

Supplementary Committee Agenda



Overview and Scrutiny Committee Thursday, 28th January, 2010

Place: Council Chamber, Civic Offices, High Street, Epping

Time: 7.30 pm

Committee Secretary: Simon Hill, Senior Democratic Services Officer, The Office of the Chief Executive
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10.a Contract Standing Orders - Annual Review (Pages 3 - 28)

(Constitution and Member Services Standing Panel) to consider the attached report.

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SCRUTINY



Report to Overview and Scrutiny Committee

Date of meeting: 28 January 2010

Portfolio: Leader and Finance and Economic Development Portfolios

Report of: Constitution and Member Services Standing Scrutiny Panel

Chairman: Councillor Mrs M McEwen

Subject: Contract Standing Orders (SCO) – Annual Review 2009/10

Officer contact for further information: I Willett (01992 564243)

Democratic Services Assistant: A Hendry (01992 564246)

Recommendations:

- (1) To recommend to the Overview and Scrutiny Committee and the Council amendments to contract standing orders set out in the Appendix to this report; and**
- (2) To recommend that the new contract standing orders be published in the Constitution following Council approval.**

Report:

1. Introduction

- 1.1 Each year a cross-directorate working party of officers carries out a review of contract standing orders with a view to ensuring that these documents are up to date and reflect current statutory requirements and operational needs. This report concerns contract standing orders which have now been discussed by the Officer Working Party.
- 1.2 The number of significant changes proposed this year are relatively limited in number. The remainder are minor drafting changes relating to post titles, changes in responsibilities and updating for new legal requirements.

2. Summary of More Significant Changes

- 2.1 Changes to the contract standing orders are shown in bold type and underlined in the Appendix to this report.
- 2.2 A summary of the more significant changes is given below:

(a) Tender and Bid Rigging

The new wording at the top of page L2 of the CSO's reflects a recent national investigation by the Office of Fair Trading into possible collusion and rigging of tenders and bids. The additional wording is designed to alert all officers involved in tendering procedures to be alert as to any unusual circumstances which arise in this regard. This statement is supported by further advice to officers via the Council's

intranet.

(b) CSO 1(9) (Compliance – Combination of Orders)

The amendment to this CSO is to extend the period from one to four years in determining the value of orders which can be combined into one contract. The period has been extended to four years to comply with EU Regulations.

(c) CSO 1(10) (Compliance – Single Contractor Limits)

The final sentence in this CSO is new and relates to Chief Officers being required to have regard to the overall cost of contracts in deciding whether the threshold amount for awards of contracts to a single contractor has been exceeded. Such an assessment must now include management costs and any costs which extend over longer than a single financial year. This is included for clarification.

(d) CSO 1(12) (Compliance – Procurement Hub)

The only change to this CSO is in the first sentence by the removal of “framework” after “Essex Procurement Hub”. The word “framework” appears to give the impression that procurement similar, but not part of, the Procurement Hub need not be subject to CSO's or the Hub itself. This is not the case. CSO's will only apply to any procurement method which is not specifically part of the hub procedures.

(e) CSO 6(4)(a) (Tender Invitations - £50,000+)

This paragraph has been amended to refer to five contractors selected from Constructionline. Previously the paragraph referred to four contractors. The change has been made to accord with EU Regulations.

(f) CSO 8(1) (Open Tendering)

The final sentence of this CSO is new. It is designed to clarify that when the open tendering method is adopted all the tenders received must be reviewed in accordance with EU Regulations. However many tenders are received, all must be properly assessed against the tender specification. There can be no filtering process to reduce the number which are examined.

(g) CSO 10(2)(ii) (Contractor Selection - £50,000+)

Previously this CSO required that, in respect of contracts in excess of £50,000 the previous lowest and second lowest tender for similar work should be part of a new tendering list. The text has been changed to refer to the Housing Repairs Service and the previously successful contractor unless this is deemed to be inappropriate to the contract concerned. The reason for this is the advent of quality assessments being included in tender assessments.

The previous wording reflected only assessments based on financial considerations which were previously the norm. However, because quality considerations might mean other than the lowest tender had been accepted, it is felt appropriate to include only the successful tender from the previous round.

The inclusion of the Housing Repairs Service is to cover the fact that some contracts may be related to its specialist skills. The inclusion of those two tenderers in any list may be deemed inappropriate on discussion between the Chief Finance Officer and the relevant Service Director.

(h) CSO 20(3) (Acceptance of Tenders - £50,000+)

The second sentence of paragraph 3 is new and relates to tenders considered on both financial and quality grounds. Currently, the only tenders which may be accepted without prior approval are lowest tenders where the sole criterion is price. Others are to be approved by the Council or the Cabinet on the recommendation of a Portfolio Holder. The additional sentence makes it clear that if the Cabinet or the Portfolio Holder has determined prior to the invitation of tenders that they will be assessed on the basis of quality or on the most economically advantageous proposal to the Council, then the formal decision of the Council or the Cabinet is not required subject to the conditions in paragraph 1 and 2 earlier in that contract standing order.

(i) CSO C23(1) (Official Orders)

The final sentence is new and is designed to clarify that an official purchase order is required in conjunction with all contracts irrespective of the method of procurement concerned.

(j) CSO C34 (EU Procurement Thresholds)

The contract standing orders now show the new EU procurement thresholds which came into effect on 1 January 2010.

3. Further Action

- 3.1 The Overview and Scrutiny Committee is asked to consider the proposed changes to contract standing orders and, if in support, to recommend these to the full Council for adoption and publication in the Council's Constitution.

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CONTRACT STANDING ORDERS

TENDER AND BID RIGGING – IMPORTANT NOTICE

DURING EACH STAGE OF THE CONTRACT PROCESS CHIEF OFFICERS SHOULD BE AWARE OF THE PRINCIPLES IN THE GUIDELINES FOR FIGHTING BID RIGGING IN PUBLIC PROCUREMENT, ISSUED BY THE ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD) AND THE OFFICE OF FAIR TRADING AND THE CHECK LIST PROVIDED WITHIN THESE GUIDELINES. THE GUIDELINES CAN BE FOUND IN THE PROCUREMENT SECTION OF THE COUNCIL'S INTRANET.

