

Item No. 6	Classification: Open	Date: 26 May 2004	Meeting Name: Council Assembly
Report title:		Modernising Contract Standing Orders	
Ward(s) or groups affected:		None specifically	
From:		Assistant Chief Executive (Performance and Strategy)	

RECOMMENDATION(S)

1. It is proposed that the Council Assembly agrees:
 - that the new Contract Standing Orders are adopted with effect from 1 July 2004;
 - that a report is presented to the Executive after the first 12 months of operation of the new Contract Standing Orders evaluating their success.

BACKGROUND INFORMATION and POLICY IMPLICATIONS

2. The current Contract Standing Orders were approved by the Strategic Services Committee at the end of 1998 and issued by the Chief Legal Officer in January 1999. Changes in legislation have taken place since their issue, particularly in terms of the abolition of CCT, introduction of Best Value, revisions to the EU Public Procurement regime, and it is necessary for new Contract Standing Orders to reflect these new requirements.
3. The Byatt report into Local Authority Procurement recommended that Councils *"... should review their standing orders to ensure they promote efficient and effective procurement whilst maintaining safeguards of probity and good governance. Standing orders should be used positively to encourage good practice. ..."* The Government, in various Circulars issued on Best Value and the Modernisation agenda in local authorities, has recommended that Councils modernise their Contract Standing Orders.
4. There are four best practice models, one from the Chartered Institute of Public Finance and Accountancy (CIPFA) and three produced by the Improvement and Development Agency (I&DeA). The CIPFA recommended model is that of Cambridgeshire County Council, the I&DeA has produced three models, from Leeds City Council, Hertfordshire County Council, and Newham LBC.
5. A review of the Council's Contract Standing Orders has been carried out. The current Contract Standing Orders were described by officers as being too legalistic, inflexible, and difficult to follow. As a result, it is now proposed that a new format of Contract Standing Orders is adopted **(this is attached at**

Appendix A). These provide an up-to-date format which are more user-friendly, give greater clarity, and act as an aid to a Best Value procurement process, while retaining or increasing the level of control of contract matters and ensuring probity and transparency in the tendering of contracts within the Council.

KEY ISSUES FOR CONSIDERATION

6. Contract Standing Orders – key changes

Contract Standing Orders are part of the Constitution and therefore must be agreed by Council Assembly (via the Standards Committee) before they can be implemented. There are other changes to the Constitution if the changes to Contract Standing Orders are to be implemented – such as the implementation of Individual Decision Making. A separate report about these changes, in particular in relation to Individual Decision Making, will be presented to Council Assembly (via the Standards Committee) at the same time as the recommendations contained in this Report. It is recommended that both sets of changes to the Constitution will be agreed on 26 May 2004 and become effective on 1 July 2004.

7. The key changes in the Contract Standing Orders are these:

- rationalisation of information, so that much information, particularly that around processes, previously contained in Contract Standing Orders will now appear in the Procurement Guidelines (see below);
- clarification of the scope of Contract Standing Orders; that they apply to the procurement of all goods, services and works, including when funded by money obtained externally to the Council (such as SRB, NDC, Sure Start, Supporting People);
- clarification of the consequences of non-compliance with Contract Standing Orders; this is a disciplinary offence;
- clarification of the way in which permissions are to be obtained for doing something different to what Contract Standing Orders usually requires;
- clarification of who is to make particular decisions (see table in paragraph 8 of Contract Standing Orders) – approval to proceed with tender process, contract award, and variations. Contract Standing Orders will set out which decisions are to be made by Executive and by Individual Decision Making by an Executive Member (see below);
- clarification of when consortium contracts, Council corporate contracts and framework contracts may be used;
- provision of a workable solution to the practical requirement to place spot contracts in the Education and Social Services fields where there is urgency and/or short supply (such as placing of an individual child in a residential or

foster placement); though combined with a requirement to move to block contracts wherever practicable;

- simplification of the levels of spend at which it is usually to be expected that quotes will be obtained or tenders sought. The proposal is that the limits are these:

A. Less than £5,000

no requirement to obtain competitive quotes; requirement is to ensure value for money and Best Value.

B. Between £5,000 to £49,999

requirement to obtain at least three written quotes. However, the Lead Contract Officer (as defined in Contract Standing Orders 2.6) may decide that this process is not appropriate in order to secure value for money.

C. £50,000 or above

requirement to invite at least five tenders following a competitive tendering process.

- insertion of a definition for “Strategic Procurements” – defined in Contract Standing Orders and not to be confused with Key Decisions which is unaffected and overarching – where the Executive will take the main decisions;
- aligning procurement methodology and gateway process with Contract Standing Orders, through the Procurement Guidelines.

