

BABERGH DISTRICT COUNCIL and MID SUFFOLK DISTRICT COUNCIL

From: Corporate Manager - Commissioning	Report Number: R57
To: Babergh Council Mid Suffolk Council	Date of meeting: 27 October 2015 29 October 2015

CONTRACT STANDING ORDERS

1. Purpose of Report

1.1 The purpose of this report is to approve revised Contract Standing Orders.

2. Recommendations

2.1 That the revised Contract Standing Orders as detailed in Appendix A be approved

2.2 That the second bullet point in A12 of the Councils' Financial Regulations be amended to read as follows:-

'Signing contracts in relation to their specific areas on behalf of the authority in accordance with the Procurement Scheme of Delegation.'

3. Financial Implications

3.1 None.

4. Legal Implications

4.1 None.

5. Risk Management

5.1 The proposed Contract Standing Orders provide clearer guidance than the current Contract Standing Orders and through this will enable a reduction in the Council's risk with regard to its Commissioning and Procurement.

6. Consultations

6.1 Relevant stakeholders in the Council, including Legal and Financial Services have been consulted.

7. Equality Analysis

7.1 There are no direct impacts for equality from the adoption of the revised Contract Standing Orders. The revised Contract Standing Orders require that the process and impact of the Council's commissioning and procurement should not adversely impact upon any community or groups within a community.

8. Shared Service / Partnership Implications

8.1 The Contract Standing Orders will be the same for Babergh District Council and Mid Suffolk District Council.

9. Links to Joint Strategic Plan

9.1 The revised Contract Standing Orders support the development of the Councils' capability to commission.

10. Key Information

10.1 The revised Contract Standing Orders now include details of the approvals and delegations required for procurement and the value triggers for the different types of sourcing processes. Appendix A provides a copy of the current Contract Standing with differences from the proposed new version of Contract Standing Orders marked. Text that has been removed is shown as struck out and the revised text is shown in blue.

10.2 The revised Contract Standing Orders have been developed in conjunction with a joint (Babergh and Mid Suffolk) Commissioning and Procurement Manual.

10.3 The implementation of the revised Contract Standing Orders and joint Commissioning and Procurement Manual will be supported by a programme of learning for Officers.

10.4 The Councils' Financial Regulations currently include the following –

MANAGEMENT BOARD AND HEADS OF SERVICE

A.12 These are responsible for:

- *Signing contracts in relation to their specific areas on behalf of the authority, which are not under seal.*

In order to be consistent with the proposed new Contract Standing Orders this should be amended to:

- Signing contracts in relation to their specific areas on behalf of the authority in accordance with the Procurement Scheme of Delegation.

11. Appendices

	Title	Location
A	Current Contract Standing Orders with amendments marked	Attached

12. Background Documents

12.1 None.

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CONTRACT STANDING ORDERS

October 2014 2015

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1. Introduction

1.1 These Contract Standing Orders are made in accordance with the requirements of Section 135 of the Local Government Act 1972. The Contract Standing Orders form part of the Council's Constitution. The purpose of these Contract Standing Orders is to provide a framework within which commissioning and purchasing decisions are undertaken to enable the Council to:

- furthers its priorities
- use its resources efficiently
- commission quality goods, services and works
- operate in a fair, open and transparent manner
- safeguard its reputation from the implication of dishonesty or corruption.

1.2 These Contract Standing Orders provide the minimum standards and requirements that must be met on all occasions when the Council enters into an agreement for the supply of goods, services or the execution of works. Further guidance that should be applied to all of the Council's commissioning and procurement is provided in the Council's Commissioning and Procurement Manual.