C1 Compliance with Standing Orders

(1) Every contract made by the Council or on behalf of the Council except as hereinafter provided shall comply with:

- Standing Orders
- Financial Regulations
- The Local Government Act 1972
- The Local Government Act 1988, Part 2
- The Local Government Planning and Land Act 1989, and supporting documentation.
- Local Government Acts 1999, 2000, 2003
- Common-hold and Leasehold Reform Act 2003
- The Local Government (Contracts) Act 1997
- The EU Regulations
- Any relevant European Council Directive and any other current legislation for the time being in force
- Asset Management Plan

Where there is a conflict between Standing Orders, Financial Regulations and any statutory requirements, the Council must comply with statutory requirements.

(2) Before seeking quotations or inviting tenders in respect of any contract, a Chief Officer must establish whether a central contract exists which meets the requirement. If a central contract does exist then it must be used unless the appropriate Chief Officer in consultation with the Cabinet or Portfolio Holder if authorised under the general scheme of delegation or specific regulation is able to demonstrate that there are specific advantages to be obtained via alternative arrangements. In such circumstances consideration shall be given to whether a new/revised central contract would be advantageous and appropriate.

- (3) Where the Council is acting as agent for a Government Department, or for another authority under the terms of an agency agreement, nothing in these Standing Orders shall be taken to authorise or require any departure from the instructions or requirements of those departments or the terms of any Agency Agreement.
- (4) No exception from any of the provisions of these Standing Orders other than those provided for within the Standing Orders themselves, shall be made otherwise than by direction of the Council, the Cabinet, or a Portfolio Holder where satisfied that the exception is of necessity and justified in special circumstances where a Portfolio Holder seeks to waive any provisions in these Contract Standing Orders, they may do so only on the recommendation of the relevant Chief Officer and after consultation with the Monitoring Officer and the Chief Financial Officer and subject to the financial consequences not exceeding £250,000 or not constituting a departure from existing Council policy.
- (5) The reasons for any exception so made by the Council, or the Cabinet shall be made only pursuant to a report of the relevant Chief Officer and the reasons for such an exception shall be recorded both in the report of the Chief Officer and in the minutes of the appropriate meeting.
- (6) For the purposes of these Standing Orders, the expressions
- (a) "Chief Officer" means the Chief Executive, the Deputy Chief Executive or a Service Director;
 - (b) "Cabinet" means a duly constituted and convened meeting of those Councillors appointed to serve as Cabinet members;
 - (c) "Cabinet Committee" means a duly constituted and convened meeting of those Councillors appointed by **the Leader of Council** to the Cabinet Committee concerned;
 - (d) "Portfolio Holder" means a Councillor appointed by **the Leader of the Council** as a member of the Cabinet with responsibility for particular portfolio of services.
- (See also C15 (appointment of consultants))
- (7) Unless otherwise specifically provided, where a value or an estimated value is given in these Contract Standing Orders, this refers to the aggregate payable in pounds sterling exclusive of VAT over the entire contract period.
- (8) Chief Officers must ensure that a pre-tender estimate for a contract of a value in excess of £50,000 of anticipated costs is prepared and recorded in writing. Where the EU Public Procurement rules apply, Chief Officers must also ascertain the value of a contract in accordance with those rules.
- (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 in a financial year 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).**
- (11) If any officer is made aware of or becomes aware of an actual or potential breach of the procedures contained in these Contract Standing Orders or any other statutory requirement, that officer shall report the breach immediately to the Chief Officer or the Chief Internal Auditor as appropriate. It shall be a further requirement that any instances of serious non-compliance shall be reported by the Chief Officer concerned or the Chief Internal Auditor to the Cabinet at the first available meeting if the value of the contract exceeds £50,000.
- (12) **These Contract Standing Orders apply to procurement of goods and services outside the Essex Procurement Hub (EPH). Use of these Contract Standing Orders for procurement purposes shall only be used where Chief Officers can demonstrate that procurement through the EPH is not possible.**
- (13) Chief Officers are required to ensure that, whichever procurement method is selected, they obtain the appropriate approval from a Portfolio Holder or the Cabinet in accordance with the value thresholds for contracts as set out in these Contract Standing Orders.
- (14) The provisions of Contract Standing Orders relating to competitive quotations or tenders and use of the Essex Procurement Hub shall not apply to the procurement of goods or services from its own works organisations or equivalent unless in the opinion of the relevant Head of Service there are clear value for money reasons for doing otherwise.
- (15) The Contract Standing Orders are part of the Constitution of the Council and may only be varied at a Council Meeting.

C2 Selection of Tendering Method

- (1) A Chief Officer is required, prior to the invitation of tenders or quotations, to determine the correct procurement procedure in accordance with the provisions of Standing Orders, based on the best estimate available at that time, of the contract sum.
- (2) Chief Officers are also required to select alternatives to the Essex Procurement Hub only where this can be demonstrated as being more appropriate to the Council's procurement requirements and the Hub has been notified of this view and has confirmed that it is unable to provide appropriate alternatives within existing framework agreements. In all other circumstances, Chief Officers are required to utilise the Essex Procurement Hub for advising on tender specifications, and for managing the procurement process. The Council remains

responsible for the drafting of tender and quotation specifications together with the evaluation and acceptance of tenders.

- (3) In the event that the value of tenders or quotations received exceeds the upper financial limit prescribed by the relevant Standing Order, the Chief Officer concerned shall report the circumstances to the Cabinet where the acceptance of any such tender or quotation, will be considered.

