

Taunton Deane Borough Council

Corporate Governance Committee – 10 December 2012

Update of Contract Standing Orders

Report of the Legal and Democratic Services Manager and Councillor Bryan Denington (Chair of the Constitutional Sub Committee)

(This matter is the responsibility of the Leader of the Council)

1. Executive summary

To approve the changes to the Contract Standing Orders as set out in this report and recommend them for approval by Full Council.

2. Background

- 2.1 The Contract Standing Orders have not been updated since 2006 and therefore do not reflect the partnership with South West One.
- 2.2 An audit carried out by South West Audit Partnership recommended changes to the standing orders to reflect these changes and to ensure that they were up to date.
- 2.3 The Monitoring Officer has therefore reviewed the standing orders and has made some changes. Those changes are set out in Appendix 1 to this report.

3. Finance comments

- 3.1 There are no financial implications in this report.

4. Legal comments

- 4.1 The Council is required to keep an up to date constitution in order to ensure that its decision making processes and procedures are lawful.
- 4.2 These changes are necessary to ensure that the Council's processes are up to date.

5. Links to corporate aims

- 5.1 There are no specific links to the corporate aims.

6. Environmental and community safety implications

- 6.1 There are no implications for the environment or community safety.

7. Equalities impact

7.1 An impact assessment is not required in respect of this report.

8. Risk management

8.1 If the constitution is not kept up to date it can affect the lawfulness of decision making which is a serious risk to the Authority.

9. Recommendations

9.1 Members are recommended to approve the Contract Procedure Rules detailed in Appendix 1 to this report and recommend them for approval to Full Council.

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Contract Procedure Rules

Contract Procedure Rules

Compliance with Contract Procedure Rules

1. Every Contract made by the Authority or officer acting on its behalf shall comply with these Contract Procedure Rules, all relevant Statutory Provisions, with any relevant EU Directives currently in force in the United Kingdom, the Councils Financial Regulations and the Strategic Objectives of the Authority.
2. Where a corporate contract, negotiated by Southwest One Strategic Procurement Service, exists for the supply of specific goods or services (such as for rail tickets, temporary staffing, stationery etc) the corporate supplier must be used, unless that supplier confirms they are unable to fulfil the particular order in question.
3. A Contract is an agreement between the Council and an individual or organisation for the individual or organisation to provide works, goods or services (including the engagement of consultants) for which the Council will provide consideration. Contracts relating solely to disposal or acquisition of land are exempt from these rules.
4. Officers involved in the awarding of a Contract must ensure that the best value for money is obtained. Before commencing procurement, it is essential that the authorised officer leading the procurement has identified the need and fully assessed the options for meeting those needs. The best use of purchasing power shall be sought by aggregating purchases wherever possible.
5. Exceptions from any of the following provisions of these Contract Procedure Rules may be made under the provisions of Contract Procedure Rule 13 or otherwise by direction of the Council, the Executive or the Executive Member where they are satisfied that the exception is justified in special circumstances. No exception shall apply to Contract Procedure Rule 19. Every exception and the reason therefore shall be recorded in the Tenders Register held by the Corporate Support Unit.

Southwest One

6. The Council has entered into a strategic partnering arrangement under which Southwest One (SW1) has contracted to provide a broad range of goods and services, including a number of procurement services. This includes the transformation of the procurement service to embed strategic Category Management as a methodology across the Council's external spend areas and procurement and management of corporate contracts for generic goods and services.

The Theme Manager, or the authorised officer leading the procurement, should always consult with the Chief Procurement Officer (SW1) to ascertain whether any particular services or goods fall within the description of services or goods to be provided by Southwest One and, if that be the case, the procurement of the said services or goods should normally be dealt with under the contractual arrangements with Southwest One.

In some instances, where Southwest One has already undertaken a procurement process in respect of services or goods of the type required, there may be no need for a further formal procurement process to be carried out. However, if that is not the case, the Theme Manager, or his authorised officer, in collaboration with Southwest One, must ensure that the procurement is carried out in accordance with these Contract Procedure Rules and, where the EU procedure applies, with the Regulations.

Notwithstanding the fact that a procurement may fall to be dealt with under this Contract Procedure Rule and subject to any provision in the Council's contractual arrangements with Southwest One having contrary effect, the Theme Manager, or the authorised officer leading the procurement, must still comply with his obligations to confirm that he/she has the appropriate power, authority and finance for the procurement to proceed.

