

## HAMPSHIRE COUNTY COUNCIL

### Decision Report

<b>Decision Maker:</b>	Audit Committee
<b>Date:</b>	29 September 2010
<b>Title:</b>	Revision of Contract Standing Orders
<b>Reference:</b>	2091
<b>Report From:</b>	Chief Executive and County Treasurer

**Contact name:** Kevin Gardner, Head of Legal Services

**Tel:** 01962 847381

**Email:** kevin.gardner@hants.gov.uk

#### 1. Executive Summary

1.1. The purpose of this paper is to seek the comments of Audit Committee on a proposed set of revised Contract Standing Orders (CSOs) and, subject to those comments, for the Committee to recommend these to Cabinet and full Council for adoption. The report is presented by the County Treasurer and Head of Legal Services who, under CSO 1.4, are the joint custodians of CSOs and responsible for keeping them under review.

#### 2. Introduction

2.1. The County Council spends some £630m per annum on goods, works and services provided under contract by external suppliers. This includes expenditure across the full range of Council services, including personal social care, property construction and maintenance, waste management, passenger transport, IT equipment and services, cleaning, catering and professional services.

2.2. The Council is subject to certain legal requirements regarding the award of contracts. Local government legislation requires the Council to make standing orders with respect to contracts for the supply of goods or materials or for the execution of works, which “provide for securing competition and regulation of the manner in which tenders are invited”<sup>1</sup>. Further, the Council is a contracting authority for the purposes of the EU Public Procurement

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<sup>1</sup> S.135 Local Government Act 1972

Directives, and is thereby legally bound to comply with certain practices and procedures in the award of Contracts<sup>2</sup>.

- 2.3. The Council has therefore operated for some years a set of CSOs, included at Part 3:F of its Constitution. These set out the administrative procedures that must be followed in relation to the procurement and award of a Contract. CSOs provide a framework to ensure that the Council uses its resources efficiently in making purchasing decisions to obtain best value in public services. CSOs also provide a means of safeguarding the reputation of the Council and its staff from any implication of dishonesty or corruption.
- 2.4. A review of CSOs has been undertaken, to ensure that these reflect developments in law and practice, and remain fit for present and future business needs. This review has been co-ordinated by the Head of Legal Services, with input from members of the Council's Corporate Procurement Network (which comprises key senior officers from all Council departments engaged in purchasing). Input has also been provided by the Head of Corporate Procurement in Property, Business and Regulatory Services, the County Treasurer's Internal Audit Team, and Legal Services' Contracts Team.
- 2.5. The outcome of the review is the proposed revised set of CSOs appended to this report.
- 2.6. Capitalised terms used in this report are those used and defined within CSOs<sup>3</sup>.

### **3. Summary of Main Proposed Changes**

- 3.1. A new format and layout is intended to make CSOs more accessible by staff involved in procurement, and to promote greater understanding of how the rules apply in practice. Reflecting modern developments in how people access information, the new format is designed to be web-based, with each separate CSO accessed from a "home" contents page. Each separate CSO page will then contain the relevant CSO, with hyperlinks wherever practicable. These will enable the user to easily locate other relevant sections of CSOs, definitions of commonly used terms, guidance, practical examples of best practice, supplementary information which changes from time to time (such as the EU Thresholds), and standard corporate forms that are to be used at key stages of a procurement process.
- 3.2. The approach will be that the actual CSO as set out in the Appendix will constitute the minimum standard that must be observed at all times, to ensure that the Council acts lawfully and that staff are protected in the event of allegations of impropriety<sup>4</sup>. These minimum standards are to be agreed by full Council and will not generally be expected to change. Each minimum

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<sup>2</sup> Reg 3(1)(i) Public Contracts Regulations 2006

<sup>3</sup> See CSO 1

<sup>4</sup> CSO 2.5

standard will then be supplemented by guidance and examples, agreed by the County Treasurer, Head of Legal Services, and Director of Property, Business and Regulatory Services, as to how that standard is to be achieved in practice<sup>5</sup>. The guidance and examples will be flexible, and can be updated by the key officers referred to from time to time in response to developments in case law and best practice.