C3 Contracts Not Exceeding £25,000

- (1) Each Chief Officer may, in respect of the service or services for which they are responsible, by the issue of an official order in accordance with Standing Order C23 (1) enter into a contract not exceeding £25,000 in value or amount other than a contract for consultancy services. In the case of a contract for consultancy services, the form of agreement is available on the Council's intranet unless the Director of Corporate Support Services otherwise directs. Each Chief Officer shall at all times have regard to best value requirements in the procurement of services and entering into contracts which are set out in Financial Regulations and if best value considerations result in a quotation other than the lowest in financial terms being accepted, the reasons for so deciding shall be documented by the Chief Officer making that decision.
- (2) Written quotations must be obtained for contracts which have a value of up to £25,000. The minimum number of quotations needed is:

Contract Value:	Number of Quotations
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Up to £10,000	One, unless the price and terms are known in advance
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£10,001 - £15,000	Two
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£15,001 - £25,000	Three
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- (3) Where the supply of goods, works and/or services are of a repetitive and regular nature and not covered by a central contract as referred to in Standing Order C1(2), a contract shall be entered into for the supply of such goods, works or services in accordance with Standing Orders C11 (Serial Contract) or C13 (Exceptions for Consortia, Public Supply Agencies etc).
- (4) The terms of the delegation set out in (1)-(3) above shall not be applicable if the requirements of Standing Order C10 (Contractor Selection) apply.

C4 Contracts Exceeding £25,000 but not exceeding £50,000

- (1) In respect of contracts exceeding £25,000 but not exceeding £50,000 in value or amount the appropriate Chief Officer may, subject to the provisions of Standing Order C15 (Receipt and Custody of Quotations and Tenders), enter into a contract, provided that:
 - (a) at least three quotations (plus any 'in-house' bid) are obtained from those companies included on Constructionline;
 - (b) where the required trade or profession is not served by Constructionline, at least three quotations are obtained from sources considered appropriate by the relevant Chief Officer;

- (c) the proposed contract forms a continuation of an existing contract which is based on rates and prices obtained in accordance with these Standing Orders and the achievement of best value procurement can be demonstrated.
 - (d) all quotations under (a) and (b) above being invited in such a way as to allow sufficient time, as determined by the Chief Officer, to enable those companies to submit competitive quotations or tenders;
 - (e) the receipt, custody and opening of such quotations or tenders being carried out as prescribed in Standing Orders C16 (Receipt and Custody), C16 (Opening) and C17 (Late Receipt);
 - (f) a register being maintained by Chief Officers of the selection criteria employed to obtain a tender list; and
 - (g) Where the Council has procured services, supplies or works through a competitive process, and the service, supplies or works that are being provided is considered to represent best value in terms of quality and price, then the relevant Chief Officer should be enabled to continue for a period of no more than four years in accordance with Standing Order C11 (2) to appoint that service provider, supplier or contractor through a negotiated process subject to the Chief Officer being satisfied that the negotiated price represents best value, based on a value assessment each year based on market conditions.
- (2) Where the goods and/or services are of a repetitive and regular nature and not covered by a central contract as referred to in Standing Order C1(2) (Central Contracts) an annual contract or contract for such other period as the Chief Officer shall consider appropriate shall be entered into for the supply of such goods/services and be in accordance with Standing Orders C11 (Serial Contracts) or C13 (Exceptions for Consortia).
- (3) **Chief Officers will notify the Chief Internal Auditor of all individual purchases and contracts for goods, works and services over £25,000 in value whatever the period of the contract. Similarly, the Chief Internal Auditor should be notified of goods, works and services purchased from one supplier which total over £25,000 in value during one financial year.**

C5 Contracts Exceeding £50,000

Where the estimated value or amount of a proposed contract for the supply of goods or services exceeds £50,000 or where the conditions of Standing Orders C3(3) (Repetitive or Regular Contracts) or C4(2) (Repetitive or Regular Contracts) apply, tenders shall be invited in accordance with Standing Orders C6 (Restricted Tendering), C7 (Ad Hoc Lists), C8 (Open Tendering), C9 (Negotiated Tendering), C10 (Contractor Selection) or C11 (Serial Contracts). Standing Order C4(3) (Notification to Chief Internal Auditor) shall also apply.

C6 Restricted Tendering: For Contracts Exceeding £50,000 in Value

- (1) This Standing Order shall apply to projects with an estimated value not exceeding the limits specified in the EU Regulations and mentioned in Standing Order C33 (EU Procurement Thresholds). A Chief Officer will resolve that

invitation to tender for a contract be limited to those persons or bodies whose names are on Constructionline, the national qualification system, unless the trade or profession is not served by Constructionline.

- (2) **The system will be administered by the Director of Finance and ICT via the Senior Finance Officer – Procurement and Administration designated as the Contract Compliance Officer to whom comprehensive details shall be provided in respect of the contractor selection criteria applied, tenders invited and contracts awarded. All Chief Officers are placed under a duty to provide this information to the designated Contract Compliance Officer.**
- (3) If any Chief Officer considers that any contractor should no longer be considered for any future invitation to tender, a report shall be made to the relevant Portfolio Holder. If approved, a report shall also be made to Constructionline.
- (4) Invitations to tender shall be:
 - (a) **sent to not fewer than five contractors selected from Constructionline if the contract exceeds £50,000 unless the trade or profession is not served by Constructionline in which case the contractors selected in accordance with Standing Orders C7, C8 or C9 may be invited to tender;**
 - (b) **where fewer than five are available, to all such contractors.**

C7 Ad Hoc List - Contracts over £2 million

- (1) This Standing Order shall apply to projects;
 - (a) with an estimated value in excess of £2 million; or
 - (b) where the Council has resolved that invitation to tender be made to persons who have replied to a public notice; or
 - (c) where the EU regulations specified in C1(1) (Contract Compliance) or C35 (EU Procurement Thresholds) apply.
- (2) This Standing Order shall apply also to the provision of goods and services of an ad hoc nature that cannot be accommodated by Standing Order C6 (Restricted Tendering).
- (3) **Where the EU Regulations apply, the Chief Officer shall send:**
 - (a) **as soon as possible after the decision to approve any works; or**
 - (b) **in the case of services and supplies, as soon as possible after the commencement of the Council's financial year, to the Official Journal of the European Union (OJEU) a Prior Information Notice (PIN) via the Essex Procurement Hub in the form prescribed by the appropriate EU Regulations to alert prospective tenderers to the availability of contracts during the next financial year.**
- (4) **In order that applicants will have a reasonable opportunity of expressing an interest, at least ten days public notice shall be given in trade journals circulating among persons who undertake such contracts.**

- (5) **Where required a contract notice must be placed in the OJEU stating the nature and purpose of the contract. Where the Notice is not being placed by the Hub the content of European Union Notices shall be agreed in advance with the Director of Finance & ICT through the Essex Procurement Hub or in exceptional circumstances by any method approved by the Director of Finance & ICT by the appropriate Chief Officer and shall be published in the official journal at such a date prior to the letting of the contract which complies with EU public procurement regulations.**
- (6) After the expiry of the period specified in the public notice and the contract notice invitations to tender for the contract shall be sent to:
- (a) not less than four persons or bodies who have applied for permission to tender and who have been selected as suitable by the appropriate Portfolio Holder;
 - (b) If this is a contract to which the EU regulations apply, to the number specified in the advertisement as the minimum number of tenderers to be invited apply; and
 - (c) where fewer than four have applied, all those applicants considered suitable.