Risk and Project Management

- 7 For procurement where the estimated spend is greater than Threshold 3 the Procurement Risk Management policy must be applied and decisions recorded. Any high risks that exceed the accepted threshold must be reported to Corporate Management Team (CMT). The Corporate Project Management process must be applied.
8. For procurement where the estimated spend is less than Threshold 3 the Service Manager must ensure that all risks are considered and managed, reporting to CMT any consequential risks that may seriously jeopardise the Council.
9. For procurement where the estimated spend is less than Threshold 3 the Corporate Project Management process should be used at the discretion of the Service Unit Manager particularly where the risk of failure would impact on the ability to deliver a service or create a significant consequential risk.

Specifications

10. Enquiries and Invitations to Tender shall be based on a written specification. The specification shall adequately describe the required procurement in sufficient detail to enable effective procurement in accordance with these rules.

Supplier Pre-Qualification

- 11 The Council shall only enter into a contract with a supplier if it is satisfied as to the supplier's eligibility, financial standing and technical capacity to undertake the contract. For contracts over Threshold 3 the Section 151 Officer will

formally vet those companies that have been selected to receive an invitation to tender.

Requirement for Quotation/Tender and Public Advertisement

12. Before entering into a Contract a written quotation/tender for the contract price must be secured. Consideration shall be given to other costs associated with the procurement (Lifetime costings including for example maintenance costs and power consumption). Where these could be significant such as in the final disposal of a product appropriate arrangements shall be put into place to consider these costs against alternative options.
 - a) **Contracts below Threshold 1**
At least one written quotation must be obtained, preferably more where there are opportunities for competitive savings.
 - b) **Contracts between Threshold 1 and Threshold 2**
Written quotations must be sought from not less than three individuals or organisations that could undertake the contract.
 - c) **Contracts between Threshold 2 and Threshold 3**
 - (i) A Public Notice must be made in the relevant section of the Council's website, setting out particulars of the contract and inviting persons interested to apply, within a period not less than 10 days, for permission to tender.
 - (ii) After the expiration of the period specified in the Public Notice invitations to tender shall be sent to not less than four individuals or organisations that could undertake the contract (or, if fewer than four apply, to those that are suitable). If less than four invitations to tender are sent then the reasons need to be noted in the tender register.
 - (iii) Tenders are to be submitted and opened in accordance with Contract Procedure Rule 18.
 - d) **Contracts above Threshold 3**
 - (i) The procurement shall comply with the requirements of the EU Procurement Directives.
 - (ii) A Public Notice must be made in the relevant section of the Council's website.

- (iii) After the expiration of the period specified in the Public Notice invitations to tender shall be sent to not less than four individuals or organisations selected in accordance with the applicable EU Procurement Directives (or, if fewer than four apply, to those that are suitable and the reasons noted in the register as set out in cii above.
 - (iv) Tenders are to be submitted and opened in accordance with Contract Procedure Rule 19.
- 13 Contract Procedure Rules 13a, 13b and 13c shall not apply to the following but, wherever possible, alternative quotations shall be obtained:
 - a) Purchases by auction or at public fairs or markets
 - b) Contracts involving special technical, scientific or artistic knowledge
 - c) Contracts in respect of which there would be no genuine competition (following consultation with the Theme Manager)
 - d) Contracts comprising spare or replacement parts of existing machinery or plant or repairs to such machinery or plant
 - e) The Contract to be entered into is to be dealt with in a prescribed manner under agency arrangements entered into by the Council with another authority
 - f) Urgent situations as agreed with the client Director and Executive Councillor where the authority is put at significant risk or significant costs could be incurred by not taking urgent remedial action.
 - g) Emergency situations (as defined in the Council's Business Continuity Strategy or Emergency Planning procedures)
- 14. Paragraphs 13a, 13b and 13c (up to Threshold 3) of these Contract Procedure Rules shall not apply to the entering into of contracts by the Deane DLO for the supply of goods or the engagement of sub-contractors where such transactions are necessary to enable the carrying out of contracts obtained by the Deane DLO after competitive tendering, provided that full details of all orders and contracts are maintained in such manner as required from time to time by the Section 151 Officer

15. Framework Agreements

A Framework Agreement is an agreement or other arrangement made with one or more suppliers for the provision of goods or materials, services or works under agreed terms and conditions during a specified period under which the Council may enter into specific contracts known as “call-offs”.

The term Framework Agreement must not exceed four years and, while an agreement may be entered into with one provider, where an agreement is concluded with several organisations, there must be at least three in number.

The Theme Manager must consult with the Chief Procurement Officer to ascertain what Framework Agreements are in place from time to time. Where such an Agreement which deals with the subject matter of the proposed contract is in existence, subject to the need to ensure value for money and to comply with EU Treaty principles and to obtaining the advice of the Chief Procurement Officer and, if necessary, the Monitoring Officer, the procurement will be dealt with under the Framework Agreement.

