

Committee: Standards and General Purposes Committee

Date: 28 June 2021

Wards: All

Subject: Revisions to the Council's Contract Standing Orders

Lead officer: Caroline Holland, Director of Corporate Services

Lead member: Tobin Byers

Contact officer: Dawn Jolley, Head of Commercial Services

Recommendations:

- A. That Members note, approve and recommend to full Council, the proposed revisions made to the Councils Contract Standing Orders. Changes made are in response to the implementation of the impact the UK leaving the EU will have on the Public Contracts Regulations [The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020] (PPR 2020), greater reinforcement with regards to the Social Value Act 2012, reference to the Council's commitment to the Climate Emergency; and to try to provide clarity in order to drive greater compliance overall with procurement governance and best practice.

 - B. That Members approve and recommend to full Council that the appendices to the CSOs may be updated by the Head of Commercial Services, with approval by Procurement Board, without the need to seek approval from SGPC and full Council. These are supplementary documents, templates and guidance notes that compliment but do not impact on the content of the main CSOs.
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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 Councils Constitution, in light of the legislative changes brought about by the UKs exit from the EU and the Public Procurement (Amendment etc.) (EU Exit) Regulations 2020. The revision also seeks to drive greater reinforcement to the Social Value Act 2012, reference to the Council's commitment to the Climate Emergency; and to try to provide clarity in order to drive greater compliance overall with procurement governance and best practice.

2 DETAILS

- 2.1. Merton, as a public authority is bound by the Public Procurement Regulations, which governs public sector procurement of works, supplies and services contracts. This legal framework encourages free and open competition and value for money, in line with agreed obligations and regulations. As part of its strategy, the government aligns procurement policies with this legal framework, as well as with its wider policy objectives.

- 2.2. The implementation of the Public Procurement (Amendment etc.) (EU Exit) Regulations 2020, took effect from 23:00 on 31 December 2020. The revised Regulations fixes deficiencies in the public procurement regulations that are caused by the UK leaving the EU, and also implements the Withdrawal Agreement between the EU and the UK (which includes the Northern Ireland Protocol), the [EEA Separation Agreement](#) and the Swiss Citizens' Rights Agreement.
- 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. Given that Contract Standing Orders form part of the Council's Constitution, any amendments to the CSOs must be approved by full Council.
- 2.4. The main impact which affect councils in the short term is:
- i) From 23:00 on 31 December 2020, new UK public procurement opportunities needed to be published on the UK e-notification service called Find a Tender service (FTS). The FTS means new UK opportunities will no longer be sent to the Official Journal of the European Union (OJEU) or Tenders Electronic Daily (TED). However, for procurements that were advertised in OJEU before 23:00 on 31 December, any subsequent notices, such as award notices, needed to be sent to OJEU for publication.
- 2.5 The Government is considering further reforms to the public procurement regulations. These are detailed in the Green Paper: Transforming public procurement, which has recently undergone consultation. There will also be the outcomes of the NHS and social care White Paper: Integration and innovation: working together to improve health and social care for all – implications for future procurement of public health service. The Council's CSOs will be revised and updated once the impact of both of these paper are known and appropriate legislation has been drafted. This is expected to be in about 18-months.

3.0 RECOMMENDED CHANGES TO CSOs

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

a) Clearer signposting

The CSO's have been amended to better highlight the key principles of transparency and the need for value for money.

Clearer signposting to Departmental Scheme of Management; the Departmental Operational Procurement Groups (OPGs) and Procurement Board (PrB) has been included.

b) Application of the CSOs

The CSOs have been amended to reflect the change in requirement to advertise in Find a Tender as per the PPR 2020.

c) Social Value

Reference to the Public Services (Social Value) Act 2012 has been strengthened.

d) Climate Emergency

Due consideration is to be given to the Council's commitment to the Climate Emergency and how the Council can reduce its carbon footprint through the tenders that it lets.

e) Use of Professional Services and/or Consultants

The CSOs have been amended to ensure that in the first instance, Officers make use of corporate contracts / agreements for the provision of this type of requirement.

f) Evaluation of Bids

The CSOs have been amended to include reference to the fact that bids for contracts above the Lower Threshold (over £25,001) are to be evaluated by at least three Officers; that the highest scoring bid for contracts above the Lower Threshold (over £25,001) should have their financial standing reviewed by the respective departmental Service Financial Advisor; and the evaluation of bids received for contracts above the upper threshold (£100,000) are to be moderated by a member of the Commercial Services team.

g) Contract Extensions

The CSOs have been amended to make it clearer for officers wanting to extend or vary a contract.

4. PROCUREMENT TOOLKIT REFRESH

- 4.1 Along with the proposed revisions to the CSOs, the Procurement Toolkit, available to staff via the Merton Hub, is currently being refreshed in order to further support Officers undertaking compliant, outcomes focused procurements that meet the Council's needs now and in the future. This is a 'live' document which is updated as and when. This has been supplemented by a Social Value Toolkit, also available via the Merton Hub. Additionally, the Social Value Toolkit will be made available on the Council's website under Contracts, tenders and procurement.
- 4.2 Key updates to include:
- i) The updating of the template suite of documents for all the main procedures, including Quotations, Open and Restricted tenders and supporting detailed guidance notes.
 - ii) Updated short summary guides and tables which offer a 'quick guide' to the approvals, advertising and procurement procedures based on the contract value
 - iii) Up to date 'Process flows' 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.
 - iv) Templates for obtaining approval to invite tender and award a contract, where Officers have delegated authority as part of the Scheme of Delegation.
 - v) A Commercial and Procurement glossary.
- 4.3 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.

5 ALTERNATIVE OPTIONS

- 5.1 Leave the CSOs as they are, previously revised by Full Council on 22 November 2017. This option is not recommend given that CSOs are required to be amended to ensure they are complaint with current legislation and best practice.

6 CONSULTATION UNDERTAKEN OR PROPOSED

- 6.1. The Council's Procurement Board as well as the Council's Monitoring Officer has been given the opportunity to comment on the proposed amendments to CSOs.

7 TIMETABLE

- 7.1. It is anticipated that should the proposed amendments be approved by Full Council on 7 July 2021 that the updated CSOs will be effective 8 July 2021.

8 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 8.1. None.

9 LEGAL AND STATUTORY IMPLICATIONS

- 9.1 The Local Government Act 1972 (Section 135) requires that Local Authorities make Standing Orders in respect of contracts for the supply of goods, services and materials or the execution of works to ensure competition and regulate the manner in which tenders are invited.

10 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 10.1 None.

11 CRIME AND DISORDER IMPLICATIONS

- 11.1 None.

12 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 12.1. By revising and updating the Council's Contract Standing Orders, risk of Legal Challenge for failure to follow due process should be mitigated at least in part.

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

- 13.1. Proposed Revised Contract Standing Orders

14 BACKGROUND PAPERS

The Public Procurement (Amendment etc.) (EU Exit) Regulations 2020