

Update on Procurement and Standing Orders

Strategy & Resources Committee 7 April 2022

Report of: 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 replace the Council's existing Contract Standing Orders with the proposed updated contract standing orders as set out in the attached '**Appendix A**'
 - to report against the set of standard Key Performance Indicators ('KPI's) for procurement agreed at the S&R Committee on 2 Feb 2021
 - to report on the number of and reasons for CSO waivers as agreed at the S&R Committee on 2 Feb 2021 – '**Appendix B**'
 - to inform Members of the progress of the Procurement Improvement Plan aimed at identifying and realising savings during financial year 21/22 as set out in attached '**Appendix C**'
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Recommendations to Committee:

That:

- A. the changes to the Contract Standing Orders ('CSOs') as set out in Appendix A be agreed;
 - B. the procurement performance referred to in Section 2 be noted;
 - C. the volume and value of waivers from CSOs at Appendix B be noted; and
 - D. the progress of the Procurement Improvement Plan at Appendix C be noted.
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Reason for recommendation:

Since the current version of the Contract Standing Orders was approved by this Committee in February 2021, there are several amendments required as a result of changes in Public Contract Regulations. The proposed changes will also improve internal governance and procedures. It is recommended that Members accept the new revised version of the Contract Standing Orders and that they recommend acceptance by Full Council.

1. CHANGES TO CSOs

Introduction and background

- 1.1 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”.
- 1.2 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.
- 1.3 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, implemented by the Legal Services Team and considered by this Committee. Following which, they are to be presented to Full Council for adoption.
- 1.4 Changes to the CSOs were agreed at the February 2021 Committee Meeting and included:
 - Reference to the new UK e-notification service ‘Find a Tender’ (FTS) that replaced OJEU as a means of publication of official procurement notices.
 - Removal of references to EU and OJEU
 - Updated references to relevant regulations and legislation
- 1.5 A summary of proposed main amendments to the CSOs are detailed below and with the full Contract Standing Orders, including tracked proposed amendments, found in **Appendix A**.

Summary of Proposed Main Amendments to Contract Standing Orders

| PARAGRAPH NUMBER | REASONING FOR PROPOSED AMENDMENT |
|------------------|---|
| 1.1 | Provides clarity that the CSOs apply to all staff including external consultants. |
| 1.4 | Clarifies that if the CSOs are inconsistent with UK Regulations then UK law takes precedence. |
| 2.2.10 | More detailed process for the use of external legal advice to ensure a greater degree of governance and achievement of value for money. |
| 2.5 | Clarification of requirement for Chief Officer to ensure there is a business need for all proposed contracts, to ensure a high level of governance. |

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|-------------------------------|--|
| 8.5 | Updated guidance on the Council's bribery policies to ensure greater awareness of these and improve governance and effectiveness of those policies. |
| 8.5 OLD CLAUSE DELETED | This clause related to contract terms to be included re anti bribery provisions. This has been moved further down the CSOs. |
| 8.10 | Advice added regarding the re-tendering of a contract to which an officer has a financial interest. Included to ensure better transparency and governance. |
| 12.2.1 | New clause added to make it clear to an Officer starting a procurement exercise that they must have the approval from their head of service and Finance Business Partner. This is to ensure an earlier level of financial oversight and improve efficiency of process within the Council. |
| 14.5 & 14.6 | New provisions re the inclusion of VAT when calculating certain procurement thresholds, as set out by Government. |
| 16.5 | Procurement threshold updated in line with Government announcement. |
| TABLE 1 | <p>A new table has been added to replace the previous table detailing procurement thresholds and procedure. The changes state that:</p> <ul style="list-style-type: none"> • all contracts (regardless of value) must be signed by an Approved Signatory. This is to ensure that all contracts undergo a good level of governance and are reviewed by the Legal Services Team; • the Legal Services Team have discretion to recommend a different form of contract to the default proposed in the table. This aids efficiency and better ensures the Council always contracts on the most effective basis. |
| 16.7 | Procurement thresholds have been updated in line with Government announcement. |
| 18.7 | A new paragraph has been added enabling utility contracts to be approved with the agreement of the Head of Finance and the Executive Head of Communities. This is proposed because of the volatility of the utility markets and the need to immediately accept offers to secure best value for the Council. |
| 31.1 | Reference to the Strategic Director of Resources has been removed as the post is not currently utilised and has been vacant for a long period of time. |
| 31.2 | Provision added to enable the Council to seal deeds electronically. Currently deeds are physically sealed in the Council Offices, which causes delay. Requiring that deals are sealed in hard copy is unnecessary in the strive for good governance. E-sealing enables deeds to be executed in an efficient manner and does not require staff to be physically present in the office. Many organisations do not physically seal documents and requiring this is becoming outdated. E-sealing is efficient, provides good governance, reduces paper wastage and facilitates good record keeping. |

