

Update on Procurement and Standing Orders

Strategy & Resources Committee Tuesday, 2 February 2021

Report of: John McGeown - Procurement Specialist

Purpose: For decision and for information

Publication status: Unrestricted

Wards affected: All

This report supports the Council's priority of: Building a better Council
Creating the homes, infrastructure and environment we need
Supporting economic recovery in Tandridge
Becoming a greener, more sustainable District

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Executive summary:

The purpose of this report is:

- to update Members on procurement revisions that have been considered following the Internal Audit Report in 2020
 - to replace the Council's existing Contract Standing Orders with the proposed contract standing orders as set out in the attached **Appendix A**
 - agree a set of standard Key Performance Indicators ('KPI's) for procurement as set out in the attached **Appendix B**
 - to inform Members of the Procurement Improvement Plan that is aimed at identifying and realising savings during financial year 21/22 as set out in **Appendix C**.
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Recommendation to Committee:

- A. It be recommended to Council that Contract Standing Orders be amended in accordance with **Appendix A** as advised by Internal Audit;
 - B. The Committee agree a set of standard procurement KPIs detailed in **Appendix B**; and
 - C. the Procurement Improvement Plan as detailed in **Appendix C** be noted.
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Reason for recommendation:

Since the current version of the Contract Standing Orders ('CSOs') was approved by this Committee in November 2019, several changes have been proposed by the Southern Internal Audit Partnership ('SIAP'). This report sets out the proposals for amendments to deliver those changes and improvements put forward by SIAP. The Committee is asked to consider the proposed amendments to the Constitution for recommendation to Full Council for formal approval.

It is also recommended that Members agree a set of standard procurement KPIs as well as the Procurement Improvement Plan.

Introduction and background

1. Section 135 of the Local Government Act 1972 requires Local Authorities "to make 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".
2. Contract Standing Orders ('CSOs') form part and are included within the Council's Constitution and set out the minimum obligations and minimum requirements to be followed by Officers when making purchases with third parties. It is one of the core Council's governance documents and should therefore reflect both legal and best value requirements.
3. A requirement of the existing CSO's is that they are reviewed and updated as necessary with any such recommendations made by the Procurement Specialist being considered by this Committee. Following which, they are to be presented to Full Council for adoption.
4. Changes to the CSOs were agreed at the November 2019 Committee Meeting and included:
 - Introduction of 5 thresholds bands and a lowering of first threshold to £5,000 at which 3 competitive quotes must be sought.
 - Mandated e-procurement
 - Updated references to relevant regulations and legislation

These changes aligned the Council with the other Districts and Boroughs in the County. The structure of the CSOs was completely revised and rewritten to be more comprehensive and make them flow more logically from a user's perspective. They were also reviewed in the light of changes to Procurement Regulations and other statutory obligations (i.e. General Data Protection Regulations [GDPR]).

5. SIAP were commissioned to review procurement activity within the Council during February 2019 and March 2020. A report was published in May 2020 and contained nine recommendations. The review of a 12-month period included the period before the new CSOs were adopted. SIAP made the following observation:

'There is currently no annual or cyclical report to Members to provide assurance that compliance to contract standing orders and the procurement strategy is evident and progressing'

The management action was to develop a report to Members that illustrates compliance with the CSOs and Procurement Strategy.

6. This report is in response to this management action but will also provide Members with an update on all the other observations contained within the SIAP report.
7. Regardless of their findings, it is vital that CSOs are kept up to date and the compliance with those orders is promoted by Members and senior Officers. Potential costs to the Council could be incurred unnecessarily if regulations and guidelines are not complied with and, as a result, a successful challenge to a contract award is made.
8. The nine recommendations are summarised with reasons for changes in the following table:

No	Audit Observation	Update	What does the Committee Need to do
1	Non-Compliance with CSOs.	<p>The following management actions have been completed:</p> <ul style="list-style-type: none"> • A communication was sent to all staff regarding the need to comply with the CSOs. • A new Procurement site on Sharepoint was created that includes a 'Procurement Toolkit' with all the resources and guidance to undertake a procurement exercise. The site is a comprehensive resource allowing procuring officers to collaborate and share files, it also stores all Corporate Procurement Board minutes, actions and documents. 	Take Note

