

## OSC Briefing: Contract Standing Orders review 9 June 2003

### Why we have Contract Standing Orders

- To ensure good financial practice and probity in the making of contracts in order to obtain competition, ensure propriety, secure compliance with UK and European law and provide a framework for ensuring that the contract process is accountable, transparent and auditable.
- Because the Local Government Act 1972, and regulations require them.

### What's in CSOs now

CSOs currently include a mix of:

- statutory requirements
- procedures
- good practice guidance
- information on legal requirements
- Thresholds at which different procedures apply
  - Example: contracts valued at £40,000 and above must be tendered.
- Provisions which allow a waiver/exemption from a particular CSOs
  - Example: a contract which is valued at £90,000 will require 5 tenders. However, if there is only one company which can provide this service, this rule can be waived by a Chief Officer, on receipt of a report from the contracts officer.
- Provisions which allow contracts to be varied, within certain limits, without going through the complete process again
  - Example: Chief Officers may currently approve additional works up to 20% of the value of the contract. Any accumulated variations above 20% must be referred to the Executive.
- Provisions which allow the Chief Officer to award contracts to the lowest tender at any value and up to £144,000 as long as it is within 20% of the lowest tender. Decisions to accept other than the lowest tender, are reserved to the Executive.

### Why Change?

The current Contract Standing Orders have been criticised by staff during a review as:

- being too prescriptive,
- not enabling,
- too long, difficult to find where things are,
- legalistic, not user-friendly,
- it is difficult to distinguish between the Council's requirements, guidance and the legislative requirements
- issues around (lack of) compliance,
- not helpful, no guidance on how to do things,
- CSOs encourage the award of contracts to the lowest price (as Chief Officers can make the award whereas Executive approval is required for others) rather than looking for true value for money.
- CSOs do not encourage evaluation of tenders from a perspective of best value for money, or sustainability

Government Best Value Guidance required us to review our standing orders to ensure compliance with the Best Value duties. The Byatt report into local authority procurement recommended that CSOs be reviewed and modernised.

### What has already happened

An officer working group has considered best practice Contract Standing Orders produced by the Improvement and Development Agency (I&DeA ) and CIPFA , and have also looked at models from Westminster CC, Wandsworth LBC, Barnet LBC. The I&DeA best practice model used by

LB Newham was considered to best meet Southwark's needs, and a new draft has been prepared.

### **The future**

The new "high level" CSOs will be more enabling and succinct, and will set out clearly the immutable principles. They will be agreed and changed by Council Assembly.

The Southwark Commissioning Code of Practice will provide detailed guidance and procedures, and will be able to be updated frequently to take account of fast-changing legislative requirements (e.g. thresholds change frequently, as do TUPE practices). The Code may be amended by the Chief Executive on the recommendation of the Contracts Review Board (see below), following the approval of the Borough Solicitor & Secretary and Chief Finance Officer. The code will be made available on the intranet, and will be searchable and hyperlinked.

The Commissioning Code of Practice is set out in a format of "must do/must not do" and "should do/should not do". Officers must obtain a waiver in advance of contravening a "must" and must make an audit trail record when they do not follow a "should".

A draft is on deposit in the Members' suite for and Members who would like more information can contact Linda Campling on x 53435.

### **The Process**

Areas where Member guidance and decisions are required are summarized below. A report is scheduled to come to OSC in July, before going to the Executive, who will make a recommendation to the Standards Committee (as a change to the Constitution is anticipated). OSC now has the chance to request any additional information to help inform its decisions/comments at 7<sup>th</sup> July 2003 meeting.

### **Key Issues for Member Consideration**

#### **1. *Whole Life Costs vs Lowest Price***

Currently CSOs are biased towards accepting the lowest initial price values. They do not adequately allow for best value to be taken into account (i.e. quality in relation to tendered value, ongoing costs, sustainability and end-of-life activities.)

#### **2. *Individual Decision Making***

There is scope for Individual Executive Members (rather than the Executive as a whole and/or Chief Officers) to agree the award of contracts/variations/exemptions. The wider issue of Individual Decision Making is covered in a separate briefing.

#### **3. *Thresholds***

<b>Quotations</b>	<b>No. of written quotations</b>	<b>No. (written) to be received</b>
Less than £5,000	No requirement	No requirement
£5,000 to less than £10,000	Two oral or written	One
£10,000 to less than £15,000	Three	Two
£15,000 to less than £20,000	Four	Three
£20,000 to less than £40,000	Four quotations or Tenders	No requirement
<b>Tenders</b>		
£40,000 to less than £70,000	Four Tenders	No requirement
£70,000 to less than £250,000	Five Tenders	No requirement
£250,000 plus	Six Tenders	No requirement

There is scope to simplify the requirements regarding quotations/tenders

#### 4. Public advertisement

Where no Approved List exists, then tenders valued at £144,000 or more must be publicly advertised. Departmental Lists covering tenders under £144,000 are not required to be publicly advertised.

The £144,000 level is a previous EU threshold (they change every two years) for supplies and services. The current EU threshold for works (the only current Approved List) is £3.67 million. The Approved List is new, having been publicly advertised in Dec 2002.

There is scope to differentiate between works and service/supply type contracts.

#### 5. Contract Signing

All contracts awarded for £144,000 or more must be in writing and sealed or signed by the Borough Solicitor and Secretary.

All other Contracts must be in writing and be signed by or on behalf of the appropriate CO. For contracts up to £40,000 in value an exchange of letters will form the contract.

Again the threshold moves with EU thresholds every two years. There is scope to pin this threshold for certainty (e.g. £100,000) and to make clear the contract should be signed before commencement of the contract, except in emergencies.

