

Report to the Cabinet

Report reference: C/117/2006-07.
Date of meeting: 19 February 2007.



Portfolio: The Leader of the Council.

Subject: Contract Standing Orders and Officer Delegation.

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Recommendations/Decisions Required:

- (1) To note that the Overview and Scrutiny Panel on Constitutional Affairs is submitting the following recommendations to the Council on 20 February 2007:**
 - (a) that the revised Contract Standing Orders set out in Appendix 1 to the Panel's report to the Council meeting be approved and incorporated in the Council's Constitution;**
 - (b) that the schedule of changes to officer delegation set out in Appendix 2 to the Panel's report to the Council meeting be adopted and incorporated in the Council's Constitution;**
 - (c) that, in future, an annual review be carried out in respect of Contract Standing Orders, financial regulations and officer delegations in accordance with recommended best practice of the Audit Commission;**
- (2) To note that the changes to the responsibilities of Portfolio Holders arise in C1 (4), C21 (paragraph 11 below) and C31 (paragraph 13 below); and**
- (3) To agree any comments and authorise the Leader of the Council to submit them to the Council.**

**PLEASE REFER TO THE AGENDA FOR THE COUNCIL MEETING ON 20.2.07
FOR APPENDICES 1 AND 2.
THESE ARE OMITTED HERE TO ECONOMISE ON PRINTING**

Report:

1. The Audit Commission recommends, as best practice, that local authorities should review their Contract Standing Orders, Financial Regulations and Delegations to Officers on an annual basis. This Council has not reviewed financial regulations since 2000 but Contract Standing Orders have been reviewed at various times over the lifetime of the Council. In relation to officer delegation, from time to time Committees and the Cabinet make changes to officer delegation arrangements and these are routinely incorporated in the Constitution and ratified at the Annual Council meeting each year.

2. A Working Party of officers has been established comprising representatives of Internal Audit, Legal Services, Finance Services and Housing Services to review each of these three documents so as to comply with Audit Commission advice. Results of the review of Contract Standing Orders and Officer Delegation are set out in the report, which is being

recommended to the Council on 20 February 2007 by the Constitutional Affairs Scrutiny Panel. The latter is consulting the Cabinet on its views before adoption by the Council.

Contract Standing Orders:

3. Appendix 1 shows, by means of track changes the alterations to Contract Standing Orders which are being recommended. Many of these changes relate to points of detail regarding post titles of relevant officers, typographical corrections and general updating for the current legal requirements. It is recommended that the Scrutiny Panel does not need to pay a great deal of attention to those items but there are some significant changes in the proposals which are outlined below.

Contract Standing Order C1(4)(Exceptions from Contract Standing Orders):

4. The current Contract Standing Order allows only the Council or the Cabinet to authorise a departure from any of the contract and tendering procedures prescribed by Contract Standing Orders. The amendment reflects a change to allow Portfolio Holders to waive Contract Standing Orders under certain conditions. These are:

(a) where waiving of Contract Standing Orders is recommended by the relevant Chief Officer, after consultation with the Monitoring Officer and the Chief Financial Officer.

(b) subject to the financial consequences not exceeding £250,000 or constituting a variation in Council policy.

Reason:

5. There is a later proposal to increase the limit for tenders which Portfolio Holders can accept. Thus it is desirable that they should also have the authority to waive Contract Standing Orders up to the level of their new delegated authority (i.e. £250,000).

C1(12) - Compliance with Contract Standing Orders:

6. This is a new sub-paragraph of Contract Standing Order C1 which relates specifically to the Essex Procurement Hub. The new provision requires that the rules set out in Contract Standing Orders relate only to procurement outside the hub it also contains a new provision whereby Chief Officers have to demonstrate that procurement through the Essex Procurement Hub is not possible before they resort to other methods. Use of the hub is thought likely to achieve better value for money for the Council and if this method is encouraged there are contractual rules and framework agreements within the hub that ensure probity.

Reason:

7. EFDC has signed up to the Essex Procurement Hub and should use the hub for all procurement except where Chief Officers can clearly demonstrate that the Hub is inappropriate and other methods have to be adopted.

C5(1)(g) (New) - Contracts Exceeding £20,000 but not exceeding £50,000:

8. This new provision relates to the procurement of services, supplies or works through a competitive process. It provides for an initial contract to be extended if a Chief Officer can demonstrate that such a continuation provides best value for the Council. In accordance with Contract Standing Order C12(2) such a process of renewing an existing contract must take place for no more than 4 years.

Reason:

9. The change gives a discretion to Chief Officers if they are satisfied that best value continues to be achieved by extending routine and on-going contracts on a more flexible basis without the cost of re-advertising contracts each year.

C10 (Negotiated Tendering - Contracts in excess of £50,000):

10. Sub-paragraph 1(a) adds a requirement that where contracts have to be entered into as a matter of urgency that they must in all respects comply with the requirements of financial regulations.

Reason:

11. This is not currently stated.

C12(3) (New) (Serial Contracts):

12. This Contract Standing Order relates to contracts that are let on the basis of a serial programme and are based on a schedule of rates and prices contained in an initial contract. The new sub-paragraph (3) reflects a situation that arose with one Housing Contract where the schedule of rates did not give a clear indication of the total value of the contract when Cabinet approval was sought. The new provision introduces a requirement for Heads of Service to estimate quantities for each of the rates contained in the tender and for these to be recorded at the tender opening. This will then used to quantify the actual cost of the contract, which would be reported to the Cabinet.