C8 Open Tendering - Contracts in Excess of £50,000

- (1) **This Standing Order shall apply only in exceptional circumstances where the Director of Finance & ICT determines that the opportunities for real competition are limited and the Council, the Cabinet, a Cabinet Committee, or Portfolio Holder have resolved that tenders for a contract are to be obtained by open competition. When open tendering is adopted, all tenders received must be reviewed in accordance with the requirements of EU regulations.**
- (2) For the purposes of this Standing Order procedures should comply with the requirements of Standing Orders C7(2), (3), (4)(Contracts over £2 million), and other Standing Orders as appropriate (e.g. C10 (Contractor Selection), C15 (Receipt and Custody of Tenders), C16 (Opening of Tenders), C17 (Late Receipt of Tenders) etc).

C9 Negotiated Tendering - Contracts in Excess of £50,000

- (1) This Standing Order shall apply where the Council, the Cabinet, a Cabinet Committee or a Portfolio Holder have resolved that tenders need not be invited and that a contract may be negotiated in the following circumstances:
- (a) the subject matter of the contract is urgently required and that loss, injury or damage would result from a delay whilst advertising takes place and the requirements of Financial Regulations relating to urgent expenditure are followed;
 - (b) the subject matter of the contract is of such a specialised nature that no advantage would accrue by inviting competitive tenders;

- (c) there is no effective competition for the subject matter of the contract because payment is fixed under statutory authority or because the subject matter is a patented or proprietary article or is available from only one source;
 - (d) other tendering procedures have been used and resulted in:
 - (i) unacceptable or irregular tenders; or
 - (ii) no tenders being received;
 - (e) where the tender sought is in respect of a continuation contract and the preceding contract was won in competition, subject to the tenderer's satisfactory performance on the previous phase and to the approval not resulting in a contract which is for more than a four year period; or
 - (f) where the tender sought is in respect of specialist works or services, and the Council is satisfied that it is fair and reasonable in view of an existing relationship with a contractor to extend that relationship in regard to a new project, and the reasons for proceeding by means of a negotiated tender shall be recorded in the minutes of the appropriate meeting.
- (2) If the value of the contract is such that EU regulations apply, then the negotiated tender procedure or competitive dialogue procedure may only be used in the circumstances permitted by the regulations and public notice shall be given in accordance with EU requirements where applicable.

C10 Contractor Selection

(a) All Contracts Valued at More than £25,000

- (1) **For contracts in excess of £25,000, under no circumstances shall an invitation to quote be given to any person or body:**
- (i) whose name does not appear on Constructionline unless the trade required is not included on Constructionline; or
 - (ii) who has given advice to the Council on any matter relating to the proposed contract either in their own right, jointly with another firm or company or as agent, consultant or employee of such company; or
 - (iii) who has not met the requirements mentioned in the Contract Notice where the contract is one to which the EU Regulations apply.
- (b) **Contracts in Excess of £50,000 only**
- (2) **Subject to Standing Order C7 (4) (Invitations to Tender) invitations to tender (other than those in accordance with the EU Regulations) shall –**
- (i) **be agreed in consultation with the Director of Finance & ICT unless the contract is let in accordance with Standing Orders C3 (Contracts not Exceeding £25,000), C5 (Contracts Exceeding £50,000), C6 (Restricted Tendering), C7 (Ad Hoc Lists), C8 (Open Tendering), C9 (Negotiated Tendering) or if not previous contract has been let for this type of work, service or goods;**

- (ii) **include the Housing Repairs Service and the previously successful contractor unless deemed to be inappropriate;**
 - (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;**
 - (iv) **be subject to the EU Procurement Regulations procedures for letting contracts if the contract exceeds the value thresholds prescribed by those regulations**
- (3) **The results of all tenders received together with details of any contract awarded shall be notified in writing to the Director of Finance & ICT and to the Chief Internal Auditor prior to the commencement of the contract. All Chief Officers are placed under a duty to provide this information to the Senior Finance Officer - Procurement Administration, the designated Contract Compliance Officer.**
- (4) **In respect of a contract to which the EU Regulations apply, a Contract Award Notice must be sent via the Essex Procurement Hub to OJEU in the form prescribed by the EU Regulations within 48 days of the award of the contract.**
- (5) As part of the tender process, the pre-qualification information held on Constructionline (or obtained from other sources), should be in conjunction with pre-contract checks on any contractor as follows:
- (i) the contractor's background and competence to carry out the task in question;
 - (ii) evidence of satisfactory Employers and Public liability Insurance cover, the amount and terms of which are to the satisfaction of the Head of Finance;
 - (iii) acceptable Health and Safety and Equal Opportunities policies;
 - (iv) details of any registration with a nationally recognised regulating body or its European equivalent as appropriate to the work and any guarantee schemes attached are satisfactory;
 - (v) the qualification of the workforce and supervisors in relation to the proposed works is satisfactory;
 - (vi) the contractor's previous work record for the Council is considered satisfactory;
 - (vii) obtaining satisfactory banking references, statements of account (which should be no more than 18 months old) or similar references by referees of sufficient standing. An entry in Constructionline may count as one reference; and
 - (viii) asking the contractor to attend for interview if considered necessary.