16. Every written contract shall specify
 - a) the work, materials, matters or things to be furnished, had or done;
 - b) the price to be paid, with a statement of discounts or other deductions (if any); and
 - c) the time or times within which the contract is to be performed.
17. Every contract which exceeds Threshold 3 and is either for the execution of work or the supply of goods or materials shall provide for payment of liquidated damages by the contractor in case the terms of the contract are not performed.

Submission of Tenders

18. Submission Procedures for contracts between Threshold 2 and Threshold 3
 - a) Where an invitation to tender is made, each invitation shall state that no tender will be considered unless it is enclosed in a plain sealed envelope. The envelope shall bear the word '**Tender**' - in large emboldened lettering followed by the subject to which it relates and the Tender reference number (if applicable) but no other name or mark indicating the identity of the sender.
 - b) The tenders shall be kept in the custody of the appropriate Director's nominated officer until the time and date specified for their opening.
 - c) Tenders shall be opened in the presence of (at least) two Council Officers. Tenders shall be date-stamped and signed on all pages containing price information.
19. Submission Procedures for contracts above Threshold 3

- a) Where an invitation to tender is made, each invitation shall state that no tender will be considered unless it is enclosed in a plain sealed envelope clearly addressed to the Legal and Democratic Services Manager. The envelope shall bear the word '**Tender**' - in large emboldened lettering followed by the subject to which it relates and the Tender reference number (if applicable) but no other name or mark indicating the identity of the sender.
 - b) The tenders shall be kept in the custody of Democratic Services Manager until the time and date specified for their opening.
 - c) Tenders shall be opened in the presence of (at least) two Council Officers and a Councillor. Tenders shall be date-stamped and signed on all pages containing price information.
 - d) All tenders which were received by the time and date specified shall be recorded in the Tenders Register maintained by the Legal and Democratic Services Manager.
- 20 Tenders received after the time and date specified in the invitation to tender shall be considered only in exceptional circumstances. A tender received late can only be considered with the approval of the Monitoring Officer or in her absence the Section 151 Officer.
- 21 Invitations to Tender may be issued by electronic means provided that evidence that the transmission was successfully completed is obtained and recorded.
- 22 Quotations and tenders may be submitted electronically provided that they are kept in a separate secure folder under the control of the authorised officer which is not opened until the deadline is passed for the receipt of tenders.

Acceptance of Quotations and Tenders

- 23 The tender that is most economically advantageous to the Council shall be accepted. Each tender shall be evaluated for price and quality to ascertain the most economically advantageous tender.
24. For procurements over Threshold 3 the questions and scoring system used to evaluate quality shall be written before tenders are received. The basis of this exercise shall be explained in any invitation to tender documentation
25. The Impact on Corporate Priorities will be considered in every procurement process and, where appropriate, incorporated into these Corporate Procedure Rules, any evaluation model used ultimately into the terms and conditions of contract.

26. Where the Officer considers it in the best interests of the Council he may negotiate with the tenderers whose tenders are being considered for acceptance. No negotiation on contracts whose value is in excess of Threshold 3 can take place without reference to the Theme Manager. Any negotiation which would distort competition is expressly forbidden. Details of the negotiations must be placed on the contract file.
27. Arithmetical errors found in the most economically advantageous tender when checking shall be dealt with as follows:
- a) Where the arithmetical error if corrected would inflate the cost of the contract to the Council the tenderer shall have the error pointed out to them and be offered the opportunity to stand by their tender or withdraw it
 - b) Where the arithmetical error if corrected would reduce the cost of the contract to the Council the tenderer shall have the error pointed out to them and corrected and be offered the opportunity to withdraw their tender.

Signing or Sealing of Contracts

28. Every successful quotation/tender shall be accepted in writing, provided that contracts which exceed Threshold 3 in value or amount and such other contracts as the Solicitor to the Council shall determine shall be set out in a formal contract document.

Authority to Commit the Council

29. Officers are authorised to commit the Council to expenditure on contracts as follows:
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|----|------------------|--|
| a) | Chief Executive | £Unlimited |
| b) | Directors | Up to £1,000,000 |
| c) | Theme Manager | Up to £500,000 |
| d) | Service Managers | Up to Threshold 3 |
| e) | Other staff | As delegated by one of the above named officers low risk items, level not to exceed Threshold 3 and to be notified to Section 151 Officer. |

Nominated Sub-Contractors and Suppliers

- 30 Where a sub-contractor or supplier is to be nominated to a main contractor, the procurement of the services of the sub-contractor or supplier shall be subject to these Contract Procedure Rules.

