

# **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

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## **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.