- (6) Chief Officers may reduce any Long List produced by Constructionline to a Short List; using a priority rating system provided documentary justification is held. Priorities should include locality to the District, extent of relevant experience, previous working relationships with the Authority and any other relevant factors at the discretion of Heads of Service (e.g. qualification awards).

C11 Serial Contracts

- (1) This Standing Order shall apply where the Council has resolved that the proposed contract forms part of a serial programme.
- (2) The terms of such contract shall be negotiated with the contractor on the basis of the rates and prices contained in an initial contract awarded competitively following an invitation to tender in accordance with the provisions of Standing Orders C6 (Restricted Tendering) or C7 (Ad Hoc Tendering) and any such serial programme shall continue for a maximum of four years following the end of the financial year in which rates and prices are first obtained.
- (3) Where tenders or quotations for works, supplies or services are based on a schedule of rates or hourly rates, then a reasoned pre-estimate of quantities for each of the rates contained in the tender are to be quantified at the point of tender, and recorded at the tender opening. When evaluating the tenders, the rates contained in the tender or quotation must then be multiplied by the pre-estimate of quantities to reach an estimated tender sum. The estimated tender is the contract sum that is to be reported, and the tender evaluation report is to be held as a record of the tender analysis.

C12 Sub-Contractors and Nominated Suppliers

- (1) Tenders for sub-contracts to be performed or goods or materials to be supplied by nominated sub-contractors or suppliers shall be invited in accordance with the methods prescribed in these Standing Orders.
- (2) The Chief Officer concerned is authorised to nominate to the main contractor the sub-contractor, or supplier whose tender, obtained in accordance with the preceding sub-paragraph, is in his opinion, the most satisfactory; provided that, where the tender is not the lowest received or where the tender it is proposed to accept, exceeds by 10% the prime cost sum included in the main contract sum, the circumstances shall be reported to the next meeting of the Council or the Cabinet, as appropriate.

C13 Exception for Consortia, Public Supply Agencies etc.

The procedures for invitation of tenders by the Council need not apply where special arrangements have been entered into by any consortium, collaboration or similar body of which the Council is a member or under which the Council is entitled to benefit by virtue of its status as a public authority. The terms and conditions of any proposed contract must be acceptable to the Council's Chief Financial Officer and its Director of Corporate Support Services. Where, however, tenders are invited by an officer of the Council, which includes any consortia or public supply agency as one of those invited to tender, then the delivery, opening and acceptance of tenders shall comply with the provisions of these Standing Orders.

C14 Appointment of Consultants

- (1) It shall be a condition of the appointment of any architect, engineer, quantity surveyor or other consultant (not being an officer of the Council) who is to be responsible to the Council for the supervision of a contract on its behalf, that in relation to that contract there shall be compliance with the requirements of these Standing Orders relating to contracts as though the Consultant was a Chief Officer. The Council's standard forms of appointment for consultants shall apply in all cases unless the **Director of Corporate Support Services** directs otherwise. These are set out on the Council's intranet.
- (2) The engagement of consultants shall be in accordance with Standing Orders C3 (Contracts not Exceeding £25,000), C4 (Contracts Exceeding £25,000 but not Exceeding £50,000), C5 (Contracts Exceeding £50,000), C6 (Restricted Tendering), C7 (Ad Hoc List - Contracts over £2 million), C8 (Open Tendering), C9 (Negotiated Tendering - Contracts over £50,000) or C11 (Serial Contracts), dependant on the estimated amount of the fees and disbursements to be paid to them.
- (3) The procurement of consultants as defined in paragraph (5) below shall be exempt from the requirements of paragraph (2) above if appointments are sought and made through the Essex Procurement Hub or the Capita system. In the event that the Procurement Hub and the Capita system cannot secure a suitable appointment, paragraph (2) above will apply.
- (4) The appointment of any consultant to the Council in respect of duties performed or services rendered on projects with an estimated or potential scheme value in excess of £250,000 shall be under seal. The appropriate Chief Officer may however, require that any contract in respect of a scheme of less than £250,000 in value or amount shall be under seal if it is considered that this would be in the Council's best interests.
- (5) For the purposes of this Contract Standing Order, "consultant" is defined as an appointment of a non-established person (ie not employed by the Council or included on the Council's payroll or covering an establishment post) which is procured directly, through a company or similar commercial undertaking or through an agency and engaged to perform a specific task over a predetermined period.
- (6) Any appointment which does not meet the definition of consultant shall be deemed to be an appointment of a temporary member of staff, being a person included on the Council's staffing establishment and payroll, whether procured directly, through a company, or similar commercial undertaking or through an agency. Such a temporary appointment shall be deemed to be for the purpose of covering establishment posts within the Council. Such appointments shall be made by the relevant chief officer under delegated authority subject to the following conditions:
 - (a) appointments being funded from the existing salary budget for the service or Directorate concerned;
 - (b) appointments being made at a salary within the appropriate salary scale for the post being covered;
 - (c) delegated authority being exercisable by the relevant chief officer within a salary level equivalent to 20% above the highest scale point in the salary scale concerned;

- (d) such temporary appointments being made for no more than six months.
- (7) The engagement of Counsel (or similar legal adviser) is exempted from the requirement to place orders through the Essex Procurement Hub or the Capita system but the Director of Corporate Support Services is required to demonstrate value for money has been obtained provided that the nature of the legal advice concerned makes competitive arrangements realistic.

