

FALKIRK COUNCIL

Subject: CONTRACT STANDING ORDERS
Meeting: FALKIRK COUNCIL
Date: 14 MARCH 2012
Author: CHIEF GOVERNANCE OFFICER AND DIRECTOR OF
CORPORATE AND NEIGHBOURHOOD SERVICES

1. INTRODUCTION

- 1.1 The Council's contract standing orders (**CSOs**) were last revised and approved by Council in 2005.
- 1.2 There have been considerable changes in procurement legislation and best practice since then, as well as internal restructuring within the Council. A review has been carried out of the CSOs by the Procurement Team and Legal Services with a view to bringing them up to date. These have been circulated to Directors and relevant procurement staff for consultation and are attached in their proposed revised form (**Appendix 1**).
- 1.3 This report highlights the main changes proposed to the CSOs and seeks Council's approval of them. It also seeks approval of (a) one consequential change to the Financial Regulations and (b) the introduction in due course of new Corporate Procurement Procedures.

2. MAIN CHANGES TO THE CSOs

Procurement Board

- 2.1 Reference is now made to the Council's Procurement Board as the champion of procurement best practice across the Council, with the authority to issue Corporate Procurement Procedures and best practice guidance – see **CSO 1.3**.

Training

- 2.2 The existing **CSO 1.4** places a responsibility on Chief Officers to ensure officers dealing with contracts are properly trained to undertake procurement in accordance with the CSOs. This has been widened to ensure that Chief Officers follow any best practice guidance on training issued by the Procurement Board.
- 2.3 The Procurement Team is developing a programme of training for officers involved in procurement. This will include sessions on the EU procurement directives, fundamentals of contract law, specification writing and contract management.
- 2.4 In addition, training for officers has been developed jointly by the Procurement Team, Legal Services and Internal Audit on the main changes to the CSOs and procedures which should be in place to ensure compliance with the CSOs. It is anticipated that will be rolled out later this month.

Changes to advertising requirements/ Increase in financial limit for formal competition

- 2.5 In relation to advertising, it is made clear that contracts for goods and services with a value of more than £50,000 must be advertised on the Public Contracts Scotland website, unless there are justifiable reasons for not doing so - see **CSO 7.3**. The website is a national advertising portal for all public sector contracts in Scotland. The Procurement Team has carried out a considerable amount of work with local SMEs to encourage them to register with the website.
- 2.6 Current guidance from Scottish Procurement is that this advertising requirement applies only to goods and services contracts but Development Services are also currently working voluntarily on this basis for works contracts.
- 2.7 Currently, formal competition is required for contracts with a value of more than £30,000. Below this limit, it is still necessary to ensure best value is obtained, eg by obtaining 3 quotes. It is proposed to increase the limit from £30,000 to £50,000 before formal competition is required – see **CSO 5.1**. This is to tie in with the new figure of £50,000 for advertising via the Public Contracts Scotland website. However, as before, Chief Officers must ensure that best value is obtained and generally this will require quotes to be invited.
- 2.8 An alternative to inviting specific businesses for quotes is to use Quick Quote, the online quotation facility on the Public Contracts Scotland website for contracts worth less than £50,000 and provision is made for this in **CSO 8.3**.
- 2.9 As a consequence of (a) amending CSO 5.1 from £30,000 to £50,000 and (b) introducing the use of Quick Quote, it will be necessary to amend Regulation 13 of the Financial Regulations. A copy of Regulation 13 with the proposed changes marked in bold is attached (**Appendix 2**.) Council is asked to approve this amendment.

Financial checks/performance bonds

- 2.10 Currently, the CSOs provide that the Chief Finance Officer must be satisfied with the financial standing of the contractor for contracts worth more than £200,000.
- 2.11 It is proposed that the Chief Finance Officer is less involved in checking the financial standing of the contractor, given the limited value of historical financial checks and the administrative burden the process imposes; only when the contract value is £1m or more must the Chief Finance Officer be satisfied as to the contractor's financial standing – see **CSO 6.1**. This ties in with a 2009 report on the matter of performance bonds, insurance certificates and financial checks to the Directors of Finance, Development and Law and Administration, following on from an audit report on that subject. However, it will still be open to Chief Officers to ask that the Chief Finance Officer be satisfied as to the financial standing of contracts for contracts worth less than £1 million if they consider it prudent.

- 2.12 Also, as result of the 2009 report referred to in the preceding paragraph, the requirement for a performance bond for all work contracts with a value in excess of £200,000 has been increased to £1 million – see **CSO 12(15)**. In effect, the Council will self-insure for contracts under £1 million in value.

