

Committee: Standards Committee

Date:

Wards: All

Subject: Revisions the Contract Standing Orders in response to the Public Contracts Regulations 2015

Lead officer: Peter Stone, Head of Commercial Services

Lead member: Councillor Peter McCabe

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Recommendations:

- A. That Members note and recommend that General Purposes Committee approve the proposed revisions made to the Council's Contract Standing Orders to in response to the implementation of the Public Contracts Regulations 2015.
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. To inform members about the proposed changes to the Contract Standing Orders (CSOs), which form Part 4G of the Council's Constitution, in light of the legislative changes brought about by the Public Contracts Regulations 2015 (the "PCR").

2 DETAILS

- 2.1. The Council, as a public authority is bound by the PCR which govern public sector procurement of works, supplies and services contracts. The PCR are designed to open up the EU's public procurement market to competition, to prevent "buy national" policies and to promote the free movement of goods and services.
- 2.2. The PCR passed into law on Thursday 26 February 2015. The PCR aim to provide clarity, promote transparency, improve the efficiency of the procurement process (both in respect to the administrative burden on buyers and suppliers, but also in the timescales), and ensure greater access to public contracts for SMEs.
- 2.3. The Council is obliged to maintain a set of Contract Standing Orders to cover the procurement of all works, supplies and services and the procedures underpinning them.
- 2.4. The PCR have had an immediate impact on the ways in which the Council undertakes its procurement activity, which creates the opportunity to undertake a comprehensive review and overhaul of the Contract Standing Orders, to bring them in line with current legal requirements and best practice.
- 2.5. The main impacts which will affect the Council include:
- i) Contracts below £25,000 (for local authorities) are not subject to the PCR.

- ii) Making shortlisting illegal for all contracts with a value below £172,514. Therefore contracts with a value below this threshold cannot have a formal pre-qualification questionnaire designed to restrict the number of bidders submitting tenders. Certain “suitability” questions are permitted to enable a level of shortlisting.
- iii) Making it a requirement to advertise tenders on a national website, Contracts Finder, where a contract with a value over £25,000 has been advertised nationally.
- iv) All procurement documentation (this is likely to include the PQQ, ITT, Specification, Contract Terms and Conditions) is to be available and published at the time of advertising. The rationale is that by publishing a full specification at the outset it allows bidders to better gauge whether opportunity is appropriate and therefore reduce unnecessary costs in bidding for both the supplier and the Council.
- v) Fewer services fall into the new Light Touch Regime, which replaces the previous Part B services, and introduces a new OJEU Threshold of £650,050, below which the procurement regime is more flexible.
- vi) The PCR allow the Council to devote greater attention to pre-procurement activity (referred to in the PCR as preliminary market consultations) with a view to achieving better outcomes from its procurements, provided this does not have the effect of distorting competition and does not result in a violation of the principles of non-discrimination and transparency.
- vii) The PCR introduce two new procurement processes (referred to as (1) the Competitive Procedure with Negotiation (replacing the negotiated procedure) and (2) the Innovation Partnership). The Open, Restricted and Competitive Dialogue procedures remain, resulting in a total of five available procedures.
- viii) The Council will have the power to reserve participation in certain procurement exercises to social enterprises or staff mutuals (limited to a set of particular services and provided the organisations invited to bid fulfil the criteria set out in the PCR).
- ix) The circumstances in which the Council shall be permitted to vary its contracts without triggering a new procurement process have been defined. For example, in future the Council will be permitted to vary a contract where the need for a modification has arisen due to circumstances which a diligent authority would not have envisaged when it let the contract and provided that the modification does not alter the nature of the contract and any increase in cost does not exceed 50% of the original contract value.