| | |
|------------------------|---|
| 31.5 & 31.6 | New paragraphs to make it clear that the Legal Services Team should be consulted on all contracts to ensure there is a clear governance audit trail. |
| 32 | The standard clauses to be included in contracts have been updated to give the Legal Services Team a greater degree of flexibility to adapt to different legal and commercial situations. The aim of this amendment is to ensure the Council can contract on the most appropriate terms for each individual situation. |
| 32.2.6 | An additional contract requirement has been added to make it a requirement that contracts reference the Council's obligations under Freedom of Information and Data Protection legislation. |
| 32.7.3 | In line with the other insurance provisions, the amended clause states that the CFO can agree to reduce the requirement for a supplier to carry £10m of employer's liability insurance. |
| 33.3-33.4 | The responsibilities of a Contract Manager have been set out in more detail to ensure a better level of governance. |

2. PROCUREMENT PERFORMANCE

2.1 Procurement Performance is measured against several Key Performance Indicators identified by Internal Audit and agreed at the Committee in February 2021.

2.2 KPIs

| KPI | Measure | Measured From | Target | Collection Period | Reporting Regime | Performance |
|-----|---|---------------------|----------------------------------|-------------------|------------------|---------------------------------|
| | | | | | | Jan-Dec 2021 |
| 1 | Savings achieved as a result of a procurement process | In-tend | No Target in year 1 | Quarterly | Annual | -£282,196 |
| 2 | % of procurement transactions greater than £5k captured on in-tend | PAR Library/In-tend | 95% in year 1 100% thereafter | Quarterly | Annual | 91% |
| 3 | % of spend with 100 top suppliers currently compliant with CSOs | Agresso / In-tend | 80% in year 1 100% thereafter | Bi-annual | Annual | 97% |
| 4 | Number of Contract values awarded to within 10% of pre-contract estimated value | In-tend | 95% in year 1 100% thereafter | Quarterly | Annual | 90% |
| 5 | Number/Value of current CSO waivers in force | CSO Library | n/a | Quarterly | Annual | Number = 19 Value = £293,863 |
| 6 | Number of contracts awarded to local SMEs | In-tend | n/a | Quarterly | Annual | 1 |

2.3 A full breakdown of all Procurement Activity Requests can be found in Background Paper '**PAR Analysis 2021**'

2.4 **Commentary:**

- (i) **Savings.** Refer to '**PAR Analysis 2021**'. This identifies the saving (or overspend) achieved following a procurement exercise against the approved value of the Procurement Activity Request (PAR). Additional savings are also identified.
- (ii) **In-tend.** All Requests for Quote and Invitations for Tender should be processed via In-tend (the Council's tendering portal). However, due to the departure of several key procuring officers this has not always been possible. Quotes have been obtained via email instead.
- (iii) **Compliant Spend.** Contracts are in place with all Top 100 suppliers (where relevant). However, there is spend with 4 suppliers (operating under an ongoing SLA) for voids works on empty Council owned properties that was due to be tendered in 2021. However, due to the departure of two key staff managing this spend the procurement exercise has been delayed until the new Property Services Manager commences work in April 2022.
- (iv) **Awards within 10%.** It should be noted that where a contract award is greater than the amount approved at the PAR stage the contract award must go back to the Corporate Procurement Board for approval.
- (v) **CSO Waivers.** As per section 3 below.
- (vi) **Local SMEs.** This refers to the number of contracts awarded to local SMEs during 2021, and not the total number of contracts in place with local SMEs.

