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By: Interim Strategic Commissioner – Clare Maynard  
To: Governance and Audit Committee – 18 May 2023  
Subject: Review of the Council’s current Standing Orders (Spending the Council’s Money)  
Classification: Unrestricted

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**Summary:** This report summarises the proposed revisions to the Council’s Contract Standing Orders ‘Spending the Council’s Money’ following a comprehensive review.

**Recommendation:** The Governance and Audit Committee are asked to:

- i. Recommend the proposed amendments to section 13 of the Constitution to full Council for adoption – as attached as annex 1
- ii. Approve the revisions to 'Spending the Council's Money' as attached as annex 2 and recommend that the revised version be presented to full Council for noting alongside the proposed amendments to the Constitution.
- iii. Delegate Authority to the Section 151 Officer to amend Spending the Council’s Money in line with relevant legislative changes, with the Committee to be informed of any changes.

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## 1. Introduction

“Spending the Council’s Money” was initially published in June 2010 as a document that provided both mandatory rules and guidance for carrying out contracting activities in the Council. Section 135 of the Local Government Act 1972 requires that local authorities have such standing orders in place.

With changes to government regulations, technology and the Council’s structure, the original document became outdated. The document was archived, and a significantly slimmed down version of “Spending the Council’s Money” was published in text on a KNet page covering the most crucial rules, as guidance and rules for staff.

In 2021/22, the Commissioning Standards Team reviewed the elements of “Spending the Council’s Money” that were for guidance purposes and published a new suite of guidance and a Commissioning Handbook on the Commissioning Standards for staff.

However, the mandatory elements of “Spending the Council’s Money”, including our procurement thresholds, have not been reviewed until now.

This report proposes an updated version of “Spending the Council’s Money” consisting of a set of mandatory rules for the Council’s external spending activity.

## **2. Case for Change**

A key motivation for the update is to make the content up-to-date and easily understandable. However, this is also about ensuring that everyone who is spending the Council’s money knows and adheres to the rules that are in place.

This year, the functions and roles of commissioning and procurement services are being reviewed and that change is likely to make the current rules increasingly outdated.

Additionally, since the conception of “Spending the Council’s Money”, prices of goods and services have increased significantly, and many local authorities have higher thresholds that reflect this while KCC’s thresholds have not changed. This means that KCC’s rules have become more restrictive, compared to other local authorities, leading to additional bureaucracy for relatively small amounts of spend, compared with the Council’s overall budget.

There is nothing that has fundamentally changed within the contract standing orders to address any perceived weaknesses in control and governance issues, but any set of rules that are simplified and laid out to make them easy to understand and navigate should improve the control environment and ensure that governance is easier to follow and monitor. For example, there are clear sections covering the need for a procurement business case and an annual procurement pipeline to test that major procurements are adequately resourced.

A recent report by Grant Thornton<sup>1</sup> on lessons learned from recent auditor reports in Local Government procurement and contract management highlighted a number of key recommendations which support the proposed changes to “Spending the Council’s Money”. These include:

- a. Having clear procurement and contract management processes and rules in place, that are clearly communicated and understood
- b. Where there is non-compliance, it should be dealt with promptly, rectified and lessons learned should be shared
- c. Ensuring roles and responsibilities of individuals involved in procurement and contract management are clear, for both the local authority and for suppliers

## **3. Additional Considerations**

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<sup>1</sup> Grant Thornton (December 2022) ‘Local government procurement and contract management’ Available at: [Local government procurement and contract management \(grantthornton.co.uk\)](https://www.grantthornton.co.uk/local-government-procurement-and-contract-management)

As part of this work there is also a requirement to update the Constitution, as there is a small section regarding contract standing orders. It will also be necessary to update role titles in the Scheme of Delegation. Additionally, as the Council now has a Chief Executive Model, adherence to standards will be reported to the Chief Executive as well as those Elected Members charged with governance.

There is also a need for the revised standing orders to be consistent with updates that have occurred in other areas (such as the Ethical and Sustainable Procurement Policy, Commissioning Standards, the Contracts register and pipeline).

#### **4. Spending the Council's Money - Summary of Content**

##### **Responsibilities and Conduct**

"Spending the Council's Money" clearly establishes the responsibilities of different teams and officers involved in procurement activity, which previously has not been defined in their entirety. In addition to this, the document delegates some authority over decision making to the Head of Commercial role.

The document also clearly states the expectations of staff and other individuals who are buying on behalf of the Council.

##### **Contract Pipeline**

"Spending the Council's Money" mandates the requirement to establish a Contract (or Commercial) Pipeline. This is simply a forward look of potential commercial activity for the Council and may include the procurement of a contract or a framework, a call-off from a framework, a significant contract amendment or a contract extension. It is important to better engage with markets, plan and manage resources, improve transparency and improve governance and decision-making. This is an element that we are aware will be required in the upcoming changes to public procurement regulations.

The document also implements a new requirement for approval of increases of actual aggregate contract value of 5% more from that budgeted before contract award.

##### **Requirements for Sourcing Goods, Services and Works**

"Spending the Council's Money" defines the expected considerations and activities that must take place in order to ensure that the chosen procurement route will be appropriate for the related value and risk and deliver value for money.

Some of the elements included in this section are procurement thresholds, calculating the contract value, business cases, using existing arrangements and Local Authority Trading Companies (LATC's), financial security and using framework agreements.

Many of these elements, other than the procurement thresholds, have not been clearly defined as a mandatory requirement up until this point. However, they are important for consistent practice and to support the Council in saving money through reducing inefficient and inappropriate procurement activity.