2.6. Recommended changes to CSOs

2.6.1 The key changes proposed within the review of the CSOs are summarised below:

a) Structure

The CSO's have been revised structurally to ensure they follow a logical path from the initial pre-procurement stages, through the required process and finally to contract management.

b) Application of the CSOs

The CSOs have been amended to reflect the PCR, in particular to reflect those points set out at the Proposed Revisions section above.

c) Contracts Register

In line with the Local Government Transparency Code 2015, which sets out the minimum data that local authorities should be publishing, the frequency it should be published and how it should be published, the CSOs make it a requirement to enter all contracts of £5,000 or greater in value on to the Central Contracts Register.

d) Revising the current procurement thresholds

Current position;

Threshold	Process	Decision Making
< £10,000	Best Value 3 written quotations, however 1 may be acceptable providing it demonstrates value for money	Responsible Officer duly authorised under a Scheme of Management
£10,000 - £100,000	Quotations 3 written quotations	Head of Service duly authorised under a Scheme of Management
£100,000 - relevant EU Threshold	Tenders Officers to decide whether a one or two (with pre-qualification) stage process is used	<ul style="list-style-type: none"> • Director duly authorised under a Scheme of Management where the value of contract is between £100,000 and £500,000 <p>OR</p> <ul style="list-style-type: none"> • Director duly authorised under a Scheme of Management and Chief Executive where the value of contract is between £500,000 and £2,000,000
> Relevant EU Threshold	Tenders , following one of the following procedures: <ul style="list-style-type: none"> • Open Procedure • Restricted Procedure • Competitive Dialogue 	<ul style="list-style-type: none"> • Director duly authorised under a Scheme of Management and Chief Executive where the value of contract is between £500,000 and £2,000,000

	<p>Procedure</p> <ul style="list-style-type: none"> • Call-Off from an Existing Framework Agreement 	<p>OR</p> <ul style="list-style-type: none"> • Cabinet where value of the contract is £2,000,000 or greater
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Proposed revisions (Purple text denotes the changes)

Threshold	Process	Decision Making
< £25,000	<p>Best Value</p> <p>3 written quotations, unless the requirement is urgent or it can be demonstrated there is only one supplier capable of meeting the requirement</p>	Responsible Officer duly authorised under a Scheme of Management
£25,000 - £100,000	<p>Quotations</p> <p>3 written quotations, although officers may choose to advertise</p> <p>If advertised, must also advertise on Contracts Finder</p> <p>No pre-qualification stage</p>	Head of Service duly authorised under a Scheme of Management
£100,000 - relevant EU Threshold	<p>Advertised</p> <p>Must advertise on Contracts Finder in all cases</p> <p>No separate pre-qualification stage can be used</p>	<ul style="list-style-type: none"> • Director duly authorised under a Scheme of Management where the value of contract is between £100,000 and £500,000. <p>OR</p> <ul style="list-style-type: none"> • Director duly authorised under a Scheme of Management and Chief Executive where the value of contract is between £500,000 and £2,000,000
> Relevant EU Threshold	<p>Advertised following one of the following procedures:</p> <ul style="list-style-type: none"> • Open Procedure • Restricted Procedure 	<ul style="list-style-type: none"> • Director duly authorised under a Scheme of Management and Chief Executive where the value of contract is between

	<ul style="list-style-type: none"> • Competition with Negotiation • Competitive Dialogue Procedure • Innovation Partnership • Call-Off from an Existing Framework Agreement <p>Must advertise on Contracts Finder in all cases</p>	<p>£500,000 and £2,000,000</p> <p>OR</p> <ul style="list-style-type: none"> • Cabinet where value of the contract is £2,000,000 or greater
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e) Advertising requirements

Due to the new requirements in the PCR regarding the advertising of contract opportunities and awards, clarification has been added within the CSO's to ensure that the circumstances for advertising opportunities is clear:

	Contract opportunity	Contract Award
< £25,000	No requirement to advertise*	No requirement to advertise*
£25,000 - £100,0000	No requirement to advertise*	No requirement to advertise*
£100,000 - relevant EU Threshold	Contracts Finder	Contracts Finder
> Relevant EU Threshold	Contracts Finder & OJEU notice or (in the case of restricted or competitive procedure with negotiation) a Prior Information Notice (PIN)	Contracts Finder & OJEU

While there is no requirement to advertise the opportunity, Officers may due to the requirement of market conditions choose to do so. Where the opportunity is publically advertised, an advert and award notice must be placed on Contracts Finder where the contract opportunity is above £25,000.

