

## REVISION TO CONTRACT STANDING ORDERS

To:	Standards Committee, 11th September 2018
Report Author	Karen Paton, Strategic Procurement Manager
Portfolio Holder	Cllr Ian Gregory
Status	<b>For Recommendation</b>
Classification:	<b>Unrestricted</b>
Key Decision	<b>No</b>
Reasons for Key	N/A
Previously Considered by	N/A
Ward:	N/A

### **Executive Summary:**

The purpose of this report is to propose revisions to Contract Standing Orders (CSO's) to Standards Committee.

### **Recommendation(s):**

Standards Committee is asked to support content of CSO's as per recommendation provided under 5. Options at 5.2 and make further recommendation to Full Council for adoption.

## **1.0 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 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.
- 1.3 The format and general content for Contract Standing Orders originates from a joint piece of work undertaken by Kent Legal Secretaries in May 2009. Whilst each authority has included their own specific requirements, in general the formatting has largely been maintained and continues to provide a level of standardisation across the Kent authorities. Standardisation is especially beneficial across East Kent as this provides consistency of rules for shared service providers (i.e. East Kent Services/East Kent Housing) and also provides ease of approach when undertaking joint or collaborative procurements with other local authorities.
- 1.4 A requirement of the existing Contract Standing Orders (CSO's) is that they are reviewed and updated as necessary with any such recommendations made by the Strategic Procurement Manager being considered by the Constitutional Review

Working Party and recommended to the Standards Committee. Following which, they are to be presented to Full Council for adoption.

## **2.0 Reasons necessitating review and changes undertaken**

2.1 The Council's Contract Standing Orders have been reviewed in the light of changes to Procurement Regulations and other statutory obligations (i.e. General Data Protection Regulations [GDPR]). At the same time, opportunity has been taken to align spend thresholds with our neighbouring authorities, Canterbury, Dover and Folkestone and Hythe to provide standardisation for shared service and partner organisations (i.e. East Kent Services, East Kent Housing) and our local and Regional supplier base. Further changes have been made to tighten the controls operating over the Council's procurement processes and to support the government's objectives in relation to greater transparency and the further digitalisation of the procurement process.

Whilst there are a number of subtle amendments, the main changes of significance within Contract Standing Orders (appended at Annexe 1 to this report) at the section and contained to the specific CSO number indicated below:

- **Section 4. General Principles applying to All Contracts - (CSO 4.8)**  
Notification of contract variations with a value of £10,000 or more or when value is 20% of the annual value of the existing contract
- **Section 5. Responsibilities of Chief Executive, Deputy Chief Executive, Directors, Heads of Service and Responsible Officers - (CSO 5.4.6)**  
Contracts Register to include all contracts of a value of £5,000 or more
- **Section 6. Financial Thresholds and Procedures**  
**(CSO 6.3)** Requirement for quotations and tenders in excess of £10K to be undertaken via the Kent Business Portal using e-procurement software.  
**(CSO 6.5, 6.5.1, 6.5.2, 6.5.3, 6.5.4)** Changes in advertising requirements - derived from the Public Contracts Regulations 2015 and Local Government Transparency Code 2015  
**(CSO 6.6)** i) Use of Procurement templates to produce Invitation to Quote and Invitation to Tender documents ii) Minimum threshold for local tendering increased to £100,000 iii) Addition of thresholds and procedures for concession contracts (now subject to own directive and regulations: Concession Contracts Regulations 2016 (CCR2016))
- **Section 7. Financial Thresholds and Processes Applying to Approval and Execution of Contracts**  
**(CSO 7.2.3)** Requirement to have due regard under General Data Protection Regulations (GDPR)  
**(CSO 7.3)** Requirement to complete Procurement Initiation Form for all contracts £10,000 and above
- **Section 10. Submission and Opening of Tenders**  
**(CSO 10.1)** Threshold for tender opening increased to £100,000 in keeping with change to financial threshold for local tenders  
**(CSO 10.1 - 10.4)** Reworded to reflect electronic receipt, security and opening procedures.
- **Section 13. Extensions and other Variations to Existing Contracts - (CSO 13.2.3)** Consultation and notification to Procurement Section of extensions and variations to contracts
- **Section 16. Standard Clauses**  
**(CSO 16.1.8, 16.1.9, 16.1.11)** Changes to the Council's Standard Clauses

2.2 **E-Tendering** - The implementation of e-tendering not only supports the Government's overarching recommendations for electronic delivery of services and information but also provides the following benefits for the Council and Suppliers: -

**Council Benefits: -**

- Automation of the quotation/tender process including, advertising opportunities, issuing and receiving quotation and tender responses, central contract store functionality (internally & externally facing) – ensuring all information is quickly/easily available/transmitted to Suppliers
- Opportunity to respond quickly to any Suppliers questions and points of clarification.
- Can notify Suppliers in a standardised manner, ensuring there is no bias to any one Supplier ensuring equal treatment and transparency
- Responses from Suppliers remain secure and privileged until the closing date (providing greater probity) and are opened 'electronically'
- All communications are tracked and recorded in the system to create a clear audit trail
- Provides a document repository for contracts and full records of procurement activity to meet statutory reporting obligations (PCR 2015 and Local Government Transparency Code 2015)

**Suppliers Benefits: -**

- Reduced costs associated with, printing, copying, postage, administration etc. associated with a manual process
- Automated in process updates
- Automatically notifies Suppliers electronically of future ITQ/ITT opportunities for all participating authorities negating the need for suppliers to continually monitor & search for future business opportunities across various council/authority websites etc.
- Ability to continually review/update their submission documentation right up to deadline
- Free of charge – web based, only requires internet access

2.3 TDC uses the ProContract e-Tendering Suite software (in addition to utilising the Kent Business Portal for advertising future ITQ/ITT opportunities [as do the vast majority of other Kent authorities]).

