

**COUNCIL
26 MARCH 2003**

**REVIEW OF CONTRACT REGULATIONS
(Director of Corporate Services)**

1 INTRODUCTION

- 1.1 At its meeting on 11 March 2003 the Executive considered a report that set out areas where existing Contract Regulations posed operational difficulties and proposed four relatively straightforward amendments that would contribute towards the efficient working of the Council, pending a full and comprehensive review of the regulations.
- 1.2 The four areas where amendments are proposed are as follows:
- a) Single tender action
 - b) Use of standard contract conditions
 - c) Framework agreements,
 - d) Links to the key decision procedure in the Council's constitution
- 1.3 As Contract Regulations comprise a part of the Council's constitution, the Council is required to approve the proposed amendments.

2 RECOMMENDATION

- 2.1 That Council approves the interim revisions to Contract Regulations**

3 REASONS FOR RECOMMENDATION

- 3.1 The interim revisions to Contract Regulations will eliminate some of the operational difficulties that are being encountered with the current regulations.

4 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The only alternative option would be to defer the recommendation in 2 above. This would mean retaining the operational difficulties associated with the current Contract Regulations.

5 SUPPORTING INFORMATION

- 5.1 A recommendation arising from the Best Value Review of Finance was that standing orders should be reviewed to ensure they promote efficient and effective procurement whilst maintaining safeguards of probity and good governance. The

Strategic Procurement Group's overall view is that Contract Regulations are in need of major revision to bring them up to date to reflect current procurement practice and to simplify the structure to make them easier to understand. The ultimate aim will be to completely rewrite the Regulations, including the more detailed procedural guidance in a Procurement Manual, which would act as a sister publication to the Contract Regulations in the same way as Financial Regulations are supported by the Financial Management Handbook. Because of the scale of the task, this is unlikely to be completed for some time, with March/April 2004 representing a realistic timescale.

- 5.2 The current Contract Regulations do, however, pose a number of operational difficulties and the Strategic Procurement Group has identified four specific areas where relatively straightforward amendments can make a significant contribution to the efficiency of the Council, pending the outcome of a full review. The four areas are:
- a) Single tender action
 - b) Use of standard contract conditions
 - c) Framework agreements, and
 - d) Links to the key decision procedure in the Council's constitution.
- 5.3 The Council's existing Contract Regulations are attached as an Annex, suggested deletions are shown crossed out with additions highlighted in bold. Each change is accompanied by a detailed commentary in italics. The rationale for each of the amendments is set out below:

Single Tender Action

Under existing Contract Regulations single tender action can be used for contracts up to £5,000. If the contract is for more than £5,000 the Responsible Director needs to obtain approval from the Executive.

This can cause delay in dealing with relatively minor and fairly routine cases that could be decided by senior officers. There is, though, no question of relaxing the criteria used in arriving at decisions.

The proposed change affects only cases above £5,000. It provides for full written justification by responsible Directors to be submitted for approval by the Section 151 Officer or Monitoring Officer. The acceptable criteria set out in Annex A of the existing Regulations remain, changed only by the deletion of one out dated criterion. Members remain involved in the more significant decisions however as above £250,000, approval must be obtained from the Leader or the Leader's nominee (Committee Chair for non-Executive functions).

Use of Standard Contract Conditions

The allowable standard terms and conditions to be used in the Council's contracts are not prescribed in the Regulations, nor is a formal approval procedure stipulated.

This can lead to confusion over what is acceptable and exposes the Council to unnecessary contractual risk for example where suppliers-own terms are used or where suppliers insist on amending some of the Council's terms.

The proposed change makes the use of the Council's standard conditions of contract mandatory and permits changes and exceptions only with the agreement of the Borough Solicitor. Other specialised standard contract forms e.g. Joint Contracts Tribunal (JCT), may only be used with the Borough Solicitor's agreement. A list of currently approved forms is included. For contracts above £150,000, or in any cases of doubt, staff are required to consult the Borough Solicitor.

Framework Agreements

No provision is currently made for Framework Agreements, meaning that technically, all individual orders made under them would need single tender approval.

This negates the whole purpose of Framework Agreements, greater use of which was foreshadowed by the Best Value Finance Report and forms part of the Council's proposed Procurement Strategy and Implementation Plan.

The proposed change exempts from the single tender provisions of Contract Regulations, any order placed against a Framework Agreement approved by the Head of Procurement (in consultation with the Borough Solicitor as necessary to ensure compliance with EC Procurement Directives). Those Frameworks that are approved are listed in Annex E to the regulations and will be published on the intranet.

Links to the Key Decision Procedure

The Key Decision procedure is not referred to in the Regulations

The changes simply cross refer to the Key Decision procedure where appropriate.

- 5.4 A training seminar is planned to appraise relevant key staff of the changes and how their working practices will be affected. The new regulations will be published on the intranet.

6 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS

Borough Solicitor

- 6.1 There are no specific legal issues arising from this report.

Borough Finance Officer

- 6.2 The proposed amendments to Contract regulations have no direct financial implications, although the changes will improve the efficiency of Council procedures and decision making in a number of areas.

Access Implications

- 6.3 None

7 CONSULTATION

Principal Groups Consulted

- 7.1 Staff involved in the procurement process have been consulted via the Strategic Procurement Group.

Background Papers

Finance Best Value Review – Final Report & Improvement Plan (June 2002)
Byatt Report – Delivering Better Services for Citizens (July 2002)
Strategic Procurement Group – Agendas & Minutes

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