


<p>London Borough of Hammersmith & Fulham</p> <p>COUNCIL</p> <p>27 JANUARY 2016</p>	
<p>CHANGES TO CONTRACT STANDING ORDERS</p>	
<p>Report of the Cabinet Member for Finance, Cllr Max Schmid, and the Cabinet Member for Commercial Revenue and Resident Satisfaction, Councillor Ben Coleman</p>	
<p>Open Report</p>	
<p>Classification - For Decision Key Decision: Yes</p>	
<p>Wards Affected: All</p>	
<p>Accountable Executive Director: Nigel Pallace, Chief Executive</p>	
<p>Report Author: Alan Parry and John Francis, Interim Heads of Procurement (Job-share)</p>	<p>Contact Details: Tel: 020 8753 2581/2582 alan.parry@lbhf.gov.uk john.francis@lbhf.gov.uk</p>

1. **EXECUTIVE SUMMARY**

- 1.1. Under section 135 of the Local Government Act 1972, Councils are required to have in place arrangements for managing their procurement processes. This is to promote good purchasing practice, aid transparency, accountability and probity in how public funds are spent, and help evidence value for money. In H&F, these arrangements are Contract Standing Orders (CSOs), which form part of the Council's Constitution. The Council last reviewed its CSOs at its Annual Meeting in May 2015 to ensure compliance with the new Public Contracts Regulations 2015.
- 1.2. Cabinet Members have since reviewed the CSOs and feel that further changes are required in order to improve procurement forward planning and Cabinet visibility, ensure forthcoming procurements reflect Council priorities, and strengthen the efficiency of decision-making on contract awards. This report, therefore, seeks approval to amend the CSOs in two significant ways:
 - i) A new requirement for full Cabinet approval of a commissioning and procurement strategy with supporting business case for procurements in excess of £100,000 before the formal competition can commence.

- ii) Following this Cabinet approval, automatic delegation of the subsequent contract award decision to the relevant Cabinet Member(s) up to the value of £5,000,000, unless the Cabinet expressly state a wish to make the contract award decision.

1.3. This is a report to full Council as it concerns a constitutional matter.

2. RECOMMENDATIONS

2.1. That Council adopt the revised Contract Standing Orders as set out in Appendix 1 to this report as part of the Council's Constitution.

2.2. That Council specifically approve the following changes in sections 8 and 17 of the revised CSOs:

- a) That for all procurements in excess of £100,000, Chief Officers, acting on advice from Service Review Teams, must develop and present to full Cabinet for approval a commissioning and procurement strategy and supporting business case with options appraisal for the proposed procurement. (Appended CSOs 8.11.1)
- b) That all commissioning strategies for procurements at or above £100,000 (except those relating to pensions) must be approved by full Cabinet prior to the commencement of any tendering process and agreed as a Key Decision. (Appended CSOs 8.12.1)
- c) That the above commissioning and procurement strategy report to Cabinet must include the details contained in clause 8.11.1 (a) – (n) in the appended CSOs.
- d) That the commissioning and procurement strategy report to Cabinet must detail the frequency of any interim reports to relevant lead Cabinet Members on the procurement as it proceeds. (Appended CSOs 8.12.2)
- e) That the specific approval of the Commercial Director must be contained in the commissioning and procurement strategy report where it is the intention to create a framework agreement that other public bodies may call-off from. (Appended CSO 8.12.3)
- f) That in normal circumstances for contracts valued at between £100,000 to below £5,000,000, and where:
 - i) the actual contract value is less than £5,000,000; and
 - ii) the returned tender falls within a +10% tolerance of the estimated financial value set out in the commissioning and procurement strategy report approved by Cabinet – the award decision will be delegated to the appropriate Cabinet Member(s).
- g) That where the conditions described in Recommendation 2.2(f) above do not apply or are not met, the contract award decision is reserved for full Cabinet.

h) That “normal circumstances” under 2.2(f) above means an automatic delegation unless the Cabinet decide they wish to reserve the contract award decision to the Cabinet. (Appended CSOs 17.3.1- 17.3.3)

2.3. That in recognition of the need for a transition period from approval of the changes recommended in 2.2 above, and in order to enable adequate pre-Cabinet governance requirements to be met on imminent procurements, the CSO changes come into effect on 1st July 2016, with the Council implementing the new arrangement ahead of this date wherever practical during the transition period.

2.4. That Council approve delegated authority to the Cabinet Member for Finance and the Cabinet Member for Commercial Revenue and Resident Satisfaction to issue “Purchasing Guides” to help implement Council policy and set out good procurement practice. These guides will supplement the provisions contained in CSOs.