		<ul style="list-style-type: none"> Developed and implemented a training programme for Procuring Officers. This provided officers with an understanding of public contract regulations and the Council's CSOs as well as the necessary skills to undertake a procurement exercise. 	
2	There are currently no performance indicators for the Procurement Function.	<p>A total of 6 Performance Indicators have been identified.</p> <p>See Appendix B these include:</p> <ol style="list-style-type: none"> 1. Savings achieved as a result of a procurement process 2. % of procurement transactions greater than £5k captured on in-tend 3. % of spend with 100 top suppliers currently compliant with CSOs 4. Number of Contract values awarded to within 10% of pre-contract estimated value 5. Number of contracts awarded to local SMEs <p>Once agreed these will be reported annually after the financial year end.</p>	Approve the KPI format
3	Identified a number of shortcomings with the Procurement Card process and policy	<p>A review of procurement card usage was undertaken and as a result a 4 of 28 cards were cancelled.</p> <p>A new policy was created that details what the cards can and cannot be used for, and a monthly usage report is reviewed by CPB to provide oversight.</p>	Take note
4	The Procurement Strategy does not clearly define roles and responsibilities and the key objectives are not aligned to the current operational systems and priorities.	<p>The Procurement Strategy has been updated to ensure it:</p> <ul style="list-style-type: none"> Is aligned with current corporate objectives, as stated in the Strategic Plan and the Climate Change Action Plan Include reference to roles and responsibilities 	Take note
5	Recommended the following changes to Contract Standing Orders.	<p>See Appendix A –</p> <p>Audit changes are highlighted in yellow</p>	Approve CSO changes

	<p>a. CSOs to be amended to include reference to pre-tender estimates and how contract awards over the original estimate are approved</p> <p>b. CSOs to be amended to include reference to the treatment of Abnormally Low tenders.</p> <p>c. CSOs to be amended to clarify that the confidentiality of quotations, tenders and the identity of contractors must be preserved at all times</p>	<p>Add</p> <p>15.4 Where the final contract award is greater than the value approved by the CPB, the award must be approved by the CPB.</p> <p>Add</p> <p>28.2 Abnormally Low Tenders</p> <p>Add</p> <p>26.5 The confidentiality of quotations, tenders and the identity of contractors must be preserved at all times and the information about one contractor's response must not be given to another contractor.</p>	
6	Recommended that the % of spend in the Top 100 that is non-compliant with the CSOs should be recorded and benchmarked	This will part of the KPIs identified in Observation 2 above	Approve the KPI format
7	There is currently no annual or cyclical report to members to provide assurance that compliance to contract standing orders and the procurement strategy is evident and progressing'	This report is in response to this observation.	Take note
8	Recommended some changes to the way that CSO Waivers are recorded	The CSO Waiver form now identifies if a waiver is a one-off or ongoing and the register records the reason for the waiver.	Take Note

9	Procurement Strategy	See Observation 2, above	Take Note
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9. Procurement Board

9.1 The Corporate Procurement Team consists of:

- Chief Executive
- Chief Finance Officer (S151)
- Head of Legal Services & Monitoring Officer
- Procurement Specialist

9.2 The Procurement Board's purpose is to ensure that any procurement undertaken with a cumulative value above £5,000.00, or which has implications which in the view of the Procurement Specialist is of interest to the Procurement Board. In addition, it

- has oversight and scrutiny of the Council's commercial activities, primarily commissioning and procurement;
- reviews and approves commercial activities at key stages of the commissioning and procurement lifecycle;
- ensures alignment with corporate priorities, corporate objectives and value for money; compliance with CSOs;
- ensures that the procurement of goods and services achieve value for money;
- provide a forum for sharing expertise, learning and good practice between departments.

9.3 The board has met monthly and approved 60 Procurement Activity Requests in the 12 months to December 2020.

9.4 The Procurement Board is the main Officer forum for procurement decisions. The Procurement Board has the power to waive the CSOs in specific circumstances and agree waiver decisions.

9.5 A report on the number of, and reasons for CSO waivers will be included in the report to Members after the financial year end along with the performance KPIs contained in **Appendix B**.

9.6 The report will also provide a summary of the work conducted by the Procurement Board.

10 Procurement and Brexit

10.1 Although widescale reform of public procurement was anticipated following Brexit, there have been only some minor changes as of 1 January 2021.

10.2 On 1 January 2021, the Public Procurement (Amendment etc.) (EU Exit) Regulations 2019 and Public Procurement (Amendment etc. (EU Exit) (No.2) Regulations 2019 ('Withdrawal Regulations') came into force. The

Public Contract Regulations 2015 (UK Procurement Regulations) continues to apply from 1 January 2021 but in a slightly amended form.

- 10.3 The current EU thresholds, £189,330 for goods and services and £4,733,252 for works will remain in place. This applies to CSO threshold 5 which will remain unchanged.
- 10.4 A new UK e-notification service "Find a Tender" (FTS) replaces OJEU as the means of publication of official procurement notices under the UK Procurement Regulations from 1 January 2021.
- 10.5 In-tend, the Council's tendering software will automatically publish opportunities to the new FTS platform rather than the OJEU register, there is nothing for individual officers to do.
- 10.6 The procurement templates have been amended accordingly.
- 10.7 Change to the CSOs are required to remove references to the EU and OJEU and replace with references to Public Procurement Regulations 2015 (as amended) and FTS.
- 10.8 The Committee is asked to approve the changes contained in the CSO document in **Appendix A**. Changes as a result of Brexit are highlighted in green.
- 10.9 It is not anticipated that there will be any significant changes this year, but just as soon as the changes are announced it is likely that the CSOs will need to be updated and a report will come back to this Committee for approval.