Bribery

31. In every contract a clause shall be inserted to secure that the Council shall be entitled to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation if the contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract with the Council, or for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Council, or if the like acts shall have been done by any person employed by him or acting on his behalf (whether with or without the knowledge of the contractor), or if, in relation to any contract with the Council, the contractor or any person employed by him or acting on his behalf shall have committed any offence under the Prevention of Corruption Acts, 1889 to 1916, or shall have given any fee or reward the receipt of which is an offence under sub-section (2) of Section 117 of the Local Government Act, 1972.

Contracts Record

32. A record of all contracts in excess of Threshold 2 in value placed by the Council shall be kept on the Council's Intranet site. This register shall specify for each contract the name of the contractor, the works to be executed or the goods or services to be supplied, the contract value and the contract period. This is the responsibility of the officer authorising the contract to ensure that a timely entry is completed.

Contract Management

33. Project management shall be practiced at all times in undertaking procurement. All Threshold 2 and 3 contracts will be monitored on a quarterly basis by the Corporate Management Team or any such group set up by them for this purpose.
34. Any third party who is required to supervise a Contract on behalf of the Council shall comply with the requirements of these Contract Procedure Rules.

Contract Extensions of Time

- 35 In exceptional circumstances where it is in the interests of the Council and good value for money contracts may be extended in accordance with Financial Regulations.

36. For contracts where the value is over Threshold 3 or extension will take the contract value over Threshold 3 such an extension shall be with the prior agreement of the relevant Director and the Council's Section 151 Officer. A report on this decision shall be posted in the weekly bulletin. If the extension significantly alters the original contract value or purpose the extension can only be made with the additional agreement of the Executive portfolio councillor, who shall post their decision for possible call in accordingly.

Contract Variations to Scope

37. Any necessary instructions to vary a contract shall be made in writing by the Theme Manager or persons responsible for supervising the contract. Where a variation occurs during the currency of the contract that is material and cannot be met from within the original contract sum an immediate report shall be made to the Council's Section 151 Officer who shall decide what further action is necessary. Where a supplementary estimate is required this shall be made in accordance with the councils Financial Regulations.

Bonds, Guarantees and Insurances

38. For procurement projects where the spend is greater than Threshold 3 consideration must be given as part of the pre-qualification assessment and evaluation process as to whether a performance bond and/or parent company guarantee (if applicable) shall be required from the successful tenderer.
39. Consideration must be given as to the appropriate type (employee liability, public liability, professional indemnity, etc.) and level of insurance requirements for each contract.

Completion Statement

40. As soon as possible after completion of a Threshold 3 works contract the Theme Manager or person responsible for supervising the contract shall prepare a Final Account and, after agreeing it with the contractor and the Section 151 Officer, shall report it in the Council's Weekly Bulletin with a comparison of the contract amount and the reasons for any material variations.

Freedom of Information Act 2000 and Confidentiality

41. There is a presumption that contractual information should be made available for disclosure if requested. However, officers should be aware of the potentially anti-competitive implications of disclosing detailed contractual information in the period around a procurement process taking place. Guidance and advice is available from the Council's Monitoring Officer.

During the period between the opening of proposals and/or tenders and the award of contract, all details of the proposals submitted must remain secret and be treated as confidential. It is the responsibility of those involved in the process to ensure complete confidentiality during this period.

Breaching of Contract Procedure Rules

- 42 Any non-compliance to or breach of these rules should be reported immediately to the Monitoring Officer and the Section 151 Officer. Failure to report any known non-compliance or breach may result in disciplinary action being taken against the employee who failed to report the non-compliance or breach.

The Section 151 Officer will undertake an investigation where deemed necessary and they will refer the investigation findings to the Human Resources Manager in order that the appropriate disciplinary action can be taken where a serious or repeated breach of these rules is identified.

Retention of Records

- 43 On completion of the Tender process, all related documentation will be filed and retained for a period appropriate to the contract in the contract file. For further details of retention periods please see the Council's Document Retention Policy on the Intranet.

Review of Contract Procedure Rules

- 44 These rules will be reviewed and updated as required by changes to procurement legislation and regulation or to meet the operational requirements of the Council. The Council's Section 151 Officer, in consultation with the Monitoring Officer will be responsible for undertaking the review and reporting to the Council for approval.

Appendix 1 – Thresholds

The thresholds below represent the total value of the contract, not just the annual value. For example, a 5 year supply contract with a value of £25,000 per year would have a value of £125,000 for the purposes of these rules.

