

Somerset County Council
Constitution Committee – 11 April 2017

Changes to Contract Standing Orders

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1. Summary

- 1.1.** The purpose of this report is to recommend the adoption of a refreshed and re-written set of Contract Standing Orders (the “Rules”) which incorporates amendments to the decision-making processes around waivers, the escalation procedures associated with breaches of the Rules, the procurement procedures to be followed according to the financial value of the contract and the incorporation of best practice procurement practices across the procurement cycle.
- 1.2.** There is an indirect link to the County Plan and the aims of the organisation, in designing processes that are proportionate to the decisions to be made. This will reduce the administrative burden on officers and increase the speed of decisions.
- 1.3.** General housekeeping of the current version of the Rules is proposed to reflect procurement legislation issued in 2015, known as the Public Contracts Regulations (the “Regulations”), relevant case law that is developing in this area and contemporary best practice in relation to procurement and contract management.

2. Recommendations

- 2.1. That the Constitution Committee endorse the proposed refreshed Contract Procedure Rules and Standing Orders (as detailed in Appendix 1), which have been set out with the purpose of:**
 - 1. restructuring the Rules to be more reader-friendly and adjusting the content to provide greater clarity for officers;**
 - 2. introducing a more collaborative approach between commissioners and the Commercial and Procurement Team, which has resulted in a re-written set of procedures;**
 - 3. providing greater clarity around the definition of an exemption from the Rules versus a waiver and a more streamlined process for lower value waivers;**
 - 4. introducing a more robust approach where there is a breach of the Rules;**
 - 5. raising the thresholds but having a tighter grip on the processes that must be followed at the various financial levels;**
 - 6. ensuring the content follows the most contemporary developments in procurement and contract management best practice and legislation;**
 - 7. taking a more comprehensive approach to the various stages of the procurement and commissioning cycle, including providing advice to officers in relation to pre-procurement and contract management activities; and**
 - 8. providing clarity to officers on issues related to procurement, but not**

previously given coverage within the Rules, such as State Aid and development agreements.

2.2. That the Constitution Committee makes its recommendation to Full Council that the Rules as amended in Appendix 1 and summarised in Annexe 1 below are formally adopted in to the Constitution by Full Council on 24 May 2017.

3. Background

3.1. SCC's Rules include the requirement to be reviewed regularly and in any case on an annual basis. The current version of the Contract Standing Orders state that they are effective from 30 October 2013. Whilst informal reviews and updates of the document have taken place since that date it was clear that a more formal review was required to reflect the changing environment of the Council and bring the Contract Standing Orders more in line with contemporary best practice, based on a comprehensive review of a number of other local authorities' (such as Cornwall, Devon, Dorset, Hampshire, Norfolk and Oxfordshire County Council's) Rules. This review has been undertaken by Commercial and Procurement Services in collaboration with finance, information governance, legal and commissioning managers and the refreshed version has been presented to and has received endorsement from both the Commissioning and Governance Boards.

3.2. Following this review a number of areas for improvement were determined, as detailed under section 2 Recommendations above. The purpose of such improvements are:

1. to give greater clarity to how Council officers must conduct their procurement activities;
2. to remove certain onerous restrictions and procedures;
3. to simplify certain processes;
4. to ensure that Officer can conduct their procurement activities in a way that ensures compliance with the Rules and the Regulations.

3.3. Whilst the review has resulted in a re-written set of procedures, it is relevant to highlight that the section entitled 'Approval to award' remains unchanged and as such the previously agreed scheme of delegation still applies.

4. Concise analysis

4.1. Upon reviewing the Rules it was felt that it was necessary to produce a refreshed version, which has resulted in a complete re-write of the Contract Procedure Rules and Standing Orders. This report will highlight all of the fundamental changes that have been made drawing specific attention instances where decision-making procedures have changed for officers or members.

4.2. Fundamental changes

- **Exemptions and waivers**

- to align the rules with the list of permitted exemptions held by Finance and clarify which activities are exempt and which require a formal waiver;
- to include a more specific list of permitted waiver grounds;
- to provide flexibility in the waiver procedure for over EU Threshold procurements and to introduce a streamlined waiver procedure with lower and higher threshold approval procedures; and
- to report higher value waivers through Governance Board.

- **Breaches**

- to strengthen our approach to breaches of the rules;
- to provide enforceable repercussions for breaches of the rules that have genuine consequences; and
- to report breaches through Governance Board.