## Requirements for Quotations and Tender Procedures

“Spending the Council’s Money” defines the required activities and documentation for running quotation and tender procedures and the details for how these should be carried out and completed.

The previous version of “Spending the Council’s Money” included the mandatory requirements for these procedures, with guidance that differed based on circumstances. This made the document large and unwieldy and required frequent updating and circumstances changed. This version only states the mandatory requirements (which shouldn’t fundamentally change in the short to medium term), with the rest of the guidance covered by the Commissioning Standards.

Some of the elements included in this section are:

- Engaging the procurement team
- Selection Questionnaires
- Requests for Quotations
- Invitations to Tender
- Advertising
- Evaluation
- Contract Award

### 5. Changes to Procurement Thresholds

“Spending the Council’s Money” makes changes to the current value thresholds that determine the procurement procedures required to be undertaken. The key changes are summarised in the table below.

Procurement Procedure	Current Threshold	New Threshold
Minimum of one written quote required	Up to £7,999	Up to £24,999
Minimum of three written quotes required	£8,000 - £49,999	£25,000 - PCR Threshold (approx. £177,897**)
A competitive tendering process that follows Council defined procedures and/or regulatory procedures where the thresholds for these are met. This excludes works procurements*.	£50,000 +	PCR Threshold (approx. £177,897**) - £999,999
A competitive tendering process that follows Council defined procedures and/or regulatory procedures where the thresholds for these are met*.	N/A	£1,000,000 +

*\*Previously this requirement included works procurements. This refers generally to building, construction and engineering related works., “Spending the Council’s Money” allows a competitive quotation procedure to be undertaken for works procurements up to £1m.*

*\*\*Indicative value excluding 20% VAT*

The new proposed thresholds were derived following research into KCC's contracting activity and other local authority's thresholds and a series of review meetings with a subgroup of the Governance and Audit Committee. A summary of the research can be found in Annex 4.

Additionally, the new thresholds define further required elements of the procurement procedure including advertising in line with public procurement regulations, contract award approval and contract signature.

## **6. Governance and Audit Committee Subgroup Review**

The G&A subgroup panel met on 8th and 23rd February to work through the document in detail. Each section was reviewed in detail and discussed with the group and any feedback was recorded and actions to review were noted. Following these meetings, a track changed version of the document was produced to outline any variations to the original. The sessions were extremely valuable in being able to test and challenge the proposal and ensure that all elements had been worked through. There was general agreement and support for the proposal from the group and the main amendments made to the document as a result are outlined below:

- Increasing the robustness and clarity of wording around roles and responsibilities to ensure all Officers and Members are fully aware of how the rules apply to them and their role.
- Increase the threshold below which officers can undertake a quotation process up to the PCR 2015 threshold for services (approx. £177,897 exc VAT) and £1m for Works. This was on the basis that data from the KCC e-tendering system showed that there are minimal procurements that fall between £100,000 and PCR threshold, the majority of procurement processes at KCC are for low value (below £50,000) and high value (PCR+). Data for this can be seen in Annex 4. Raising the level to PCR threshold also avoids confusion of having a further layer of rules between the original proposed £100,000 threshold and the PCR 2015 threshold and it ensures consistency with Public Procurement Regulations. This amendment was proposed on the basis that there will be an extensive communication and education programme to launch these updated rules to ensure all Officers and Members are fully aware of the changes and what they mean for them. There will also be increased compliance monitoring reviews with consequences for non-compliance to provide assurance that these rules are being adhered to.
- Clarity on the wording for non-compliance and education process
- Clarity on the engagement of legal and procurement advice and when this is necessary

There was also agreement at the meetings that the Commissioning Standards team would work with KCC legal to ensure the wording is in line with legislation, especially

on areas such as the Public Contract Regulations, Grants and Subsidies. This review was carried out in conjunction with an external law firm to provide additional assurance and robustness. A version showing all of the changes to the document over the review process can be found at Annex 3.

## **7. Future Changes to "Spending the Councils Money"**

There is a strong link between "Spending the Council's Money", other Council policies such as the Financial Regulations and government regulations such as The Public Contract Regulations.

We are already preparing for the changes that both the Public Procurement Reforms and the NHS Provider Selection Regime will bring in late 2023, however there will inevitably be some changes required to the Procurement Rules as a result of the reforms. Public Procurement Reforms refers to the Government's proposal to repeal the current EU law-based procurement regulations and replace them with new rules and procedures that would cover local government. The NHS Provider Selection Regime (PSR) refers to a new set of rules for arranging healthcare services in England.

Additionally, changes to technology, systems and the teams in the future may require small changes to be made to "Spending the Council's Money", before we intend to review them again.

In order to avoid "Spending the Council's Money", becoming outdated with these changes, we are recommending to the Governance and Audit Committee authority for approving non-substantive changes to Spending the Council's Money should be delegated to the Section 151 officer in conjunction with the General Counsel.

Non-substantive changes will include:

- Changes required due to changes in law or changes to relevant KCC policies
- Changes required due to changes in roles or teams that are relevant to Spending the Council's Money
- Changes required due to the adoption of new procurement systems or technologies
- Changes required due to changes to the names of procurement documentation and procedures

## **8. Background Documents**

Annex 1: Proposed changes to Constitutional wording on contract standing orders

Annex 2: Spending the Council's Money

Annex 3: Spending the Council's Money with tracked changes

Annex 4: Review of KCC's Current Procurement Thresholds