

Report of the Strategic Director Corporate Resources to the meeting of the Governance and Audit Committee to be held on the 20th of August 2020.

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Subject:

Amendments to the Constitution – Contract Standing Orders and Financial Regulations

Summary statement:

This report provides members of the Council with details of the annual review of the Financial Regulations and Contract Standing Orders sections of the Council's Constitution and makes recommendations for their amendment.

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Overview & Scrutiny Area:

Corporate

1. SUMMARY

- 1.1 This report provides members of the Governance and Audit Committee with details of the annual review of the Financial Regulations and Contract Standing Orders sections of the Council's Constitution and makes recommendations for their amendment.

2. BACKGROUND

- 2.1 During the municipal year 2019/20 Officers have undertaken their annual review of Financial Regulations and Contract Standing Orders to ensure they properly reflect appropriate governance procedures for the Council. This report sets out the proposals for amendments to deliver those changes and improvements. The Committee is asked to consider the proposed amendments to the Constitution for recommendation to Council for formal approval.
- 2.2 The City Solicitor will implement any recommendations approved by Council and make consequential amendments to the Constitution.

3. OTHER CONSIDERATIONS

- 3.1 There are a number of proposed changes to Contract Standing Orders, these are summarised with reasons for changes in the following table with a complete copy set out at Appendix 1:

Proposed Changes to Contract Standing Orders	
CSO	Summary of Changes
Def	Defined terms updated including Thresholds Definition included on Concessions and changes to Procurement Legislation.
1	Introduction Introduction included describing the procurement cycle. Reference to Grants being subject to the full CSO's has been removed. Grants are dealt with at CSO 27.
2	Compliance with Contract Standing Orders Inclusion of some Legal Services which have always been exempt from CSOs Non Compliance log and report is referenced
3	Social, Economic, Environment and Ethical Considerations Typographical errors corrected
4	Procurement Plans New CSO (but the principle is taken from previous CSOs) on obtaining procurement plans and the intention of publishing them on the Council website.
5	In House Services and Existing Arrangements New CSO on existing contractual arrangements Reference to payment via PCard has been removed as PCard is a transactional process not an alternate route to market
6	Estimating Contract Values

	New CSO based on aggregating Value
7	Pre-Procurement Requirements Re-structured the clause so it is clearer what is required prior to commencing procurement activity. Note about use of Prior Information Notices (PINs) included. Financial Checks section has been moved to CSO 19
8	Framework Agreements and Dynamic Purchasing Systems (DPS) New CSO on due diligence required when using a framework agreement or DPS and also when establishing the Council's own framework agreement and DPS'.
9	Concession Contracts Reference that advice must be sought when considering these types of contracts.
10	Contracts up to £24,999 Low value CSO to focus on the use of local suppliers under the duty of best value rather than a prescribed procedure. Officers must keep a record of their decision making to meet transparency obligations.
11	Contracts between £25,000 and £189,329 (EU Threshold for Supplies and Services) Removal of the differentiation between above and below £100k (four or six quotes) – the new requirement is 4 local quotes within this threshold. Made a differentiation between restricted and closed procedures at this value level so not to confuse the process with higher value procedures. Section added about relevant and proportionate suitability assessment questions when assessing suppliers experience, capability and capacity at this value threshold.
12	Light Touch Regime Contracts Valued £189,330 to the Light Touch Regime (LTR) Threshold, Concession Contracts Valued £189,330 to the Concession EU Threshold, Works Contracts Valued £181,330 to the Works EU Threshold Acknowledges that there is a 'grey' area between the supplies threshold and works, LTR, concession threshold and describes the procedure required.
13	All Contracts valued above the EU Threshold Updated in line with proposed CSO 12.
14	Procurement Procedures Adds more detail on LTR procurements.
15	Submitting and Opening Tenders and Quotations. No change
16	Evaluation New CSO on Officer requirements when evaluating tenders
17	Errors in Tenders and Quotations No change
18	Post Tender and Quotation Negotiations Clarity provided around not negotiating above the relevant EU threshold after Final Tenders.
19	Approval and Acceptance of Tenders and Quotations New CSO requiring that a tender evaluation report is produced for every procurement above the relevant EU threshold or £2million (whichever is lower) – signed off by the Head of Procurement in order to assess any

