

AGENDA MANAGEMENT SHEET

Name of Committee Cabinet

Date of Committee 23rd February 2006

Report Title Review of Contract Standing Orders

Summary This report summarises the outcome of the phase 2 review of the Council's Contract Standing Orders and proposes amendments to be endorsed by Cabinet and to be approved by Council.

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Would the recommended decision be contrary to the Budget and Policy Framework? No

Background papers A copy of the revised Contract Standing Orders and Contract Standing Orders for Schools showing the changes has been placed in each of the member group rooms. A 'clean copy' without tracked changes is also available upon request from Catherine Witham tel: 01926 418167 or email: catherinewitham@warwickshire.gov.uk

CONSULTATION ALREADY UNDERTAKEN:- Details to be specified

- Other Committees Standards Committee, 31.1.06
- Local Member(s)
- Other Elected Members Councillors David Booth, George Atkinson and Frank McCarney
- Cabinet Member Cllr Cockburn
- Chief Executive
- Legal Reporting Officer - David Carter, Strategic

Director of Performance & Development
Catherine Witham, Senior Solicitor

- Finance Chris Juckes, Head of Projects
Garry Rollason, Audit Services Manager
Lynn Joyce, Audit Team Leader
Tania Kiff, Principal Auditor
- Other Strategic Directors David Clarke, Strategic Director of Resources
- District Councils
- Health Authority
- Police
- Other Bodies/Individuals Mr Bridgeman, Chair of Standards Committee
- Contracts co-ordinators from all departments
under the Council's previous structures
- Paul White, County Procurement Manger

FINAL DECISION NO

SUGGESTED NEXT STEPS:

Details to be specified

- Further consideration by
this Committee
- To Council 21 February 2006 or 14 March 2006
- To Cabinet
- To an O & S Committee
- To an Area Committee
- Further Consultation

Agenda No

Cabinet – 23rd February 2006

Review of Contract Standing Orders

Report of the Strategic Director of Performance & Development

Recommendation

That Cabinet endorses the amendments proposed to Contract Standing Orders and Contract Standing Orders for Schools as set out in this report and recommends their approval by the County Council.

1. General Background

- 1.1 The purpose of Contract Standing Orders (CSOs) is to ensure probity and value for money in the letting and entering of contracts. CSOs for Schools must be followed if contracts are being arranged by schools. Wherever possible CSOs for Schools are identical to CSOs and there are very few differences.
- 1.2 This review of CSOs follows the Council's commitment to keep its internal controls under review. The last full review of CSOs was undertaken in 2004 and previous to that 1999, although some minor amendments were made to take into account changes resulting from the adoption of the new constitution in 2001.
- 1.3 This review has not sought significantly to change the format or style of CSOs, but rather has been designed to update contracting rules and make provision for new developments in areas that are of particular relevance to local government. It also seeks to remedy particular difficulties that have been highlighted through experience of CSOs in practise or identified by internal audits.
- 1.4 Members should note that electronic procurement toolkits are being developed to assist compliance with CSOs and CSOs for Schools. It is expected that these will be available from Spring 2006. The electronic toolkits will provide officers and schools undertaking procurement exercises with further information, guidance, standard documentation, and assistance in keeping within the Council's internal rules, UK and EU laws, complying with best practice, and obtaining best value.

1.5 The Standards Committee on 31 January 2006 recommended endorsement by the Cabinet and approval by the County Council of the proposed changes.

2. **Outcome - Contract Standing Orders**

2.1 Each Department that existed under the Council's previous structures was given the opportunity to comment on the review of CSOs through their nominated Contracts Co-ordinator. Treasurers (including Internal Audit) and the County Procurement Unit were also fully involved in the review process.

2.2 A number of minor changes are proposed for clarification purposes and as a result of the expected implementation of the procurement toolkits. A number of other minor changes are also proposed as a result of the modernisation of the Council and the introduction of the new structures.

2.3 Otherwise, the outcome of the review process has resulted in amendments being proposed in the following key areas.

2.3.1 A number of changes are being proposed as a result of draft amendments to the UK procurement Regulations which implement the European Court of Justice 'Alcatel' judgement. Although the amendments to the Regulations are only in draft form, we are expected to comply with immediate effect. Specifically, in relation to contracts governed by the full EU procurement rules:

- We are required to implement a 10-day standstill period between the communication of the award decision to the successful tenderer and entering into a contractually binding agreement.
- The notice of our award decision must contain certain specified information.
- We must provide an additional debriefing to unsuccessful tenderers where that is requested.