2.5 **Procurement Board**

2.5.1 The Corporate Procurement Team consists of:

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

2.5.2 The purpose of the board is to:

- have oversight and scrutiny of the Council's commercial activities, primarily commissioning and procurement;
- review and approve commercial activities at key stages of the commissioning and procurement lifecycle;
- ensure alignment with corporate priorities, corporate objectives and ensure value for money; ensure compliance with CSOs;

- to approve all procurement expenditure over £5k;
- ensure that the procurement of goods and services achieve value for money;
- provide a forum for sharing expertise, learning and good practice between departments.

2.5.3 The board has met monthly with the following agenda:

- Procurement Activity Request (PAR) for approval
- CSO Waivers for approval
- Progress update on previously approved PARs
- Review of upcoming expiring contracts
- Current contract performance update
- Top100 spend review
- Procurement Pipeline update
- Procurement Card spend review

2.5.4 The board approved 75 Procurement Activity Requests in the 12 months to December 2021 with a total value of £14,026,339.

2.5.5 Under the Contract Standing Orders the Procurement Board is the main Officer forum for procurement decisions. The Corporate Procurement Board has the power to waive the CSOs in specific circumstances and agree waiver decisions.

3. WAIVERS FROM CSOs

3.1 The requirement for a report to Members on the number of and reasons for CSO waivers was identified by Internal Audit and agreed at the S&R Committee in February 2021.

3.2 CSO 4 details the permitted exceptions from all or part of CSOs provided that the CPB has given prior approval by means of a CSO waiver. All waivers from CSOs are approved by the CPB.

3.3 A summary of all CSO Waivers approved in 2021 is provided below, the full list is provided in **Appendix B**.

| Reason for Waiver | Volume | Value |
|-------------------|-----------|-----------------|
| Extension | 8 | £108,402 |
| Single Supplier | 5 | £59,307 |
| Urgency | 3 | £48,000 |
| Other | 3 | £78,154 |
| | 19 | £293,863 |

4. PROCUREMENT IMPROVEMENT PLAN

- 4.1 A Procurement Improvement Project (PIP) was initiated in February 2021 with the primary aim to achieve savings in FY 21-22.
- 4.2 The project also aimed to identify process improvements aimed at achieving savings in future years.

Objectives of the Project

- 4.3 The primary objectives of the project are to:
 - (i) Deliver the budgeted savings for FY 21-22
 - (ii) Identify and deliver additional savings in FY 21-22 - by means of a systematic review of all contracts expiring by 31/3/22
 - (iii) Identify savings against longer term contracts that will carry through to FY 22/23 and 23/24 and beyond.
 - (iv) Identify and implement process improvements that facilitate compliance and transparent procurement to achieve maximum cost efficiency in both the short and longer term.

Project Timeline

- 4.4 The initial data gathering has commenced and while the contract reviews are scheduled to be completed by the end of March 2021 the re-procurement of new contracts will continue throughout the financial year to March 2022

Progress Report

- 4.5 A systematic review of all contracts expiring by 31/3/22 was completed by all contract owners
- 4.6 Savings against longer term contracts that will carry through to FY 22/23 and 23/24 and beyond were identified.
- 4.7 Process improvements were identified that facilitate compliance and transparent procurement to achieve maximum cost efficiency in both the short and longer term.
- 4.8 Non-Contract spend was identified and either stopped or competitively tendered contracts to be put in place.

Summary

- 4.9 Summary results of the progress to date are listed below. Refer also to **Appendix C** – PIP Progress Update.

4.9.1 Identified Contract Savings (Contracts expiring by 31/3/22)

| | | | |
|--------|----------|----------|----------|
| Non-IT | 21/22 | 22/33 | 23/24 |
| | -£19,736 | -£23,163 | -£17,706 |

| | | | |
|----|----------|----------|----------|
| IT | 21/22 | 22/33 | 23/24 |
| | -£86,933 | -£67,098 | -£59,553 |

4.9.2 Process Improvements

| Action | Owner | Deadline | Status |
|---|-----------------------------|------------|-----------|
| Add link to PO process to the Procurement Process Flow charts at each threshold | John McGeown | 31/03/2021 | Completed |
| Update Contracts Register User Guide in procurement pages on Sharepoint | John McGeown | 31/03/2021 | Completed |
| Update all active contracts with correct Contract Owner | Jacob Hughes | 31/03/2021 | Completed |
| Update all active contracts with default notification dates | John McGeown | 31/07/2021 | Completed |
| Automate the PAR process | John McGeown / Mel Thompson | TBA | On hold |

