

Report to the Constitutional Affairs Standing Scrutiny Panel



Date of meeting: 3 November 2008

Report of: Assistant to the Chief Executive

Subject: Review of Contract Standing Order C13 (Provisions for Appointment of Consultants)

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Recommendation:

That the revised Contract Standing Order C13 set out in Appendix 1 to this report be approved and recommended to the Overview and Scrutiny Committee and the Council for adoption.

Report:

1. An officer working party has reviewed arrangements for recruitment of consultants. This review was carried out because of concerns expressed about the process for recruiting consultants being used in various directorates of the Council. These concerns focus on the following aspects:
 - (a) that consultants are being engaged for extended periods often to cover establishment posts;
 - (b) that there is not always evidence of adequate market testing in order to demonstrate value for money in these appointments;
 - (c) that consultants are often engaged and retained at high cost which may adversely affect the number of staff hours available to the Council.
2. Some aspects of the engagement of consultants by the Council and also their duties and responsibilities on behalf of the Council are covered in Contract Standing Order C13. However, the officer review indicates that this Contract Standing Order does not go far enough in ensuring that consultant services are procured in such a way as to secure value for money for the Authority. With this in mind, the review has focussed on the different roles that consultants perform within the Authority and how Contract Standing Orders can regulate the use of these appointments.
3. In broad terms, the use of consultants falls into two categories:
 - (a) cases where the Council supplements its own staffing resources with specialist advice and support for specific projects over a predetermined period; and
 - (b) cases where consultants are brought in to supplement the staffing resources of the Council where there are vacancies etc which are affecting basic workflow.

4. The officer review has concluded that the term “consultant” has not been clearly defined. Therefore, if Contract Standing Orders are to apply to the procurement of such persons, they will need to define what a consultant is. The review also highlighted the fact that there are occasions when the term “consultant” is often used in the context of temporary members of staff which must be dealt with in a completely different manner.

Definition of Consultant

5. The definition of “consultant” which is recommended is a non-established person (i.e. not employed by the Council and not on the payroll or covering an establishment post). The person may be engaged to carry out a specific task over a specific period and recruited externally, either directly with the individual, through a company or similar commercial undertaking or through an agency. This definition envisages that the consultant will be appointed, carry out the task allocated over a pre-determined period and then cease to be employed at the completion of the project.

Definition of Temporary Staff

6. A definition of temporary staff is also required. It is recommended that temporary staff be defined as those appointments which cover existing posts within the Council. These persons will appear on the Council’s payroll and appear on its staffing establishment, in a temporary capacity. Temporary staff may be recruited directly, through commercial concerns or through agencies but there should be a condition that they are appointed within the relevant salary scale for the post being covered. There must also be budgetary provision available.
7. There is a requirement that temporary staffing positions must be time limited so as not to create for the individual employment rights which may be to the detriment of the Authority as employer. Thus, the definition of a temporary member of staff includes reference to a six-month employment limit.

Procurement of Consultants

8. “Consultants” as defined above must be procured with regard to value for money. With this in mind, it is proposed in the revised Standing Order that these appointments must be subject to the competition rules set out in Contract Standing Orders unless the Essex Procurement Hub or the Capita Recruitment System has been used. Those two systems have in-built market testing which achieve value for money. Only if those systems are unsuitable or unable to secure an appointment would Contract Standing Orders apply. This principle has already been included in Contract Standing Orders for other types of procurement.

Procurement of Temporary Staff

9. It is proposed that Service Directors, in addition to having regard to budgetary considerations and salary scales, should be able to appoint at up to 20% above maximum scale point concerned if there are any problems in securing an appointment.

Legal Advice

10. Procurement of legal advice services has been specifically excluded from the requirements of Contract Standing Orders and the Procurement Hub/Capita System because of the extremely specialised advice that is required. Often in these cases, competition between different legal advisers is not a reality because of specific legal experience or expertise and it is considered that the Contract Standing Order should recognise this. However, Contract Standing Orders should still require competitive quotations to be sought whenever this is a practical proposition.

Revisions to Contract Standing Order C13

11. The Panel is asked to consider the proposed revisions to the Contract Standing Order. These are set out in Appendix 1 to this report in bold type underlined. If the Panel accepts these changes, they should recommend accordingly to the Overview and Scrutiny Committee and the Council for adoption as part of the Council's Constitution.
12. Other aspects of Contract Standing Orders will be brought forward as part of the forthcoming annual review for 2008/9. This matter was brought before the Panel now because it is considered urgent to have a framework for procuring consultant services as soon as possible.