8. Procurement Guidelines

Phase one of the Procurement Guidelines (the “Guidelines”) to support the proposed Contract Standing Orders is now complete. The Guidelines, after much drafting and consultation with key procurement personnel, the Strategic Procurement Forum and the Chief Officer Team, are to be issued by the Head of Procurement subject to the agreement of the new Contract Standing Orders. The Head of Procurement will be responsible for maintaining the Guidelines in consultation with the Borough Solicitor and Secretary, the Chief Financial Officer and the Strategic Procurement Forum.

9. The Guidelines, which are written in plain English and in a user friendly format, aim to provide helpful information on the full spectrum of procurement matters to all individuals involved in procurement across the Council. An interactive version of the Guidelines will be available on the intranet from 10 June 2004. The Guidelines describe “should do” best practice to help achieve Best Value. Due to the size of the procurement agenda and the need to establish and embed good processes and practices, the Guidelines are to be published in two phases:

- phase one covers all issues relating to the tender process and contract standing orders to accompany

- the new Contract Standing Orders;
 - phase two will cover other areas of procurement such as transaction management and market development. It is planned that this will be available in December 2004.
10. The Chief Officer Team has agreed that each department will implement the “Gateway” system. The Guidelines explain clearly how the Gateway process fits in with procurement processes and decision-making.
11. Individual Decision Making (IDM) by members
- There is a separate report before Council Assembly on Individual Decision Making. This report deals in detail with the proposed changes to the Council’s Constitution to allow certain decisions to be made by individual members of the Executive. It is proposed, following consideration by the Individual Decision Making Working Party that certain decisions which are related to contracts are made by individual members of the Executive. In the past, such decisions could only be made by the Executive itself or by an individual officer, in line with his/her level of delegated authority.
12. In particular, the attached Contract Standing Orders say that this IDM procedure is to apply to:
- decisions to carry out a tender process with only a single tenderer or to negotiate with only a single provider where the contract value is above the relevant EU Threshold (where EU requirements allow this);
 - decisions on award of contracts which are high in value but otherwise not of strategic significance;
 - decisions on award of certain contracts where it is recommended that the contract is to be awarded to other than the lowest bidder;
 - decisions on certain variations of contracts.
13. It will be necessary to ensure that there are good and auditable procedures adopted in relation to decisions made by Individual Executive Members. The details of the procedures to be followed in relation to how an individual member of the Executive will go about this decision-making are set out in the separate Individual Decision Making report. There are two recommendations made in that report which are particularly relevant to decision making under Contract Standing Orders:
- a recommendation that decisions to be taken by IDM, where they are not key decisions, will not need to be on the forward plan;
 - a recommendation that such decisions, where they are not key decisions, will not be subject to call in.

14. The reasons for this are referred to in the Individual Decision Making report. To add further comment in relation to contract decision-making, it is noted that in the past, such decisions have been made by officers and have therefore not been required to follow those procedures. If Assembly decides that such contract decisions when made by IDM should be on the forward plan and subject to call in, there are likely to be delays to decision making in relation to contracts compared to the present regime. The new Contract Standing Orders contain a requirement that every decision maker must make a record of their decision and the reasons for it (CSO 8.2), and there will be guidance given to Individual Executive Decision making which confirms the need to have a record of such decisions. There is ability for the individual Executive decision maker to decline to make the decision and to refer the matter to Executive (CSO 8.4) and a requirement to do so where the decision affects the remit of more than one Executive member.

EFFECT OF PROPOSED CHANGES ON THOSE AFFECTED

15. Contracts Review Board

The Chief Officer Team agreed to set up a Contracts Review Board (CRB). This is made up of the Chief Officer Team sitting with the Chief Finance Officer, the Borough Solicitor and Secretary, and when appropriate, the Head of Personnel (or their deputies). It has commenced operation. It is proposed that the Head of Procurement also sits at the CRB. The CRB has the following responsibilities, related to Strategic Procurements:

- to consider reports at each stage of the Gateway process;
- to receive six monthly monitoring reports relating to these contracts.

16. Strategic Procurement Forum

This forum is made up of key Managers from across the Council who are involved in procurement. The forum's role is principally to act as a representative body to be consulted on major issues to do with procurement, which include:

- the annual review of the Procurement Strategy and Contract Standing Orders;
- the publication of and review the Council's three-year Procurement Plan;
- revisions to the Procurement Guidelines, subject to their agreement by the Borough Solicitor and Secretary, the Chief Financial Officer and the Head of Procurement;
- resolution of any disagreements, conflicts or inconsistencies within procurement best practice;

- monitor and review Council wide procurement performance.

17. Communication and Training

A full programme to raise awareness of and train all involved in procurement in the new Contract Standing Orders and Procurement Guidelines is currently underway, this includes:

- a “Forward @ Southwark” learning session;
- a senior manager session, lead by the Chief Executive;
- Council wide away days for all those involved in procurement;
- both Southwark Procurement and Legal Services staff are fully versed in Contract Standing Orders and able to provide help on any enquiries from across the Council;
- a new Southwark Procurement Intranet site will be launched soon, containing key information and sources of help relating to procurement;
- a member development session is now being organised;
- a continuous corporate training and development programme on key procurement matters is being developed to start by the end of 2004.