1.3 These Contract Standing Orders apply to all contracts, leases, concessions and agreements entered into by or on behalf of the Council; except ~~where:~~ for the specific types of contracts and which are listed below:

- ~~• circumstances where purchases are made or services rendered as a consequence of a contract made by another local authority, government department, body or agent the benefits of which the Council obtains as a result of participation in a consortium.~~
- ~~• goods purchased by public auction~~

- ~~circumstances where the Council enters into a contract jointly with one or more other local authorities one of whom is the “lead authority” for that contract~~
- ~~the lending or borrowing of money~~
- ~~the appointment of any officer directly employed by the Council~~
- ~~the sale or purchase of any land or buildings~~
- ~~the provision of services by legal counsel.~~
- ~~service level agreements setting out the conditions which the Council will provide funding to particular voluntary sector bodies.~~
- The goods, services or works are provided by a wholly owned subsidiary of the Councils where the Councils control the subsidiary in a similar way to which control is exercised over their own departments, more than 80% of the subsidiary’s activities are undertaken for the Councils and there is no direct private capital participation in the subsidiary.
- The Councils collaborate with other Public Authorities to deliver a public service with a view to achieving objectives that they have in common and the collaboration is implemented in a manner governed solely by considerations relating to the public interest.
- The Councils’ have established a Mutual Organisation delivering a service contract in relation to education, healthcare and housing, health and social work services, or library and other cultural services. A contract may be awarded for no more than 3 years.
- Circumstances where purchases are made or services rendered as a consequence of a contract made by another Local Authority, Government Department, Government Body or Agent, the benefits of which the Councils obtain as a result of participation in a consortium.

- Goods are purchased by public auction.
- The lending or borrowing of money.
- The appointment of any Officer directly employed by the Councils.
- The sale or purchase of any land or buildings.
- The provision of services by Legal Counsel.
- Agreements setting out the conditions which the Councils will provide funding to particular voluntary sector bodies.
- The goods or services are supplied at a fixed price or the prices are wholly controlled by trade organisations or Government order and no satisfactory alternative is available.

2. Delegated Authority

2.1 All commissioning and procurement activity by the Council must be undertaken in compliance with the Council's [Procurement Scheme of Delegation](#) which is provided in [Table 1](#). ~~Details of the Scheme of Delegation are included in the Council's Commissioning and Procurement Manual.~~

Table 1 – Standard Procurement Scheme of Delegation

£ Value excl. VAT	Approve the Selection of Suppliers to Invite to Tender	Approve the award of business	Signing of contracts	Approval of Purchase orders and invoices	Approval of certification of completion for services and works	Approval of contract extensions	Approval of exemption to undertake a competitive sourcing
Up to £10k	Not Applicable	Approved Officer	Approved Officer	Approved Officer	Approved Officer	Approved Officer	Corporate Manager
£10k to £75k	Not Applicable	Corporate Manager	Corporate Manager	Corporate Manager	Approved Officer	Corporate Manager	Corporate Manager
£75k to £250k	Corporate Manager	Head of Service	Councils' Monitoring Officer	Head of Service	Corporate Manager	Head of Service	Head of Service
Over £250k	Corporate Manager	Director and Mid Suffolk Executive and Babergh Strategy Committees for Strategic Contracts	Councils' Monitoring Officer	Director	Corporate Manager	Director	Director
All values	For the Best Value Exemption for to undertake a competitive sourcing process approval for all values is required by: Head of Legal and Governance and the Corporate Manager Commissioning & Procurement.						

2.2 Delegation of Authority to Approved Officers

Corporate Managers have responsibility to delegate authority to Approved Officers and should ensure that they have the appropriate levels of capability and understanding to undertake the role.

2.3 Recording of Delegations

Effective records of delegations should be maintained in the Councils' Authorised Signatory List which the Councils' Section 151 Officer or his/her nominee has responsibility for the compilation of. Corporate Managers have responsibility to ensure that details of Approved Officers are maintained in the Authorised Signatory List.

2.4 Approval of the Award of Business of Strategic Contracts

For the purpose of approval strategic contracts are defined as:

- Over £250k in value and
- The goods, services or works have a significant impact upon the delivery of the Councils' services are not replacements for an existing operation.

Following the completion of the evaluation phase of procurement, before the approval for the award of the business should be obtained from Executive /Strategy Committees. This approval can be delegated from the relevant Committee to an Officer with the appropriate level of responsibility, however the delegation must be in place before the procurement process commences.

