

Report to Overview and Scrutiny Committee

Date of meeting: 29 January 2009

Portfolio: Leader

Report of: Constitution and Member Services SSP

Subject: Review of Contract Standing Orders

Responsible Officer: I Willett (01992 564243)

Democratic Services Officer: A Hendry (01992 564246)



Recommendations:

(1) That Contract Standing Order CSO C1 be amended by the addition of a new sub-paragraph (13) as follows:

"(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."

(2) That CSO C1 be amended by the addition of a new sub-paragraph (14) as follows:

"(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."

and that the subsequent paragraphs of this Standing Order be re-numbered accordingly;

(3) That CSO C15 be amended by the addition of the following new sub-paragraphs to be numbered (1) and (7):

"(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."

"(7) Specifications for tenders and quotations shall include a statement regarding the Council's policy of paying invoices within 14 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."

and that the other paragraphs of this Standing Order be renumbered accordingly.

(4) That CSO C34 be amended by the addition of a new sub-paragraph (1) as follows:

"(1) 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."

(5) That Contract Standing Order C32 be amended by paragraph (2) being substituted with the following revised wording:

"(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."

and that the effectiveness of these arrangements be reviewed after one year.

Report:

1.1 Each year the Council reviews its Contract Standing Orders with a view to reflecting changes in the law or operational matters regarding interpretation and good governance. We have received details of officer proposals for review in 2008/9.

1.2 Each of the Contract Standing Orders which have been reviewed this year are dealt with in turn below:

(a) CSO C1 (Authority for Contracts) (Recommendation (1))

1.3 In carrying out an audit of contract systems, there was at least one occasion when officers using the Essex Marketplace Procurement System had not obtained the relevant member authority for the acceptance of quotations or tenders. It is felt that Contract Standing Order C1 could usefully be amended by adding a new paragraph (as set out in the recommendation) stipulating that Chief Officers must ensure that whichever procurement method is selected, there is suitable authority from a Portfolio Holder or the Cabinet in accordance with value thresholds for contracts.

1.4 The results of the audit review suggested that officers may have thought that by using the Essex Marketplace System, it was not necessary to gain member approval for the acceptance of a quotation or a tender. This is not the case because the value thresholds set out in Contract Standing Orders still apply.

(b) CSO C1 - (District Council Works Organisations) (Recommendation (2))

- 1.5 We support a new sub-paragraph being added to Standing Order C1 to emphasise that where Chief Officers are using the Council's own works organisations or equivalent, it is not necessary to obtain competitive quotations and tenders. However, we agree that the relevant Chief Officer must consider whether procuring the service in another way is preferable if there is a value for money reason for doing so.

(c) CSO C15 - (Publication of Tender Information and Local Businesses) (Recommendation (3))

- 1.6 It is proposed to include in Standing Order C15 two new sub-paragraphs dealing with quotations and tenders.
- 1.7 The first of these is the new sub-paragraph (1) which provides for tender and quotation specifications to include a statement that tender details may be published in a public agenda or the minutes of the Council or become available as a background paper or by means of a Freedom of Information Act request. There have been occasions where tenderers do not fully appreciate that by submitting tender documents they are potentially placing the information in the public domain. The Standing Order also requires that the tender specification will say that the Council, if requested, will be obliged to provide any information but only on those matters which are not covered by any of the statutory exemptions (in particular commercially sensitive information).
- 1.8 The second addition is to reflect the decisions of the Council in October 2008 to assist, wherever possible, local businesses. One of the points raised relates to contracts let to national or international companies where the services of local suppliers and sub-contractors are utilised. The new Contract Standing Order was reviewed to include a statement designed to encourage main contractors to do everything possible to pay those invoices promptly. If invoices from sub-contractors and suppliers are paid quickly, the cash flow for those local companies would be very greatly assisted, particularly in times of economic difficulty.
- 1.9 We asked for the new standing order to go further than just "encouragement". We have asked that the following should be included:
- (a) reference to the Council's own policy (14 day payments);
 - (b) a requirement for tenderers to give details of their own policies for paying suppliers and sub contractors;
 - (c) a statement that (b) will be part of assessments by the Council of tenders and quotations now and in future tendering exercises.

We feel that this makes a stronger statement of the Council's expectations.

(d) Recommendation (4) - Local Businesses

- 1.9 A new Contract Standing Order C34 is proposed to deal with support for local businesses. As mentioned above, this derives from a motion passed at the Council meeting in October 2008.
- 1.10 The sentiment expressed in the motion was quite clear: that the Council should be doing as much as possible to support local businesses particularly in times of economic difficulty. However, in recording that view in Contract Standing Orders, care has to be taken that the Council is not seeking to avoid its responsibilities to

achieve value for money in the procurement of goods and services or to avoid compliance with legal duties and Contract Standing Orders in the use of public funds.

- 1.11 The Officer Working Party which has reviewed the motion has received advice about the various statutory restrictions on the procurement of goods and services by local authorities. The proposal set out in recommendation (4), is considered to be as far as the Authority can go in furthering the spirit of the motion without conflicting with its legal and other responsibilities. The proposal is that Chief Officers should obtain, where possible, at least one tender or quote from a business located in the Epping Forest District. The proviso is that if a contract is awarded to a local concern, the Council's duty to achieve value for money, to comply with its legal duties and comply with Contract Standing Orders is not compromised.
- 1.12 The reason for this proviso is that the Council is open to challenge if it is perceived to be procuring services in an anti-competitive manner. We have asked that the term "local businesses" should be defined as those operating from premises in the District (including those with headquarters elsewhere).

(e) CSO 34 (New) - (Land and Property Transactions) (Recommendation (5))

- 1.13 Contract Standing Order C32 deals with land and property transactions. Currently, it states that the Director of Corporate Support Services is authorised to negotiate, agree terms and complete any lease, assignment, underletting, change of use or alternations to premises (irrespective of the term) provided that it represents a rental or premium not exceeding £25,000. In actual practice, this has proved very difficult to operate as the majority of such transactions which are dealt with by the Director of Corporate Support Services are considerably greater than the £25,000 limit. This is because the value of a leased contract has to be calculated over its full term.
- 1.14 With this in mind, it is proposed to amend the Contract Standing Order by making the limit of the delegated authority £25,000 per annum but subject to conditions:
- (a) an overall limit of £250,000 (or 10 years) for a single transaction, this being calculated over the length of the term; and
- (b) consultation between the Director of Corporate Support Services and the relevant Portfolio Holder as to who should make the decision if the transaction involves a material change of use or conflicts with any other Council policy.
- 1.15 The Director of Corporate Support Services has commented that the current Contract Standing Order results in only a small number of relatively minor transactions being dealt with under delegation being less than the present limit of £25,000. The result is that routine Estates transactions have to be referred to the Portfolio Holder.
- 1.16 It is suggested that the effectiveness of these charges be reviewed after one year.

Reasons for Proposed Decision:

To respond to the Council motion adopted in October 2008 and to submit proposals for changes to Contract Standing Orders for consideration by the SSP, the Overview and Scrutiny Committee and the Council.

Other Options for Action: None

Resource Implications: Nil

Budget Provision: Nil

Personnel: Nil

Land: Nil

Community Plan/BVPP Reference: Nil

Relevant Statutory Powers: Local Government Act 2000

Background Papers: Nil

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