C15 Receipt and Custody of Quotations and Tenders

- (1) All specifications for the provision of goods and services by tender or quotation shall include a statement advising potential bidders that details of their tender may be published in the public agenda or minutes of the Council or may become available as a background paper or by means of Freedom of Information Act (FOI) request in response to which the Council would provide any information which is not covered by any of the Statutory Exemptions.
- (2) All quotations and tenders invited in accordance with standing orders shall be sent out by Special Delivery. The instruction shall include 'T&T' or equivalent system so that the progress of the documentation will be traced.
- (3) Quotations and tenders invited in accordance with these Standing Orders will not be considered unless contained in a plain envelope which shall be securely sealed and shall not bear any distinguishing matter or mark intended to indicate the identity of the sender, such envelope to be marked and returned in one of the following ways:
 - (a) in respect of contracts with an estimated value up to £50,000 the envelope shall bear the word "Quotation", followed by the subject to which the quotation relates, the closing date for receipt and shall be addressed impersonally to the relevant Chief Officer, or
 - (b) in respect of contracts with an estimated value in excess of £50,000 the envelope shall bear the word "Tender" followed by the subject to which the tender relates, the closing date for receipt, and shall be addressed impersonally to the **Assistant to the Chief Executive**, who shall maintain in a secure location a record of tenders and the dates and times of receipt.
- (4) Any tender or quotation submitted to the Council by electronic means shall be disqualified from consideration.
- (5) **All tenders shall be in the custody of the Assistant to the Chief Executive and shall be kept in a secure location until required to be opened.**
- (6) The provisions of Standing Orders C15(1) (Delivery of Tenders) and C15(2) (Envelopes etc) shall not apply in relation to Standing Order C3. (Contracts Not Exceeding £25,000).
- (7) Specifications for tenders and quotations shall include a statement regarding the Council's policy of paying invoices within 20 days of receipt and a requirement for the following:

- (a) the submission of a statement of the policies of tenderers regarding payment of sub contractors and suppliers and the timescales which apply to such payments; and
- (b) a statement by the Council that the statement under (a) above will be taken into in the Council's assessment of all tenders and quotations."

C16 Opening of Tenders and Quotations - Contracts in Excess of £25,000

Quotations and tenders received in accordance with these Standing Orders shall be opened at one time, as follows:

- (a) in respect of contracts with an estimated value exceeding £25,000 but not exceeding £50,000, the relevant Chief Officer in the presence of at least one of his principal or senior officers, shall open the quotations received, and shall maintain a record of all such quotations;
- (b) **in respect of contracts with an estimated value in excess of £50,000 the Portfolio Holder concerned, in the presence of authorised representatives of the Assistant to the Chief Executive and the relevant Chief Officer, shall open the tenders which in the normal course of events will not be less than three working days after the closing date for receipt of those tenders; and**
- (c) **the Assistant to the Chief Executive shall maintain and his authorised representative sign a record of all tenders opened which shall also be signed by a member of the Cabinet and the representative of the Chief Officer concerned.**

C17 Late Receipt of Quotations and Tenders

Quotations and tenders invited in accordance with these Standing Orders which are received after the date stipulated for their return shall be examined unopened by the relevant chief officer and shall be dealt with as follows:

- (a) where other quotations or tenders have been received but not opened and the Chief Officer is satisfied that there is evidence of posting in time for delivery, a late tender shall be noted in the record kept by the Chief Officer and retained for opening in accordance with Standing Order C16 (Opening of Tenders and Quotations - Contracts in Excess of £25,000) and the circumstances reported to the body or individual responsible for approval;
- (b) **where other tenders have been opened or there is no evidence in the opinion of the Chief Officer of posting of the tender in time to reach the Council by the closing date, the tender will be opened by the Assistant to the Chief Executive or the relevant Chief Officer for the purpose of advising the tenderer of their disqualification from consideration, the record of tenders received being annotated accordingly.**

C18 Alterations

- (a) Quotations and tenders shall not be altered after the date stipulated for their return, save that the relevant Chief Officer shall permit correction of arithmetical errors if he is satisfied that such errors were made inadvertently.
- (b) If an error is identified before the closing date for the return of tenders, all the tenderers shall be informed of the error and invited to adjust their tenders.
- (c) If an error in the specification is identified after the closing date for the return of tenders, all tenderers shall be given details of the error and afforded the opportunity of withdrawing the offer or submitting an amended tender.

C19 Acceptance of Quotations and Tenders - Contracts exceeding £25,000 but not exceeding £50,000

- (1) A Chief Officer may, subject to the provisions of Standing Order C4 (Contracts exceeding £25,000 but not exceeding £50,000) accept the lowest quotation received in respect of a contract not exceeding £50,000 in value or amount; a quotation other than the lowest received shall not be accepted until the relevant Portfolio Holder has considered a report from the appropriate Chief Officer or other person.

(2) Paragraph (1) above shall not apply where:

(a) the tender documentation prepared by the Chief Officer and submitted to prospective tenderers specifies that the acceptance of any tender will be not only based on consideration of price but also on an assessment of quality; and

(b) Where sub-paragraph (a) above applies, the methodology for assessing tenders on the basis of price and quality shall be documented and signed by the Chief Officer prior to the opening of tenders and retained as part of the contract documentation.

C20 Acceptance of Tenders – Contracts Exceeding £50,000

- (1) No tender valued in excess of £1 million shall be accepted unless approval by the Council or the Cabinet has been given.
- (2) Tenders of value between £50,000 and £1 million may be accepted by the relevant Portfolio Holder provided that the tender sum is within the approved budget provision for the contract and all other requirements of Contract Standing Orders have been met. In the event that the amount of the tender exceeds the approved budgetary provision, the acceptance of that tender shall stand referred to the next Cabinet meeting.
- (3) A tender other than the lowest received may only be accepted after approval by the Council or the Cabinet on the recommendation of the appropriate Chief Officer to the Portfolio Holder concerned. **This standing order shall not apply to tenders where the Cabinet or a Portfolio Holder has determined prior to the invitation of tenders that they will be assessed on the basis of quality considerations or on the most economically advantageous proposal to the Council.**

- (4) Acceptance of tenders for the disposal of land or property and proposals for acquisition of interests in land or property shall be dealt with in accordance with the (1) – (4) above and Standing Order 32 below. References in this Standing Order to "budget provision" shall be deemed to be the Council's pre-contract valuation estimate in relation to land and property matters.

C21 Acceptance of Tenders – Certificates of Bona Fide Tendering

Each Chief Officer shall ensure that a certificate of bona fide tendering is completed by every tenderer before a tender valued in excess of £50,000 is accepted. This certificate shall be in a form prescribed by the Director of Finance & ICT.

