

Cumbria Police Authority

**14 December 2009
Agenda Item No. 10**

REVIEW OF CONTRACT STANDING ORDERS

A Report by the Chief Executive and the Treasurer

1. Introduction

- 1.1 At its meeting on 28 September the Authority considered the annual review of Contract Standing Orders and adopted the recommendation from Governance Committee of a single change in respect of the updating of European procurement thresholds.
- 1.2 However, the Committee and the Authority were also advised that further work was to be undertaken to review Contract Standing Orders arising from:
 - (a) an internal audit report on tendering arrangements considered by the Governance Committee at the same meeting, and
 - (b) a reference inserted into the Annual Governance Statement relating to the procurement and governance arrangements for capital projects
- 1.3 This work was completed by the Director of Finance and Resources and the Head of Procurement on behalf of the Chief Constable and in consultation with the Treasurer and the Chief Executive and was reported to the Governance Committee on 04 December as detailed in paragraphs 2, 3 and 4 below, together with the attached appendix.
- 1.4 The Governance Committee agreed to recommend that the Authority approve the adoption of the revisions detailed in this report to take effect from 01 January 2010.

Extract from report to Governance Committee on 04 December 2009

2 Outcome of the further review of Contract Standing Orders

- 2.1 The outcome of this further review has been to conclude that the Contract Standing Orders as remodelled in 2007 based on a CIPFA best practice model, remain essentially sound, reflect current best practice and are fit for purpose. However, a small number of amendments have been made to better reflect circumstances in which procurement is undertaken within Cumbria Police Authority and more particularly within the Constabulary. These changes are highlighted in the attached appendix and are commented on as follows:

- 2.1.1 All references to Procurement Manager have been amended to 'Head of Procurement' to reflect the change in status of the post-holder.
- 2.1.2 Paragraph 2.1.3 has been strengthened to make clearer that Officers must take all necessary legal, financial and professional advice, particularly relating to EU procurement with a reference also being added in respect of the new EU Remedies Directive which will be implemented in the UK in December 2009.
- 2.1.3 Paragraph 4 detailing 'relevant contracts' to which the Contract Standing Orders apply has been amended to make explicitly clear that they apply also to contracts for the execution of works in addition to the supply of goods and services
- 2.1.4 Paragraph 8 has been amended by removing the reference to EU threshold £ amounts and instead referring the reader to the new Annex A which details the threshold levels. This will ease the task of updating the CSOs when these thresholds change every two years – the next being due from 01 January 2010.
- 2.1.5 Sub-paragraph 16.3.3 deals with the sealing of contracts and has been extended to capture 'Contract Variations' which have the effect of increasing the value of sealed contracts. 16.4 is a new paragraph to be inserted in to the CSO's which makes explicitly clear that when issuing 'Contract Variations' in respect of existing contracts, formal approval must be obtained from the Director of Legal Services and the Director of Finance and Resources (or the Chief Executive in the case of a contract let by an Authority Officer). Where the variation is in respect of a contract which was completed under seal, and the effect of the variation is to increase the value of the contract, then the variation shall itself be submitted for sealing.
- 2.1.6 As noted earlier, a new Annex A has been added to the end of the CSOs and referenced where necessary within the body. The Annex records the EU Thresholds in force at any one time and which change every two years, the next occasion being from 01 January 2010.
- 2.2 Some consideration was given to the possibility of adopting higher thresholds above which the formal JCT contract provisions would be adopted for contracts governing the execution of works. However it was felt that this could lead to confusion and be seen as a possible weakening of the contract arrangements. Instead the Constabulary has agreed to buy a licence and the necessary software which will allow the documentation to support JCT contracts to be produced much more easily and so remove what was seen as an onerous amount of administrative work for relatively minor works covered by this form of contract.

3. North West Forces Collaboration

- 3.1 Members are reminded of the report made at the Committee's last meeting of the growing collaboration between forces taking place within the North West Region. This in turn has sparked some discussion on whether there may be a need to more closely harmonise the Financial Regulations and Contract Standing Orders of individual police authorities. If the outcome of discussion supports a call for such an approach, this will be reported to Governance Committee along with an analysis of any proposals and their impact for Cumbria.

4. Recommendation

- 4.1 Members are asked to consider this report and the recommendation of the Governance Committee and subject to being satisfied on any matters raised, members are asked to approve:

that the Authority approve and adopt the revisions detailed in this report and the attached appendix, to be incorporated in to the Contract Standing Orders and to take effect from 01 January 2010.

Clive Alcock
Chief Executive
07 December 2009

Douglas Thomas
Treasurer

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Appendix 1

Review of Contract Standing Orders

The changes to specific paragraphs or additions proposed, are reproduced below with the changes highlighted.

2.1.3 *Officers* must:

- have regard to the guidance in the *Procurement Handbook*
- check whether a suitable *Corporate Contract* exists before seeking to let another contract. Where a suitable *Corporate Contract* exists, this must be used unless there is an auditable reason not to
- keep the records required by Rule 6
- take all necessary legal, financial and professional advice, particularly relating to EU procurement*.