- **Thresholds**

- to increase the thresholds and give greater distinction between the procurement process requirements at the various threshold levels; and
- to step back from previous Council decision taken regarding the Council's application of the Transparency Code on the basis of what is reasonable for the Council. This would facilitate our taking a more proportionate approach to our procurement activity, which the Commercial and Procurement Team (CPT) will be better able to support with fewer resources.

| | Current | | Proposed | |
|------------------------|------------------------------|------------------------------|---|--|
| | Goods and Services | Works | Goods and Services | Works |
| Minimum of one quote | Up to £1,000 | | Up to and including £25,000 | |
| Three written quotes | Between £1,000 and £10,000 | | Over £25,000 but less than £75,000 | Over £25,000 but less than £150,000 |
| Open tendering | Between £10,000 and £130,000 | Between £25,000 and £130,000 | Over £75,000 but less than the EU Threshold | Over £150,000 but less than the EU Threshold |
| EU compliant tendering | Over £130,000 | | At and above the EU Threshold (£164,176) | At and above the EU Threshold (£4,104,394) |

4.3. It is important to note that there are specific procedures that Officers must

follow at each of these threshold levels, including at the lowest threshold. Officers will be required to seek existing contractual arrangements through which they can meet their needs before they will be able to actively seek a minimum of one quotation and in doing so, they must demonstrate best value.

4.4. Other changes

Further information has been provided in Annexe 1 to this report as to the technical changes that have been made as a consequence of legislative or best practice movements in the area of procurement and contract management and where it was felt that rewording the section would provide additional clarity for Council officers or a more comprehensive approach to the various stages of the procurement and commissioning cycle.

5. Consultations undertaken

- 5.1.** Consultation has taken place with a number of Council officers including representatives of the Commercial and Procurement, Information Governance, Corporate Finance, Corporate Records and Legal Services teams, on the basis that these were the officers and teams that will be the most affected and/or are those best able to offer advice and guidance in relation to specific sections of the document to be covered.

6. Implications

- 6.1.** Legal & Risk: the Contract Procedure Rules and Standing Orders set out the legal and procedural framework within which the Council manages its third party spend through the procurement of goods, services and works. It must be kept up to date and compliant with the relevant legislation and is an important part of the Council's Constitution.
- 6.2.** Impact Assessment: the Council's duty under Section 149 of the Equality Act 2010 is to have "due regard" to the matters set out in relation to equalities when considering and making decisions on the provision of services. There are no direct impacts on equalities, sustainability, health and safety, or community safety as a result of this report.
- 6.3.** Financial: the proposed reduction in the thresholds, discussed more fully at section 4.2 of this report, is made on the basis of analysis of procurements completed via the Council's electronic tendering system covering the period of 01 April 2016 to date. What the analysis looked at was the number of contracts (in percentage terms) procured in accordance with the thresholds and their respective procurement processes under the current Rules as against the proposed thresholds. What the analysis showed was that nearly three-quarters of the contracts that we currently procure in accordance with the full rigour of the Public Contracts Regulations 2015 are done so unnecessarily due to the fact that the current threshold, which necessitates the application these procedures is significantly lower than that set by the European Commission as the EU Threshold.

The revised thresholds seek to redress that balance and would see something in the region of 50% of our contracts being advertised to the market, meaning that those that would be dealt with under a quotation

process would be made available to more SME and local suppliers. The financial implications are twofold: that greater access to our contracts by SME and local suppliers means a positive impact on the local economy, and that the Commercial and Procurement team would be able to redirect their efforts to procurement activities against which the team would be able to deliver greater benefit.

- 6.4.** HR: the proposed revisions to the sections covering Officer's breaches of the Rules provide a more robust and comprehensive approach to those issues that may be considered as breaches and the disciplinary procedures that would apply in dealing with such activity. The Rules also draw stronger reporting lines between the Governance Board and the Human Resources and Organisation Development Director as part of that procedure.

7. Background papers

- 7.1.** None.

