

Item No. 6.4	Classification: Open	Date: 22 March 2017	Meeting Name: Council Assembly
Report title:		Proposed changes to Part 4 Contract Standing Orders	
Ward(s) or groups affected:		All	
From:		Constitutional Steering Panel	

That council assembly considers the recommendations of the constitutional steering panel in respect of the proposals set out in this report.

RECOMMENDATIONS

1. That the proposed changes to Part 4 Contract Standing Orders of the constitution be agreed (see Appendix 1).

Consequential changes

2. That the proper constitutional officer be authorised to make any necessary consequential changes to the constitution as a result of the above.

BACKGROUND INFORMATION

3. The council's contract standing orders (CSOs) are reviewed each year to reflect any statutory or procedural changes but with the approval of the council's Fairer Future procurement strategy in June 2016, the impact of the Public Contract Regulations 2015, and the introduction of an e-Procurement system, a more substantive review is now timely.
4. Article 1 of the constitution provides that all changes, other than minor ones, must be agreed by council assembly, after consideration by the constitutional steering panel. The draft revised CSOs have been considered by the cabinet member for finance, management and performance and also by the audit, governance and standards committee, as its remit includes the monitoring and development of corporate governance in the council and in view of its interest in contract-related decisions.
5. The purpose of this report is to set out proposed changes to the CSOs for the panel's consideration.

KEY ISSUES FOR CONSIDERATION

6. The following paragraphs set out the key changes which are being proposed. In addition to these changes, it should be noted that the structure of the CSOs has been revised in order to try and make them flow more logically from a user's perspective so that they more closely mirror the steps in a procurement process. Appendix 1 sets out the proposed revised CSOs, Appendix 2 the current CSOs and Appendix 3 shows the changes made.

E-Procurement system

7. In approving the council's Fairer Future procurement strategy in June 2016, cabinet noted that there would be consequential amendments to the constitution including the CSOs and these were made in late 2016. The strategy refers to the benefits of the use of an e-procurement system and the proposed revised CSOs make it clear that the use of this system is the preferred route when tendering. It should be noted that from mid October 2018, all procurements will have to be carried out in this way and, in due course, CSOs will be amended to reflect this.

Thresholds

8. Thresholds in respect of approval decisions relating to pre-procurement strategic assessments (GW0 reports), procurement strategies (GW1 reports) and contract awards (GW2 reports) have not been amended.
9. However, changes have been proposed in respect of thresholds relating to approval decisions in respect of contract variation decisions (GW3 reports). Decisions for these have been amended to align thresholds with those for GW1 and GW2 approval decisions.
10. A change is also proposed in respect of the threshold at which the preparation of a gateway report is mandatory such that this applies to all decisions of £100,000 or more (currently £75,000), with use of it being recommended for contracts below this value.
11. Requirements in respect of obtaining quotes or tenders for contracts with an estimated value below the relevant EU threshold have been reviewed and it is proposed that thresholds be raised as follows: five tenders should be sought for contracts over £100,000 (currently £75,000), three quotes should be sought for contracts valued at £25,000 to £100,000 (currently £5,000 to £75,000) and best value, usually three quotes, should be sought for contracts below £25,000 (currently £5,000).
12. Changes are proposed to the thresholds at which works contracts must be executed under seal so that this would apply to all contracts of £200,000 or more. Current requirements are considered to be potentially confusing, with all works contracts over the EU threshold for supplies and services being subject to this. It is good practice for all other contracts to be signed by at least two authorised officers wherever practicable, but it is proposed that that a threshold of £25,000 be introduced in order to recognise that contracts of low values may be supported by a purchase order only.
13. The threshold at which supplemental advice is required to be obtained by report authors is proposed to be reduced in respect of work contracts to £2 million (currently the EU threshold for works).