18. Timetabling

Key dates:

- Executive decision 2 March 2004
- Standards Committee 8 March 2004
- Council Assembly 26 May 2004
- Changes in Constitution effective 1 July 2004

19. Resource Implications

There are no specific resource implications to making these changes to Contract Standing Orders. The resources required to train procurement officers will be met from within existing budgets.

20. Consultation

Extensive consultation with officers across the Council has been undertaken throughout the development of these Contract Standing Orders.

21. The Chief Officer Team approved this report on 11 February 2004.

22. The Executive agreed with the recommendations of this report on 2 March 2004, subject to any comments by the District Auditor. This has been actioned and taken account of.
23. The Standards Committee agreed with the recommendations of this report on 8 March 2004, subject to comments by the District Auditor and clarity in respect of CSO 9.1. This has been actioned and taken account of.
24. The District Auditor has reviewed the new Contract Standing Orders (in association with the Guidelines) and said that overall they were well constructed and cover the salient aspects of the stated objectives. However, some areas were pointed out for further consideration / clarification, particularly with regard to the accompanying Guidelines. These have been considered and actioned where appropriate. Only one firm recommendation was made and that was to “devise cross references or electronic hyperlinks between the Contract Standing Orders and the Guidelines for common issues and related items”. This has been actioned through the Guidelines and both documents will be linked once on the intranet site.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Comments of the Borough Solicitor and Secretary

25. This report recommends that Council Assembly agree new Contract Standing Orders.
26. The Council’s power to make contracts standing orders derives from section 135(1) of the Local Government Act 1972. That section also requires local authorities to make Contract Standing Orders ‘with respect to the making by them or on their behalf of contracts for the supply of goods or materials or for the execution of works’. Such Contract Standing Orders must ensure that there is provision for securing competition and regulating the manner in which tenders are invited.
27. The Local Authorities (Executive Arrangements) (Modification of Enactments and Further Provisions) (England) Order 2002 also provide a duty to make standing orders under Section 135 of the Local Government Act 1972, which must include provision for securing that any contract which is of or above a value specified in the Contract Standing Orders by the authority, or is of a description specified in the Contract Standing Orders must be in writing. The Local Authorities (Functions and Responsibilities) (England) (Regulations) 2000 prohibit delegation of the responsibility to make standing orders to the Executive. However, it is possible for the power to be delegated to a committee or officer, with the exception that the decision on the level above which and the description of which contracts must be in writing must be determined by Council Assembly.
28. Other legal matters are dealt with in the body of the report.

Comments of the Chief Finance Officer

29. The revised and simplified contract standing orders should help ensure full compliance by officers with the Council's contract letting procedures. This is because the revisions and simplifications should aid officers understanding of the correct procedures thus minimising the scope for unintentional breach as a result of ignorance or misunderstanding.

REASONS FOR URGENCY

30. The revised Contract Standing Orders should be considered at the same time as the report on Individual Decision Making, which has also been submitted to Council Assembly on 26 May 2004. It is important that the new Contract Standing Orders take effect by 1 July 2004 to ensure that the implementation of the Council's Procurement Strategy and the benefits it brings, agreed by the Executive in November 2003, is not delayed.

REASONS FOR LATENESS

31. The late submission of this report is due to the need to consult external bodies and the subsequent requirement to re-consult internal officers on the comments received.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
A. I&DeA (the "Code of Procurement Practice a Best Practice Guide" which includes Codes of Practice from Newham LBC, Hertfordshire CC, & Leeds CC) B. Westminster City Council Code of Practice C. Brent LBC Contract Management Guidelines D. Wandsworth LBC Code of Practice E. Barnet LBC Code of Practice F. Best Value Purchasing issued by CIPFA (Cambridgeshire County Council's Code of Practice) G. Southwark's new Procurement Guidelines (phase one)	Southwark Procurement 19 Spa Road, London, SE16 3QN	Christine St Matthew -Daniel
Published Documents referred to in the report		
H. Competitive Procurement" by the Audit Commission		
I. Delivering Better Services for Citizens – A Review of Local Government Procurement in England" by the Local Government Task Force chaired by Sir Ian Byatt (available on ODPM website)		
J. Towards a National Strategy for Local Government Procurement – the Joint Response of the Government and the Local Government Association to the Local Government Procurement Taskforce report "Delivering Better Services for Citizens" (available on ODPM website)		

Audit Trail

Lead Officer	Sarah Naylor - Assistant Chief Executive	
Report Author	Paul Deegan - Head of Procurement	
Version	Final	
Dated	12 May 2004	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Borough Solicitor & Secretary	Yes	Yes
Chief Finance Officer	Yes	Yes
Chief Officer Team	Yes	Yes
Executive Member	Cllr Lorraine Zuleta	
Date final report sent to Constitutional Support Services	18/05/04	