and contract matters. Furthermore, the Public Contracts Regulations 2015 requires all contracting authorities (such as the Council) to treat suppliers equally and without discrimination in a transparent and proportionate manner. The Council's revised TCRs are intended to achieve these requirements and assist the Council in securing best value in its procurement activities while complying with its legal duties.
- 8.2.2 In overall terms, agreeing changes to TCRs (i.e. rules and procedures for procuring supplies, services and the execution of works and related contract matters) is a Full Council function. However, changes to thresholds and delegations and policy decisions bearing upon the awarding of contracts, such as replacing the London Living Wage with the Real Living Wage, are an executive function of the Council. Approval for these changes will be sought in accordance with constitutional arrangements for the discharge of executive functions of the Council.



- 8.2.3 Adopting changes to the Council's Constitution is a non-executive function reserved to Full Council after the General Purposes Committee has considered the proposed changes and made a recommendation.
- 8.2.4 According to s9P of the Local Government Act 2000 the Council must keep its Constitution up to date.
- 8.2.5 Comments approved by the Head of Commercial & Property Law on behalf of the Director of Legal Services and Monitoring Officer. (Date 27/05/2024)

### **8.3 EQUALITIES IMPLICATIONS**

- 8.3.1 The Council has a statutory duty, when exercising its functions, to comply with the provisions set out in Section 149 of the Equality Act 2010. The Council must, in the performance of its functions, have due regard to the need to:
  - 8.3.2 Eliminate discrimination, harassment, victimisation, and any other conduct that is prohibited by or under this Act.
  - 8.3.3 Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
  - 8.3.4 Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
  - 8.3.5 There are unlikely to be specific equalities impacts arising from the specific changes outlined in this report, however the Council's wider procurement policies and decisions will be kept in review with regards to their impact on equalities.
- 8.3.6 Comments approved by Helen Reeves, Head of Strategy & Policy 21/03/2024

### **8.4. OTHER IMPLICATIONS**

- 8.4.1. If the Council does not approve the threshold and delegation changes, it will limit the Procurement team from providing strategic and commercial focus on critical and high value contracts leading to improved value and affordable service delivery.
- 8.4.2. Updating the procurement thresholds will also allow a planned approach to the procurement pipeline and improve procurement regulation compliance.
- 8.4.3. Approved by: Huw Rhys-Lewis Interim Director of Commercial Investment & Capital (Date 27/03/2024).

## **9. APPENDICES**

- 9.1.1 Appendix A – Draft Tenders and Contract Regulations (2024)

Appendix B – Draft Tenders and Contract Regulations (2024) with track changes from the 2022 version

Appendix C - Draft Procurement Strategy 2024-26

**10. BACKGROUND DOCUMENTS**

N/A

**11. URGENCY**

N/A