

AGENDA ITEM

**AMENDMENTS TO THE COUNCIL'S CONSTITUTION**

**Report of the Assistant Director of Law and Administration**

1. **Purpose of the Report**

1.1 To recommend to full Council amendments to paragraphs 3.5 and 3.6 of Contract Standing Orders in Part 4 of the Constitution to enable the Group Director of Community and Adult Care and the Group Director of Environment respectively, in consultation with the Director of Strategic Procurement, and the relevant Cabinet Member:

- to authorise the negotiation of single tenders of up to ten years in length and
- to authorise the extension of existing contracts that have been awarded as a result of a single tender process to a maximum length of 10 years

**in respect of Supporting People Contracts, Day Care Contracts and Bus Contracts.**

2. **Background**

Currently, the Council's Contract Standing Orders require authority from the Cabinet, the Leader of the Council or a Lead Cabinet Member before entering into single tender negotiations for a contract exceeding three years, or extending contracts for a term exceeding five years. This process does not work efficiently for the three types of contract referred to above and following a report to Cabinet on 24<sup>th</sup> September 2008 Cabinet agreed that authority to authorise single tender negotiations in those circumstances could be delegated to Group Directors in consultation with the Director of Strategic Procurement and the relevant Cabinet Member. The report sets out the difficulties with this process and the relevant extract from that report is set out at Annex A.

The changes to Contract Standing Orders which are necessitated by the Cabinet decision are set out in Annex B.

**RECOMMENDED THAT:**

The changes to paragraphs 3.5 and 3.6 of the Council's Contract Standing Orders set out in Annex B are approved by the Committee and are now recommended to full Council for adoption.

### 2.0 DELEGATED AUTHORITY FOR SINGLE TENDER NEGOTIATIONS FOR CONTRACT AND EXTENSIONS THEREOF.

#### 4.1 Context

Contract Standing Orders do not currently delegate to officers the power to enter into single tender negotiations with a provider for a contract with a term exceeding three years nor do they delegate to officers the power to extend single tender contracts for a term in excess of 5 years, without in both cases having previously obtained the approval of the Cabinet, Leader of the Council or a Lead Cabinet Member.

##### 4.1.1 Supporting People

The Council's Supporting People team manage approximately 240 contracts, many of which were negotiated under a strict format specified by the previous Office of Deputy Prime Minister. Many of these contracts deal with support delivered into tenancies or specialist services of a local nature such as funding to a domestic violence refuge and are by their very nature single tender contracts.

A significant number of these contracts are now coming up for renewal (approximately 36 contracts totalling £10m spend per annum).

##### 4.1.2 Day Care Services

Similarly to the above, there are now a significant number of day care contracts approaching renewal. These contracts are of a local nature and it is highly unlikely that they could be re-tendered successfully in the short term

##### 4.1.3 Bus Contracts

The Integrated Transport Unit is reviewing its contracting process. They have hundreds of existing bus contracts, which often have a very low value, and often only comprising of a single route. The routes are constantly being reviewed but given the nature of the market and the interdependency of routes it is not always possible or desirable to re-tender within time scales set out under Standing Orders.

#### 4.2 Challenge

Under the current Standing Orders where the renewal of these contracts means the total term will exceed five years they should be brought to Cabinet for approval. Given the high volume of Supporting People, Day Care and Bus contracts, it is impractical for Cabinet to consider every one of these, neither is it practical or proportionate, given the nature of the services, to re-tender every 5 years. Many of these contracts are subject to wider service planning reviews and it may therefore be in the best interests of the Council to extend them until such reviews are complete.

#### 4.3 Recommendation

It is therefore recommended that in respect of Supporting People Contracts, Day Care Contracts and Bus Contracts, Cabinet delegates to the Group

Director of Community and Adult Care and the Group Director of Environment respectively, in consultation with the Director of Strategic Procurement;

4.3.1 the authority to negotiate single tenders of up to ten years in length and  
4.3.2 the authority to extend existing contracts that have been awarded as a result of a single tender process to a maximum length of 10 years.

It will be a requirement for Group Directors, in these circumstances, to consult with their Lead Cabinet Member in respect of any significant contracts.

It must be noted that all Bus contracts will still comply with the Transport Act.

It must also be noted that this does not preclude these services from tendering where appropriate and that the decision to enter into single tender negotiations for significant tenders will only be taken following a Gateway review. The Gateway review is a process required through the Council's Standing Orders whereby all procurements over £50,000 (over the life of the contract) are subject to a documented procurement strategy and require formal ratification by the Director of Strategic Procurement and the Director of Law and Administration.

This recommendation is subject to the necessary amendments to the Council's constitution.