4.9.3 No PO No Pay

| Action | Deadline | Status |
|--|------------|-----------|
| Send instruction to all Suppliers on No PO No Pay policy | 31/11/20 | Completed |
| Develop and obtain approval for No PO Pay policy. To include exceptions. | 01/07/2021 | Ongoing |
| Implement Policy | 01/07/2021 | Ongoing |
| Update TDC website 'Doing Business with the Council'. | 01/07/2021 | Ongoing |

4.9.4 New Contracts

| Supplier | Title / Category | Spend | Owner | Action | Target Date | Status |
|--|--|----------|--------------------|---|-------------|---|
| CA Barclay | Works to Council owned void properties | £450,000 | Rob Preedy | Procurement of new contract for Void works -project kicked of 10-2-21. | 01/04/2022 | New Voids contract - procurement delayed to 04/22 |
| Abbots Groundworks | Works to Council owned void properties | £144,000 | Rob Preedy | Included in new Responsive Repairs Framework contract as of 1-4-21, as well as Responsive Repairs contract. | 01/04/2021 | New Voids contract - procurement delayed to 04/22 |
| Cox Skips | Skips | £50,000 | Rob Preedy | Part of a wider waste disposal review | TBC | Ongoing |
| Tersus Consultancy Ltd | Asbestos | £40,160 | Rob Preedy | The terms of any new contact dependant on the implementation of the ProMaster system | 01/10/2021 | Ongoing |
| Cosgrove & Sons Locksmiths | Evictions, Voids (New Framework) | £27,264 | Rob Preedy | Included in new Responsive Repairs Framework | 01/04/2021 | Completed |
| Christopher J Edwards Ltd t/a Oxted Drain Services | | £24,750 | Rob Preedy | NM. Procurement of new contract for Void works -project kicked of 10-2-21. | 01/04/2022 | New Voids contract - procurement delayed to 04/22 |
| John Vicars | | £22,572 | Rob Preedy | NM. Procurement of new contract for Void works -project kicked of 10-2-21. | 01/06/2021 | New Voids contract - procurement delayed to 04/22 |
| Balcombe Pest Control Ltd | Pest Control | £19,462 | Nic Martlew | NM has meeting on 1 May to review. Update Required | 01/06/2021 | New Contract being procured |
| Elliot Baxter and 3WM | Stationary | £14,550 | TBA | Single supplier for Office Supplies. Undertake review and procure single contract. | 01/07/2021 | Ongoing |

Key implications

Comments of the Chief Finance Officer

There are no direct financial implications from this report.

Note that the savings within this document refer to procurement savings that are identified by comparing current contract value with awarded contract. In some respects, financial and procurement savings are different. Where the service budget in which the contract resides has financial savings to achieve, this can be through a combination of contract and other reductions.

There are financial savings within the Tranche 3 budget distribution that require the authority to find £150k of improved commercial value from external spend (£75k 22/23 and £75k 23/24).

The amendments to Contract Standing Orders and adoption of a set of standard KPI's for procurement will also strengthen current practice.

Comments of the Head of Legal Services

The purpose of Contract Standing Orders (CSO) is to set clear rules for the procurement of goods, works and services for the Council. The rules should ensure that the Council is fair and accountable in its dealings with contractors and suppliers. The CSOs are also intended to ensure that the Council obtains value for money and that it is taking good care of public funds. These are made in accordance with the requirements of Section 135 of the Local Government Act 1972.

The CSOs are kept under review and when necessary amendments are proposed to this Committee for consideration and recommendation on to Full Council. Additional changes are required to support the introduction of new regulations, technologies, inconsistencies in the current CSO's and minor drafting amendments. There are no legal reasons preventing Members from approving the recommendations in the report.

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

The climate change action plan included the development of a new procurement strategy to further sustainability and carbon reduction via the Council's procurement activities. The strategy was approved by the corporate procurement board in April 2021 and includes a sustainable procurement clause that makes specific reference to the use of environmental products and a commitment to environmental construction, biodiversity and recycling.

Appendices

Appendix A – Changes to CSOs

Appendix B – CSO Waivers 2021

Appendix C – Procurement Improvement Progress Update

Background papers

PAR Analysis 2021

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