	Works Contracts	Supplies & Services contracts
Threshold 1 -	£15,000	£ 5,000
Threshold 2 -	£50,000	£25,000
Threshold 3 -	The current EU procurement thresholds for 'Other public sector contracting authorities'	

For current EU thresholds visit <http://www.ojec.com/Thresholds.aspx>

Appendix 2 – Systems and Procedures

Order Controls

- 1.1 Ordering and requisitioning procedures shall conform to those instructions on the Council's procurement intranet page .
- 1.2 All works, goods and services, with the exception of rent, public utility supplies, small petty cash purchases and works and services covered by contract, shall be ordered on an official order through the Council's purchase order system in advance of the provision of those goods and services. An estimate of the cost, or where applicable, the quoted price shall be inserted, together with the relevant expenditure codes.
- 1.3 The Section 151 Officer shall approve officers authorised to place orders or make requisitions on behalf of the Council. This will be done through delegations and role allocations within the purchase order system.
- 1.4 Before authorising an order, the officer shall satisfy himself that the expenditure:
 - a) is covered in approved estimates;
 - b) is necessary providing Best Value; and
 - c) that Contract Procedure Rules in respect of contracts and tenders have been complied with.
- 1.5 The design, amendment, requisition, custody and issue of all forms are contained in the SAP system.
- 1.6 The Control of all orders/requisitions raised or otherwise held is the responsibility of each Manager. All order and requisition stationery shall be securely held by the responsible officer with copies and any cancelled forms accounted for.
- 1.7 Telephone orders are permitted, however they must be immediately followed up by an order marked "Confirmation".
- 1.8 Any orders requiring amendment should be cancelled and a revised order issued.

General Contract Controls

- 2.1 All contracts for the provision of services, the supply of goods and the execution of works, entered into on the Council's behalf shall be made in accordance with the Council's Contract Procedure Rules.
- 2.2 Officers and/or consultants shall where appropriate maintain adequate records to support all contract payments and valuations made, including all variations, omissions and additions to the contract sum.

- 2.3 Any contracts for works with a final value in excess of Threshold 2 (as defined in Contract Procedure Rules) together with supporting records, shall be subject to Audit and Review before any final payment is made.

Pre-Contract Controls

- 2.4 Each Theme Manager or officer leading the procurement shall prepare as appropriate a suitable project plan to financially control and monitor the subsequent performance of each contract.
- 2.5 Each Theme Manager, or officer leading the procurement, shall ensure that they have received the relevant financial references and these have been checked by Finance for contracts above threshold 3.
- 2.6 Letters of appointment shall specify the terms and conditions of consultants to the Council and the formula for paying fees. Their requirements to conform with the Council's Financial Regulations and Contract Procedure Rules shall be contained therein together with a right of Audit access to their records to validate payments and claims made on or behalf of the Council.

Current Contract Controls

- 2.7 Payments to contractors on account shall be made only on a certificate issued by the officer specified in the contract, or by his deputy or other such officer nominated by him in writing for the purpose.
- 2.8 Subject to the provisions of the contract in each case, every extra or variation shall, unless otherwise evidenced to his satisfaction, be authorised in writing by the officer specified in the contract, or by his deputy or other officer nominated by him in writing for the purpose.
- 2.9 Any such extra or variation, the estimated additional cost of which exceeds £5,000 shall be reported to the Director as soon as possible. The relevant approval for the financing solution should be considered at the same time.

Post Contract Controls

- 2.10 Wherever possible within the terms of the contract the final payment certificate on completion of any works contract shall not be issued until the appropriate officer has produced to Audit and Review, a detailed statement of account and all relevant documents if required.
- 2.11 The Internal Audit Service shall, to the extent that he considers necessary, examine final accounts and he shall be entitled to make such enquiries and receive information and explanations as he may require in order to satisfy themselves as to the accuracy of the accounts.

- 2.12 Claims from works contractors in respect of matters not clearly within the terms of a contract shall be dealt with by the responsible Service Unit Manager who shall consult as appropriate with the budget holding director and Audit and Review Manager before taking any action which might result in claims on the Council.
- 2.13 Where completion of a contract is delayed, it shall be the duty of the Service Unit Manager to inform Audit and Review and to take action in respect of any claim for liquidated damages in accordance with the contract.
- 2.14 In April of each year, the final cost of all projects completed in the preceding 12 months shall be reported to the Executive. Where the final cost of any individual project exceeds the estimated cost after tenders have been accepted by 2% or £25,000, whichever is the lesser, then a report will be presented to the Executive giving the reasons for the difference.
- 2.15 At the conclusion of a contract, an opportunity should be taken to evaluate the performance.