

## **EAST AYRSHIRE COUNCIL**

### **COUNCIL MEETING – 5<sup>th</sup> DECEMBER 2007**

#### **REVIEW OF THE COUNCIL'S STANDING ORDERS RELATING TO CONTRACTS**

#### **Report by the Depute Chief Executive/Executive Director of Corporate Support**

#### **1 PURPOSE OF REPORT**

- 1.1** To apprise Council that a review of the terms and provisions of the Council's Standing Orders Relating to Contracts has been carried out and to submit for the consideration of Council the revised Standing Orders Relating to Contracts & Tendering. A copy of the proposed revised Standing Orders Relating to Contracts & Tendering is attached.

#### **2 BACKGROUND**

- 2.1** The Council last reviewed its Standing Orders Relating to Contracts in May 2006 and no alterations or amendments have since been made to the terms thereof. In terms of the Action Plan contained in the Corporate Procurement Strategy it was proposed to undertake a further review of the Standing Orders Relating to Contracts during 2007.
- 2.2** In order to take account of the changes in procurement legislation and in particular The Public Contracts (Scotland) Regulations 2006 and the National Procurement Agenda as promoted by the Review of Public Procurement in Scotland and in tandem with the revised Corporate Procurement Strategy approved by Cabinet at its meeting of 21<sup>st</sup> November 2007 the Standing Orders Relating to Contracts & Tendering have been revised accordingly, in an effort to ensure that the Council continues to promote best professional practice across the spectrum of contracting/procurement/purchasing activities.
- 2.3** Accordingly, the formal process to facilitate and appropriately inform such a review began in March 2007. The process was conducted by seeking views and representations from all Council departments in general and from particular service units which have a significant input into contractual matters. Comparative information, mainly on standing order financial threshold levels, was also obtained from a range of local authorities on a national basis.

### **3 DISCUSSION**

- 3.1** The issue which attracted most comment from respondents and in particular relevant to Building & Works and Roads & Transportation was the issue of sourcing materials in an emergency and urgent situation, in particular for Category A (Emergency) and Category B (24 Hour) responsive repairs. This resulted in exemptions being included in Standing Orders Relating to Contracts & Tendering where Emergency or 24 Hour works are undertaken by both Building & Works and Roads & Transportation. However, this will be monitored and the sourcing arrangements reviewed in March 2008 with a view to formalising contractual arrangements for emergency supplies where a call-off requirement has been identified.
- 3.2** The other major issue raised by respondents was in respect of the proposed paragraphs 15(1) & (2) Forward Planning of Requirement, which require Directors/Executive Heads/Heads of Service to give advanced notice of anticipated requirements of up to seven months where the Transfer of Public Undertakings (Employment Protection) Regulations 1981 (TUPE) are likely to apply, as this was likely to extend the programming of procurement projects. However, experience has shown that timescales of between 4 and 7 months from identification of the requirement to the award of contract are required in order to manage the minimum EU timescales, tender evaluation process, facilitate TUPE transfers, deal with requests for feedback and to comply with the mandatory Standstill Period required to allow unsuccessful tenderers the right to challenge award decisions.
- 3.3** Another issue raised by respondents was the requirement to adequately consider the notification of tender opportunities for below EU threshold contracts and its impact on utilising the Approved List Of Contractors. European procurement judicial precedent is to the effect that all contracting opportunities should be subject to a degree of advertising sufficient to ensure competition, avoid discrimination and allow bidders to identify potential opportunities. However, there is no guidance on the minimum value of contracts that should be advertised and it is left at the discretion of authorities to decide on a project-by-project basis which contracts should be formally advertised and in what publications/websites.