	<p>procurement risk prior to notification letters being issued to tenderers. Details also included as to what the content of notification letters should be.</p> <p>Financial checks on suppliers has been included at this CSO</p>
20	<p>Exceptions Exception reasons have been edited.</p> <p>Deleted The Exception for using in-house services as this is a compliant route to market. The requirement for Exceptions below £25k as this is a compliant route to market. The Exception for using a consortium procurement as this is a compliant route to market.</p> <p>Added An exception for unique works of art An exception to extend a contract to allow for a re-procurement An exception to allow for using a supplier that is specifically required by a funder.</p>
21	<p>Contract Extensions, Variations, Novation or Termination Drafting of the language has been clarified. Closer link to Regulation 72 of the Public Contracts Regulations which deals with substantial modifications of contracts.</p>
22	<p>Written Contracts All contracts above £2m are sealed.</p>
23	<p>Professional Services, Consultants and Intermediary Employment No Change</p>
24	<p>Contract Conditions Emphasis placed on consultation before entering in to contract. Framework Agreements and DPS' added to the exclusion list due to new CSO8 about Framework / DPS due diligence.</p>
25	<p>Contract Management No change</p>
26	<p>Lease and Other Credit Arrangements No change</p>
27	<p>Grants Grants are dealt with here – must follow the principles of these CSOs not the entire procedures of CSO</p>
28	<p>Payment Outside of Standard Procure to Pay Procedures Caveat about up front payment where it is industry practice.</p>
29	<p>Claims No Change</p>
30	<p>Contracts Where Members Have an Interest No Change</p>

3.2 There are a few proposed changes to Financial Regulations, set out as 'track changes' in Appendix 2, these are summarised with reasons for changes in the following table:

Proposed Changes to Financial Regulations	
Section	Reason
1.10	Added to ensure clarity for officers that the budget is approved by full council.
2	Heading changed for clarity.
3.2	Amended for clarity.
7.1	Amended to be consistent with 8.2. This role can be carried out by the Strategic Director Corporate Resources and the Chief Financial Officer.
8	Amended heading to clarify that this section relates to Strategic Investments and not treasury management or WYPF investments.
13.1	Amended for clarity.
14.1	Amended for clarity.
15.3	The responsibility for this role lies with the Chief Financial Officer not the Strategic Director Corporate Resources.
16.2 (new)	This regulation has been added to clarify to Officers that irrespective of how a capital investment proposal is funded it must fit the capital programme and maximise grant funding.
16.3 (previously 16.2)	Added to differentiate the process between capital/non capital funded projects and some corrections in terminology.
18.6	Change from "nominate" to "delegate" and extend the range of staff to the Department of Corporate Resources so that it covers staff in Revenues, Benefits and Payroll.
18.7	Change from "nominate" to "delegate".
19.1	Sterling limit reduced to £8,400 due to change in exchange rate (at the time of writing).

4. FINANCIAL & RESOURCE APPRAISAL

4.1 There are no financial issues arising from this report.

5. RISK MANAGEMENT AND GOVERNANCE ISSUES

5.1 The proposed recommendations are offered to improve the Council's finance and procurement related processes and provide rules to limit risk to the Council.

6. LEGAL APPRAISAL

6.1 Article 17 of the Constitution requires the Monitoring Officer to take steps to make himself/herself aware of the strengths and weaknesses of the Constitution and make recommendations for improvement.

6.2 The review and development of the Constitution is undertaken in compliance with the provisions of the Local Government Act 2000, regulations and guidance made and issued under the Act.

- 6.3 The review of the Council Standing Orders upholds the obligation placed on the Council by s135 of the Local Government Act 1972.
- 6.4 The Council will ensure that any updates to the Council Contract Standing Orders shall be compliant with all procurement legislation including the Public Contracts Regulations 2015.

7. OTHER IMPLICATIONS

- 7.1 There are no implications in relation to the following:
- Equality and Diversity
 - Sustainability
 - Greenhouse Gas Emissions
 - Community Safety
 - Human Rights Act
 - Trade Unions
 - Ward Implications
 - Area Committee Action Plans
 - Corporate Parenting
 - Privacy Impact Assessments

8. NOT FOR PUBLICATION DOCUMENTS

- 8.1 There are no 'not for publication' documents for this report.

9. OPTIONS

- 9.1 The recommended option is for Members of the Governance and Audit Committee to recommend the proposed changes to Contract Standing Orders and Financial Regulations set out in this report for approval to the Council to support improvements in the organisation's finance and procurement processes and procedures.
- 9.2 Member of the Governance and Audit Committee may wish to accept some of the proposed recommendations and, or make their own recommendations.
- 9.3 The 'do nothing' option is not recommended as the proposed changes have been put forwards to support improvements in the Council's finance and procurement processes and procedures.

10. RECOMMENDATIONS

- 10.1 That option 1 be accepted and the proposed changes to Contract Standing Orders and Financial Regulations be accepted and recommended to Council to support improvements in the organisation's financial and procurement processes and procedures.

11. APPENDICES

Appendix 1: Proposed Contracts Standing Orders 2020/21

Appendix 2: Proposed Financial Regulations with track changes 2020/21

12. BACKGROUND DOCUMENTS

There are no background documents to this report.