

# Update on Procurement and Contract Standing Orders

## Strategy & Resources Committee 29 June 2023

Report of: Procurement Specialist

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Purpose: For decision and for information

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Publication status: Unrestricted

Wards affected: All

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### **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 amend the Council's Contract Standing Orders in accordance with changes in section 5.
- to report against the set of standard Key Performance Indicators ('KPI's) for procurement agreed at the S&R Committee on 2nd February 2021 (section 6)
- to report on the number of and reasons for CSO waivers as agreed at the S&R Committee on 2 Feb 2021 – '**Appendix A**'

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## **Recommendations to Committee:**

That:

- A. it be recommended to Full Council that the Contract Standing Orders ('CSOs') be amended in accordance with the revisions in section 5 of this report;
- B. the procurement performance referred to in section 6 be noted;
- C. the volume and value of Waivers from CSOs at Appendix A be noted; and
- D. the new procurement shared service be noted.

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## **Reason for recommendations:**

Since the current version of the Contract Standing Orders was approved by this Committee in April 2022, there are some minor amendments required that will 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.

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## **CHANGES TO CSOs**

### **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, implemented by the Legal Services Team and 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 April 2022 Committee Meeting and included:

- Detailed process for use of external legal advice
- Updated bribery policies to improve governance
- Updated procurement thresholds

5. The proposed amendments to the CSOs are detailed below:

### Proposed Amendments to Contract Standing Orders

PARAGRAPH NUMBER	REASONING FOR PROPOSED AMENDMENT
2.2.3	<p>Clarifies that CSOs do not apply to the awarding of grants provided that no works or services are provided direct to the Council in return for the grant. Definition of a Grant also added to Glossary.</p> <p>2.2.3 would be amended to read:</p> <p>[Section 12-30 of these CSOs do <u>not</u> apply to.....]</p> <p><del>Grants given by the Council either where the Council is giving or receiving a grant</del></p> <p><i>Awarding grants to external organisations provided that no works or services are provided direct to the Council in return for the grant.</i></p>
2.5	<p>Changes reference from Chief Officer to Head of Service in line with new structure, and throughout document.</p> <p>2.5 would be amended to read:</p> <p><i>Under the Local Government (Contracts) Act 1997, local authorities can enter into contracts with third parties in connection with any of their functions. However, first the <del>Chief Officer</del> Head of Service must be able to demonstrate there is a business need for the proposed Contract.</i></p>
2.2.10	<p>Changes to the arrangements for procuring legal advice. There have been occasions where the Council could not obtain accurate specialist legal advice for major projects or those projects or requirements that are high profile, high risk or of strategic importance from firms who are appointed to the Surrey Legal framework. Although, the framework does provide extra benefit such as discounted rates and has several expert and experienced barristers' chambers and legal firms appointed to the framework, the Council has managed in some instances to obtain better rates from off panel firms. Having the flexibility to seek of panel legal advice has both assisted the Council in achieving best value, and enhance delivery of services.</p>

PARAGRAPH NUMBER	REASONING FOR PROPOSED AMENDMENT
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2.2.10 would be amended to read:

*External legal advice. The Head of Legal Services and Monitoring Officer commissions all external solicitors, counsel, experts within Legal Proceedings (actual or contemplated) and arbitrators /adjudicators.*

*The engagement of barristers, experts and adjudicators/arbitrators in construction disputes shall be subject to completion of a formal letter, contract of appointment or brief. The barrister, expert or arbitrator /adjudicator or chambers must either be named in the relevant Contract or be on an approved list maintained by the Head of Legal Services and Monitoring Officer for this purpose and the appointment shall be approved by the Head of Legal Services and Monitoring Officer. Where there is no approved list, then the Head of Legal Services and Monitoring Officer will determine the method of selection, likely to be appointed from a list maintained by a third party.*

*The engagement of external solicitor shall be made by formal letter or appointment contract once and approved by the Head of Legal Services and Monitoring Officer. In most cases the Head of Legal Services and Monitoring Officer may will authorise the use of external solicitors on the Surrey Legal Alliance Solicitors Framework. Requests for advice (up to £10k £20k) can be obtained without the need to advertise or seek alternative quotes subject to the Head of Legal Services and Monitoring Officer being satisfied that the appropriate specialism is not obtainable elsewhere and that value for money is achieved.*

*Instructions to, or a brief to external counsel shall be issued in consultation with the Head of Legal in respect of any matter.*

*Before instructing or briefing external counsel or external legal advisor, the Head of Legal or their substitute shall take all reasonable steps to obtain an oral quotation from Counsel's clerk or from the firm's legal director. Where the Head of Legal anticipates that the net value of counsel's fees or external legal advisor will exceed £20k, the Head of Legal shall take all reasonable steps to obtain fee quotations from three (3) different counsels' chambers for counsel or external legal firms of comparable experience and seniority unless, in the opinion of the Head of Legal it is not practicable or appropriate to do so.*

**33.4.4**

Includes reference to the Council's Risk Management Strategy that applies to the management and monitoring of supplier contracts by inserting

33.4.4 would be amended to read:

