

## ***Report to the Cabinet***

**Report reference:** C-042-2015/16  
**Date of meeting:** 5 November 2015



**Portfolio:** Leader

**Subject:** Contract Standing Orders C2(9) and C2(10) – Breaches due to Cumulative Spend

**Responsible Officer:** Glen Chipp (01992 564080).

**Democratic Services:** Gary Woodhall (01992 564470).

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### **Recommendations:**

- (1) To note, in accordance with Contract Standing Order CSO C2(11), the 55 breaches of Contract Standing Orders listed in the Appendix to this report involving cumulative spends with individual contractors in excess of £50,000 over a 4-year period and reasons they have occurred;
- (2) To note that a further 205 breaches of Contract Standing Orders involving cumulative spends with individual contractors of less than £50,000 over a 4-year period have occurred; and
- (3) To note that Assistant Directors have been asked to take the required action that they have identified within the Appendix (and for the other breaches with values of less than £50,000) in respect of individual contractors, to seek to ensure that no future breaches of Contract Standing Orders occur regarding contracts with those contractors.

### **Executive Summary:**

Current Contract Standing Orders require a report to the Cabinet where, within a single service directorate, the aggregate sums payable to one supplier is likely to exceed the limits of authority referred to in the Contract Standing Orders. Furthermore, where Contract Standing Orders are breached and the value exceeds £50,000 (in this case over a period of four years), a report must also be made to Cabinet on the matter.

This report is in accordance with the latter case and details the results of a recent audit of supplier payments, actions already taken by the Management Board and proposed actions in individual cases where the cumulative spend is greater than £50,000.

### **Reasons for Proposed Decision:**

The Council's Contract Standing Orders (CSOs) require a report to be made to the Cabinet; CSOs C2(9), C2(10) and C2(11) apply.

### **Other Options for Action:**

None – it is a requirement of Contract Standing Orders to report to Cabinet breaches in

excess of £50,000.

**Report:**

1. At its meeting in June 2015, the (officer) Corporate Governance Group (CGG) considered a list provided by the Procurement Manager of all orders placed with contractors/suppliers through Marketplace over the past 4 years. This list showed that, from a strict interpretation of the current CSOs, there were a number of occurrences where the cumulative spend limit (£10,000 over a period of four years) currently set in Contract Standing Orders, above which more than one quote has to be sought, had been exceeded – thereby resulting in a breach of CSOs.

2. The relevant CSOs are C2(9) & C2(10), which state:

*“ (9) The value of orders which can be combined in one contract, must be added together over a period of four years when deciding which tendering or quotation method is to apply. Contracts must not be artificially under or over-estimated or divided into two or more separate contracts where the effect is to avoid the application of Contract Standing Orders and/or EU Regulations.*

*(10) Where the aggregate sum payable within a single service directorate to one supplier of goods, works or services over a period of four years is likely to exceed the limits of authority referred to in these Contract Standing orders, the Chief Officer must report to the Portfolio Holder (in respect of contracts up to £250,000) and the Cabinet (in respect of contracts if over £250,000 in value) and seek a waiver of the Standing Order. It is the responsibility of the Chief Officer to ensure that such a report is submitted prior to the limit of authority being breached. In exercising their responsibilities under this paragraph, Chief Officers are required to have regard to the overall cost (including any management costs and those which extend over longer than a single financial year). “*

3. Additionally, CSO C11(2)(iii) states:

*“ (2) Subject to Standing Order C7 (4), invitations to tender (other than those in accordance with the EU Regulations) shall:...*

*(iii) be subject to a report to the appropriate Council body if a contractor succeeds in winning more than two successive contracts in the same financial year as lowest tenderer. “*

These Standing Orders seek to avoid larger contracts being split and to ensure that best value is received under contracts for goods and services.

4. Assistant Directors were therefore asked to complete a schedule listing all the contractors/suppliers used by their Directorate where they had identified a breach of CSOs has, or may have, occurred.

