

Report to the Council

Committee: Overview and Scrutiny

Chairman: Councillor Mrs D Collins

Date: 13 December 2005

1. REVIEW OF CONTRACT STANDING ORDERS

Recommendations:

... (1) That the proposed changes to Contract Standing Orders set out in the Appendix to this report be approved and published as part of the Council's Constitution.

(The draft revisions to Contract Standing Orders have been submitted to the Cabinet for comment and its views were that the proposed changes were supported but that provision should be made for electronic invitation and submission of tenders and quotations. This aspect has been investigated and the Overview and Scrutiny Committee will be considering an amendment to Standing Order C16(3). Provisional wording to be considered by the Committee is shown in the Appendix)

Report:

1. We have carried out a review of contract standing orders. This review has not sought to achieve a wholesale re-writing of current contract requirements but merely to bring the document up to date and to clarify certain points.
2. The majority of changes relate to the following:
 - (a) alterations arising from changes in legislation;
 - (b) alterations arising from changes in the top management structure of the Council in respect of post designations;
 - (c) updating of references to member bodies to take account of the Executive Constitution;
 - (d) general simplification of the wording where appropriate.
3. More significant changes are being proposed where practices and requirements have changed since these Contract Standing Orders were last examined in 2002. These points relate to the following:
 - (a) **C4 Contracts Not Exceeding £20,000**

The revised Contract Standing Order introduces a greater element of competitive tendering in respect of contracts up to £20,000 which are delegated to Heads of Service. At present, any contract under delegation may be let on the basis of an official order without the necessity for competitive quotations. In actual practice, Heads of Service often test the market among different contractors even though they

are not required to do so. The change therefore reflects existing practices and offer assurances about value for money in the procurement of services throughout the Council.

(b) C16 Receipt and Custody of Quotations and Tenders

Contract Standing Order C16(2) has been altered to reflect that contractors are increasingly wanting to submit tenders and quotations by electronic means. Currently C16(2) debars from consideration any electronic tender but it is felt that this provision is now outmoded. The replacement C16(2) allows the submission of electronic quotations and tenders subject to evidence of successful completion of transmission, proper recording and secure custody arrangements.

(c) C16 Invitation of Quotations and Tenders

Currently Contract Standing Orders make no provision for the manner in which the Council should invite tenders and circulate tender documents. This has caused difficulties in some cases where contractors have claimed that they did not receive tender documentation and this can sometimes result in a dispute concerning the credibility of tendering. A new C16(1) is proposed to add a further requirement that despatch of documentation will be traceable by use of service products provided by the Post Office and similar agencies. This will enable the Council to have clear evidence of documents being despatched at a certain time and received by the prospective tenderer at a precise time. The question of electronic tendering is under consideration at the time of writing this report.

(d) C22 Contract Documentation

C22(1) provides that contracts arising from the use of an official order rely on standard terms and conditions. Since the last review of Contract Standing Orders the Council has agreed a form of services contract which is available to all Heads of Service via the Council's website. C22(1) has therefore been amended to ensure that the terms and conditions of that service agreement are also covered as contract terms in the same way as the official order.

(e) C22 Standard Contract Terms

It has been proposed to add a fifth paragraph to this standing order in order to refer to a separate annex which will be published for the first time showing the standard conditions of contract prescribed by the Head of Legal, Administration and Estates Services as this should be an easy source of reference for Heads of Service and contractors as to the Council's expectations. The new paragraph also gives authority to the Head of Legal, Administration and Estates Services, authority to agree that the standard contract terms should be amended from time to time or adapted in particular cases if this is appropriate. This conforms to existing practice and the role of the Solicitor of the Council but it is helpful to have this stated clearly.

(f) C28(1) Final Account

Contract Standing Order C28(1) implies that there will be provision in the contract for a final account to be produced by the Head of Service concerned. This wording is confusing in that the final account is provided separately from the contract, and not as a contract term. The wording therefore needs to be clarified.

(g) C31 Acquisition and Disposal of Land

It is proposed to extend the wording of this Standing Order to make it clear that the terms “lease” and “disposal” involve a considerable range of related transactions which for the avoidance of doubt should be included in the Contract Standing Order.

The Standing Order continues to provide for Estates related transactions to be delegated if they represent up to £20,000 in amount.

(h) Contract Standing Orders - Authority for Amendments

There are many places throughout Contract Standing Orders where the Head of Legal Administration and Estates Services is the most appropriate person to issue amendments, for instance on changes to legislation, to changes in detailed contract terms and to the exercise of discretions where appropriate in order to fulfil the Council's legal requirements. In order to avoid wholesale amendments to the Constitution involving a Council decision on each occasion the Head of Legal Administration and Estates Services will be able to instruct that Contract Standing Order pages will be subject to clerical amendments of this sort. Major changes in policy would, of course, still remain to be dealt with by the Council as part of the Constitution.

Approval of revisions to Contract Standing Orders:

4. Contract Standing Orders are part of the Constitution and therefore these amendments must be approved by the full Council. As some of the changes relate to executive functions, we have consulted the Cabinet and their comments are set out above.
5. We recommend at the commencement of this report.