- 3.3. A definitions section makes it easier to understand the terminology used. The types of Contracts subject to CSOs are clarified, and in particular that they do not apply to employment contracts or Grant Agreements<sup>6</sup>.
- 3.4. The section on estimating Contract value, and aggregation, has been expanded, to reflect legal requirements<sup>7</sup>. It is emphasised that Contracts which are each of a value below the relevant EU Threshold may nevertheless be subject to full EU Public Procurement Directives tendering requirements, where they constitute a series of related or repeat purchases<sup>8</sup>. Clarity is given that the estimated value of a Contract is the total consideration payable, net of VAT, over the full term<sup>9</sup>, and that where the term is indefinite, this is to be calculated on a basis of four years<sup>10</sup>.
- 3.5. Recent years have seen a growth in use of Framework Agreements, which may be established by the Council, other public bodies or public sector buying consortia. These set out terms and conditions under which specific purchases may be made (or “called-off”). As a Framework Agreement will itself have been the subject of a full tendering exercise compliant with EU Public Procurement Directives, suppliers have already been subject to pre-qualification vetting, and the process of making a specific purchase is simplified. Framework Agreements are therefore given greater prominence, and distinction made between when a Framework Agreement is used as opposed to an Approved List<sup>11</sup>. There is also greater clarity than before as to how Framework Agreements are to be used in respect of individual purchases. A general principle adopted in the revised CSOs is that where there is a suitable Framework Agreement that has been approved by the Head of Legal Services and Director of Property, Business and Regulatory Services, this shall be used for the specific purchase<sup>12</sup>.
- 3.6. Requirements as to the publication of notice inviting tenders are summarised in a table<sup>13</sup>. Provision is made for this to be advertised in all cases on the corporate tendering opportunities portal on Hantsweb<sup>14</sup>.

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<sup>5</sup> CSO 2.4 and 2.7

<sup>6</sup> CSO 1

<sup>7</sup> CSO 4

<sup>8</sup> Reg 8(11) Public Contracts Regulations 2006

<sup>9</sup> Reg 8(7) Public Contracts Regulations 2006

<sup>10</sup> Reg 8(10) Public Contracts Regulations 2006

<sup>11</sup> CSO 5

<sup>12</sup> CSO 5.2, 7.1, 8.1 and 9.1

<sup>13</sup> CSO 6.5

<sup>14</sup> CSO 6.1

- 3.7. Purchasing procedures are different depending on whether the estimated value is less than £25,000<sup>15</sup>, £25,000 or greater but less than £100,000<sup>16</sup>, £100,000 or greater but less than the relevant EU threshold<sup>17</sup>, and above the EU threshold<sup>18</sup>. The underlying principle is that the rigour of the process to be followed increases in proportion to the risk and value of the Contract.
- 3.8. Consideration has been given to whether the £25,000 and £100,000 thresholds should be changed. The argument in favour of raising them is that this may simplify the processes that apply to lower value purchases, thereby reducing cost. The arguments against are that the thresholds were last reviewed and revised relatively recently, in 2007, since when there has been little inflation. Further, the revised CSOs place greater emphasis on utilising a suitable Framework Agreement for purchase, which will reduce procurement costs. With regard to the public financial climate, it is felt inappropriate at this time to be removing a tier of publicly funded contracts from a tendering regime that demonstrates best value is being obtained. For these reasons, no change to thresholds is being recommended on this occasion.
- 3.9. The advent of the Council's electronic tendering system (In-Tend) is reflected. The general principle is that this shall be utilised in all cases, other than in exceptional circumstances where the Director of Property, Business and Regulatory Services agrees an invitation to tender may be issued in hard copy format<sup>19</sup>.
- 3.10. Provisions on the evaluation of tenders have been extended to require the evaluation criteria, including any sub-criteria, weightings and scoring criteria, that will be used in the evaluation of tenders, to be stated in the invitation to tender<sup>20</sup>. This reflects a development in case law requiring the publication of such details in the interests of greater transparency, consistent with EC Treaty principles.<sup>21</sup>
- 3.11. The importance of compliance with legislation introduced in December 2009<sup>22</sup> is reflected, by reference to the need to observe a "standstill period" in Contracts of a value above the EU Threshold<sup>23</sup>. This is a period of at least ten days between making a decision on the award of a Contract and entering into that Contract. This is to allow unsuccessful tenderers to be furnished with detailed information as to the reasons for the award, so that they have an opportunity to challenge the decision should they wish to. The change in legislation gives aggrieved bidders more opportunity than before to challenge Contract award decisions, and introduces the remedy of ineffectiveness,

