

To: **Council**
20 April 2022

Review of Contract Standing Orders **Executive Director of Delivery**

1 Purpose of Report

- 1.1 The purpose of this report is to recommend the replacement of the Council's existing Contract Standing Orders with an updated version as set out in **Appendix 1**

2 Recommendation; That the Council

- 2.1 That Council updates the Constitution to replace the existing Contract Standing Orders with the version proposed in **Appendix 1**

3 Reasons for Recommendation(S)

- 3.1 The Current Contract Standing Orders need to be updated to ensure they reflect legislative requirements and the Council's scheme of delegation

4 Alternative Options Considered

- 4.1 To retain the Current Standing Orders is not a viable option in order to ensure clarity of purpose and compliance with legal requirements.

5 Supporting Information

- 5.1 The law requires a local authority to make Standing Orders with respect to contracts for the supply of goods or materials or for the execution of works.
- 5.2 The Standing Orders must include provisions for securing competition and for regulating the manner in which tenders are to be invited. They may exempt contracts for a price below that specified in the standing orders and may authorise the authority to exempt any contract from the relevant standing order when it is satisfied that the exemption is justified by special circumstances.
- 5.3 The Council has adopted Contract Standing Orders as part of the Constitution which have been amended from time to time as required to meet the Council's operational needs.
- 5.4 This report recommends that Council replaces its existing Contract Standing Orders with the version set out in **Appendix 1** to the report. An accompanying Contract Standing Order Best Practice checklist **Appendix 2** will be circulated to all Council Heads of Service once the revised Contract Standing Orders have been approved by Council.
- 5.5 A summary of the material changes is set out below;

5.5.1 Thresholds

There are different thresholds which trigger application of the Public Contract Regulations 2015 for different types of contracts and these are updated every 2 years.

The most recent update to the thresholds was on 1 January 2022 and the new thresholds are as follows (now inclusive of VAT whereas previously VAT was not included):

Concession Services Threshold: £4,447,447.50 (assuming VAT applies at 20%)

Works Contract Threshold: £4,447,447.50 (assuming VAT applies at 20%)

Standard Supply Services Threshold: £177,897.50 (assuming VAT applies at 20%)

Social and Other Services Threshold: £552,950 (assuming VAT applies at 20%)

5.5.2 Consideration of Grants

Under the current published Contract Standing Orders, grants of any form were excluded from scope. However, just because the Council is using a grant, does not mean that this is exempt from the procurement regime. Therefore grants which are “procurement activity grants” (i.e giving funding to an organisation to deliver a service commissioned according to the Council’s requirements) have been included as being within scope under the proposed new Contract Standing Orders. Grant to voluntary organisations which are merely supporting those organisations’ existing activities rather than delivering a service on behalf of the Council will remain outside of scope.

5.5.3 Effect of approved Procurement Plans on decision making process

The current published Contract Standing Orders state that when it comes to contract award, if a procurement above £1m has been the subject of an approved procurement plan, further approval at contract award stage is only required where cost and scope as stated in the procurement plan are not met or where the procurement plan states that such approval is required. However it is considered that should actually refer to “further approval *by the Executive*” not being required, as it would be expected in practice that Executive Member approval would still be sought for contract award for contracts above £400,000 and that Executive Director (or person with delegated authority) approval would be sought for contracts below such amount, even if the contract award did not exceed the cost and scope as stated in an approved procurement plan. Hence the new Contract Standing Orders reflect this.

5.5.4 Contract Standing Order Waivers

The current published Contract Standing Orders suggest that an Executive Director could waive a requirement to follow the Contract Standing Orders provided that the associated value did not exceed the PCR 2015 threshold. However, as the limit of an individual Executive Director’s authority is set at £400,000, and the threshold for works contracts which triggers application of the PCR 2015 is above £4million, it does not seem proper that an Executive Director acting alone could approve a waiver of the requirement not to follow a competitive procurement for such a sum. Hence it is proposed that Borough Solicitor approval will also be required if the contract is above threshold or above £400,000 (Borough Solicitor approval is already required if contract is above threshold so amendment is really just to make clear that Executive

Director alone cannot approve waiver for contract which has associated value of more than £400,000).

5.5.5 Contract Extensions and Variations

Under the current published Contract Standing Orders, it is not clear who would need to authorise extensions or variations, apart from that Borough Solicitor approval is required if the extension or variation is not clearly provided for in the original contract and, once the extension or variation is included, the contract has a total contract value which exceeds the relevant threshold under the PCR 2015.

To make it clearer what authority is needed, new Contract Standing Orders propose that this depends on what expenditure was authorised within the approved Contract Award Report. If the total contract value, inclusive of the extension or variation, now exceeds the sum approved in the Contract Award Report, then this should be treated as a new procurement for governance purposes (in line with the tick sheets appended to the Contract Standing Orders).

If the total contract value, inclusive of the extension of variation, does not exceed the sum approved in the Contract Award Report, then the Executive Director can approve this if the total value does not exceed £400,000 whereas Executive Director approval and Borough Solicitor approval would be required if the total contract value exceeds £400,000.

5.5.6 Checklists

Checklists within the form of ticksheets are already included within the current published Contract Standing Orders. These have been amended to reflect the changes to the main body of the Contract Standing Orders.

Further, a separate checklist (separate to the Contract Standing Orders), has been prepared which sets out good practice in relation to procurement and entering into contracts.

6 Consultation and Other Considerations

Legal Advice

- 6.1 Section 135 of the Local Government Act 1972 requires the Council to issue Contract Standing Orders with respect to contracts for the supply of goods or materials and for the execution of works.
- 6.2 The Public Services (Social Value) Act 2012 imposes a duty on the Council to consider social value in its procurement activities.
- 6.4 Section 3 of the Local Government Act 1999 imposes a duty on the Council to provide best value in the delivery of its services.
- 6.5 These implications have been taken into consideration in the preparation of the proposed contract standing orders.

Financial Advice

- 6.6 Robust control of external expenditure committed through supplier contracts is essential for the Council to properly manage its financial status. The proposed changes ensure that appropriate controls are in place and all procurement activity is conducted and approved in a compliant manner whilst ensuring that commercial flexibility of the Council is not compromised.

Equalities Impact Assessment

- 6.7 The proposals incorporate the Principles set out in the Public Contract Regulations relating to non discrimination.

Strategic Risk Management Issues

- 6.8 It is recommended that the Council adopts the proposed Contract Standing Orders for the reasons outlined in this report.

Contact for further information

Claire Bradford Contracts & Procurement Lawyer, Delivery Directorate - 01344 355277
Claire.bradford@bracknell-forest.gov.uk