2.5 Variation from the Procurement Scheme of Delegation

Where requirements for high value contracts and purchase orders occur on a regular basis the Section 151 Officer may approve a variation from the Standard Procurement Scheme of Delegation for requirements up to £250k. Any such variations should be recorded in the Councils' Authorised Signatory List.

3. Personal Interests of Officers and Members

~~3.1 Section 117 of the Local Government Act 1972 requires employees to give notice in writing to the Council of any pecuniary interest, direct or indirect, which he/she has in a contract entered into (or to be entered into) by the Council.~~

3.1 Employees of the Council and Members of the Councils should give notice in writing to the Council of any pecuniary interest, direct or indirect, which he/she has in a contract entered into (or to be entered into) by the Council.

3.2 Such notification should be given to the Council's Monitoring Officer.

~~4. Statutory Requirements~~

~~4.1 All commissioning and procurement activity by the Council must be undertaken in compliance with EC Treat Principles, EU Directives and all relevant UK legislation.~~

~~4.2 Further guidance on relevant Directives and Statutes is provided in the Commissioning and Procurement Manual.~~

4. Management of Records

4.1 Proper records of all communications, reports, minutes, meetings, quotes, tenders, contract and other relevant documents should be retained securely so as to protect the integrity of the process and managed in accordance with the Council's policy on The Management and Retention of Records.

4.2 A record of all Contracts should be entered into the Council's Contract Register.

~~5. Transparency and Fairness~~

~~5.1 All procurement and commissioning activity by the Council must be undertaken in an open, fair and transparent manner which provides an equal opportunity for all potential providers.~~

~~5.2 The total economic opportunity in terms of value available for the whole period of the requirement (excluding VAT) will determine the procurement processes which should be followed. Guidance on the contract value thresholds and procurement processes that should be used is provided in the Council's Commissioning and Procurement Manual.~~

~~5.3 Requirements should not be broken down into smaller portions (lots) for the purpose of avoiding the impact of the contract value threshold.~~

~~5.4 A standing list of suppliers may be compiled where the business requirements of the Council require access to a number of suitably qualified suppliers for a specific category, value or quantity of goods, services or the execution of works. Invitations to tender or quotation for these categories will be limited to those suppliers whose names are included on the list compiled and maintained for that purpose.~~

~~5.5 All suppliers included on a standing list must be given equal opportunities to respond to quotes and tenders.~~

~~5.6 Standing lists are effective for a limited period and must be renewed on a regular basis in accordance with the guidance and procedures provided in the Commissioning and Procurement Manual.~~

5. Principles

5.1 The Councils are required to comply with the Fundamental Treaty Principles of the EU which should be applied to all of the Councils' commissioning and procurement, the principles are:

- Non-discrimination on the basis of nationality
- Transparency
- Equality and fairness

5.2 All of the Councils' commissioning and procurement should be undertaken in an open and fair manner which provides the same information to all suppliers and an equal opportunity to all potential suppliers.

5.3 The Councils should ensure that comparable situations are not treated differently and that different situations are not treated similarly.

5.4 The process of the Councils' commissioning and procurement and the impact of the outputs and outcomes achieved should not impact adversely upon any communities or groups within a community.

5.5 The Councils' commissioning and procurement should be undertaken with regard to the principle of proportionately. This requires that requirements placed upon suppliers should be appropriate for attaining the objective pursued and should not go beyond what is required to achieve the objectives of the procurement.

5.6 The selection of offers for goods, services or the execution of works from suppliers should be based upon achieving value for money for the Council, utilising sustainable and ethical sources of supply with minimal impact upon the environment.

5.7 Subject to the test of fairness and equality for potential suppliers the requirement to support specific regional economic and social development opportunities may be included.