*Note: The new EU Remedies Directive will be implemented in the UK in December 2009. Any public sector and utilities contracts awarded in breach of certain fundamental EU public procurement rules can be declared “ineffective” by the Courts. Depending on the circumstances of the breach, the Courts may order the setting aside of the decision concerned; order the contracting authority to amend any document; make an award of damages to an economic operator, and order the contracting authority to pay a fine.

4. RELEVANT CONTRACTS

4.1.1 All *Relevant Contracts* must comply with these contract procedure rules. A *Relevant Contract* is any arrangement made by, or on behalf of, the Authority for the carrying out of works or for the supply of goods, materials or services. These include arrangements for:

- the supply or disposal of goods
- the hire, rental or lease of goods or equipment
- the execution of works
- the delivery of services, including (but not limited to) those related to:
 - the recruitment of specialist staff
 - land and property transactions
 - financial and consultancy services.

8.1 Purchasing – Competition Requirements

8.1.1 Where the *Total Value* for a purchase is within the values in the first column below, the *Award Procedure* in the second column must be followed. *Shortlisting* shall be done by the persons specified in the third column.

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Total Value	Award Procedure	Shortlisting
Up to £5,000	On oral <i>Quotation</i> (confirmed in writing where the Total Value exceeds £500)	Officer
£5,000 - £9,999	At least one written <i>Quotation</i>	Two Officers (usually Officer and Line Manager)
£10,000 - £34,999	At least three written competitive <i>Quotations</i>	Two Officers (usually Officer and Line Manager)
£35,000 – EU Threshold See Annex A	<i>Invitation to Tender</i> by advertisement / list to at least three and no more than six <i>Candidates</i>	Officer, Line Manager, in conjunction with the Director of Legal Services or the Head of Procurement
Above EU Threshold See Annex A	EU Procedure or, where this does not apply, <i>Invitation to Tender</i> by advertisement / list to at least four and no more than six <i>Candidates</i>	Officer, Line Manager, in conjunction with the Director of Legal Services or the Head of Procurement
In respect of any contracts to be let by the Authority directly, references above to the Director of Legal Services shall be to the Chief Executive, who may instruct the Director of Legal Services to act on the Authority's behalf.		

- 8.1.4 Where the *EU- Procedure* is required, the relevant *officer* shall consult the **Head of Procurement** to determine the method of conducting the purchase.

8.5 The Appointment of Consultants to Provide Services

- 8.5.1 Consultant architects, engineers, surveyors and other professional *Consultants* shall be selected and commissions awarded in accordance with the procedures detailed within these contract procedure rules and as outlined below: -

Total Value	Award Procedure	Shortlisting
Up to £30,000	One oral <i>Quotation</i> (confirmed in writing where the <i>Total Value</i> exceeds £2,000)	Officer
£30,001 - £100,000	Three written <i>Quotations</i>	Two Officers (usually Officer and Line

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		Manager)
£100,001 – EU threshold See Annex A	<i>Invitation to Tender</i> by advertisement / list to at least three and no more than six <i>Candidates</i>	Officer, Line Manager in conjunction with Director of Legal Services or Head of Procurement
Above EU threshold See Annex A	<i>EU Procedure</i> or, where this does not apply, <i>Invitation to Tender</i> by advertisement / list to at least four and no more than six <i>Candidates</i>	Officer, Line Manager in conjunction with Director of Legal Services or Head of Procurement
In respect of any contracts to be let by the authority directly, references above to the Director of Legal Services shall be to the Chief Executive, who may instruct the Director of Legal Services to act on the Authority's behalf.		

14.3 Post-tender negotiation must only be conducted in accordance with the guidance issued by the Director of Finance and Resources who, together with the **Head of Procurement**, must be consulted wherever it is proposed to enter into post-tender negotiation. Negotiations must be conducted by a team of at least two *Officers*, one of whom must be from a department independent to that leading the negotiations.

16.3.3 A contract must be sealed where:

- the Authority may wish to enforce the contract more than six years after its end
- the price paid or received under the contract is a nominal price and does not reflect the value of the goods or services
- there is any doubt about the authority of the person signing for the other contracting party,
- or the *Total Value* exceeds **£150,000**
- **or is a 'Contract Variation' which has the effect of increasing the value of a contract which has already been subject to sealing (see 16.4.2 below)**

16.4 Contract Variations

16.4.1 Formal approval of the Director of Legal Services and the Director of Finance and Resources (or the Chief Executive in the case of a contract to be let by an Authority Officer) must be sought whenever a contract variation is required. A written Change Control Notification must be issued for any contract variation,

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which must be signed and agreed by both parties, and a copy of the signed document retained by Legal Services.

16.4.2 Any Contract Variation which has the effect of increasing the value of a contract which has been subject to sealing shall itself be submitted to the Chief Executive for sealing.

ANNEX A

EU Procurement Thresholds

Thresholds applicable from 1 January 2008 are given below. Thresholds are net of VAT.

Council Regulation 1422/2007 (L317/34 5/12/07). Sterling Equivalents were published in C301/07 13/12/07

PUBLIC CONTRACTS REGULATIONS 2006 - FROM 1 JANUARY 2008

	SUPPLIES	SERVICES	WORKS
Contract Notices	£139,893	£139,893	£3,497,313
	€206,000	€206,000	€1,150,000