3. REASONS FOR DECISION

3.1. To:

- Comply with statutory requirements.
- Improve the planning and implementation of Council procurement.
- Ensure procurements reflect and give effect to Council policies.
- Improve transparency. And,
- Improve the efficiency of how Key Decisions are made.

4. INTRODUCTION AND BACKGROUND

4.1. The Council’s CSOs were originally based on a model published by CIPFA as part of its procurement excellence documentation. For the last decade the Council has reviewed on a regular basis its internal arrangements for managing its procurement activity.

4.2. Since 2006 there have been no major changes to the internal financial thresholds. (In May 2015 the Council increased from £20,000 to £25,000 the threshold for a Cabinet Member Decision being required to align with a new statutory threshold). It is not proposed to increase the current thresholds at which a political decision needs to be made (£25,000 for a Cabinet Member Decision and £100,000 for a Cabinet Decision).

4.3. The majority of changes to the CSOs since 2006 have been made to reflect either legislative changes and/or operational requirements.

5. PROPOSAL AND ISSUES

Current position

5.1. In H&F, Cabinet Member visibility and approval of procurements within their portfolio is high when compared to other Councils. Under current CSOs, contracts valued at between £25,000 and £100,000 must be formally approved by the relevant Cabinet Member. In most other London authorities, Cabinet

Member approval for contract award is not required until the value is significantly higher and in one, WCC, it is not required until the value reaches £1,500,000.

- 5.2. Collective Cabinet visibility and approval of H&F contract award decisions is also high, with a relatively low financial threshold of £100,000 when compared to other Councils. However, prior to being asked to agree a contract award recommendation, full Cabinet currently rarely has any visibility of current or forthcoming procurement exercises.

Issues

- 5.3. The current requirements present issues both for Cabinet and officers.
- 5.4. For full Cabinet, there is currently a lack of transparency about – and a lack of opportunity to shape – commissioning and procurements before the Council goes out to the market. Presenting the Cabinet with a recommendation on contract award at the end of a tendering process which has not entailed sufficient prior visibility, discussions with stakeholders or pre-market testing risks either contracts not being awarded or contracts being awarded which do not adequately reflect Council policies and priorities and do not achieve the optimal outcome for residents.
- 5.5. For officers, the requirement for full Cabinet approval of contracts worth £100,000 or more can mean six to eight weeks elapsing between officers' recommendation and Cabinet approval.

Proposal

- 5.6. In order to address these issues, this report proposes that full Cabinet should:
- Have earlier sight of forthcoming procurements.
 - Assure itself that the commissioning and procurement strategy for a forthcoming procurement gives effect to Council policies and priorities.
 - Have opportunity and time to reshape inadequate commissioning and procurement strategies.
 - For procurements at or above £100,000, approve the commissioning and procurement strategy and supporting business case before tendering commences.
 - Once it has approved the strategy and business case and unless it expressly wishes to decide the contract award itself, automatically delegate contract award decisions of up to £5,000,000 to the relevant Lead Cabinet Member.
- 5.7. The Council's current CSOs require a business case to be prepared for each procurement at or above £100,000, signed off by the relevant Executive Director.
- 5.8. The main proposal looks to build on this by making it a requirement for the Cabinet to sign off the business case, along with a commissioning and procurement strategy, before the start of any procurement at or above £100,000. The strategy and supporting business case should include, but not be limited to:
- (i) An options appraisal.
 - (ii) The estimated value of the contract.

- (iii) Whether and how the commission and its procurement will contribute to the Council's MTFS savings, avoid financial cost in other areas, contribute to enhanced revenue and improve service quality.
- (iv) The headline requirements contained in the specification, including key outcomes to be delivered.
- (v) The contract award evaluation criteria, including all important relative weightings.
- (vi) The packaging of the contract, including evidence that sufficient consideration has been given to dividing it into smaller "lots" to enable bids from small businesses and third sector organisations.
- (vii) Consideration of the local social value, economic and community benefits that can be derived from the contract on top of the headline requirements.
- (viii) Whether and how other policy objectives are being met through the procurement, such as diversity and equality related matters, environmental considerations including whole life costings, avoidance of zero hours contracts, and any other statutory considerations and/or requirements.
- (ix) Evidence of how stakeholders have been consulted and consideration of how they will be further involved if the procurement goes ahead.
- (x) Evidence of pre-procurement market soundings and feedback from these.
- (xi) An indicative timetable for the procurement, and the procedure to be used (e.g. restricted, open, competitive dialogue, etc.)
- (xii) The arrangements for monitoring and managing the contract once it has been awarded.

