



Full Council

11 July 2016

Report from the Chief Legal Officer

For Action

Wards Affected:
ALL

Amendment to Standing Orders

1.0 Summary

- 1.1 This report seeks Full Council's urgent agreement to waive and amend Standing Order 73(a) which, with one exception, requires contracts valued over £500,000 to be executed as a deed under seal.

2.0 Recommendations

- 2.1 That the execution of a tripartite contract with the Laser Energy Buying Group and Npower Limited for the supply of the Council's electricity for the period 2016 – 2020 be executed as a simple contract.
- 2.2 That the execution of a tripartite contract with the Laser Energy Buying Group and Total Gas and Power Limited for the supply of the Council's gas for the period 2016 – 2020 be executed as a simple contract.
- 2.3 That Standing Order 73(a) be amended as set out in paragraph 3.7.

3.0 Detail

- 3.1 In 2014 Cabinet approved tripartite contract arrangements with the Laser Energy Buying Group (operated by Kent County Council) and Npower Limited (for the supply of the Council's electricity) and Total Gas and Power Limited (for the supply of the Council's gas) for the period 2016 – 2020. The contracts are due to commence on 1 October 2016 but have to be executed by 12 July 2016 in order to secure the most favourable pricing plans.

- 3.2 Although the contracts have been prepared and agreed, a problem has been encountered with the execution of the contracts.
- 3.3 In accordance with Standing Order 73(a)(ii) these contracts, which are valued at over £500,000, are required to be executed by deed. Laser, Npower Limited and Total Gas and Power Limited have informed the Council, however, that it is not their usual practice to execute such contracts as deeds and would not be willing to do so on this occasion.
- 3.4 Other than the need to comply with Standing Order 73(a)(ii), there is no legal requirement for these contracts to be executed as deeds and execution as simple contracts is considered entirely appropriate. In fact, there is recognition within Standing Order 73(a) itself that the requirement to execute contracts exceeding £500,000 in value should not apply to all such contracts and there is a specific exclusion in respect of “*contracts of insurance where the contract is brought into effect by the issue of a schedule of insurance and policy documents to the Council*”.
- 3.5 More generally, the problems encountered with the execution of the Council’s gas and electricity contracts, has highlighted the need for greater flexibility in respect of the Council’s formalities for executing contracts.
- 3.6 It is recommended therefore that Standing Order 73(a) be amended to allow exceptions from execution by deed of contracts where the Chief Legal Officer considers it is legally permissible to execute otherwise than as a deed under seal and to do so would be in the Council’s best interest.
- 3.7 It is recommended that Standing Order 73(a) is amended to read:

(a) All contracts, agreements or transactions

(i) in respect of which there is no consideration

(ii) that exceed £500,000 in value over the life of the contract including contracts where the Council is providing goods, services or works to another body); or

(iii) which are grants that exceed the sum of £150,000

must be executed as a deed under seal in accordance with these Standing Orders. However this will not apply to contracts, agreements or transactions where the Chief Legal Officer considers it is legally permissible to execute otherwise than as a deed under seal and to do so would be in the Council’s best interest. For the avoidance of doubt there is no requirement to execute contracts for insurance as a deed under seal where the contract is brought into effect by the issue of a schedule of insurance and policy documents to the Council by the insurer.

4.0 Financial Implications

- 4.1 Execution of the contracts by 12 July 2016 will secure the most favourable pricing plans.

5.0 Legal Implications

- 5.1 Documents are most commonly executed as simple contracts. A contract is made binding on the date that both parties intend that it is to come into effect, which is typically evidenced by both parties signing the contract. There is no requirement for the signature to be witnessed.
- 5.2 Simple contracts have a statutory "limitation period" of six years. This means that a party to the contract must bring any claim for breach of that contract within 6 years of the breach taking place.
- 5.3 Deeds are required by law in certain circumstances. For example, transfers of land must be made by deed.
- 5.4 Deeds can also be advantageous even when they are not strictly required by law. For example, if only one party under a contract is receiving a real benefit from an agreement, it would be advisable under English law to execute the contract as a deed so that it is not void for lack of consideration. Another potential advantage of deeds is that they have a longer statutory limitation period than contracts: twelve years. In practice, this can be advantageous when, for example, construction contracts are entered into because of the risk of latent damage and the need for the Council to enforce its contractual rights many years after the contract has been entered into. Contracts for the supply of gas and electricity, however, do not carry that kind of risk and there is no real advantage to the Council in executing these contracts as deeds.

6.0 Diversity Implications

- 6.1 None.

Background Papers

None

Contact Officers

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