



**POLICY AND RESOURCES SCRUTINY COMMITTEE –
20TH APRIL 2010**

SUBJECT: REVIEW OF COUNCIL'S STANDING ORDERS FOR CONTRACTS

REPORT BY: MONITORING OFFICER

1. PURPOSE OF REPORT

1.1 To recommend to Members amendment to the Authority's standing orders for contracts.

2. SUMMARY

2.1 Over the past twelve months the Authority has reviewed the Council's Constitution. Standing Orders for contracts is an element of the Constitution which details how decisions are made and the procedures which are followed when contracting with third party providers.

2.2 The current standing order for contracts were last reviewed in September 2005. Since that date there has been considerable development in Procurement legislation, case law and working practices.

3. LINKS TO STRATEGY

3.1 The Council is under a duty to keep under review its constitutional arrangements. Standing orders for contracts form part of the Authority's Constitution and therefore the recommendation in this Report supports that obligation.

4. THE REPORT

4.1 The Council's Constitution sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that decision making is efficient, transparent and accountable to local people.

4.2 The terms of the current standing orders for contracts are generally considered to be effective, however it was considered timely to undertake a thorough review as part of the overall review of the Constitution. Members will recall having recently approved amendments to the Constitution following a report by the Monitoring Officer earlier this year.

4.3 The Head of Legal Services, Head of Procurement and Head of Corporate Finance have therefore undertaken a consultation exercise with senior officers. The revision is intended to bring more flexibility and a modern approach to contracting with third party providers, whilst maintaining open, fair and transparent contracting in line with EU legislation and the Treaty of Rome.

4.4 Key areas of amendment

4.4.1 Thresholds

4.4.1.1 Previously the Authority has organised its contracting thresholds around those set by the European Union under the EU procurement legislation. All public sector procurement must adhere to the rules set out in The European Union (EU) Procurement Directives, and the Regulations that implement them in the UK. Their purpose is to open up the public procurement market and to ensure the free movement of goods and services within the EU. The rules apply to purchases by public bodies and certain utilities which are above set monetary thresholds. They cover all EU Member States and, because of international agreements, their benefits extend to a number of other countries worldwide. Where the Regulations apply, contracts must be advertised in the Official Journal of the EU (OJEU) and there are other detailed rules that must be followed. The rules are enforced through Member States' courts, and the European Court of Justice (ECJ).

4.4.1.2 In December 2009, the EU Remedies Directive was introduced into the UK, which is a significant amendment to the existing legislation and sets clear rules on award of contracts and the rights of providers. As a result of these changes it is more important than ever to ensure that as a public body we fully comply with the legislation.

4.4.1.3 Therefore Officers believe that to ensure true compliance with the Directives and to ensure we support the overall principles of the treaty of Rome, the authority will set contracting thresholds below that set by the EU procurement Legislation. This will ensure that far more of the Authority's spend is subject to open, fair and transparent competition on a EU wide basis, and most importantly will limit the risk of a legal challenge against the Council proving to be successful.

4.4.1.4 It is therefore proposed that the following thresholds will apply.

- Low level procurement (quotations) below £10K - No compulsory competition
- Intermediate Value procurement (quotation) between £10k and £75k – Competition via buy4wales
- Medium Value Procurements (tenders) between £75k and £150k - Competition via buy4wales
- High Value procurements (tenders) over £150k for goods and services. – Competition via OJEU
- High Value procurements (tenders) Over 2.5 Million Works contracts – Competition via OJEU (works contracts below 2.5 million will be treated as per medium value procurements).

4.4.2 Authorised Officers

4.4.2.1 All officers responsible for procurement across the Authority, will be identified and the Head of Procurement will collate and maintain a register of all Officers with delegated powers and duties in respect of procurement. All Authorised Officers will receive training on the revised Standing Orders, provided by the Head of Legal Services and the Head of Procurement.

4.4.3 Role of Corporate Procurement

4.4.3.1 The proposals detailed within the revised standing orders for contracts strengthens the role of corporate procurement in that all contracts over £10k will require involvement of the corporate procurement team. The role of corporate procurement will be supported by a detailed procurement code of practice.

4.4.4. Joint Procurement and Collaboration

4.4.4.1 Collaboration and joint working is now part of everyday practices within the Welsh Public sector. Currently standing order for contracts is silent on this matter. Therefore, it is proposed that all future collaboration projects or joint procurements must be approved by Corporate Management team. All collaborations, which involve any aspect of procurement will be recorded on the corporate contracts register.

4.4.5 Internal Providers

4.4.5.1 Currently Officers are able to procure services from external providers even though the Authority has an internal provision capable of delivering the service. It is proposed that In house service providers should be offered the work as of right unless more than 25 percent of that work is to be sub-contracted. In the case where more than 25 percent is to be sub-contracted the whole contract will be subject to competition. This revised approach will enable in house providers to improve forward planning in the provision of their service for the Authority.

4.4.6 Use of existing arrangements and frameworks.

4.4.6.1 To undertake any form of procurement process is expensive to the authority and providers therefore to ensure we make best use of resource it is proposed that all officers must ascertain whether a formal arrangement or framework is available for use. This may be an arrangement organized by another public body. If such arrangement exists then Officers must make use of that arrangement unless approval is sought from the Head of Service and Head of procurement for a new arrangement to be conducted.

4.4.7 The authority currently spends in the region of £158,000,000 with third party providers. It is vital that we maximize the use of all expenditure and comply with the EU Procurement legislation. The proposal put forward will enable officers to have full visibility of all third party spend and ensure that it is contracted in a compliant manner.

4.4.8 The revised standing orders for contracts and the procurement code of practice has been subject to external legal advice to ensure they are flexible, modern and robust.

4.4.9 It is planned to introduce the revised Standing Orders on 1st September, 2010. The impact of the changes will be subject to a six month review to be undertaken by Internal Audit Services. This review will take place at the end of the financial year 2010/11.

5. FINANCIAL IMPLICATIONS

5.1 There are no financial implications associated with the amendments to standing orders for contracts

6. PERSONNEL IMPLICATIONS

6.1 There are no personnel implications.

7. CONSULTATIONS

7.1 Consultation on the amendments to contract standing orders has taken place and comments and views are reflected within the proposal attached as appendix A

8. RECOMMENDATIONS

- 8.1 It is recommended that standing orders for contracts be amended in line with proposals set out within Appendix A

9. REASON FOR RECOMMENDATIONS

- 9.1 To ensure that the Authority's rules on the procurement of goods and services remain fit for purpose.

10. STATUTORY POWERS

- 10.1 Local Government Act 1972, The European Union Treaty and Directives made thereunder, Public Contracts Regulations 2006.

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Background Papers: File Reference: CL23252