

## Report to Council

**Date of meeting: 20 February 2014**



**Report of: Constitution & Member Services Standing Scrutiny Panel**

**Chairman: Councillor J Philip**

**Subject: Annual Review of Contract Standing Orders (CSOs) and Financial Regulations**

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### Recommendations:

(1) That the proposed changes to CSOs listed below be adopted and published in the Council's Constitution:

(a) CSO 35 (Local Businesses)

**That CSO 35 (Local Businesses) be re-positioned within CSOs to give it greater prominence and an index at the beginning of CSOs to aid navigation by officers be added to the published version;**

(b) CSO 16 (Receipt, Custody and Opening of Quotations)

That CSO 16 (Opening of Tenders and Quotations – Contracts in Excess of £25,000) be amended as follows:

“Quotations and tenders received in accordance with these Standing Orders shall be opened at one time, as follows:

(i) in respect of contracts with an estimated value exceeding £25,000 but not exceeding £50,000, the relevant Chief Officer ~~in the presence of~~ **or at least one of his principal or senior officers and a representative of the Director of Governance,** shall open the quotations received; ~~and shall maintain a record of all such quotations;~~

(ii) in respect of contracts with an estimated value in excess of £50,000 the Portfolio Holder concerned, in the presence of authorised representatives of the **Director of Governance** and the relevant Chief Officer, shall open the tenders which, in the normal course of events, will not be less than three working days after the closing date for receipt of those tenders; and

(iii) the **Director of Governance or his/her authorised representative** shall maintain and sign a record of all tenders opened, which record shall also be signed by the member of the Cabinet **in attendance (in respect of contracts valued in excess of £50,000 only) and** the representative of the Chief Officer concerned.”

(c) CSO 19 (Acceptance of Quotations/Evaluation of Tenders)

That CSO 19 (Acceptance of Quotations – Contracts Exceeding £25,000 but Not Exceeding £50,000) be amended as shown below:

“(1) a Chief Officer may, subject to the provisions of Standing Order C4 (Contracts

exceeding £25,000 but not exceeding £50,000) accept the lowest quotation received in respect of a contract not exceeding £50,000 in value or amount; a quotation other than the lowest received shall not be accepted until the relevant Portfolio Holder has considered a report from the appropriate Chief Officer or other person.

(3) Paragraph (1) above shall not apply where:

(i) the tender documentation prepared by the Chief Officer and submitted to prospective tenderers specifies that the acceptance of any tender will be not only based on consideration of price but also on an assessment of quality; and

(ii) where sub-paragraph (i) above applies, the methodology for assessing tenders on the basis of price and quality shall be documented and signed by the Chief Officer prior to the opening of tenders and retained as part of the contract documentation.

(iii) the relevant Chief Officer has obtained approval in advance of the terms under which quotations will be accepted from the Cabinet or the relevant Portfolio Holder and acceptance of a quotation is fully in compliance with that decision **in which case the results of the evaluation process shall be reported back to the Cabinet or the Portfolio Holder as appropriate.**

(iv) in cases where quotations received exceed the limit of £50,000, provided that the lowest quotation exceeds the pre-contract estimate by no more than 10%.”

(d) CSO 12 (Contract Extensions)

That a new CSO (to be numbered C12) be approved as follows:

**“C12 Contract Extensions**

(a) **No contract in excess of £25,000 shall be extended (other than extensions provided for under CSO 11 (serial contracts) without prior approval by a Portfolio Holder or the Cabinet. Any such proposal shall explain the circumstances which leads the relevant Chief Officer to recommend that course of action and indicate the terms on which the contract is to be extended and a date on which the proposed extension will terminate.**

(b) **No more than two contract extensions shall be approved in respect of any one contract.”**

(2) That any further alterations to CSOs and Financial Regulations to reflect any other changes arising from the recent Directorate restructuring be delegated to the Assistant to the Chief Executive for incorporation in final version before publication.

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**Report:**

**Introduction**

1. This report deals with our annual review of CSOs and Financial Regulations which provide controls on contract procedures and provide for financial governance.

2. We have been advised that there has been a recent review by Internal Audit and this has resulted in the proposals set out in this report which we were asked to consider. We would emphasise that the suggested changes to CSOs are points of detail rather than major alterations, being designed to reinforce existing requirements. These points are discussed in turn below and changes to the relevant CSOs are shown in bold text (additions) or crossings out (deletions).

### **CSO 35 - Local Businesses**

3. In order that the use of local contractors/suppliers is tested during procurement, it is recommended that CSO 35 be made more prominent within CSOs so that users are always aware of the need to comply with need to seek at least one local tender if possible.

### **CSO 16 – Receipt, Opening and Recording of Quotations Valued between £25,000 and £50,000**

4. In order to monitor the requirement for contracts to be executed in this value range, it is proposed that receipt, opening and recording of such quotations should be dealt with through Democratic Services. Currently only tenders in excess of £50,000 are dealt with in this way. This would improve controls on tendering procedures and is supported by the Essex Procurement Hub for tenders which are dealt with through that organisation. This requires an amendment to CSO C16.
5. Portfolio Holders will continue to supervise tender openings for contracts valued over £50,000 but, for those in the £25,000-£50,000 range, these would now be attended by a member of Democratic Services staff and a senior officer from the relevant Directorate.

### **CSO 19 – Evaluation of Tenders**

6. Internal Audit found instances of Portfolio Holders agreeing the basis for evaluating tenders but without the results of that exercise always being reported back to them. It is proposed that CSO C19(c) be amended to require that a report to the Portfolio Holder concerned on the results of evaluations or to the Cabinet whichever is appropriate.

### **CSO C12 – Contract Extensions**

7. We have been advised that there have been Portfolio Holder approvals extending contracts in the light of particular circumstances and, on some occasions, for a second time. There are no rules about contract extensions of this kind and it is suggested that a limit should be placed on the number of such occasions when this can take place. A limit of two extensions is suggested, this having the benefit of giving greater assurance that the Council is achieving best value in its procurement.

### **CSO (1) and CSO 10 (Contractor Selection)**

8. We were asked to consider a change to this CSO to reflect the current practice of consulting contractors/suppliers if there is a lack of in house expertise prior to tenders being invited. Currently this CSO precludes tenders being invited from any company which has been consulted in this way.
9. The proposal was for contracts valued in excess of £50,000, that one or two firms could be consulted and be allowed to tender if necessary provided that Chief Officers ensure that any advice received is not anti competitive.

10. We had misgivings about this proposal and agreed with officers that a further look should be taken at this proposal so as to put more safeguards in place to prevent any anti-competitive behaviour and to avoid disclosure of sensitive commercial information. We will receive a report on the outcome of a further review by officers at a later meeting.

### **Conclusion**

11. These recommended changes require the approval of the Council prior to publication in the Council's Constitution.
12. In addition some clerical amendments to CSOs and Financial Regulations may be required to reflect the recent approval of a new Directorate structure. We propose that these be made by the Assistant to the Chief Executive when the approved revision is published.
13. We recommend as set out at the commencement of this report.