2.3.2 One of the main aims of the new EU procurement rules that come into force on 31st January 2006, is to encourage the use of electronic purchasing mechanisms by making explicit provision for their use. The Council is keen to make increased use of electronic procurement. It is therefore proposed to amend CSOs to include provision for the use of eAuctions and dynamic purchasing systems. More detailed requirements and further guidance will be set out in the Procurement Code of Practice.

2.3.3 It is proposed to make clearer the requirements in relation to framework agreements, in particular in relation to:

- the conduct of mini-competitions under framework agreements;

- the content of Contract Notices for contracts that are subject to the full EU procurement rules.
- 2.3.4 To aid clarity and prevent misunderstanding, it is proposed that Directorates which use consultants and/or agents shall be required explicitly to ensure that such people act and operate in accordance with the Council's internal rules, and all relevant UK and EU laws. Directorates will also be required to retain documentary evidence that this requirement has been complied with.
- 2.3.5 In accordance with good practice, it is proposed that officers shall be required to publish any tender scoring system or similar tender evaluation model to be used prior to the issue of the invitation to tender. In accordance with EU law it is also proposed that officers will be required to notify suppliers of any weightings used.
- 2.3.6 To provide officers with greater guidance, it is proposed that a notional level of £30,000 be included as the point at which tenders as opposed to quotations should be sought.
- 2.3.7 It is proposed to add further guidance in respect of the selection and evaluation stages of a procurement exercise, and in particular the rules relating to Pre-Qualification Questionnaires.
- 2.3.8 The Council is increasingly working in partnership with the private, voluntary and public sectors. Amendments are proposed to provide greater guidance and clarity in relation to the approvals and controls needed for the successful operation and management of such arrangements.
- 2.3.9 It is proposed to update Form 2 that is used to apply for a variation from recommended insurance levels. The proposed changes to the format and content make the Form clearer and require applicants to provide the decision-makers (Strategic Director of Performance & Development and the Strategic Director of Resources) with more detailed information on which their decisions will be based.

3. Outcome - Contract Standing Orders for Schools

- 3.1 The Education Department that existed under the Council's previous structure was given the opportunity to comment on the proposed changes to CSOs for Schools, as well specialist education legal advisors and Treasurers (including Internal Audit).
- 3.2 A number of minor changes are proposed for clarification purposes and as a result of the expected implementation of the procurement toolkits. A number of other minor changes are also proposed as a result of the modernisation of the Council and the introduction of the new structures.
- 3.3 Otherwise, the outcome of the review process has resulted in amendments being proposed in the following key areas

- 3.3.1 It is proposed to make a number of changes as a result of draft amendments to the UK procurement Regulations which implement the European Court of Justice 'Alcatel' judgement. These are very similar to the changes being proposed in relation to general CSOs (see paragraph 2.3.1 above).
- 3.3.2 It is proposed to provide further guidance to make clear that people that are paid on an hourly basis by schools are classified as 'employed' and therefore must be paid through the payroll.
- 3.3.3 It is proposed to emphasise the importance of the correct valuation of contracts by schools as this largely determines the correct procurement procedure to be followed.
- 3.3.4 It is proposed to provide clearer guidance to schools as to when it is appropriate for them obtain bespoke legal and financial advice in relation to particular procurement exercises.
- 3.3.5 It is proposed to make clear that schools are required to check the financial situation of a proposed supplier, via the Strategic Director of Resources, prior to entering into a contractual relationship.
- 3.3.6 In order to provide schools with greater guidance, it is proposed that a notional level of £30,000 be included as the point at which tenders as opposed to quotations should be sought.
- 3.3.7 It is proposed to delete those few sections of CSOs for Schools that originally were copied from the Council's general CSOs and are not relevant to schools.
- 3.3.8 It is proposed to include greater guidance as to where schools may obtain further information in order to undertake procurement exercises in line with the council's internal rules and in accordance UK and EU laws and best practice.
- 3.3.9 It is proposed to make amendments to the Forms by which schools may apply for an exemption from tendering, or a variation to the insurance levels, so that they are consistent with the Forms used under general CSOs in order to avoid confusion.

4. Conclusion

Support is requested for the proposed amendments to CSOs, and CSOs for Schools, as set out in this report.

David Carter
Strategic Director of Performance & Development

6th February 2006