

TO: GOVERNANCE & AUDIT COMMITTEE
31 JANUARY 2018

CHANGES TO CONTRACT STANDING ORDERS
Director of Resources

1 PURPOSE OF REPORT

- 1.1 This report seeks approval of changes to Contract Standing Orders, which form part of the Council's Constitution. The changes are principally to reflect the need to transform procurement processes in line with the approach taken to the Council Wide Support Services review. Specifically, the aim is to make procurement practices and processes more streamlined and more commercial, though the opportunity has also been taken to make other minor changes.

2 RECOMMENDATION

- 2.1 **That the Committee recommends that Council agrees to adopt the proposed changes to the Contract Standing Orders set out in the report and in Appendices A and B to this report.**

3 REASONS FOR RECOMMENDATION

- 3.1 As part of the Transformation programme, and with the aim of making procurement more streamlined and commercial, the proposed changes to Contract Standing Orders reduce the decision points in the procurement process and increase the thresholds above which decisions must formally be taken to Executive Members and the Executive. This reduces the administrative effort in undertaking a procurement, thereby allowing procurements to be undertaken more quickly to seize opportunities in a dynamic market place. This will facilitate a move to more commercial practices including pre-market engagement, commissioning and contract management.
- 3.2 The changes are designed to ensure that members are still involved appropriately in decisions regarding the larger, more complex or more sensitive procurements and will retain visibility of procurements generally.

4 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The Council may decide to retain Contract Standing Orders in their current form, or make only some of the variations proposed.

5 SUPPORTING INFORMATION

- 5.1 All local authorities include in their constitutions a set of rules regarding the approach to be taken to procurement activities, commonly referred to as Contract Standing Orders (CSOs). For large value purchases (contracts for services above around

£160k, social services above around £590k and works above around £4.1m) the approach is standard and is dictated by Public Contract Regulations. For lower value items, local authorities are free to determine their own local rules.

- 5.2 The overall intent of the CSOs is to ensure that “officers always apply procedures that allow a fair and non-discriminatory competitive process and equal treatment of all potential suppliers and contracts”. Responsibility for ensuring compliance with CSO rest with directors, who are also responsible “for all purchase orders and contracts tendered and let by their directorates [and] accountable to the Executive for the performance of their duties in relation to contract letting and management”.
- 5.3 Larger value contracts above £400,000 represent “key decisions” under the constitution and therefore require Member approval at different stages. A range of other thresholds exist for lower value items and there are different requirements in terms of procurement planning, seeking quotes / tenders and awarding contracts dependent on the anticipated contract level.
- 5.4 With the exception of relatively minor amendments and updates to the EU procurement thresholds, the CSOs have been unchanged for many years. The thresholds have not been updated to account for inflationary increases and, at the lowest level in particular, are well below those used in many similar authorities. They were designed primarily to ensure compliance in procurement activity, rather than to promote innovative approaches to secure best value.
- 5.5 The Council's Transformation programme was established to undertake a fundamental review of all services and activities over time. Changes to the Procurement function were introduced as part of the Council Wide Support Services review, which secured a 10% reduction in staffing costs in all support services, including Procurement.
- 5.6 Another key element of the CWSS Transformation programme was to review and streamline processes in order to facilitate wider transformational change and reduce levels of bureaucracy. Officers across the Council have often identified CSOs as being overly onerous, unnecessarily complex and not conducive to securing best value in fast moving, competitive markets (e.g. social care placements). They have therefore been reviewed with a view to addressing those concerns, while continuing to ensure that they provide a clear framework and promote a consistent approach.
- 5.7 The proposed changes are described in detail in the appendices to this report. The main appendix is a copy of Contract Standing Orders with tracked changes evidencing the recommendations. The three charts, commonly known as the “tick sheets”, which form appendices to Contract Standing Orders and are the documents most officers refer to, are appended separately for clarity. Since it not possible to reflect track changes on spreadsheets, the current and proposed versions are attached.
- 5.8 The main areas of change proposed are as described in paragraphs 5.9 to 5.15 below.
- 5.9 The threshold above which a procurement plan must be approved is raised, aligning this threshold in most cases with the threshold required by regulation. The principal decision point for a procurement will be at procurement plan stage. It is at this stage that key award criteria are defined, which cannot then be amended during the procurement. Procurement plans above the thresholds stated in the tick sheets must now be approved by the Executive, bringing greater visibility to this key stage.

- 5.10 Council requirements for advertising will be broader. Below the regulatory thresholds, advertising will be preferred but not compulsory. Officers deciding not to advertise must justify that decision.
- 5.11 The only options at the completion of a procurement are to award to the successful supplier, as evaluated by officers according to the pre-defined criteria, or not to award the contract. Given that the outline evaluation criteria are part of the procurement plan, which is approved by the Executive for significant value items, award of a contract will no longer normally be an Executive decision. Exceptions to this will be a) where the cost as defined in the procurement plan has been significantly exceeded or scope significantly altered or b) the procurement plan as approved specifically states that the award is to be approved by the Executive – typically for complex or sensitive matters.
- 5.12 This will reduce the number of awards presented to members or to Executive for decision, and reduce the often significant time period between tender evaluation and formal award due to the lengthy lead-in time for formal decision making . However, there will be a requirement that awards not so presented must be communicated to members by the responsible director.
- 5.13 Waivers, contract extensions and contract variations will be Director decisions, subject to advice from the Head of Procurement and Borough Solicitor if the resulting total contract value exceeds the regulatory threshold.
- 5.14 The Council must continue to comply with the Public Contract Regulations 2015 and the Concession Contract Regulations 2016. In many areas, these changes re-align Contract Standing Orders with the regulations, simplifying the procurement process.
- 5.15 The regulations apply in full above certain financial thresholds. These thresholds are fixed in sterling by the European Commission every two years on January 1st, and have changed in January 2018. The new values are incorporated for clarity. The Euro values do not have any relevance and have been removed.

6 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS

Borough Solicitor

- 6.1 The proposed amendments reflect the Authority's need to provide a more commercially relevant procurement framework whilst recognising and adhering to the requirements of EU procurement law where applicable. For sub threshold procurements, the amendments remain faithful to the principles of transparency proportionality and non discrimination.

Borough Treasurer

- 6.2 There are no direct financial implications arising from the proposals in this report, however the proposed changes will both reduce the administrative cost of supporting procurements and help ensure that savings identified through procurement processes can be realised sooner.

Equalities Impact Assessment

- 6.3 None

Strategic Risk Management Issues

6.4 None

7 CONSULTATION

Principal Groups Consulted

7.1 Council Wide Support Services Board, Corporate Management Team, Executive Briefing

Background Papers

None.

Contact for further information

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