C22 Post Tender Negotiation

- (1) Where procurement is conducted through either the open or restricted procedure, and the EU (UK) Regulations apply, no post tender negotiations are permitted unless the contract has been advertised and tendered under the competitive dialogue procedure where the **Director of Corporate Support Services** determines that the procedure is appropriate to the nature of the contract concerned. The Council may seek clarification from suppliers where appropriate and this does not constitute post-tender negotiation.
- (2) Where procurement is conducted through the open or restricted procedures and the EU (UK) Regulations do not apply, post tender negotiations are only permitted to the extent indicated in the tender documentation. Any negotiation will be in strict compliance with the tender documentation. Proper and sufficient records of any negotiation shall be maintained.
- (3) Should negotiations be required because the lowest tender exceeds the budget available, or the Council's requirements have changed since the tenders were invited, all tenderers must be given the opportunity to submit revised tenders based on a revised specification.

C23 Contract Documentation

- (1) **Contracts placed in accordance with Standing Order C3 (Contracts not Exceeding £25,000) may be dealt with by the use of an official order, providing that the relevant Chief Officer is satisfied there is no need for more extensive terms and conditions in order to protect the interests of the Council. An official Council purchase order is required, in conjunction with all contracts.**
- (2) Contracts for the execution of works placed in accordance with Standing Orders C4 (Contracts Exceeding £25,000 and not Exceeding £50,000) and C5 (Contracts Exceeding £50,000) shall be in writing and be in a standard format such as ICE, PPC 2000 or similar partner contracts or JCT as approved by the Director of Corporate Support Services.
- (3) Every contract for the supply of goods, materials or services or for the execution of works for an amount in excess of £50,000 shall be under seal as should any other contract where it is desired that the period of liability for breach of contract should be extended from six to twelve years.

- (4) Every contract for the execution of works shall contain a provision affording the relevant Chief Officer, the Chief Internal Auditor or their authorised representatives access to the site and the relevant documentation for audit purposes during the construction of the works.
- ... (5) All contracts shall include standard contract terms, which are available on the Council's Intranet, unless the Director of Corporate Support Services agrees an amended clause in substantially the same term or agrees that it would not be relevant to a particular contract.

C24 Retention of Documents

The relevant Chief Officer shall ensure that:

- (a) all appropriate contract documentation must be retained for a minimum of six years, or if a contract is executed as a deed under seal, twelve years, following the date of the final payment;
- (b) unsuccessful tenders should be retained in a secure location for a period of two years; and
- (c) tender opening records should be retained indefinitely in a secure location.

C25 Liquidated Damages, Performance Bonds and Insurance

- (1) Contracts (including contracts under PPC 2000 or similar partnering contracts) for the execution of works for an amount in excess of £50,000 shall provide for liquidated damages. These should be calculated by using the standard formulae drawn up by the Chief Society of Quantity Surveyors in Local Government as a basis. Advice regarding the calculations may be obtained from the Internal Audit Unit.
- (2) The Council shall not require security for the due performance for any contract below £2m, unless there are special circumstances which in the opinion of the relevant Chief Officer would warrant this provision.
- (3) For every contract of £2m and above, a performance bond shall be obtained for its due performance.
- (4) **In exceptional circumstances, a Chief Officer may, subject to the agreement of the Chief Financial Officer, require a parent company guarantee or a deposit with the Council, as security. The precise form of any parent company guarantee must be agreed with the Director of Corporate Support Services.**
- (5) Notwithstanding the fact that Constructionline does include insurance details of contractors and consultants, there shall be a requirement to insert in every written contract which places upon the contractor liability to effect insurance in respect not only of the works to be carried out or goods to be supplied but also in respect of its employees and third parties. The insurance shall have the interest of the Council noted and the contractor shall be required to supply evidence of insurance cover effected and premiums paid as and when required for the approval of the Chief Financial Officer. The minimum third party insurance cover shall be £5,000,000 or such other sum as may be determined by the

Chief Financial Officer. The contractor shall also be required to show evidence of a level of employer liability cover which is considered appropriate by the Chief Financial Officer.

- (6) In contracts for professional services, confirmation of Professional Indemnity Insurance with a minimum cover of £1,000,000 for any one claim or such other sum as may be determined by the Chief Financial Officer, shall be additionally provided when required.

C26 Retentions

A contractually specified retention must be held on all contracts where there is a defects liability or maintenance period. The monies held must not be finally released until the end of these periods. Retention clauses shall also be included in other forms of contract where the Chief Officer considers it appropriate.

C27 Assignment

- (1) Every written contract shall contain a provision which prohibits the contractor from transferring or assigning directly or indirectly, to any person or persons whatever, any portion of the contract without the written permission of the Council.
- (2) Whenever a contractor is unable to conform with C26 (Retentions), and every alternative measure has been evaluated, then the Chief Officer responsible shall request approval to proceed from the relevant Portfolio Holder.

C28 Cancellation

Every written contract shall include a provision for cancellation in the terms specified in the annex unless the Director of Corporate Support Services agrees an amended clause in substantially the same terms.

C29 Final Account

- (1) The Chief Officer responsible for every contract for the provision of works, goods and services in excess of £50,000 shall provide at the end of the contract, a final account. This account will include details of the tender sum, contract variations, final account sum, any deducted liquidated damages, any extension of time awarded and any claims agreed with the contractor.
- (2) The Chief Officer responsible is fully accountable for the agreement of the final account and is authorised to sign off the final payment.
- (3) **At the time the final account is agreed, a Final Account Certificate where applicable should be completed by the Chief Officer responsible and copied to the Chief Internal Auditor.**
- (4) For contracts in excess of £500,000, the Chief Officer responsible should advise the Chief Internal Auditor of all details relating to the contract at the time of practical completion. If considered necessary, any contract could be subject to examination by Internal Audit.

C30 Contract Monitoring

- (1) All contracts let in excess of £1 million in value shall be the subject of monitoring reports to the relevant Portfolio Holder every three months, as should any other contract where the Portfolio Holder so requests.
- (2) On completion of contracts in excess of £1 million, a review should be carried out and reported to the Council, the Cabinet, or a Portfolio Holder in order to:
 - (a) provide a means of accountability, in showing how far the authority has done what it set out to do, and how much it cost; and
 - (b) enable the Council to learn from experience; this covers identifying how well projects met client and user requirements, recording issues that might require changes to procedures and transferring lessons between different services and types of project.
- (3) The relevant Chief Officer shall prepare and submit jointly with the Chief Financial Officer reports to the Cabinet on completion of all contracts where the final expenditure exceeds the approved contract sum by more than the lesser of 10% or £50,000 as required by Section 2 of Financial Regulations (Budgeting).