5.9. Where the procurement is covered by the statutory Public Contracts Regulations 2015, much of the information listed above must be publicly available in relevant documents at the same time the contract advertisement is published, and should also inform the "live" report required under Regulation 84 meant to capture how and why strategic policy decisions on the procurement were made. Much of it is also information that departmental Commissioning and Contracts Boards in shared service departments currently receive in reports when deciding whether to approve commissioning projects and their procurement.

5.10. Requiring this information to be gathered before Cabinet approves a procurement strategy will streamline the decision-making process and reduce the time taken between officers' contract recommendation, the Cabinet Member Decision and commencement of the contract.

5.11. The CSOs will be supplemented with Purchasing Guides. These Purchasing Guides may be modelled on policy decisions taken by the Cabinet. Where a policy decision has an impact upon the procurement process, a Purchasing Guide will be developed and approved jointly by the Cabinet Member for Finance and the Cabinet Member for Commercial Revenue and Resident Satisfaction.

6. CONSULTATION

- 6.1. Consultation on the proposed changes has taken place with senior officers in service departments responsible for commissioning and procurement, and with Business Board. Departments and Business Board overwhelmingly welcome and support the proposed changes, and their feedback has been reflected in this report's recommendations. Given that the change will be significant, all departments are working closely with the corporate Procurement team to identify any potential exceptions, and ensure the transition to and implementation of the new requirements are properly managed and communicated.

7. FINANCE

- 7.1. The proposals should be cost-neutral by enhancing earlier Cabinet visibility of the effectiveness, and value for money of proposed procurement strategies, and supporting more efficient decision-making on contract awards.

8. EQUALITY IMPLICATIONS

- 8.1. There are no direct negative equality impacts on protected individuals and groups that would result from the recommendations of this paper being accepted. The paper recommends at 5.7 and 5.8 that officers adopt an approach towards commissioning and procurement strategies and their associated business cases which takes account of:

- The packaging of the contract, including consideration of whether it should be divided into smaller "lots" to enable bids from small businesses and third sector organisations.
- Consideration of the local social value, economic and community benefits that can be derived from the contract on top of the headline requirements.
- Whether and how other policy objectives are being met through the procurement, such as diversity and equality related matters, environmental considerations including whole life costings, avoidance of zero hours contracts, and any other statutory considerations and/or requirements.

- 8.2. The above will provide additional assurance that equality impact assessments continue to be given due consideration in the council's governance and decision-making processes.

- 8.3. Implications verified by: David Bennett, Head of Change Delivery (Acting) – 020 7361 1628.

9. FINANCIAL AND RESOURCES IMPLICATIONS

- 9.1. The proposals should be cost-neutral by enhancing earlier Cabinet visibility of the effectiveness, and value for money of proposed procurement strategies, and supporting more efficient decision-making on contract awards.

- 9.2. Implications verified by: Andrew Lord, Head of Strategic Planning and Monitoring, Corporate Finance 020 8753 2531.

10. LEGAL IMPLICATIONS

- 10.1. Legal services notes and supports the proposal to require Cabinet approval of a business case and commissioning and procurement strategy for the procurement of contracts with an estimated value of £100,000 or more, with delegation of the award decision to the relevant Cabinet Member.
- 10.2. Implications verified by: Cath Tempest, Senior Solicitor (Contracts) 020 8753 2774.

11. RISK MANAGEMENT

- 11.1. The Contract Standing Orders are the focal point of the Council's control environment for procurement. These Orders, together with supporting operational guidance, provide a framework of control for procurement practices in the Council. In this report the corporate Procurement service seeks to make recommendations which will promote a more consistent and analytical approach to commissioning and procurement at the Council.
- 11.2. Commissioning of public services is about public sector agencies working with purchasers, providers and communities to identify and understand end users' needs so that services can be designed to meet them.
- 11.3. This is done by working within a structured and planned process called a commissioning cycle which ensures services are improved and developed against past experience and current community need.
- 11.4. Procurement can be defined in the as "the process of acquiring the goods and services the Council needs, at the best possible quality for the right price, with due regard for full, fair and open competition between suppliers."
- 11.5. This is achieved through compliance at all times with the Council's minimum requirements for purchasing works, supplies and services (including the appointment of consultants) as described in the Contract Standing Orders.
- 11.6. Poor project planning and lack of monitoring of performance in contract management are common challenges in commissioning and procurement. Improved commissioning and procurement can achieve value for money savings through (for example):
 - Getting outcomes delivered more cost effectively / at a higher quality / or increased volumes for same cost by re-tendering existing services;
 - Redesigning services to reduce waste or activity that is not in line with Council priority outcomes; and
 - Reducing process costs within existing services e.g. reducing profit margins, efficiency incentives, working with existing and potential suppliers to reduce waste by electronic invoicing / consolidated payments etc.
- 11.7. Cabinet should be notified in advance of commercial activity including the pipeline of upcoming procurement projects and contract management information on high risk and/or high spend contracts, including the contractors' performance