Contract variations

14. Contract variations are currently defined in CSOs as decisions to 'extend the length or cost or amend the scope of a contract where the original agreed contract makes explicit provision for this'. In a situation where there are no or no further extension options available but the most appropriate option is to continue to use a current provider, it is currently necessary to seek the approval of a

procurement strategy and then of a contract award, even though the decision to extend or vary will be effected by means of a variation to the existing contract. It is proposed to amend the definition of a variation to 'a modification to an existing contract such as additional services, exercising options, changes in price or a change in contractor'. This will help to ensure that there are appropriate but not overly cumbersome governance arrangements in place.

Corporate contracts and contracts used by more than one department

15. Decisions on contracts which are used by more than one department, including corporate contracts, are currently taken by the strategic director of finance and governance but changes in recent years in responsibilities for services and council functions mean that a number of these contracts are now more clearly the responsibility of another chief officer – e.g. those relating to IT and facilities management.
16. It is proposed that the separate category of 'corporate' contracts be removed and that decisions on such contracts and other multi-departmental contracts should be taken by the chief officer responsible for the contract, after consideration by all relevant departmental contract review boards.

Spot contracts

17. Although referred to in the current CSOs, 'spot' contracts is not a recognised term and as many such contracts now fall under the EU's Light Touch regime, it is proposed to amend CSOs to reflect this. In cases of emergency, the CSOs set out what action is required to deal with these appropriately.

Frameworks and purchasing consortia

18. The sections covering the use of frameworks and purchasing consortia have been restructured with a view to making them easier to follow and comply with.

Tender return and opening procedures

19. In addition to the proposed changes referred to in paragraph 6 above, a change is also proposed in dealing with exceptional cases where a request is made to do something different from what is required in respect of tender return and opening procedures. Current CSOs provide that such exceptions must only be authorised by the relevant chief officer following consultation with the strategic director of finance and governance, and the corporate and departmental contract review boards as appropriate. Recognising the potential legal implications of such exceptions, it is now proposed that chief officers should consult with the monitoring officer and seek legal advice as necessary.

Mergers and acquisitions

20. Although CSOs make provision for contract termination, they do not currently cover a situation where a current contractor may be the subject of a merger or acquisition by another company or organisation. This situation has arisen on a number of occasions and a new section has therefore been drafted for inclusion which would require the lead contract officer to inform the monitoring officer and the strategic director of finance and governance in order to enable appropriate advice to be given.

Contract management and monitoring

21. Requirements relating to contract management and monitoring have been tightened recently and a further amendment is now proposed which makes explicit the need to monitor KPIs and budgets as part of performance and financial monitoring.

Consequential changes

22. As a result of some of the changes proposed in this report, further consequential changes will be required to update other parts of the constitution, e.g. Article 11, to ensure that it remains consistent.

Policy implications

23. This report is not considered to have direct policy implications. The proposed changes are intended to ensure that governance arrangements in respect of contract-related decisions and contract management and monitoring will be more proportionate to risk.

Community impact statement

24. The proposed changes to CSOs are not considered to have a significant impact on any particular community or group.

Resource implications

25. There are no direct resource implications in this report.

Legal implications

26. The specific legal implications relating to this report have been included.

Consultation

27. There has been no formal consultation on this report but account has been taken of comments made by the audit, governance and standards committee.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

28. None required.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
None		

APPENDICES

No.	Title
Appendix 1	Proposed revised draft Contract Standing Orders and flow charts
Appendix 2	Current Contract Standing Orders – extract from the constitution: Part 4 (available on website)
Appendix 3	Proposed revised draft Contract Standing Orders with tracked changes (available on website)

AUDIT TRAIL

Lead Officer	Duncan Whitfield, Strategic Director of Finance and Governance	
Report Author	Jo Anson, Head of Financial and Information Governance	
Version	Final	
Dated	9 March 2017	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Not applicable	Not applicable
Cabinet Member	Yes	Not applicable
Date final report sent to Constitutional Team	9 March 2017	