

Constitution and Member Services SSP - Report to Council (Item 2)

Appendix 1

Present Contract Standing Order

Proposed Revision/Reason

C1 Compliance with Standing Orders

- (6) For the purposes of these Standing Orders, the expressions
- (a) "Chief Officer" means a Joint Chief Executive or a Head of Service;
 - (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 Council to the Cabinet Committee concerned;
 - (d) "Portfolio Holder" means a Councillor appointed by the Council as a member of the Cabinet with responsibility for particular portfolio of services.

(See also C15 (appointment of consultants))

- C1(6)(a) Amend by deleting "a Joint Chief Executive or a Head of Service" and substitute "the Chief Executive, the Deputy Chief Executive or a Service Director".

Reason:

Current definition of "Chief Officer" is out of date.

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- (10) Where the aggregate sum payable 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 Cabinet 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.

Proposed Revision/Reason

- C1(10) Amend by the addition of the words "within a single service area" after "payable" in the first line.

Amend by the addition of a new sentence after "breached" in the fifth line, namely:

"In exercising their responsibilities under this paragraph, chief officers should have regard to the overall cost (including any maintenance costs) of any contracts which extend over longer than a single financial year."

Reason:

It is suggested that controls on expenditure with a single contractor should operate on a service-by-service basis rather than the limit being calculated by reference to expenditure over all services. Service Directors should be able within their service areas to monitor expenditure with contractors so as to comply with Standing Order C1(10). This is more difficult to achieve between services.

Furthermore, the Standing Order has been amended to require Chief Officers to take account of expenditure on contracts, which extend over more than a single financial year.

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- C2 Council's Works Unit and Equivalent Organisations**
- (1) The Council's Works Unit shall have authority to enter into contracts works up to 20% of their annual turnover. In the main these will be works of a specialist nature outside the normal skills available to the organisation in question, but may also be works of a general nature when necessary to cover peak work flows or staff shortages.
- (2) The Works Unit will have its own list of approved contractors, which shall be in addition to the main list. The Works Unit list will be compiled taking into account the requirements of Standing Order C11(5) (Pre-Qualification Information) in respect of contracts in excess of £20,000. The contractors on the Works Unit list, which shall be reported to and approved by the Cabinet, will generally speaking be smaller companies or specialist contractors who would not in the normal course of events be included on Constructionline.
- (3) Where works are contracted in accordance with the provisions of these Standing Orders, the Council's Works Unit responsible for appointing the subcontractor retains full responsibility for the quality, performance and completion of the works as though they had been carried out by direct employees of the Council.
- (4) The Chief Officer must be satisfied that any contractor used is appointed in accordance with the requirements of Standing Order C2(2).

Proposed Revision/Reason

C2 Delete.

Reason:

Under the Council's recent restructuring the Works Unit has been amalgamated with the Housing Directorate. The operations of the Works Unit are thus subject to the general arrangements applicable to all service directors.

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- (5) The Chief Officer may in addition seek quotations and tenders for works not subject to a select list in order to enable the Works Unit to respond to any invitations to tender.
- (6) The Chief Officer may enter into contracts following receipt of such quotations and tenders subject to compliance with Standing Order C2(2) and reporting to the next meeting of the Cabinet.

C3 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) 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.

Proposed Revision/Reason

- C3(1) Add further paragraph(to be numbered (2)) as follows:

"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".

Reason:

To clarify the roles which the Procurement Hub can perform for the Council.

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C4 Contracts Not Exceeding £20,000

(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 C22 (1) (Official Orders) 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 £20,000. The minimum number of quotations needed is:

Contract Value:	Number of Quotations
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Up to £5,000	One, unless the price and terms are known in advance
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£5,001 - £10,000	Two
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£10,001 - £20,000	Three
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C4(1) Delete the words, "Standing Order C22(1)" and substitute "Standing Order C24(1)".

Reason:

Cross-reference is incorrect.

C4(2) Amend "£20,000" in the first line to "£25,000".

Amend Contract Value Levels as follows:

(a) "Up to £5,000": amend to "up to £10,000";

(b) "£5001 - £10,000": amend to "£10,000 - £15,000";

(c) "£10,001 - £20,000" to "£15,001 - £25,000";

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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 C12 (Serial Contract) or C14 (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 C11 (Contractor Selection) apply.

Proposed Revision/Reason

Reason:

The effects of inflation have meant that an increasing number of orders for goods and services have exceeded the present £5,000 limit for single quotations. This has resulted in an increase in the number of cases where quotations must be invited. For relatively routine items this causes delays in procurement and can lead to additional costs.

These value thresholds have not been reviewed for many years.

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C11 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 Relations) shall -
- (i) be on a strict rotation basis as agreed in consultation with the Head of Environmental Services unless the contract is let in accordance with Standing Orders C4 (Contracts not Exceeding

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£25,000), C6 (Contracts Exceeding £50,000), C7 (Restricted Tendering), C8 (Ad Hoc Lists), C9 (Open Tendering), C10 (Negotiated Tendering) or if no previous contract has been let for this type of work, service or goods;

- (ii) include the lowest and second lowest tenderers in the appropriate list, if any, and if appropriate the Council's Works Unit;
 - (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 Head of Environmental Services 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 designated Contract Compliance Officer.
- (4) In respect of a contract to which the EU Regulations apply, a Contract Award Notice must be sent to OJEU in the form prescribed by the EU Regulations within 48 days of the award of the contract.

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- (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 or similar references by referees of sufficient standing. An entry in constructionline may count as one reference; and

C11(5)(vii) Add the words, "(which should be no more than 18 months old)" after "statements of account" in line one.

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(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).