#### 6. Expressions of Interest

The EU Public Procurement Regulations require that 37 clear days to be allowed for expressions of interest (15 in cases of urgency) and the same period has been adopted for all tenders of any value below the EU threshold. This 5+ week period has cause difficulties e.g. with timetabling to meet external deadlines. There is scope to reduce this minimum period, however, it should be noted that the EU Commission is about to change their minimum requirement to 22 days if documents are sent electronically.

#### 7. The Variation Process

Currently, Contract variations may not be made until approved by the Executive:

- a) if that variation or accumulation of variations would extend the contract period by more than 3 months or 50% of the original contract period, whichever is greater; or
- b) if the variation or accumulation of variations would add more than 20% to the value of the contract or would increase the contract sum from below £40,000 (*the quotation threshold*) to £45,000 or more; or
- c) if the works, services or goods to be added to or deleted from the contract are substantially different in scope.

Delegated or Executive authority to vary a works contract gives automatic authority to vary the works consultant's fees in line with the agreed percentage. If the fee is not a percentage, then a, b, or c will apply.

Members may wish to consider changing the thresholds – e.g. Members could opt to require that individual Executive Members agree variations between 5-20% and over 20%. There will be more information and recommendations on this issue in the July report.

#### 8. Exemption Levels

Currently Chief Officers grant exemptions from CSOs following a report setting out the reasons. Where a contract has a total value of greater than £144,000 there must also be a legal concurrent from the Borough Solicitor and Secretary. Exemptions can be granted to tendering for specified reasons, though the EU Public Procurement Regulations may not be

contravened. Chief Officers are required keep a register of such exemptions and report them to the Executive every six months.

It would be possible for Individual Executive Members to take on some of the role currently played by the Chief Officer in agreeing exemptions.

#### **9. Authority to Award Contracts: Amending the Values**

Current CSOs provide that Contracts may be awarded:

- a) by the Chief Officer to the tender/quote which offers the lowest price;
- b) by the Chief Officer to the tender/quote which is the most economically advantageous, but only if it differs by no more than 20% from the lowest tender/quote; and the estimated value of the contract is less than £144,000 (*the previous EU threshold*), after considering a report demonstrating that that tender/quote offers best value;
- c) by the Council or appropriate committee in any other case.

With the move to Executive Arrangements, contracts with an annual value of greater than £500,000 (or those which have a significant impact on one or more wards) are in addition subject to extra publicity requirements of the Key Decisions process (i.e. inclusion in the Forward Plan, requirements relating to availability of reports).

#### **10. What else is happening: The Contracts Review Board**

The Council has already set up a new system for monitoring contracts and a Contracts Review Board has been established. It consists 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). The Council has adopted a "Gateway" model – where the CRB considers reports at various stages of the contracting process. The CRB

- a) considers procurement reports where one or more of the following applies:
  - i) The Contract value is greater than £2 million per annum, or is likely to increase significantly over its current value.
  - ii) The proposed Contract will significantly affect the nature, scale or scope of the previous service provision, e.g. users will be required to pay a service charge, receive a reduced level of service, etc.
  - iii) Where a service is likely to be externalised.
  - iv) Where a service is likely to be delivered in a significantly different manner, e.g. a management contract, by a charitable trust, arms-length company.,
  - v) Where there is likely to be a transfer of significant assets to or from the Council.
  - vi) Where there is likely to be a transfer of the majority of the staff providing the service into or out of the Council.
  - vii) Where, in the opinion of the relevant Chief Officer, the contract is politically sensitive;
- b) receives 6 monthly monitoring reports relating to the above contracts;
- c) receives the annual review of the Commissioning Strategy;
- d) oversees the publication of and review the Council's 3-year Procurement Plan;
- e) will consider reports seeking waivers to any part of the Commissioning Code of Practice;
- f) will manages and interprets the Commissioning Code of Practice; and
- g) will ensure that the Commissioning Code of Practice is reviewed not less than biennially, oversee its review and agree any updates or revisions to the Code, subject to their agreement by the Borough Solicitor and Secretary and the Chief Financial Officer;
- h) will ensure that the Contract Standing Orders are reviewed biennially.

#### **11. Review of Commissioning Strategy**

It is also necessary for the Council to have a Commissioning (Procurement) Strategy and this is intended to be brought to the Executive for agreement during July.

## Appendix

The language of purchasing has developed with procurement and commissioning becoming more common and often used synonymously. To enable a common understanding in Southwark, definitions of what is meant by the various terms is set out below.

<b>Commissioning</b>	This encompasses the whole process of acquisition of goods, services, and works, from the initial assessment of business need through to the end of the life of the asset or service. ( <i>Byatt Review, Terms of Reference</i> )
<b>Procurement</b>	The process of deciding the contract strategy, selection of candidates, tendering, evaluation, management and monitoring of works, a service or a supply.
<b>Purchasing</b>	This includes buying very simple goods, or repetitive ordering and paying for goods or services e.g. from a call-off or framework contract and providing feed back to the contract's responsible officer on performance.

Other jargon:

Contract Strategy	the way in which a contract will be provided e.g. several small contracts, area based contracts, one large contract, etc.
Expression of Interest	Either a letter from a firm interested in bidding for a contract, or more usually, a completed Pre-Qualification Questionnaire (PQQ)
Pre-qualification Questionnaire	Also called a Pre-Tender Questionnaire (PTQ) this comprises various questions designed to establish the financial, economic and technical qualifications of a prospective tenderer to carry out the contract to be tendered
Tendering Strategy	Whether to carry out a one-stage, two-stage or negotiated tendering process