

Report to Regulation Audit and Accounts Committee

1 December 2023

Amendment to Contracts Standing Orders - Electronic Signatures

Report by Director of Law and Assurance

Electoral division(s): Not applicable.

Summary

The Council enters into a large number of contracts, land transfers and financial transactions each year. The procedures for ensuring these are entered into properly and safely are set out in the Council's Standing Orders on Procurement and Contracts. The Scheme of Delegation defines the levels of authority given to officers to enter into legal agreements.

As part of its commitment to flexibility, sustainability and timeliness in contracting arrangements the County Council is moving to the greater use of electronic signatures so that documents can be circulated and stored electronically including the final signed versions. The authority for this needs to be confirmed in Standing Orders. The report explains how the use of electronic signatures will be managed to minimise risk.

This proposal has previously been considered and supported by Governance Committee.

Recommendation

That the Committee endorses the proposed changes to Standing Orders on Procurement and Contracts to enable the use of electronic signatures within the scope set out in the report.

Proposal

1 Background and context

- 1.1 Each year the County Council enters into hundreds of legal agreements. Most are contracts for goods or services but they include multi-million pound contracts and land transactions. It is important to ensure such agreements are lawfully and properly entered into so that the rights and responsibilities they include are enforceable in law.
- 1.2 All of the requirements to ensure propriety in the completion of contracts and legal agreements are contained in Standing Orders on Procurement and Contracts. The Scheme of Delegation sets out the allocation of authority to sign such documents on behalf of the Council.

- 1.3 Standing Orders also provide for documents above a certain value to be signed 'under seal'. This provides a greater level of legal enforceability and over a longer period of time and is important for high value contracts and land transactions when financial consequences from failed contracts are greater or many only become apparent after a longer period of time.
- 1.4 The County Council, along with most other organisations, is using electronic means for exchanging and completing legal and contractual documents. This includes the use of electronic signatures rather than 'wet' signatures. A recent commitment to invest in an application enabling the secure and safe use of electronic signatures in higher value documents means that their use can be extended. This requires a change to Standing Orders.

2 Proposal details

- 2.1 The use of electronic signatures will enable transactions to be processed more easily and in a timely way and will avoid the need for physical copies of documents to be circulated for completion of agreements or retained as the formal record of a transaction.
- 2.2 The Council has recently entered into a three-year contract for the deployment of Adobe Sign as its application for facilitating electronic signatures. Access to the facility will be limited to those with authority to sign in accordance with the Scheme of Delegation and the same levels of authority will apply dependent on the value of the transaction.
- 2.3 The Council will continue to use the Council's seal for transactions of higher value to maintain the additional protections this affords. It is proposed however that the value threshold for the use of the seal is raised from £250,000 to £500,000. This requires an amendment to clause 39.2.2 of Standing Orders on Contracts to say 'contracts with a value of £500,000 or more'.
- 2.4 It is considered that the security measures afforded by the electronic signature application will provide good protection from fraud and misuse. Access to the system will be restricted and so there is no risk of reducing the current safeguards afforded by the limited range of signing authorisation. It will also be possible to identify particular transactions at a lower value which may benefit from the use of signature under seal. This is already provided for in Standing Orders, as is the presumption of the use of a seal for land transactions.

3 Other options considered (and reasons for not proposing)

- 3.1 The Council could retain the threshold for the use of the seal at the current level or at a lower level but the overall assessment of risk concluded that it is reasonable to raise the threshold as the safeguards and protections afforded by the proposed electronic system are sufficient to ensure contracts at levels below £500,000 are effectively managed and land transactions tend to be at a higher value in any event and so will continue to be signed under seal.

4 Consultation, engagement and advice

- 4.1 Consultation has involved officers in Legal Services and Procurement Support. This exercise has also considered examples of the use of electronic signatures by similar sized authorities and the proposals are comparable.

5 Finance

- 5.1 The cost of the application to be used through the contract with Adobe Systems is around £22,000 per year and the contract is let for a three year period. The contract was let after the use of a Crown Commercial framework agreement as the procurement route. There are no cost implications of the proposal in relation to changes to Standing Orders

6 Risk implications and mitigations

Risk	Mitigating Action (in place or planned)
That the higher seal threshold exposes risk of high value transactions being difficult to enforce	Procurement procedures will identify whether any particular transaction requires the additional protection of signature under seal. Instances of such enforcement being required are very rare.

7 Policy alignment and compliance

- 7.1 The more extensive use of electronic signatures for contracts will support the reduction in the use of paper, officer time and travel for physical signatures and so is in line with the Council's climate change commitments. There are no other policy implications.

Tony Kershaw

Director of Law and Assurance

Contact Officer: Tony Kershaw email: tony.kershaw@westsussex.gov.uk

Background papers

None