33.4.        *The responsibilities of the Contract Manager will include:*

33.4.1.     *undertake appropriate risk assessments that have considered service continuity, health and safety, fraud and information management risks*

33.4.2.     *maintain a risk register during the contract period*

33.4.3.     *ensure appropriate contingency measures are in place for identified risks*

**PARAGRAPH  
NUMBER**

**REASONING FOR PROPOSED AMENDMENT**

- 33.4.4. *in line with the Council's Risk Management Strategy:*
- *formally review monthly and regularly monitor and report to the Procurement Specialist on: a Contractor's performance against the agreed level of service; the regularity of meetings held with the contractor; compliance with specification and contract costs and identifying as early as possible any potential over-spends and any Best Value requirements*
  - *monitoring the continuing level of operational and financial risk to which the Council is exposed and to institute controls as appropriate*
- 33.4.5 *facilitating the resolution of issues between the supplier and users of the service*
- 33.4.6 *ensuring prompt payment of invoices and compliance with all financial regulations and CSOs during the lifetime of the Contract*
- 33.4.7 *ensuring that appropriate arrangements are made for the termination or re-letting of the Contract at the appropriate time.*

This content is currently presented as follows:

33.4 The responsibilities of the Contract Manager will include:

- undertake appropriate risk assessments that have considered service continuity, health and safety, fraud and information management risks
- maintain a risk register during the contract period
- ensure appropriate contingency measures are in place for identified risks
- formally review monthly and regularly monitor and report to the Procurement Specialist on: a Contractor's performance against the agreed level of service; the regularity of meetings held with the contractor; compliance with specification and contract costs and identifying as early as possible any potential over-spends and any Best Value requirements
- monitoring the continuing level of operational and financial risk to which the Council is exposed and to institute controls as appropriate
- facilitating the resolution of issues between the supplier and users of the service
- ensuring prompt payment of invoices and compliance with all financial regulations and CSOs during the lifetime of the Contract
- ensuring that appropriate arrangements are made for the termination or re-letting of the Contract at the appropriate time.

## PROCUREMENT PERFORMANCE

### 6 Introduction

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

6.2 KPIs

KPI	Measure	Measured From	Target	Collection Period	Reporting Regime	Performance
						Jan-Dec 2022
1	Savings achieved as a result of a procurement process	In-tend	No Target in year 1	Quarterly	Annual	-£226,312
2	% of procurement transactions greater than £5k captured on in-tend	PAR Library/In-tend	95% in year 1 100% thereafter	Quarterly	Annual	63%
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	95%
5	Number/Value of current CSO waivers in force	CSO Library	n/a	Quarterly	Annual	Number = 23 Value = £437,719
6	Number of contracts awarded to local SMEs	In-tend	n/a	Quarterly	Annual	0

6.3 A full breakdown of all Procurement Activity Requests can be found in Background Paper '**PAR Analysis 2022**'.

### 6.4 Commentary:

1. **Savings.** Refer to '**PAR Analysis 2022**'. This identifies the saving (or overspend) achieved following a procurement exercise against the approved value of the Procurement Activity Request (PAR).

2. **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.
3. **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 was further delayed. A new project team has been created and is working to a target contract start date of 1/4/24 to procure a new voids contract.
4. **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.
5. **CSO Waivers.** As per section 3 below.
6. **Local SMEs.** This refers to the number of contracts awarded to local SMEs during 2022, and not the total number of contracts in place with local SMEs.

## **7. Procurement Board**

7.1 The Corporate Procurement Team consists of:

- Deputy Chief Executive
- Chief Finance Officer (S151)
- Head of Legal Services & Monitoring Officer
- Procurement Specialist
- Head of Operations and Contracts
- Head of Housing
- Head of Digital Business Transformation and Democratic Services

7.2 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.

7.3 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

7.4 The board approved 62 Procurement Activity Requests in the 12 months to December 2022 with a total value of £5,202,690.

7.5 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.

## **8. Procurement Shared Service**

8.1 As of 3rd April 2023 the Procurement Specialist (John McGeown) reduced to working 3 days per week. In order to provide cover for the other 2 days as well as a level of resilience that was previously missing a new arrangement with the Orbis shared procurement service (Brighton & Hove, East Sussex and Surrey County Council) was entered into.

8.2 As part of this new arrangement the Procurement Specialist was seconded to Orbis but remains as a full TDC resource. Orbis provide an 'Onsite Procurement Solution (JM) with a Flexible Transaction Delivery Team' consisting of resources within the Orbis Procurement team.

8.3 This new model will provide:

- Resilience
- Capacity
- Value for Money
- Compliance
- Customer Support
- Simplicity

## **WAIVERS FROM CSOs**

### **9 Introduction**

9.1 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.

9.2 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.



9.3 As summary of all CSO Waivers approved in 2022 is provided below, the full list is provided in **Appendix A**.

<b>Reason for Waiver</b>	<b>Volume</b>	<b>Value</b>
Extension	10	£171,232
Single Supplier	4	£106,025
Urgency	8	£146,337
Other	1	£14,125
	<b>23</b>	<b>£437,719</b>

### **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.

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 – CSO Waivers 2022

## **Background papers**

PAR Analysis 2022

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