

ABERDEEN CITY COUNCIL

COMMITTEE	Council
DATE	5 March 2014
DIRECTOR	Angela Scott
TITLE OF REPORT	Revisal of Standing Orders relating to Contracts and Procurement
REPORT NUMBER:	CG/14/035

1. PURPOSE OF REPORT

The purpose of this Report is to seek the Council's approval of revised "Standing Orders relating to Contracts and Procurement".

Many of the proposed revisals are of a minor or clarificatory nature but others concern the wording of standard contract clauses and the unlawful practice of blacklisting. The proposed revised Standing Orders are attached hereto, with all revisals shown as tracked changes.

Approval is also sought for the current "Standing Orders and Committee Orders of Reference" to remain unchanged for the time being.

2. RECOMMENDATION(S)

It is recommended that the Council;

- (i) approves the revised "Standing Orders relating to Contracts and Procurement" attached hereto, the same to come into force with immediate effect and thereby replace the "Standing Orders relating to Contracts and Procurement" that were approved by Council on 30 June 2010; and
- (ii) approves that the current "Standing Orders and Committee Orders of Reference" (as revised on 3 December 2013) remain unchanged for the time being.

3. FINANCIAL IMPLICATIONS

The revised Standing Orders should assist the Council to achieve best value in all procurements undertaken and contracts entered into.

4. OTHER IMPLICATIONS

The revised Standing Orders should make the procurement process easier for Council officers to follow and simplify or clarify aspects of the Council's internal procedures. This should have a positive impact on service provision and reduce the risk of legal challenge.

5. BACKGROUND/MAIN ISSUES

On 30 June 2010, the Council approved the introduction of new "Standing Orders relating to Contracts and Procurement". Those Standing Orders are distinct from the Council's main "Standing Orders and Committee Orders of Reference" which were approved in December 2013.

On 21 August 2013, the Council noted that the "Standing Orders relating to Contracts and Procurement" would be revised later in the year, which was considered to potentially entail further changes to the "Standing Orders and Committee Orders of Reference", both of which matters were to be reported back to Council. This Report now addresses both matters.

The proposed revised Standing Orders are attached hereto, with all revisions shown as tracked changes.

The revised Standing Orders reflect that the Public Contracts (Scotland) Regulations 2006 have been replaced by the Public Contracts (Scotland) Regulations 2012.

The revised Standing Orders now take account of recent Scottish Government advice concerning the unlawful practice of blacklisting. "*Scottish Procurement Policy Note SPPN 4/2013 – "Exclusion from public contracts of companies which engage in blacklisting"* was issued on 20 November 2013. It provides new questions for inclusion in contracting authorities' Pre-Qualification Questionnaires, which questions require suppliers to disclose if they have breached relevant legislation. It also provides a new contract clause which provides for termination of the contract if the supplier is found to have breached relevant legislation during the course of that contract.

The revised Standing Orders (at SO 27) require that;

- (i) in any tendering process, the Council shall have regard to recognised good practice, including any guidance or advice issued by the Scottish Government, in relation to the unlawful practice of blacklisting and shall ensure that suitable questions about blacklisting are included in tender documentation where appropriate; and

- (ii) except where otherwise agreed by the Head of Legal and Democratic Services, every contract in connection with the execution of works or the supply of goods or materials or the provision of services shall contain the clause specified therein or a clause to similar effect.

The revised Standing Orders also provide that the Council's standard clauses on "Corrupt or Illegal Practices" (SO 11), "Insurances" (SO 13) and "Freedom of Information" (SO 26) need not be included in a contract where the Head of Legal and Democratic Services agrees to their non-inclusion.

Ideally, such clauses – together with a blacklisting clause – would always be included in every Council contract to which such clauses might be relevant. However there are occasions, particularly in circumstances of urgency or where another authority's framework agreement or a supplier's terms and conditions are to be used, where it is not feasible to include such clauses. This revised wording affords a discretion to the Head of Legal and Democratic Services and avoids the work and delay which would be involved in seeking an exemption from Standing Orders in terms of SO 1(6). This should serve to streamline processes and contribute to greater efficiency and improved service delivery.

SO 11 has been re-worded to reflect more closely the kind of "Corrupt or Illegal Practices" clauses which typically appear in Council contracts.

The revised Standing Orders also incorporate a number of relatively minor clarifications or corrections.

In conclusion, the proposed revisions are intended to update and clarify the Standing Orders and to streamline processes to which they refer.

This revision exercise has been of limited scope because of pending legislative developments which will make much more extensive and radical changes to procurement.

The Procurement Reform (Scotland) Bill was introduced to the Scottish Parliament on 3 October 2013 and is currently making its way through the parliamentary process. Even more fundamentally, on 15 January 2014 the European Parliament approved a new EU Directive on public sector procurement. The Directive requires to be transposed into national law within 2 years and so new Scottish regulations are expected within that timeframe. More extensive revision to the Standing Orders will be required to take account of these developments and so a further report to Council will follow in due course.

The Senior Democratic Services Manager considers that there is no need at present to amend the current "Standing Orders and Committee Orders of Reference" (as revised on 3 December 2013), and approval of this position is sought.

6. IMPACT

The issues addressed in this report should lead to an improvement in the governance and decision-making processes of the Council.

Public – this Report is likely to be of limited interest to the public given that it concerns changes to Standing Orders. There may however be some interest in the blacklisting aspects given recent nationwide publicity over this issue.

No Equality and Human Rights Impact Assessment (EHRIA) is considered necessary because the revised Standing Orders are not expected to impact disproportionately on any particular group nor to involve breach of any of the Council's duties under the Equality Act 2010. On the contrary, the provisions regarding blacklisting should assist in tackling such discriminatory practices.

7. MANAGEMENT OF RISK

Acceptance of the Report recommendation is not considered to pose any significant risk to the Council. On the contrary, such acceptance should help to increase efficiency and reduce the risk of legal challenge in respect of Council contracting and procurement.

Not accepting the Report recommendation will leave the Council with Standing Orders that are, in some respects, out-of-date and in need of clarification and improvement.

8. BACKGROUND PAPERS

“Standing Orders relating to Contracts and Procurement” approved by Council on 30 June 2010.

“Standing Orders and Committee Orders of Reference” (as revised on 3 December 2013).

Scottish Procurement Policy Note SPPN 4/2013 – “Exclusion from public contracts of companies which engage in blacklisting”.

9. REPORT AUTHOR DETAILS

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