2.4 The CSO's have been reviewed to support the use of the e-tendering system for advertising, issuing and receiving quotations and tenders to the Council.

2.5 **Changes in Advertising Contract Opportunities** - As part of the Government's commitment to transparency the Public Contracts Regulations 2015 places advertising requirements on contracting authorities in relation to upcoming contract opportunities (and contract award notices)

2.6 Where the Council publically advertises any contract opportunities (£25K and over) there is a requirement to advertise the opportunities via the Governments centralised Procurement Portal – 'Contracts Finder'.

- 2.7 Government Policy (2017) now requires all contract awards (£25k and over) including call-off contracts from Framework Agreements to be to publicly notify via the Government's centralised Procurement Portal – 'Contracts Finder'
- 2.8 The Council's e-tendering system and Procurement Portal (Kent Business Portal) outlined at 2.2 above links directly to the Government's mandatory system and automatically populates the necessary advertisements etc. ensuring compliance with legislation and Government Policy requirements.
- 2.9 The impact of this legislation (and Government initiative to increase opportunities across the wider SME sector) will be reviewed as part of a future Procurement Strategy Report that will consider (amongst other key areas) how TDC can encourage and support the local economy.
- 2.10 **Roles & Responsibilities** – Part of the Strategic Procurement Managers role is to acknowledge and understand best practice, building on existing working practices and to encourage a culture of continuous improvement ensuring a robust, effective and accountable delivery within all procurement activity.
- 2.11 This approach to procurement has realised three Substantial Assurance ratings in 3 procurement related audits during 2017, the most recent being an audit of the Procurement function, processes and procedures. To build on this success, procurement would seek to ensure the benefits of existing local knowledge and service delivery/expertise applied to tendering processes is complimented by consistent, proportionate controls, processes and procedures across procurements activity as a whole including quotation activity, which previously has been viewed as a local departmental activity.
- 2.12 The CSO's have been reviewed to ensure that Officers work in partnership with the Procurement Team which in essence maintains Services as the delivery experts, whilst Procurement (& Legal) ensure that all procurement activity is effective, legal and not open to challenge, reducing and mitigating any potential risk to officers and the authority.
- 2.13 **Standard Clauses** have been updated to reflect both changes in Council protocol and legislation
- 2.14 Please note that intranet/internet hyperlinks are absent from the Contract Standing Orders document appended, due to scoping work being undertaken in parallel in order to review Procurement website content and also provide and launch an internal Procurement Toolkit for officers. All necessary hyperlinks will be included and available ahead of adoption of the reviewed CSO's.

### **3.0 Recommendations of the Constitutional Review Working Party**

- 3.1 That consideration was given to the inclusion of a provision to require contractors to pay the national living wage in paragraph 6.
- 3.2 That a reference to the purchasing guide, that contains examples of added social value, should be included in paragraph 7.

3.3. That the reference to £10,000.00 should be removed from paragraph 16.1, the sentence should read ‘Each contract shall include standard clauses, including those indicated “where applicable” dependant on the nature of the contract as follows:’

#### **4.0 Further information provided to inform decision on recommended amendments by CRWP**

4.1 Recommendation 3.1 - Consideration of a provision to require contractors to pay the National Living Wage (NLW) previously known as the National Minimum Wage. As the payment of the NLW is an obligatory minimum wage payable to workers aged 25, all contractors have a statutory legal obligation to act lawfully in this regard

4.2 In respect of recommendation 3.2 including examples of how to achieve social value as these are already provided within the Purchasing Guide this can be met by simple adding additional text “see Purchasing Guide”

4.3 In respect of recommendation 3.3. standard clauses can be applied to all Official Purchase Orders which accompany all contracted spend. This will not be possible for spend associated with the use of Government Procurement Cards which is contained to low value/ad hoc purchases only.

#### **5.0 Options**

5.1 Standards Committee endorse the proposed changes and content of CSO’s to include all CRWP recommended amendments and make recommendation to Full Council.

5.2 Standards Committee endorse the proposed changes and content of CSO’s to include CRWP recommended amendments in terms of 3.2 in entirety and 3.3 excluding spend conducted on Government Procurement Cards. Having given consideration to 3.1 do not endorse the inclusion of a provision to require contractors to pay the National Living Wage in paragraph 6 as there is a legal requirement on all employers to pay a minimum wage in this regard and make recommendation to Full Council.

5.3 Standards Committee do not endorse the proposed changes and content of CSO’s with or without CRWP recommendations and provide further instruction in this regard to the Strategic Procurement Manager accordingly.

#### **6.0 Next Steps**

6.1 Full Council - 11th October 2018

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Reporting to:	Ramesh Prashar, Head of Financial & Procurement Services

#### **Annex List**

Annex 1	Revised Contract Standing Orders
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## Background Papers

Title	Details of where to access copy
Procurement Contract Regulations 2015	<a href="http://www.legislation.gov.uk/uksi/2015/102/contents/made">http://www.legislation.gov.uk/uksi/2015/102/contents/made</a>
Local Government Transparency Code 2015	<a href="https://www.gov.uk/government/publications/local-government-transparency-code-2015">https://www.gov.uk/government/publications/local-government-transparency-code-2015</a>
Government issued Procurement Policy Notes	<a href="https://www.gov.uk/government/collections/procurement-policy-notes">https://www.gov.uk/government/collections/procurement-policy-notes</a>

## Corporate Consultation

<b>Finance</b>	Ramesh Prashar, Head of Financial & Procurement Services
<b>Legal</b>	Tim Howes, Director of Corporate Governance & Monitoring Officer