in responding to complaints. The corporate Procurement service and procurement officers within other Services should ensure that they effectively communicate their work to Councillors. This should include placing non-commercially sensitive information about their work on the intranet, such as agendas and a forward plan of projects, and include notification of significant variations to contract terms, extensions or direct awards. Procurement should be regarded as a key driver for implementing council policy.

- 11.8. Periodic reports should keep the Cabinet informed of how a project is progressing and highlight any potential problems that could have an impact on the delivery of the project objectives, together with details of the steps that are being taken to address them. These reports will also provide assurance to Cabinet that the project can be delivered on time, measured on the current expected completion date compared to the planned completion date, together with any explanations for any delays. Additionally, reports should consider the estimated final cost compared to the available budget, risk registers, change control and the extent to which the project is on track for delivering its objectives.
- 11.9. Supporting guidance should be in the form of a complete purchasing framework that is available for all officers responsible for procurement to access on the LBHF Intranet and TriBnet. The framework should include standard documents to ensure an effective approach to procurement between the Council and boroughs with which it shares services. The guidance should stipulate commissioning, procurement and contract management processes that are subjected to 'gateway reviews' at critical stages of each medium and high risk/value project. Such gateway reviews involve reviewing project objectives, costs and programme risks at key stages of the procurement process and should help to ensure that any errors are corrected at an early stage.
- 11.10. The Contract Standing Orders should always be followed by officers responsible for procurement across the Council as not doing so significantly increases the Council's exposure to the risk of challenge and reputational damage owing to officer failure to adhere to EU/UK procurement law and other legislation affecting procurement and the avoidance of controls concerning transparency, probity and accountability. As a result any lapse in adhering to the Orders should be taken seriously.
- 11.11. To assist in securing sound corporate governance arrangements, the Contract Standing Orders require Members to have some involvement in the procurement process for contracts. For reasons of probity and good practice, Members are not expected to take an active part in everyday procurement decisions but they do participate at a strategic level in the design and execution of significant contract letting processes and monitoring outcomes. Additional involvement comes in the form of the approval of the project brief, commissioning and procurement strategy, business case, increases in budget and receiving reports concerning post-completion reviews.
- 11.12. It is vital that a suitable reporting system to the relevant Policy and Accountability Committee is established for significant commissioning, procurement and contract management. Reports should keep the committee informed of how a project is progressing and highlight any potential problems that could impact on

the delivery of the project objectives, together with details of the steps that are being taken to address them. These reports will also provide assurance to Cabinet that the project can be delivered on time, measured on the current expected completion date compared to the planned completion date together with any explanations for any delays. Additionally reports should also consider the estimated final cost compared to the available budget, risk registers, change control and the extent to which the project is on track for delivering its objectives.

- 11.13. Policy and Accountability Committees should receive regular reporting on significant commissioning, procurement and contract management: for example, where contracts are in excess of £5,000,000 total contract spend (whole of life). Reports should be consistent and include time, cost, quality, risk and change as standard sections.
- 11.14. Policy and Accountability Committees should be informed quarterly where a waiver of the Council's Contract regulations has been requested. This will enable the committee to challenge requests for their appropriateness.
- 11.15. Comments provided by Michael Sloniowski, Shared Services Risk Manager 020-8753-2587.

12. PROCUREMENT IMPLICATIONS

- 12.1. The CSOs and the proposed changes to them were drafted by the Corporate Procurement Team along with this report to the Council. There are no further Procurement comments.
- 12.2. Implications completed by Alan Parry, Interim Head of Procurement (Job-share) Tel: 020 8753 2581.

LOCAL GOVERNMENT ACT 2000 LIST OF BACKGROUND PAPERS USED IN PREPARING THIS REPORT

None.

LIST OF APPENDICES:

Appendix 1 – Contract Standing Orders 2016