**Risk Assessment:**

Risks in respect of the two large contracts, temporary staffing and hotel and conferencing will be managed through the procurement and contract management process.

In respect of the proposal to allow Group Director powers to enter into longer single tender negotiations, the safeguard still exists that any contract over £50,000, including single tender negotiations or contract extensions, would be subject to a Gateway review.

**Performance Management/Follow-up:**

Contracts savings and performance will be continually monitored through the procurement process.

The number of single tender negotiations will be monitored through the gateway process.

- 3.4.2 Contracts entered into under government Central Purchasing Body arrangement such as, OGC or Scat.

*Note: Where there is sufficient information contained in the listing under the Central Purchasing Body arrangement so that the Council can clearly identify the provider that represents best value for money then the Council can enter into a contract directly with that provider, this will usually only relate to the purchase of goods. In all other circumstances a further competition/mini-tender must be undertaken and advice must be sought from Legal Services and the Procurement Team.*

or

- 3.4.3 Contracts the total value or total estimated value of which do not exceed £50,000.

or

- 3.4.4 Contracts where the total value or total estimated value does not exceed £140,000, and

3.4.4.1 the case as to why it is in the best interests of the County Council to enter into that contract, has been submitted to and approved by the Director of Strategic Procurement using Appendix A, and

3.4.4.2 the Group Director or Director or Head of Service after consultation as appropriate with the Leader of the Council, Lead Cabinet Member or Cabinet Member has authorised entry into the contract.

*Note: Contract Standing Orders 3.4 does not obviate the need for compliance with legislation requiring a tendering process to be followed.*

*The completed authorisation record must be sent to the Council's Director of Strategic Procurement who will retain the record in a register kept for that purpose.*

- 3.5 A Group Director or other officer with delegated powers shall not authorise a contract following negotiations with a single contractor for a term exceeding three years without prior approval of the Cabinet, Leader of the Council or a Lead Cabinet Member SAVE THAT

in respect of Supporting People Contracts, Day Care Contracts and Bus Contracts the Group Director of Community and Adult Care and the Group Director of Environment respectively, in consultation with the Director of Strategic Procurement and the relevant Cabinet Member, may authorise, following negotiation, entry into a single tender contract of up to ten years in length

- 3.6 A Group Director or other officer with delegated powers shall not authorise an extension to the period of an existing contract that has been awarded as a result of negotiations with a single contractor such that the total term exceeds five years without prior approval of the Cabinet, Leader of the Council or a Lead Cabinet Member SAVE THAT

in respect of Supporting People Contracts, Day Care Contracts and Bus Contracts the Group Director of Community and Adult Care and the Group Director of Environment respectively, in consultation with the Director of Strategic Procurement and the relevant Cabinet Member, may authorise the extension to the period of an existing contract that has been awarded as a result of a single tender process, such that the total term of the contract cannot exceed a maximum length of ten years.

#### **4. Selective Tendering – Standing Lists**

4.1 Subject to Contract Standing Orders 2 and 6 this Contract Standing Order applies where the Group Director has authorised that invitations to tender for a contract are to be limited to contractors on a list compiled and maintained for that purpose. In these cases:

4.1.1 Lists shall be compiled in accordance with criteria approved by the Group Director which contain the names of all contractors who are approved for inclusion by the Group Director and show the type and value of the goods and/or services for which each contractor is approved.

4.1.2 At least four weeks before any list is compiled an advertisement shall be published on at least one national website e.g. [www.supply2gov.uk](http://www.supply2gov.uk) and also where appropriate in either a local newspaper or a trade journal or similar publication inviting contractors to apply to be included on the list.

4.1.3 All lists must be kept under review. Accordingly every three months the existence of the list must be advertised in accordance with Standing Order 4.1.2 and Contractors invited to apply for admission to the list. All Contractors already included must be asked annually if they wish to remain on the list.

4.1.4 At least three contractors on the list selected by the Group Director who are appropriate for the type and value of the work shall be invited to tender. If there are fewer than three then all must be asked to tender.

#### **5. Selective Tendering – No standing List**

5.1 Subject to Contract Standing Orders 2 and 6 this Contract Standing Order shall apply to contracts for which there is no standing list under Contract Standing Order 4. In these cases the Group Director shall compile a list of not less than three appropriate contractors who shall be invited to tender.

5.2 Where three appropriate contractors are not known s/he shall advertise in at least one local newspaper and appropriate trade journal stating a closing date for applications to be considered for invitations to tender for the type of work concerned. After the closing date at least three of the contractors, selected after evaluation of their financial standing, technical ability and, where appropriate, innovative approach, shall be asked to tender. If there are still fewer than three, they must all be asked to tender.