5. This exercise has revealed that there have been a total of 260 instances where the cumulative spend by individual directorates to one supplier over a 4-year period has exceeded the limit currently contained in Contract Standing Orders, as follows:

Resources	-	91
Neighbourhoods	-	89
Communities	-	67
Governance	-	13

6. In terms of those instances where the cumulative spend is above £10,000 but below £50,000 (205 of the 260 cases above), CGG has received reports from Assistant Directors on any proposed future orders with these contractors and, where necessary, the need to either seek competitive quotes to comply with CSOs or to seek any necessary waivers to the current rules in advance. It is clear by the number of instances where non-compliances have occurred for cumulative contracts with values over £10,000 over four years, that many of the instances relate to ongoing advice or are of the nature of repetitive small level order amounts from valued suppliers.

7. For the cases that exceed £50,000 over four years, CSO C2(11) requires a report to be submitted to Cabinet on the breaches for information. Accordingly, attached as an Appendix to this report are the details of the companies involved, the amounts and reasons for the breaches and the proposed action to be taken to avoid any further breach in the future. It must be stressed that no instance of inappropriate payments has been found, all expenditure is within budget and the suppliers, in many instances, continue to provide the Council with quality services.

8. Furthermore, there is a review being undertaken of the provisions of Contract Standing Orders and an Officer Working Party, chaired by the Director of Communities, has been established to look at the totality of the rules. They have been asked to formulate proposed new "Procurement Rules" to replace the current Contract Standing Orders, that:

- (i) adopt a more modern and flexible approach;
- (ii) are simpler to understand and comply with;
- (iii) are more responsive to the current and future procurement needs of the Council; and
- (iv) meet current EU Procurement Regulations;

whilst ensuring appropriate controls and probity to safeguard the use of public money.

9. One of the proposals that the Working Party has already considered, and is likely to put forward to members to consider, is that (with the exception of works, supplies and services with values in excess of the EU thresholds over a 4 year period, which is a legal requirement) the "cumulative expenditure review period" within the current CSOs is reduced to just one year within the new Procurement Rules. This is because it is the Working Party's view that the current CSO requirement has proved to be unworkable, inefficient and ineffective – and that it would be better to have a more realistic requirement that can then be better policed, with breaches identified more easily and quickly and appropriate action taken. In addition, it is clear that the threshold levels for contracts need further examination and the Officer Working Group is currently looking at options as part of their work.

10. In summary, the review of these breaches has been timely in that it informs the ongoing review of CSOs. No fraudulent activity has been found, the expenditure was all within budget and is as a result of cumulative orders that individually would not have breached CSOs. Moreover, the placement of orders with these individual contractors has generally been in the Council's best interests, through obtaining low-value goods, supplies, services and some works quickly, effectively and efficiently. Steps are being put in place to rectify the breaches concerned going forward.

11. Members are scheduled to receive a report of officers to the Constitution Working Group in the new year on the complete revisions to the CSOs, for onward adoption along with the rest of the new Constitution before the end of the municipal year.

**Resource Implications:**

All of the contracts with suppliers were within budget at the prevailing time. There is no reason to believe that the breaches have resulted in increased costs to the Council; in fact, in view of the high number of low-value orders involved, it is quite possible that the overall costs have been less than if Contract Standing Orders had been complied with.

**Legal and Governance Implications:**

Section 135 of the Local Government Act 1972 requires local authorities to have a set of agreed Contract Standing Orders.

**Safer, Cleaner and Greener Implications:**

None.

**Consultation Undertaken:**

The Council's Corporate Governance Group has been consulted on the remedies proposed by Assistant Directors.

**Background Papers:**

None.

**Risk Management:**

In view of the relatively low-value of the individual orders (all under £10,000) the risks involved are minimal.

The main risks are that, by issuing separate orders to contractors:

(a) Better value for money may have been able to have been obtained through combining individual orders into one or more contract for which competitive quotes could have been obtained; and

(b) It could have been done by an officer to wilfully avoid compliance with Contract Standing Orders for potentially fraudulent reasons.

# Due Regard Record

This page shows **which groups of people are affected** by the subject of this report. It sets out **how they are affected** and how any **unlawful discrimination** they experience can be eliminated. It also includes information about how **access to the service(s)** subject to this report can be improved for the different groups of people; and how they can be assisted to **understand each other better** as a result of the subject of this report.

S149 Equality Act 2010 requires that due regard must be paid to this information when considering the subject of this report.

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There are no issues relating to the groups of people with protected characteristics covered by the Equality Act 2010.