C15 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 Chief of Legal, Administration and Estates Officer directs otherwise. These are set out in Annexes 1 and 2 to these contract standing orders as follows:

Proposed Revision/Reason

Reason:

The current wording would permit historical data in statements of account to be taken into account in carrying out status checks on companies. It is felt that these statements should be up-to-date, thereby giving more reliable data on the financial standing of the contractor.

C15(1) Delete all words after "set out" in final sentence, including sub-paragraphs (a) & (b).

Substitute: "... on the Council's intranet".

Reason:

The model forms of agreement are under constant review and it is simpler to amend these by means of the Council's intranet, which is accessible to officers and will regularly alert those officers who need to use them. This would also reduce printing costs.

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- (a) Annex 1 - for consultants engaged for training and similar purposes; and
- (b) Annex 2 - for consultants engaged for provision of services such as contractors, planning supervisors, structural engineers, quantity surveyors and other building-related works.

- (2) The engagement of consultants shall be in accordance with Standing Orders C4 (Contracts not Exceeding £25,000), C5 (Contracts Exceeding £25,000 but not Exceeding £50,000), C6 (Contracts Exceeding £50,000), C7 (Restricted Tendering), C8 (Ad Hoc List - Contracts over £2 million), C9 (Open Tendering), C10 (Negotiated Tendering - Contracts over £50,000) or C12 (Serial Contracts), dependant on the estimated amount of the fees and disbursements to be paid to them.
- (3) 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.

C24 Contract Documentation

- (1) Contracts placed in accordance with Standing Order C4 (Contracts not Exceeding £25,000) may be dealt with by the use of an official order, providing that the relevant

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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 order should not be used in respect of any other contract.

- (2) Contracts for the execution of works placed in accordance with Standing Orders C5 (Contracts Exceeding £25,000 and not Exceeding £50,000) and C6 (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 as set out in Annex 3 to these Contract Standing Orders 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.

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- C24(5) Delete the words: "as set out in Annex 3 to these Contract Standing Orders" and substitute "which are available via the Council's intranet";

Reason: See C15(1) above.

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C31 Contract Monitoring

- (1) All contracts let in accordance with Standing Order C8 (Contracts in Excess of £1 million in Value or Amount) 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.

- C31(1) Delete the words, "in accordance with Standing Order C8 (Contracts in Excess of £1 million pounds in value or amount)" in the first two lines and substitute the following:

"All contracts in excess of £1 million in value ..."

Reason:

The reference to Contract Standing Order C8 is incorrect as the requirement to monitor contracts is set at a level of £1 million. C8 relates the method of procuring contracts of over £2 million.

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- (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).

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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 in accordance with this Standing Order.
- (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 in value or any acquisition or disposal of any interest in land not exceeding a total consideration of £25,000 in value subject to compliance with all requirements of these Contract Standing Orders and no statutory rule having been breached. In either of these two circumstances, the Director of Corporate Support Services shall be required to report to the Cabinet seeking approval of the terms proposed.

Any other person involved in any such negotiations shall consult with the Director of Corporate Support Services and shall not be authorised to conclude any legal agreement on behalf of the Council, such authority only exercised by the Head of Legal, Administration and Estates.

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- (3) The Director of Corporate Support Services is further authorised to negotiate terms for land and property transactions within the categories set out in C30(1) (Special Market Conditions) in excess of £25,000 in value but unless otherwise required by statute shall treat such offers as tenders or quotations and shall be subject to the procedures set out in Standing Order C5(1) (a) (3 quotations from Constructionline) and C6 (Contracts Exceeding £50,000) and C21 Acceptance of Tenders valued between £50,000 and £1 million which apply to tenders and quotations for works, goods and services. 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.

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- C33** Amend paragraph (3) by deleting the following words "...and shall be subject to ..." and commence new sentence with "The procedures ... are applied to this Standing Order."

Amend by creating the last sentence of paragraph (3) as a separate paragraph to be numbered (4)

Reason: To clarify the wording.

ADDITION

Add the following additional paragraphs (4) - (11) to this Standing Order as follows:

- (4) 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

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(b) all procedures set out in the Office of Government Commerce (OGC) Guide for the Disposal of Surplus Property.

- (5) 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.
- (6) 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.
- (7) 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.

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- (8) 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;
- (9) 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.
- (10) 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:

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- (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 any of these matters.

- (11) 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.

Reason:

The current Standing Order requires that all land disposals and acquisitions should be dealt with in the same manner as tenders for goods and services. Recent experience shows that tendering of this kind may not assist the Council in achieving best consideration in property sales. The Standing Order has been revised to provide portfolio holders or the Cabinet (depending on whether the pre-contract estimate of the property value is between £50,000 and £250,000) with a series of options as to how disposals should be carried out (see sub paragraph (3) of the revised Standing Order).

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This would allow the most appropriate method to be selected on advice concerning the type of property and market conditions.

In addition, the revised Standing Order would allow the Cabinet to include in the sale particulars, the option of a second round of bids. This is currently not permissible under the Standing Order as the latter is drafted on the presumption of a tender closing date with no subsequent opportunity for bids to be increased.

The new Standing Order also makes reference to licences of various kinds, which can arise as part of property transactions. These are not adequately covered at present and the proposal is that the Director of Corporate Support Services should have discretion to finalise these matters but with the opportunity to seek confirmation from the Portfolio Holder or the Cabinet if need be.

C34 Code of Practice for the Disposal of Surplus Land

The guidance from Valuation Liaison Group from the Valuation Office, Inland Revenue, Chief Valuer's Office, shall be used, as appropriate, as a Code of Practice when dealing with the disposal of surplus land.

C34 Delete.

Reason:

The guidance referred to is no longer extant. The revised Standing Order C33(4) sets out the current guidance, namely the OGC Guide.