6. Management of Records

~~6.1 Proper records of all communications, reports, minutes, meetings, quotes, tenders, contract and other relevant documents must be retained securely so as to protect the integrity of the process and managed in accordance with the Council's policy on The Management and Retention of Records.~~

~~6.2 A record of all Contracts must be entered into the Council's Contract Register.~~

7. ~~Value for Money and Selection~~

~~7.1 The selection of offers for goods, services or the execution of works from suppliers should be based upon achieving value for money for the Council, utilising sustainable and ethical sources of supply with minimal impact upon the environment.~~

~~7.2 Subject to the test of fairness and equality for potential suppliers the requirement to support specific regional economic and social development opportunities may be included.~~

6. Sourcing Processes

6.1 The sourcing process that should be used will depend upon the type and estimated value of the requirement (excluding VAT), refer to Table 2.

6.2 Requirements should not be broken down into smaller portions (lots) for the purpose of avoiding the application of the procurement thresholds.

6.3 A Standing list of suppliers may be compiled where the business requirements of the Council require access to a number of suitably qualified suppliers for a specific category, value or quantity of goods, services or the execution of works. Invitations to quote for these categories will be limited to those suppliers whose names are included on the list compiled and maintained for that purpose. All suppliers included on a standing list should be given equal opportunities to respond to invitations to quote.

Table 2 – Sourcing Processes

Value of Expenditure	Where an Approved List of Suppliers is Not Used	Where an Approved List of Suppliers is Used (see Section 7)
Less than £1k – All Categories	Verbal or email confirmation from supplier, pricing obtained from suppliers' catalogue.	Councils' Standing List –as required by the procedures of the relevant Standing List.
£1k to £10k – All Categories	At least one Informal Quote.	
£10k to £30k – All Categories	At least three Informal Quotes.	
Goods and Services- £30k to £75k	At least three Formal Quotes.	Framework Agreement – as required by the procedures of the relevant Framework Agreement.
Goods and Services £75k to £172k	Tender advertised nationally.	
Goods and Services (apart from Light Touch Services¹) over £172k	Tender advertised in EU and undertaken using the formal EU Procurement Regime.	

1 – Light Touch Services are health, social and related services, administrative social, educational and cultural services, compulsory social services, benefit services, community social and personal services, religious services, catering services for private households, prison services, postal services, investigation and security services.

Value of Expenditure	Where an Approved List of Suppliers is Not Used	Where an Approved List of Suppliers is Used (see Section 7)
Light Touch Services £75k to £625k	Tender advertised nationally.	
Light Touch Services over £625k	Tender advertised in EU, the formal EU Procurement Regime does not have to be applied, however the EU Treaty principles should be applied and the Contract Award should be published in OJEU.	
Works £30k to £150k	At least three Formal Quotes.	
Works £150k to £4.3m	Tender advertised nationally.	
Works over £4.3m	Tender advertised in EU and undertaken using the formal EU Procurement Regime.	

7. Exemptions to Undertaking a Competitive Sourcing Process

7.1 Exemptions to the requirement to undertake a competitive sourcing process should be approved in accordance with the Councils' Procurement Scheme of Delegation and can only be undertaken in the circumstances listed in Table 3.

Table 3- Exemptions to Undertaking a Competitive Sourcing Process

Type of Exemption	Criteria	£ Value for which this Exemption can be Applied
Sole Provider	Where for technical or artistic reasons connected with the protection of exclusive rights only a single supplier can meet the requirements.	Unlimited
Urgency A	Emergency action is required which acting diligently the Council(s) could not have foreseen and if not taken would provide an unacceptable impact upon on the delivery of the Councils' services. This exemption cannot be applied where insufficient time has been allowed to undertake the relevant procurement process.	Goods and Services up to £172k Works up to £4.3m
Urgency B	In cases of extreme urgency, where the health and safety of the public is at stake and the likelihood of harm during the period of delay is considerable, for reasons unforeseeable by and not attributable to the Councils.	Unlimited

