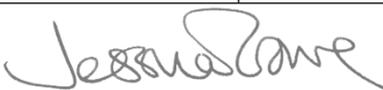




Report to:	Strategy and Resources Committee	Date:	28 September 2015
Report title:	Amendments to the Contract Standing Orders, following the introduction of the Public Contract Regulations 2015 and the introduction of Commissioning Board in place of Procurement Board		
Report from:	Jessica Crowe, Executive Head - Customers, Commissioning and Governance		
Ward/Areas affected:	Borough Wide.		
Chair of Committee/Lead Member:	Chair - Cllr. Ruth Dombey, Leader of the Council Lead Member – Cllr. Simon Wales, Deputy Leader of the Council		
Author(s)/Contact Number(s):	Mark Brewer, Head of Procurement Steve Hoy, Procurement Manager		
Corporate Plan Priorities:	(Insert relevant corporate plan priorities here) <ul style="list-style-type: none"> ● An Open Council ● A Green Council ● A Fair Council ● A Smart Council 		
Open	Open		
Signed:		Date:	17 September 2015

1. Summary

- 1.1 The report sets out the proposed changes to Contract Standing Orders (CSO). Changes to the existing CSO are required, mainly due to the revised Public Contracts Regulations 2015 (PCR 2015) that came into effect in February 2015 which changed existing procurement regulations; but also to incorporate the establishment of a Commissioning Board to oversee commissioning and contract award activity.

2. Recommendations

- 2.1 The Strategy and Resources Committee agree the amendments to Contract Standing Orders (CSO) including:
- The increase in the contract value threshold of £150,000, up to which an exemption from tendering may be sought, to that of the application at which the EU regulations for non-Schedule 3 services apply, i.e. from £150,000 to £172,514 (the value of which is subject to change every 2 years as published by the European Commission)
 - The inclusion of the Commissioning Board as an advisory forum to officers on the correct application of the Council's commissioning cycle, before contracts are tendered and contracts are awarded. It will apply when the value of a contract is £172,514 or above.



- Other general changes to accommodate the new regulations and to take account of organisational changes since the existing CSO's were last published.

3. Background

- 3.1 The Public Contracts Regulations 2015 (PCR 2015 regulations) replaced the Public Contracts Regulations 2006 (as amended). The stated objectives of the new regulations are to improve quality and value for money in the public sector procurement of goods and services, in particular by making procurement opportunities more accessible to smaller business and voluntary organisations. The changes mean that more care needs to be taken when deciding if a particular requirement in support of a corporate objective - previously applied as a mandatory requirement – is relevant to a contract and does not place a disproportionate obligation on potential suppliers in relation to the contract under tender.
- 3.2 Sutton Council has operated a procurement board since 2011 with the overall purpose to develop a consistent one Council approach to all procurement activity, drive and sustain change and ensure that the benefits of changes are realised and costs are driven out. The board's remit was limited to procurement activity across the organisation.
- 3.3 As Sutton progresses in becoming a Commissioning Council, there needs to be more of a drive to ensure that the entire commissioning process (not just the procurement aspect) is followed across all service areas, particularly those that are still delivered in house. In order to ensure consistency the Commissioning Board should be formally recognised in the council's CSO. It is important to note the Commissioning Board will perform an advisory *critical friend* role for commissioning project leads and commissioning responsibility and decision-making remain with the relevant Strategic Directors and Committees.

4. Issues

- 4.1 The changes to the CSOs fall into four groups:
- increasing the threshold where officers have to undertake a tender under the full EU regulations,
 - making the Commissioning Board part of the contract award decision making framework for contracts above £172,514.
 - Various amendments to ensure instruction that corporate policies that need to be integrated into contract requirements are done so with due regard to their relevance and proportionality
 - amendments required following organisational changes.
- 4.2 The CSO currently set out that any contract in excess of £150,000 has to be subject to a tender applying the relevant European Union (EU) rules. This is slightly below the threshold where the EU regulations have to be applied. The change is recommended because the new regulations do not permit the use of a pre-qualifying questionnaire (PQQ) for tenders that are below the EU threshold. This could create confusion for officers undertaking procurements that are above £150,000 but below the EU threshold. Increasing the threshold by just over £22,000 would have



a negligible effect on contract awards but mitigate the risk of a challenge on the grounds that a PQQ has been used in lower value tenders than is permitted.

