

# **Report to Constitution and Members' Services Standing Scrutiny Panel**

**Date of meeting: 28 April 2008**



**Portfolio** Leader

**Subject:** Contract Standing Orders - Annual Review 2007/8

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## **Recommendation:**

... **That a report be submitted to the Council recommending that the proposed revisions to Contract Standing Orders as set out in the Appendix to this report be approved and incorporated in the Council's Constitution.**

## **Report:**

1. The Council is committed each year to review its Contract Standing Orders and an officer working party of representatives from service directorates has been reviewing any proposals for change including those arising from the recent service restructurings. The working party has also looked carefully at issues which have arisen over the past year in relation to Contract Standing Orders and considered whether changes need to be made to the existing version.

## **Proposals for Change**

2. The existing Contract Standing Orders are set out in the left hand column of the Appendix to this report. Opposite the relevant Contract Standing Orders in the right hand column are proposed amendments together with an explanation of why those changes are thought necessary.
3. Many changes have been made to detailed wording of Contract Standing Orders to reflect changes in post titles which have come about through the top management restructuring. Certain clerical and typographical errors in the document have also been covered. However, a commentary is given below on the main changes of substance which are now being proposed for adoption.
  - (a) **Contract Standing Order C1(10)**
4. This Standing Order requires that expenditure on one contractor in a single financial year should not accumulate to the point where the thresholds for competitive quotations are exceeded. This is designed to ensure that one contractor does not receive orders or contracts without being subject to competition. The procedure is therefore included in Contract Standing Orders to ensure best value.

5. This Contract Standing Order is silent at present on how the aggregate figure relating to orders to one contractor is to be assessed. The assumption has been that this assessment should be based on all orders by all service areas in respect of that contractor. However, one case encountered this year has caused a review.
6. The proposed amendment is for the "totting up" procedure required by this Standing Order to apply only within each service area and not across all services. The present interpretation of the Standing Order (i.e. monitoring across all services) is very difficult to achieve without a very time consuming and expensive process of central monitoring, which is not at present available. The Working Group of officers felt that it would be better to make the requirement apply within service areas thereby enabling Service Directors to arrange their own monitoring arrangements more easily.
7. The Working Party also proposed that this standing should not apply to contractors engaged by means of a framework agreement with the Council who have won that contractor as a result of competition.

**(b) C2 (Works Unit)**

8. Standing Order C2 relates to the Works Unit and outlines special procedures which were to apply to the letting of contracts for goods and services etc within that unit. Historically these arrangements are linked to the former best value regime. However as part of the top management restructuring, the Works Unit is being integrated with the Housing Directorate. With this in mind there is no longer a case for having special arrangements for the Works Unit particularly as the best value regime is no longer in being. The proposal therefore is to delete Standing Order C2.

**(c) Standing C3(1) (Essex Procurement Hub)**

9. This Standing Order relates to a requirement that Service Directors should be procuring goods and services through the Essex Procurement Hub. Only if the hub is unsuitable for this purpose should Service Directors be seeking to procure by other methods i.e. by following the requirements of Contract Standing Orders which then must apply. However the working party feels that the present Contract Standing Order is not specific enough about the roles which the Procurement Hub is to perform. These have therefore been added in the revised wording, with the matters on which the Council remains responsible for deciding also clarified.

**(d) Standing Order C4(2) (Quotations below £20,000 in value)**

10. Contracts of up to £20,000 are dealt with under delegation to Service Directors. At present, only one quotation need be invited for contracts up to a value of £5,000. The requirement increases to two tenders in the range of £5,000 to £10,000 and for quotations above £10,000 and up to £20,000, the requirement is for three quotations. Officers feel that these thresholds have been rendered unrealistic by the effects of inflation. The proposal is that each threshold should be increased by £5,000. Thus contracts of up to £10,000 would only require one quotation, those between £10,000 and £15,000 would require two tenders whilst those above £15,000 and up to £25,000 would require three tenders.
11. Another reason for making this change is to reflect the fact that increasingly more time and effort has to be made in order to obtain tenders for relatively routine items. This has been particularly noticeable in terms of Building Services for the Civic Offices complex. These tendering limits have been in place for many years and it is felt that they should now be brought up to date.

**(e) Contract Standing Order C11(5)(7) (Status Inquiries)**

12. This Sub-Paragraph of C11(5) sets out some of the checks which must be made about the status of contractors. One of these relates to published accounts for the Company concerned. Officers feel that only limited reliance should be placed on accounts which are more than 18 months old and it is proposed to amend the Contract Standing Order in that regard.

**(f) Contract Standing Order C15(1) and C24(5) (Model Agreements)**

13. Currently the Contract Standing Orders include Annexes showing a series of model documents for Appointment of Consultants and Standard Contract Terms etc. Experience has shown that these documents are constantly under review and are changed quite regularly. It is felt that rather than publish these in the Constitution document, they should be available via the Council's intranet to the relevant officers and simply be referred to in the Constitution without being reproduced. This will certainly save considerable amounts of printing and paper consumption arising from updates to the Constitution file.

**(g) Contract Standing Order C33 (Land Transactions)**

14. This is the most fundamental alteration to Contract Standing Orders arising from this review. Recently the Council was involved in the disposal of a very valuable site at Langston Road, Loughton. Concerns were expressed at the time that as the disposal procedure had been conducted on the basis of tenders which meant that once the closing date for receipt had passed no changes could be made. There was a feeling that the Council may have achieved an even better consideration if another method had been specified in the sale particulars.
15. The proposed revision to C33 provides a "menu" of different disposal methods which can be agreed either by the Cabinet or, if necessary, by the relevant Portfolio Holder. The list of possible disposal procedures is set out in the amendment. The key stipulation is that whatever method is preferred (and this will depend on professional advice to the Cabinet and prevailing market conditions), these must be set out in the sale particulars at the outset and adhered to throughout the process. In addition provision is made for a second round of tendering to be included in the sale particulars. This is envisaged as a way of allowing some or all of the initial bidders the opportunity to re-consider their bids with a view to the Council achieving better value. The use of this option will however depend on prevailing market conditions.
16. This amendment to C33 also covers the agreement and execution of legal licences which are often part of leases (whether disposals or purchases). These have not been adequately covered in Contract Standing Orders up to now and the proposal is to include them. As they are often very detailed but routine legal processes, it is proposed that these should be delegated to the Director of Corporate Support Services unless Portfolio Holder or Cabinet involvement is considered necessary.

**(h) C34 (Advice on Property Processes)**

17. This Contract Standing Order is now redundant it refers to Government Advice on property transactions which is no longer in operation. The revised advice which the Council's Valuers now follow is set out in the revision to C33.

## **Conclusion**

18. If the Panel are happy with the proposed changes to Contract Standing Orders, they are asked to recommend these to the full Council at the Annual meeting on 15 May 2008 under the delegated authority already approved by the Overview and Scrutiny Committee.