C31 Contract Monitoring - Quality Considerations

It shall be the responsibility of all Chief Officers to monitor the quality aspects of any tender or contract (including any contract to which Contract Standing Order 19(2) or 20(3) under their control applies) so as to ensure:

- (a) **that quality requirements in the tender specification are met by any tenderer before a contract is let; and**
- (b) **that those quality standards are consistently achieved throughout the lifetime of the contract.**

C32 Special Market Conditions

- (1) **Chief Officers may (with the approval of the Cabinet) place an order for the purchase or disposal of goods or materials which in their opinion would take advantage of any special conditions in the market or any other special conditions which they consider would be to the benefit of the Council; any case in which this Standing Order is utilised shall be the subject of a written report to the next meeting of the Cabinet.**
- (2) This Standing Order shall not apply where EU Procurement legislation is applicable.

C33 Acquisition and Disposal of Interests in Land

- (1) For the purposes of these Standing Orders, any acquisition or disposal of land and property or interest in land and property shall be dealt with as follows:
- (2) The Director of Corporate Support Services may negotiate, agree terms and complete any lease, assignment, underletting, change of use or alterations to premises leased (irrespective of term) with a rental or premium not exceeding £25,000 per annum, subject to the exercise of this delegated authority being

exercised:

- (a) only up to a limit of £250,000 (or ten years) for any single transaction;
 - (b) after consultation with the relevant Portfolio Holder in the case of any transaction which involves a material change of use or conflicts with any other Council policy in order to determine whether a decision is to be made by the Director of Corporate Support Services, by the Portfolio Holder or by the Cabinet.
- (3) The Director of Corporate Support Services is further authorised to negotiate terms for land and property transactions within the categories set out in C32(1) (Special Market Conditions) in excess of £20,000 in value but unless otherwise required by statute shall treat such offers as tenders or quotations.
- (4) The procedures set out in Standing Order C4(1) (a) (3 quotations from Constructionline) and C5 (Contracts Exceeding £50,000) and C20 Acceptance of Tenders valued between £50,000 and £1 million which apply to tenders and quotations for works, goods and services are applied to this Standing Order. Any Cabinet terms of reference shall be adhered to regarding transactions of £250,000 in value or more, or of 0.25 hectares or more, or of land or property of strategic importance to the district, and any other terms and conditions shall be subject to confirmation by the Cabinet, including the acquisition and disposal of dwellings within the Housing Revenue Account, which shall be dealt with by the Cabinet.
- (5) Any acquisition or disposal of land or property or interest in land or property shall comply with:
 - (a) all governance arrangements set out elsewhere in Contract Standing Orders; and
 - (b) all procedures set out in the Office of Government Commerce (OGC) Guide for the Disposal of Surplus property.
- (6) It shall be competent for the Cabinet (in respect of transactions for the disposal of land where the pre-contract valuation estimate is in excess of £250,000 or for a Portfolio Holder (in respect of pre-contract valuation estimates of between £50,000 and £250,000) to determine the most appropriate method of disposal which achieves the Council's statutory duty of obtaining best consideration.
- (7) Pursuant to (5) above, the appropriate disposal methods are prescribed as follows:
 - (a) formal tendering (providing for an initial deposit and binding contract if tender is successful);
 - (b) formal tendering (providing for no initial deposit and no binding contract if bid is successful);
 - (c) private treaty; and
 - (d) public auction.
- (8) Paragraphs 5(c) and (d) above shall only be approved in exceptional circumstances if the decision-maker has considered a statement prepared by the

Director of Corporate Support Services which justifies the proposed procedure as the most suitable method of achieving best consideration.

- (9) The Cabinet or a Portfolio Holder (as appropriate) may also determine that sale particulars should make provision for a two stage offer process that provides the Council with the option of inviting best and final offers after receipt of initial offers where this is demonstrated by them to be appropriate, this procedure being subject to the following conditions:
- (a) the Director of Corporate Support Services having so recommended;
 - (b) the Cabinet having considered the case for adopting this method of disposal based on an assessment of the risks involved and concluding that this procedure is the most appropriate for achieving best value; and
 - (c) the sale particulars including the option for inviting best and final offers after the receipt of initial offers.
- (10) The provisions contained in this Standing Order shall not apply to any land or property transaction (including transactions in relation to interests in property land) where the pre-contract valuation estimate is less than £50,000.
- (11) The Director of Corporate Support Services may agree on behalf of the Council to the grant of any of the following licences in respect of existing leases where the appropriate enquiries have been carried out and is satisfied that to grant the licence would be in accordance with good estate management and would not adversely affect the premises concerned:
- (a) licences to assign the lease;
 - (b) licences to underlet;
 - (c) licences to change the use of the premises; and
 - (d) licences to carry out alterations.

provided that there is no prohibition contained in the lease in respect of these matters.

- (12) Where there is a prohibition against any of the matters mentioned in paragraph (c) above or the Director of Corporate Support Services considers that it is appropriate then the application for the appropriate licence will be referred to the relevant Portfolio Holder.

C34 EU Procurement Thresholds - 1 January 2010

SUPPLIES	SERVICES	WORKS
£156,442	£156,442	£3,927,260 ¹

NOTE:

These thresholds are regularly updated. Officers should check with the Director of Finance & ICT on the current thresholds. The Director of Finance & ICT will also update this Standing Order from time to time on the Council's intranet.

¹ Including subsidised services contracts under regulation 34 of the Public Works Contracts Regulations 2006.

C35 LOCAL BUSINESSES

Chief Officers are required to obtain, where possible, at least one quotation or tender from a business located in the Epping Forest District (including those with headquarters elsewhere) for any contract or official order being placed by the Authority, provided that in awarding the contract to a local business, the Council's duty to achieve value for money and to comply with legal duties and any other requirements of Contract Standing Orders is not compromised.

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