- 4.3 The EU thresholds generally change every two years. The Monitoring Officer has authority to update the Constitution to take account of statutory changes and other minor consequential amendments and will keep the Contract Standing Orders updated as and when further changes to the EU threshold arise.
- 4.4 The second recommended change is to formally introduce the Commissioning Board as part of the contract award decision making framework for contracts above £172,514. Currently permission to tender is delegated to Directors and Executive Heads in order 52.14. The decision to award contracts following a tender is delegated in 52.10, depending on contract value, it escalates from an Executive Head (£30,000-£150,000) to Strategic Director (£150,000-£500,000) and the relevant committee (over £500,000).
- 4.5 It is recommended that two steps are included in the decision making procedure, one prior to a tender exercise beginning and the other before the award of a contract is agreed. Both steps will include a gateway report being tabled at the Commissioning Board. The role of the Commissioning Board will be advisory and the primary purpose will be to ensure that the Council-wide approach to commissioning is consistently applied across the organisation. The procurement board that preceded the Commissioning Board was never tied into the CSOs. This meant that there was no formal requirement for officers to route high value contracts through this board and this made it more difficult to ensure consistency across the organisation. The Commissioning Board will develop a three year Commissioning Plan for the Council which will set out how and when all the Council's services will go through the commissioning cycle. This will enable project officers to plan commissioning and procurement activity in full knowledge of whether and when their project might need to come to the Board, and this will ensure that the Board does not delay planned activity.
- 4.6 The third change is making sure officers consider the impact on suppliers, especially smaller business and voluntary organisations, of contractual requirements that support corporate objectives. As an example, in the current version of CSOs, officers are instructed that suppliers must have environmental policies or environmental management systems. Under the new regulations such conditions must be relevant and proportionate to the contract. In the amended CSOs, when similar instructions are given, there is a caveat instructing officers to ensure they consider the relevance of the requirement to a specific contract. But to ensure contracts support corporate objectives, officers must justify why a requirement is not included.
- 4.7 In addition to the above, the following changes have been made to accommodate the new regulations:
- The removal of Part B services and the inclusion in the contract award decision making (CSOs 52.10) of the light touch regime for health, social, education and certain other service contracts subject to the rules referred to as "the light touch regime".
 - The financial standing of a contractor or supplier must be assessed as adequate in proportion to the contract being procured before being invited to tender



- the minimum annual turnover that a contractor or supplier is required to have shall not exceed twice the estimated annual contract value, except in duly justified cases
- the new duty for officers to ask the supplier for justification if the supplier's response to a tender includes an abnormally low price in proportion to the contract requirement
- A contract must be awarded on the basis of most economically advantageous tender, not based on price alone.

4.8 The fourth group of amendments reflect organisational changes undertaken since the CSO were amended in 2014. The existing CSO refer to the Executive Head of Legal Services but this role was deleted with the implementation of the South London Legal Partnership. References to the role of Executive Head of Legal Services have been replaced with the Head of South London Legal Partnership. The role of transactional advisers that support the procurement function in the directorates is also referred to in the CSOs when officers are advised to seek further advice.

5. Options Considered

5.1 We have considered:

- Option 1: not amending the CSOs at this point.
- Option 2: Amending the CSO by taking out the instructions to officers to apply specific contractual requirements that support corporate policies. This would remove the risk of a future challenge on the grounds that contractual requirements are not relevant or proportionate to particular contracts. However it could lead to contracts being let that do not reflect our corporate priorities.
- Option 3: Amending the CSOs to take account of new regulations on relevance and proportionality by retaining the orders that apply specific corporate objectives to contract requirements, but reminding officers of the need to assess the appropriateness of the condition in terms of the value and type of contract offered. It is this approach that is recommended.

5.2 In view of the new regulations, and with the introduction of the Commissioning Board and the South London Legal Partnership it is important to make amendments to make sure the CSOs reflect the national legal framework and our organisational structure. Option 3 is recommended.

6. Impacts and Implications

Financial

6.1 The aim of the Regulations is to make procurement opportunities more accessible to smaller businesses and voluntary organisations. In order to make sure that corporate objectives are supported and the potential risks of letting contracts to smaller suppliers managed, we will need to make sure officers have the information available on which to base decisions about relevance, proportionality and risk.

6.2 The introduction of the Commissioning Board adds steps into the existing governance framework for commissioning and procurement projects. To make sure that the Commissioning



Board does not delay projects, project leads will need to be clear about the projects that are required to report to the Commissioning Board and the board's meeting timetable.

Legal

- 6.3 Pursuant to section 135 of the Local Government Act 1972, local authorities are required make standing orders in respect of contracts. Under the Local Government Act 1972, standing orders are required to include provision for securing competition for local authority contracts and the proposed amendments to the Council's Contract Standing Orders are drafted to reflect the amendments to the competitive procurement regime as set out in Public Contracts Regulations 2015, which came into force on 26th February 2015. The standing orders are now reflective of the current competition requirements set out in the Public Contracts Regulations 2015.
- 6.4 Legal Services have been involved in providing advice regarding the proposed amendments to the Council's Contract Standing Orders.

7. Appendices and Background Documents

Appendix Letter	Title
A	Contract Standing Orders 2015 (with changes tracked from 2014 (current) version)

Background Documents
The Public Contracts Regulations 2015

Audit Trail		
Version	Final	Date: 16 September 2015
Consultation with other officers		
Officer	Comments Sought	Comments checked by
Finance	Yes	Sue Hogg
Legal	Yes	Susan Moussa
Environmental Sustainability Other Officers:	Yes	Katrina Lloyd

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