Type of Exemption	Criteria	£ Value for which this Exemption can be Applied
Additional Works or Services	Where the Councils require a contractor to provide additional goods or carry out additional works or services beyond 50% of the original contract value (including any extension included in the original terms of the contract); which the Councils acting diligently could not have foreseen and undertaking a further competitive sourcing process is unlikely to deliver value for money and will impede upon the delivery of the Councils' services, an exemption may be used. The extension cannot include a variation in the scope of the contract.	The contract can be extended to its original value once again and the total expenditure (including the value of the original contract) cannot be above: <ul style="list-style-type: none"> • £172k for goods and services. • £625k for Light Touch Services • Works up to £4.3m
Best Value	Where there is sufficient evidence that only one supplier is able to undertake the work within the required timescale and undertaking a competitive sourcing process would be unlikely to deliver value for money and will impede upon the delivery of the Councils' services, an exemption may be used. This exemption cannot be applied where insufficient time has been allowed to undertake the relevant procurement process.	£75k for Goods and all types of Services £150k for Works

8. Extension of Contracts

~~8.1 Where the extension of a contract is required to enable the continued provision of goods, services or execution of works; contracts may be extended, subject to adequate budgetary provision:~~

- ~~• by value or period, or any other variation that has been accounted for in the original terms of the contract~~

- ~~• in addition to the terms of the original contract, the contract may be extended by a period of not more than half of the original term~~
- ~~• in addition to the terms of the original contract by not more than 40% of the total value of the original contract~~
- ~~• an exemption or exception these Contract Standing Orders applies.~~

~~8.2 Contract extensions must be authorised in accordance with the guidance provided in the Councils' Commissioning and Procurement Manual.~~

8. Extension of Contracts

8.1 The term of existing contracts may only be extended if satisfactory performance has been provided from the contracted supplier and there is adequate budgetary provision.

8.2 Contracts may be extended for any period that was provided for in the original terms of the contract.

8.3 Where the Councils require a contractor to provide additional goods or carry out additional works or services due to circumstances which acting diligently the Councils could not have foreseen an extension of up to 50% of the original value of the contract (which includes any extension periods provided for in the terms of the original contract) can be undertaken.

8.4 Contracts may not be varied with regard to the scope and the type of goods, services or works that they deliver unless, the variation has already been provided for in the original contract terms or the changes are not substantial and do not alter the nature of the Contract.

9. Third Parties

~~9.1 Where third parties, such as consultants or contractors are engaged to commission or procure goods, services or the execution of works, or manage a contract on behalf of the Council these activities must be undertaken in~~

~~compliance with these Contract Standing Orders and the guidance contained in the Council's Commissioning and Procurement Manual.~~

~~9.2 The requirement in 10.1 must be included in the conditions of contract for third parties.~~

9. Purchase and Works Orders

9.1 With the exception of the requirements included on the Council's Purchase Order Exemption List an official Purchase or Works Order should be used to undertake all financial commitments on behalf of the Council.

10. Purchase Orders

~~10.1 With the exception of the requirements included on the Council's Purchase Order Exemption List, an official Purchase Order must be used to undertake all financial commitments on behalf of the Council.~~

~~10.2 The Purchase Order Exemption List is contained in the Council's Commissioning and Procurement Manual.~~

11. Exemptions to the Contract Standing Orders

~~11.1 Exemptions to these Contract Standing Orders may be made within the relevant law as follows:~~

- ~~• the goods required are available only as proprietary or patented articles from one supplier and there is no reasonable satisfactory alternative~~
- ~~• the goods or services to be supplied consist of a repair to or the supply of parts of existing proprietary machine or plant~~
- ~~• the goods or services to be supplied are required to be the same as those currently in use by the Council for the purpose of standardisation~~
- ~~• emergency action is required, which if not taken would provide an unacceptable impact upon on the delivery of the Councils' services~~

- ~~the goods or services are supplied at a fixed price or the prices are wholly controlled by trade organisations or Government order and no satisfactory alternative is available~~
- ~~taking into account the cost of change the Council is unlikely to benefit from improved value for money.~~

~~11.2 Exemptions to these Contract Standing Orders must be authorised in accordance with the guidance in the Commissioning and Procurement Manual.~~

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