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<sup>15</sup> CSO 7

<sup>16</sup> CSO 8

<sup>17</sup> CSO 9

<sup>18</sup> CSO 10

<sup>19</sup> CSO 9.6 and 9.8

<sup>20</sup> CSO 8.4, 9.9 and 12.1

<sup>21</sup> Letting International Ltd v Newham London Borough Council [2008]

<sup>22</sup> Public Contracts (Amendments) Regulations 2009

<sup>23</sup> CSO 12.5

whereby a Contract can be set aside if procurement rules are not complied with.

- 3.12. Authority to award and sign a Contract is clarified, in line with established practice. Such authority rests with the relevant Chief Officer (or a Senior Officer nominated by him), where the value is less than £100,000. All other contracts are to be awarded by the Head of Legal Services (or a Senior Officer nominated by him)<sup>24</sup>. Established practice on the issue of an Advance Works Order is also confirmed<sup>25</sup>.

#### **4. Conclusion**

- 4.1. The proposed revision of CSOs provides a sound basis for the Council's future procurement activity. This focuses on minimum standards that must be adhered to in the interests of protection of the Council and its staff, while ensuring that best value is obtained in the use of public funds. Promotion of transparency and equal treatment enhances the confidence of public and stakeholders that decisions are made fairly and on the basis of relevant, objective criteria. The new format will support the maintenance of the minimum standards through supplementary guidance provided flexibly in response to developments in the law and best practice.

#### **5. Recommendation(s)**

- 5.1. Subject to the comments of the Audit Committee, that the revised Contract Standing Orders be commended to Cabinet, and Council, for adoption.

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<sup>24</sup> CSO 12.4

<sup>25</sup> CSO 12.10

**CORPORATE OR LEGAL INFORMATION:****Links to the Corporate Strategy**

<b>Hampshire safer and more secure for all:</b>	yes/no
Corporate Improvement plan link number (if appropriate):	
<b>Maximising well-being:</b>	yes/no
Corporate Improvement plan link number (if appropriate):	
<b>Enhancing our quality of place:</b>	yes/no
Corporate Improvement plan link number (if appropriate):	
<b>OR</b>	
<b>This proposal does not link to the Corporate Strategy but, nevertheless, requires a decision because:</b>	
<i>NB: Only complete this section if you have not completed any of the Corporate Strategy tick boxes above. If it is not applicable, please delete.</i>	

*NB: If the 'Other significant links' section below is not applicable, please delete it.*

**Other Significant Links**

<b>Links to previous Member decisions:</b>		
<u>Title</u>	<u>Reference</u>	<u>Date</u>
<b>Direct links to specific legislation or Government Directives</b>		
<u>See footnotes in report</u>	<u>Date</u>	

**Section 100 D - Local Government Act 1972 - background documents**

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

DocumentLocation

None

## **IMPACT ASSESSMENTS:**

### **1. Equalities Impact Assessment:**

- 1.1. Promotion of transparency and equal treatment enhances the confidence of public and stakeholders that decisions in the award of public contracts are made fairly and on the basis of relevant, objective criteria.

### **2. Impact on Crime and Disorder:**

- 2.1. One of the objectives of CSOs is to minimise opportunity for fraud or corruption

### **3. Climate Change:**

- a) How does what is being proposed impact on our carbon footprint / energy consumption?

Not applicable

- b) How does what is being proposed consider the need to adapt to climate change, and be resilient to its longer term impacts?

Not applicable