

AMENDMENTS TO CONSTITUTION – EXCEPTIONS TO STANDING ORDERS – PROCUREMENT

Executive Summary

The exceptions to the procurement / contract standing order provisions are set out in Part 5, Section 6, Clause 12 of the Constitution. These include at part (ii) 'Where the executive so directs'. It is understood that the clause had been included with the Exceptions clause to enable the Executive to make a decision that would not comply with all of the contract Standing Orders in such circumstances where the Executive determines that it would not be practical and also based on an officer recommendation.

To align with best practice it is recommended that the clause be deleted as it facilitates a provision for the Executive to over-ride a procurement decision. Accordingly, a proposed amended version of clause 12 is attached showing that item (ii) is deleted with the remaining items underneath renumbered.

The proposal was considered at the meeting of the Corporate Governance Working Group held on 20 February 2024. An extract from the minutes of the meeting is set out below, with the recommendations from the Working Group beneath:

“4. Exceptions to Standing Orders – Procurement

The Group received a draft report to the Standards and Audit Committee to be received at its meeting on 29 February 2024. The report contained a proposal to amend the procurement / contract standing order provisions in the Constitution by removing the provision for the Executive to over-ride a decision on procurement, in line with best practice. An amended clause 12 under Section 6 of Part 5 was attached as an appendix to the report, showing the wording to be deleted under part (ii) as 'Where the Executive so directs'. Members welcomed the proposal and noted that it would strengthen governance and remove exceptions in Standing Orders. The Group recommended the proposal to the Standards and Audit Committee.”

Recommendations

The Standards and Audit Committee is requested to:

RECOMMEND TO COUNCIL That

- (i) the clause on Exceptions to Standing Orders (Appendix 1) be amended as set out within the report in the Council's Constitution under Section 6 of Part 5;**
- (ii) the authority delegated to the Monitoring Officer to make minor amendments to the Constitution be noted, including amendments to references within the document and section numbering; and**

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- (iii) the Monitoring Officer be instructed to make the agreed changes to the Constitution.

The item(s) above will need to be dealt with by way of a recommendation to Council.

Background Papers: None.

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“12.0 Exceptions

12.1. The following are the only permitted exceptions from all or part of contract standing orders:

- (i) where an Officer of the CLT is required to act in an emergency or other case of urgency, with the reason for the exception being fully documented and reported to the Director of Legal and Democratic Services;
- ~~(ii) where the Executive so directs;~~
- (ii) where the Council is acting solely as an agent for another body in compliance with the contract standing orders of that other body or where the Council participates in a joint procurement led by another body in compliance with the contract standing orders of that body. The Council may enter into a contract with a person approved for the purpose of such contract by the principal authority. In such cases, contracts shall be sealed either at the request of the principal authority or if the senior Officer so requires (and 10.1(a) above shall be varied accordingly). In all other respects contract standing orders shall apply;
- (iii) where a committee or an Officer of the CLT or a senior Officer is satisfied that the number of tenders or quotations required by contract standing orders cannot be obtained due to insufficient sources of supply or expertise, or where the need for standardisation or compatibility makes it necessary to obtain supplies or services from a particular source or to employ a particular contractor to carry out the work. Tenders or quotations shall be obtained from the sole or all available suppliers/persons who possess sufficient expertise or suitability;
- (iv) where the contract is one of employment;
- (v) where the contract is for works carried out by statutory undertakers in circumstances where they have monopoly status, or where no genuine competition would exist, for example, because of fixed prices or prices controlled by trade organisations;
- (vi) the extension of an existing contract (or the execution of work or materials necessary for maintenance repairs to existing machinery or plant) provided that the price for each item supplied or unit of work carried out is no higher than in the original contract and the value of the original contract is not increased by more than one third by the aggregate of extensions made under this exception; and one and two unit ad hoc refurbishment contracts may be extended by additional units up to a maximum of two, provided that the new works are at the same rates as for the original tender;
- (vii) where the contract is to appoint legal advisers, provided that the Director of Legal and Democratic Services shall be satisfied that the contract represents value for money;
- (viii) where the contract is for the disposal or acquisition of land or property;
- (ix) where the contract relates to a financing transaction, and

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- (x) the paper processes and requirements relating to the invitation, submission and opening of tenders and quotations (Standing Orders c.5.0, c.7.0 and c.8.0), shall not apply to the operation of electronic processes, provided that those processes are undertaken within a system whose use has been authorised by the Chief Finance Officer and which includes secure e-mail and document management environment to nationally approved standards and in compliance with recognised protocols.
- 12.2. Note: the use of delta eSourcing has been authorised, by the Chief Finance Officer, for all tenders with an estimated value of £50,000 or more.
- 12.3. Exceptions shall be recorded as follows:
- (i) a direction of the Executive shall be reported to Council; and
 - (ii) exceptions made under c.12.1 (a), (d) and (g) shall be reported to the Director of Legal and Democratic Services who shall maintain a record of all such exceptions.”