11.0 **Procurement Improvement Plan**

- 11.1 Effective procurement has a critical role to play in delivering the strategic objectives for the Council and improving the quality and value for money of the services delivered to its residents.
- 11.2 Given the Council's challenging financial position, a review of spend on the procurement of goods, works and services is essential in helping to deliver the savings identified as part of the 21-22 budget setting process.
- 11.3 A Procurement Improvement Project has been initiated with the primary objectives to:
 - 11.3.1 Deliver the budgeted savings for Financial Year 21-22
 - 11.3.2 Identify and deliver additional savings in 21-22 - by means of a systematic review of all contracts expiring by 31/3/22
 - 11.3.3 Identify savings against longer term contracts that will carry through to FY 22/23 and 23/24 and beyond.
 - 11.3.4 Identify and implement process improvements that facilitate compliance and transparent procurement to achieve maximum cost efficiency in both the short and longer term.

- 11.3.5 Help meet the Council's sustainability objectives outlined in the Procurement Strategy.
- 11.4 The scope of the project will include:
- 11.4.1 A review of all supplier contracts expiring before 31/3/2022.
- 11.4.3 The contract review will be based on an agreed set of parameters
- 11.4.4 Non-Contract spend will be identified and either stopped or competitively tendered contracts put in place.
- 11.4.3 Contract overspend will be identified and measures put in place to reduce and control.
- 11.5 A project initiation document has been developed and is included in **Appendix C.**
- 11.6 The project plan, including timelines, accompanies the Project Initiation Document.
- 11.7 A quarterly project status update will be provided by the SRO to the Committee.

Key implications

Comments of the Chief Finance Officer

There are no direct financial implications from this report. However, the premise of the Procurement Improvement Programme is to facilitate the realisation of 2021/22 savings required to balance the budget. Due to the Council's financial constraints any costs that do materialise due to a more rigorous procurement process will need to be contained within the Procurement budget envelope. There are no capital expenditure implications within this report.

The amendments to Contract Standing Orders and adoption of a set of standard KPI's for procurement will also address the recommendation put forward by Internal Audit. Overall, the Procurement Improvement Plan will help to minimise costs and realise savings.

Comments of the Head of Legal Services

Section 135 of the Local Government Act 1972 requires the Council to make contract standing orders with respect to contracts for the supply of goods or materials and for the execution of works. The revised CSOs are designed to facilitate strengthening the Council's procurement processes as a whole and achieving optimum value for money at a time when the Council is facing ever increasing pressures on its budgets.

The revisions also take into account the recommendations put forward by Southern Internal Audit Partnership and the changes to recent UK legislation. Notably, most of the EU rules are based on Directives which have been implemented into UK law by national legislation, such as the Public Contracts Regulations 2015. That national legislation will remain in place and is only being modified in relatively minor respects, such as:

- Replacing references to the European Commission with references to UK Ministers; and
- Changing the requirement to advertise so that it refers to the UK's new e-notification service, Find a Tender, rather than the EU Official Journal.

As the CSOs are part of the Constitution, any amendments must be approved by the Full Council.

Equality

When considering its approach to contracting, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who do not (the public sector equality duty). Officers are expected to continuously consider, at every stage, the way in which procurements conducted and contracts awarded satisfy the requirements of the public sector equality duty. This includes, where appropriate, completing an equality impact assessment.

Climate change implications

The climate change action plan includes developing a new procurement strategy to further sustainability and carbon reduction via the Council's procurement activities. The strategy is, at the time of writing, under review by the corporate procurement board. However, its principles are cited in the CSOs, and it has been acknowledged that the Council will be looking to address sustainable procurement practices as part of its Procurement Improvement Plan, and will scope how best to monitor performance in this complex area. The county council are working on a similar project, therefore good practice and lessons learned can be shared and aid the development of this area of work. Due to its complexities and the time required to scope, a fully-fledged climate change assessment lies outside the scope of this report, however the report formally acknowledges the Council's commitment to develop its approach to sustainable procurement in-line with the aims of its climate change action plan.

*(see Appendix A – CSOs: paragraph 9.2, Appendix B - KPI 7
The Procurement Improvement Plan: objective 9.3.5 above)*

Appendices

Appendix A – Changes to CSOs

Appendix B – Procurement KPIs

Appendix C – Project Initiation Document

Background papers

Procurement Improvement Project Plan (PIP)

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