ANNEXE 1

| Section reference | Impact/benefit |
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| 5 Prevention of corruption and collusion | <ul style="list-style-type: none"> • To bring SCC in line with contemporary legislation and best practice around the topic • To provide SCC with a robust set of procedures for managing officers in breach of the Rules and/or Legislation |
| 6 Conflicts of interest | <ul style="list-style-type: none"> • To bring SCC in line with best practice around the topic • To ensure that the Council's procurement activities are not compromised by the previous experiences of the officers involved |
| 8 Market engagement | This is responding to officers' comments on the lack of clarity around the ways in which SCC should approach the market in the pre-procurement phase of the procurement/commissioning cycle |
| 9 Pre-procurement authorisations | This will lead to more efficient procurement practices across the Council, less duplication of effort both across the Council and when considering external arrangements that are already in place that may adequately meet our needs and fewer individual contracts across the whole organisation |
| 10 Total contract value | <ul style="list-style-type: none"> • To bring SCC in line with contemporary legislation on the topic • To provide greater clarity for officers |
| 12 The procurement sourcing strategy | To ensure that SCC takes all relevant considerations in to account in the preparation of its procurement activities, including but not limited to the key commercial principles, risks and impacts and financial implications |
| 13 Relevant legislation | To bring SCC in line with contemporary legislation on the topic |
| 14 Relevant policy | To take a more robust approach to the application of wider Council policy to its procurement activities |
| 15 Collaborative procurement | <ul style="list-style-type: none"> • To reduce the Council's exposure to risk through dysfunctional collaborative relationships • To ensure that the Council fully considers the benefits available to it through collaborative procurement |
| 16-18 Framework Agreements; Dynamic Purchasing Systems and Use of Framework Agreements and Dynamic | <ul style="list-style-type: none"> • This is responding to a need for greater information and clarity in the Rules around these more complex procurement arrangements • To bring SCC in line with contemporary legislation and best practice on the topic |

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| Purchasing Systems | |
| 25 Selection criteria | To bring SCC in line with contemporary legislation and best practice on the topic |
| 27 Most Economically Advantageous Tender | This is responding to the need for the Council to carefully consider its budget position when awarding contracts for goods, services and works |
| 28 Performance bonds and parent company guarantees | <ul style="list-style-type: none"> To bring SCC in line with contemporary best practice on the topic To ensure that officers take proper account of the risks that the Council is exposed to in the course of its contracting activities |
| 29 Terms and conditions of Contracts | To bring SCC in line with contemporary legislation on the topic |
| 32. Submission, receipt and opening of Tenders | Whilst this has been the case in practice under the previous iteration of the Rules, it was not included in the drafting, so it has been updated to better reflect what is happening |
| 34 Presentations, demonstrations and site visits | To reduce the Council's exposure to risk through the inappropriate use of such devices in the procurement process |
| 35 Abnormally low bids | <ul style="list-style-type: none"> To reduce the Council's exposure to risk through the procurement process To bring SCC in line with contemporary legislation on the topic |
| 36 Contracts exceeding the written estimate | <ul style="list-style-type: none"> To reduce the Council's exposure to risk through the procurement process To bring SCC in line with contemporary best practice on the topic To ensure that officers fully consider their needs at the outset of a procurement process |
| 37 Clarification | <ul style="list-style-type: none"> This is responding to a need for greater information and clarity in the Rules around clarifying suppliers' bids To bring SCC in line with contemporary legislation and best practice on the topic |
| 38 Post-Tender negotiation | <ul style="list-style-type: none"> This is responding to a need for greater information and clarity in the Rules around negotiating with suppliers once quotations and tenders have been received To bring SCC in line with contemporary legislation and best practice on the topic |
| 39 Electronic auctions | To bring SCC in line with contemporary legislation and best practice on the topic |

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| 43 Signing of contract | <ul style="list-style-type: none">• This is responding to a need for clarity in the Rules• To bring SCC in line with best practice on the topic |
| 46 Variation, extension, assignment and novation | <ul style="list-style-type: none">• This is responding to a need for greater information and clarity in the Rules around what is permitted in relation to making changes to contracts• To more closely align with Rules with contemporary legislation on the topic |
| 47 Records of Tenders and Contracts | To more closely align with Rules with contemporary best practice on the topic |
| 48 Contract manager | <ul style="list-style-type: none">• This is responding to a need for greater information and clarity in the Rules contract management• To more closely align with Rules with contemporary best practice on contract management |
| 49 Contract operations manual and plan | As above |
| 50 Risk management | <ul style="list-style-type: none">• To reduce the Council's exposure to risk through the lifetime of contracts• To more closely align with Rules with contemporary best practice on contract management |
| 51 Payment; 52 Liquidated and ascertained damages and 53 Dispute | To specifically draw officers' attention to issues within contracts that they need to be aware of during the contract management phase of the procurement/commissioning cycle |
| 57 State Aid and 58 Development Agreements | <ul style="list-style-type: none">• To reduce the Council's exposure to risk in relation to both of these items• To more closely align with Rules with the legislation and contemporary best practice on the issues |