All opportunities will need to be placed through the Council's e-tendering system, which has a direct feed to Contracts Finder and the OJEU, ensuring Officers can use one system to place all of the required advertisements where applicable.

f) Framework Agreements

Further clarification has been added regarding the process for dealing with Framework Agreements. Specifically, where the Council plans to procure a new Framework Agreement, then the procurement would be subject to the same requirements as any other contract based on its value. No further approvals will be required beyond setting up the Framework i.e. sign off will not be required to enter in to a call off contract from a Council procured Framework Agreement.

Where the Council intends to enter into a call off contract from an externally procured Framework Agreement, such as those operated by Crown Commercial Services and ESPO, the Officer will require approval from Commercial Services and Legal Services to use the Framework and subsequently prior to entering into each call off contract. The appropriate level of approval will be based on the value of the call off contract.

g) Mandating the use of the e-tendering system and record keeping

We have taken the opportunity to mandate the use of e-tendering across the Council, in order to satisfy the requirements of the legislation to “provide electronic access [to the procurement documents] from the date of the OJEU notice”.

Furthermore, the electronic audit trail created by utilising the system will ensure Officers are able to easily create a conclusion report, with the supporting evidence readily available, as required by the new Regulation 84.

Procurement Toolkit Refresh

- 2.7 Along with the proposed revisions to the CSOs the Procurement Toolkit, available to staff via the Councils intranet, has also been refreshed in order to further support Officers undertaking compliant, outcomes focused procurements that meet the Council’s needs now and in the future.
- 2.8 The key updates include;
- i) The creation of a suite of template documents for all the main procedures, including Quotations, Open and Restricted OJEU tenders and supporting detailed guidance notes.
 - ii) Short summary guides and tables which offer a ‘quick guide’ to the approvals, advertising and procurement procedures based on the contract value
 - iii) Detailed guidance on market engagement, drafting Prior Information Notices (PINs) and the requirements of the Light Touch Regime.
 - iv) ‘Process flows’ have been created for each procurement process, showing Officers the key stages and minimum timescales required to undertake the individual process, such as Open, Restricted and Competitive with Negotiation.
 - v) Templates for obtaining approval to invite tender and award a contract, where Officers have delegated authority as part of the Scheme of Delegation.
 - vi) A commercial and procurement glossary.
- 2.9 All documents have been created using the same themes and language to ensure consistency and so that the principles are clear and easy to understand.

Concessions Regulations 2015

- 2.10 New regulations covering the procurement of concessions contracts are due to pass in to law in April 2016. This will provide an opportunity to reflect on the impact of the recommended changes, which are the subject of this report, and make any further amendments as required by the new legislation.

3 ALTERNATIVE OPTIONS

- 3.1 No alternative options were considered as the CSOs are required to be amended to ensure they are compliant with current legislation.

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. The proposed revisions have been developed in partnership between Legal Services and Commercial Services and have been presented and consulted upon, in two iterations, at the Council's Procurement Board on the 15th of July and 6th of October 2015.

5 TIMETABLE

- 5.1. N/A

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. None.

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. The Council is required to have Contract Standing Orders to govern its procurement processes. Those Contract Standing Orders must comply with all legislation, which would include complying with the PCR.
- 7.2 The update of the Contract Standing Orders will ensure that they are compliant with all legislation.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1 None.

9 CRIME AND DISORDER IMPLICATIONS

- 9.1 None.

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 10.1. None.

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- 11.1. Draft Contract Standing Orders document.

12 BACKGROUND PAPERS

12.1. None.