Framework approvals

- 2.13 **CSO 6.2** has been re-drafted to make it clear that authority for the award of contracts is required for both the *award* of the framework agreement and also a *call off* under that agreement. So, for example, a call off contract with a value in excess of £350,000 would have to go to Committee; if the value was £150,000, Chief Officers could approve the award in consultation with the Chief Governance Officer under CSO 6.2(ii). However, it should be noted it would be open to officers when asking Committee for authority to award a framework agreement to also ask for delegated authority to award call offs over a certain level.

Information bulletin reports

- 2.14 It is proposed that there be a *de minimis* level for reporting contract awards in the Information Bulletin of £10,000 – see **CSO 6.2**. However, it should be noted that if Services choose to use the Quick Quote facility via the Public Contract Scotland portal (see paragraph 2.5), then there is no need for a separate bulletin report and reporting will be picked up by the Procurement Team. The Procurement Team are system administrators and, as such, are notified of all contract awards and would propose to compile a single report for each bulletin.

EU Procurement thresholds

- 2.15 The EU procurement thresholds change every 2 years. These have been increased as at January 2012 and these have accordingly been changed in **CSO 8.1**. In summary, these are:

- supplies contracts - £ 173,934
- services contracts - £ 173,934
- works contracts - £ 4,348,350

Social care procurement

- 2.16 In certain areas, the current CSOs provide special arrangements apply for tendering procedures, for example for Social Care – see **CSO 8.8**. No special procedures have been adopted. Social Care procurement is a constantly changing area (and may change further following on from the recent publication by the European Commission of its legislative proposals for procurement.) It is therefore intended to simply say that tendering procedures for social care should be in line with best practice guidance, of which there is an increasing amount available – see **CSO 8.9**.

Miscellaneous

- 2.17 Reference to contracts awarded via Scottish Procurement and Scotland Excel has been introduced in **CSO 8.5**. Scottish Procurement is part of the Scottish Procurement Directorate of the Scottish Government and puts in place national contracts which can be used by Scottish public authorities. Scotland Excel is the centre of procurement expertise for the local government sector. It is run by Joint Committee and the Council is a member. It puts in place contracts which can be used by Scottish local government authorities.
- 2.18 Specific mention is now given to community benefits in procurement in **CSO 10.1**.
- 2.19 **CSO 11.4** which deals with confidentiality in the tendering process has been amended to reflect the changing practices regarding the disclosure of information since the introduction of the Freedom of Information (Scotland) Act 2002.
- 2.20 The existing **CSO 13** places a responsibility on Chief Officers to establish a contract monitoring process for contracts during their term and after their completion. It is proposed that support is given to chief officers via the Corporate Procurement Procedures (see section 3) which will make provision for a Contract and Supplier Management Procedure to be developed to provide a standard approach to contract monitoring. This will be issued by the Procurement Board at a later date.

3. CORPORATE PROCUREMENT PROCEDURES

- 3.1 In terms of the current CSOs, procedural guidelines to supplement the CSOs are issued by the Chief Governance Officer. These were last revised, along with the CSOs, in 2005 and are now out of date. It is proposed instead that officers follow corporate procurement procedures (“**Corporate Procurement Procedures**”) which will be issued by the Procurement Board. These will go much further than the existing guidelines, in that they will cover such issues as identifying needs, setting up user intelligence groups, contract management, and payment procedures.
- 3.2 Council is asked to note that the Procurement Board will issue finalised Corporate Procurement Procedures in due course, and will ensure that they are updated as and when required to remain in line with best procurement practice, and therefore to be an up-to-date, relevant document. The Corporate Procurement Procedures, and any significant changes to them, will be reported to Council for information.

4. CONCLUSION

- 4.1 The proposed changes to the CSOs are in line with best practice and necessary to ensure that the Council’s procurement and contracting procedures are fit for purpose.
- 4.2 The new Corporate Procurement Procedures will ensure a level of consistency in procurement procedures across the Council and provide detailed, and up-to-date guidance to officers.

5. RECOMMENDATIONS

Council is asked to:

- 5.1 Approve the revised CSOs;
- 5.2 Approve the revised Regulation 13 of Financial Regulations;
- 5.3 Note that the Procurement Board will issue new Corporate Procurement Procedures and amend these as required to keep them in line with best procurement practice, with the Procedures, and any significant changes, being reported to Council for noting; and
- 5.4 Note that training will be provided to relevant officers on the revised documents.

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CHIEF GOVERNANCE OFFICER

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DIRECTOR OF CORPORATE AND NEIGHBOURHOOD SERVICES

Date: 29 February 2012
Contact Names: Alistair Steel, Legal Services (x6091)
William McQuillan, Procurement Team (x0810)

Background papers

Legal Services file CN/SO/6 – review of contract standing orders