#### **4. PROPOSED REVISALS TO EXISTING TERMS**

- 4.1** In light of the ongoing developments in the National Procurement Collaboration Agenda and the formation of the National Procurement Centres of Expertise the remits of who procures on behalf of the Council has been defined.
- 4.2** Whilst the current financial threshold of £30,000 and £10,000 for Consultancy Contracts is retained, a new threshold of £500 has been proposed whereby the Executive Head/Head of Service need only ensure best value, without recourse to seeking three quotations. For contracts with an anticipated value of between £500 and £30,000 Executive Heads/Heads of Service would now be required to consult with the Corporate Procurement Team who would give guidance on procurement routes and sourcing.
- 4.3** It is proposed that all contracts irrespective of value will be notified to the Corporate Procurement Team who would be responsible for the maintenance of a Corporate Contract Register Database of all contracts awarded.
- 4.4** In cases of collaboration, the Authority to Contract has been defined, both where East Ayrshire Council is the Contracting Authority and where another Authority is procuring on East Ayrshire Council's behalf.
- 4.5** A new section (9) is proposed to address Order & Quotation Thresholds, which defines the procurement route for goods and services where no formal contract exists and directs Executive Heads/Heads of Service to consult with the Corporate Procurement Team for advice and assistance.
- 4.6** A new section (10) is proposed to address the specifics of Frameworks & Term Contracts and in particular the requirement for the Corporate Procurement Team to carry out all mini-tenders within Frameworks.
- 4.7** A new section (13) is proposed that would require Executive Heads/Heads of Service to carry out Option Appraisals prior to any decision to undertake a procurement exercise.
- 4.8** A new section is proposed (19) Procurement Procedures, which describes the procurement options when complying with over EU threshold procurements.
- 4.9** It is proposed to introduce a new section (20) Authority to Extend or Negotiate Award to replace the current section 9 – Single, Two Stage and Negotiated Tenders and Existing Contracts, whereby all extensions to contracts are to be authorised by the Head of Legal, Procurement & Regulatory Services.
- 4.10** It is proposed to introduce a new option for Executive Heads/Heads of Service who may utilise Requests For Quotations 21 (7), which would be managed on their behalf by the Corporate Procurement Team

- 4.11 It is proposed to introduce a new section (24) Checking & Evaluation of Tenders, which defines how both lowest price and added value tenders are to be evaluated and reported.
- 4.12 A new section is proposed (27) Contract Management & Monitoring, which defines the requirement to adequately manage and monitor contractors performance, including gathering Contract Management Information including utilising the web-based corporate Contract Management System and other systems maintained by Technical Services and Roads & Transportation for construction contracts.
- 4.13 It is proposed to introduce a new section (30) Applicable to Procurement Consultants, which requires any consultant used to procure a contract on the Council's behalf to fully comply with the requirements of these Standing Orders.
- 4.14 In light of the ongoing developments in the National Procurement Agenda, the establishment of a Central Purchasing function within the Corporate Procurement Team and the roll out of the electronic purchasing system (PECOS) it is proposed to include a new section (31) Interim Arrangements. This is augmented with an additional section (33) Notification of Change which draws attention to the national procurement agenda and the Centres of Procurement Expertise.
- 4.15 It is proposed to introduce a new section (32) Hire Desk, which highlights the role of Roads & Transportation for all the Council's Vehicle Hire requirements.

## **5. FINANCIAL/POLICY IMPLICATIONS**

- 5.1 There are no financial/policy implications arising directly from the terms of this report.

## **6. LEGAL IMPLICATIONS**

- 6.1 There are no legal implications arising directly from the terms of this report.

## **7. COMMUNITY PLANNING IMPLICATIONS**

- 7.1 There are no Community Planning Implications arising directly from this report.

## **8 RECOMMENDATIONS**

**8.1** It is recommended that Council

- (i) consider, approve and adopt the enclosed revised Standing Orders Relating to Contracts & Tendering;
- (ii) note that the revised Standing Orders Relating to Contracts will take effect from 1<sup>st</sup> January 2008; and
- (iii) otherwise, note the contents of this report.

Elizabeth Morton

**Depute Chief Executive/Executive Director of Corporate Support  
EM/SMcC**

**22 November 2007**

### **BACKGROUND PAPERS - Nil**

For further information, please contact Stuart McCall, Legal & Procurement Manager  
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Regulatory Services**