#### **6. Advertising Contracts**

6.1 This Contract Standing Order 6 applies to the following contracts

- 6.1.1 Contracts the total value or total estimated value of which do not exceed £50,000 but where the contract award might potentially be of interest to economic operators located in other member states within the European Union
- 6.1.2 Contracts for goods and services the total value or total estimated value of which exceed £50,000 where the contract award might potentially be of interest to economic operators located in other member states within the European Union

*Note : This requirement to advertise applies to all contracts and in particular includes all services referred to in Part A and Part B of Schedule 3 to the Public Contracts Regulations 2006*

*Contracts for the supply of goods and services exceeding £140,000 in total value, are subject to further advertisement requirements*

*A decision whether “the contract award might potentially be of interest to economic operators located anywhere in the European Union” must be based on an evaluation of the individual circumstances of the case, such as the subject matter of the contract, its estimated value, the specifics of the sector concerned (size and structure of the market, commercial practices etc.) and the geographical location of the place of performance. Advice should be sought from Legal Services and the Procurement Team.*

- 6.2 Contracts to which this Contract Standing Order 6 applies shall be advertised to such degree as is sufficient to enable the market to be opened up to competition and the impartiality and transparency of the contract award procedures to be reviewed.

*Note: Advertising must ensure that any economic operator in the European Union has access to appropriate information regarding the contract, before it is awarded, to enable it to express an interest in obtaining that contract.*

## **CONTRACTS FOR WORKS**

### **7. Invitation to Tender**

- 7.1.1 All contracts for works that have a total value or total estimated value in excess of £3.5m shall be tendered in accordance with European procurement law and the provisions of the Public Contracts Regulations 2006 or such other replacement or amending legislation as may from time to time apply.
- 7.2 All contracts for works that have a total value or total estimated value of less than £3.5m shall be tendered in accordance with the provisions of these Contract Standing Orders.
- 7.3 Subject to Contract Standing Orders 7.4 and 7.5, tenders shall be invited in accordance with Contract Standing Orders 8, 9 and 10 for all contracts under which the County Council is required to give value for and/or receive the benefit of works.

CONSTITUTION COMMITTEE  
5<sup>TH</sup> NOVEMBER 2008

AGENDA ITEM 7

**AMENDMENTS TO THE COUNCIL'S CONSTITUTION**

Report of the Assistant Director of Law and Administration

Purpose of the Report

To report to the Committee and for the Committee to recommend to full Council minor amendments to the Council's Constitution made by the Monitoring Officer under his delegated powers, such amendments being set out in Annex A hereto

**RECOMMENDED THAT:**

The changes to the Constitution are noted by the Committee and are now recommended to full Council for ratification.

Christine Wray  
Assistant Director of Law & Administration  
30 October 2008

**Changes to Gloucestershire County Council Constitution  
by the Monitoring Officer**

In the exercise of my powers set out in Article 15.02.1 of the Council's Constitution, in order to

- secure the convenient, efficient and effective discharge of any function; and
- give effect to a decision of full Council; and
- clarify the effect of the Council's Constitution;

with effect from today's date, I make the changes to the Council's Constitution set out below.

1. In Part 3 of the Constitution, the Schedule to Table 3.8 shall be amended by the inclusion in the list headed "Duty on Local Weights and Measures Authority" the following:  
  
"Consumer Protection from Unfair Trading Regulations 2008  
The Business Protection from Misleading Marketing Regulations 2008"
2. In Part 3 of the Constitution the final sentence of Section 2.1 shall be amended to read:  
"Table 3.2 therefore describes how local choice functions have been allocated".
3. In paragraph 15.1 of the Overview and Scrutiny Procedure Rules, delete the word "non" from the first sentence.
4. In the note to paragraph 5.2 of the Call-in Procedure Rules delete "relevant Overview and Scrutiny Committee" and replace with "Overview and Scrutiny Management Committee."
5. In Part 4 of the Constitution paragraph 2.1.10 of Procedural Standing orders shall be amended as follows:  
"subject to Procedural Standing Order 10 afford the opportunity to all county councillors present to ask questions about every decision made by the Cabinet, any Lead Cabinet Member or any other Council body, or a key decision taken by an officer, since the last ordinary meeting of the Council;"
6. In Part 5 of the Constitution there shall be inserted a new paragraph 3.2.4 in the Protocol on Decisions to be taken by Executive Members as follows:  
"Decisions taken by a Lead Cabinet Member shall be reported to the next ordinary meeting of full Council".

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(N J Roberts)  
Director of Law & Administration & Monitoring Officer  
Gloucestershire County Council

October 2008