Reason:

13. The change enables better reporting of contract sums to the Cabinet for such contracts.

C16(3) (Receipt and Custody of Quotations and Tenders):

14. As part of the last review of Contract Standing Orders provision was made for the electronic submission of tenders and quotations to the Council but only as part of the Essex Marketplace Procurement System to which the Council was affiliated. However, experience has shown that the Marketplace is technically not yet able to facilitate these. Thus traditional tendering (in paper copy) must continue. Any electronic tender or quotation is therefore disqualified for consideration.

15. The Council will need to review this at the next annual review of Contract Standing Orders. The technical aspects of the Marketplace system may by then embrace electronic submission on a secure basis.

Reason:

16. The current provisions of Contract Standing Order C16(3) are not achievable at present and therefore the Council should revert to its previous practice of excluding electronic tenders and quotations.

C20 (2) (New) (Acceptance of Quotations and Tenders - Contracts Exceeding £20,000 but not exceeding £50,000):

17. This Standing Order refers to the acceptance of the lowest quotations by Chief Officers in respect of contracts in the range of £20,000 to £50,000. It also stipulates that a quotation other than the lowest shall not be accepted until a Portfolio Holder has considered a report.

18. The new provision provides for tenders on the basis of quality considerations, not only on price. The new C20 (2) requires that the tender documentation must specify at the outset whether an assessment of quality will be part of the process of accepting the tender. Heads of Service must document this quality assessment when tenders are opened and record these as an adjunct to the contract.

Reason:

19. Contract Standing Orders limit acceptance tenders on the basis of price only. It is more realistic to provide a procedure whereby they can take into account quality considerations provided they are clearly set out in the invitation of quotations and the assessment of quality is recorded.

C21 (Acceptance of Tenders - Contracts Exceeding £50,000):

20. The current delegation to Portfolio Holders for acceptance of tenders and the provisions of C21 do not agree. C21 prescribes a limit of £250,000 in relation to key decisions. A Cabinet decision on the changes to C21 is designed to clarify the position:

(a) **Sub-Paragraph (1)** now proposes that the Council or the Cabinet must approve any tender valued in excess of £1,000,000;

(b) **Sub-Paragraph (2)** specifies that tenders between £50,000 and £1,000,000 may be accepted by the Portfolio Holder provided the tender sum is within budget and the requirements of Contract Standing Orders have been met. If these conditions are not met the Cabinet must make the decision;

(c) **Sub-Paragraph (3)** stipulates that a tender other than the lowest must be accepted only after approval by the Council or the Cabinet following a recommendation by a Chief Officer to the Portfolio Holder;

(d) **Sub-Paragraph (4)** as revised allows a Portfolio Holder to accept a tender within the range specified on quality grounds as already discussed; and

(e) **Sub-Paragraph (5)** clarifies how the value of acquisition or disposal of interest in land or property are to be determined in relation to the threshold set out for Portfolio Holder decisions.

Reason:

21. Current delegated authority to Portfolio Holders for tender acceptance does not match the requirements of Contract Standing Orders. These changes reconcile the two decisions and permit Portfolio Holders to take more tender decisions (subject to conditions), removing the need for reports to the Cabinet.

C22 (Acceptance of Tenders - Certificates of Bona Fide Tendering)

22. This new Contract Standing Order is not new. It is given its own number rather than being part of C21.

Reason:

23. Clarification.

C31 (Contract Monitoring):

24. This Contract Standing Order relates to monitoring of contracts in excess of £2,000,000 in value or amount. The changes propose that such contracts should be subject to a 3 monthly monitoring report to the relevant Portfolio Holder. Any other contract could be

subject to the same procedure, if the Portfolio Holder so requests.

Reason:

25. Will give a higher profile to the need for contract monitoring particularly for large contracts.

C33 (Acquisition and Disposal of Land):

26. The addition to C33(2) emphasises the importance of involving the Head of Legal, Administration and Estates and legal staff in negotiations for the disposal or acquisition of interests in land or property. No legal agreement can be concluded without that involvement.

Reason:

27. Clarification.

Review of Officer Delegation:

28. Appendix 2 to this report sets out the changes that have been identified as part of the recent officer review. Many of these changes are administrative and clerical who reflect changes in circumstances since the delegation has been reviewed. If the Panel is happy with these changes these should be recommended to the Council.

Financial Regulations:

29. The Officer Working Party is continuing to review financial regulations and this aspect of the review will be submitted to the April meeting of this Panel.

Statement in Support of Recommended Action:

30. Contract Standing Orders are in need of review and the Audit Commission recommends it should now be carried out on an annual basis.

Other Options for Action:

31. There are no other options for consideration, as Contract Standing Orders and the Schedule of Officer Delegation must be updated.

Consultation Undertaken:

32. The Officer Working Parties consulted widely with Heads of Service and the Joint Chief Executives. It is recommended that Cabinet Members should receive an advance copy of this report in that it affects the powers and duties of Portfolio Holders.

Resource implications:

Budget provision: None.

Personnel: None.

Land: None.

Community Plan/BVPP reference: None.

Relevant statutory powers: The Local Government Act 1972.

Background papers: None.

Environmental/Human Rights Act/Crime and Disorder Act Implications: N/A.

Key Decision Reference (if required): Will advise when key decisions have ref nos.