
REPORTS FROM THE EXECUTIVE AND COMMITTEES/ SUB-COMMITTEES TO COUNCIL

1 REPORT OF THE REVIEW COMMITTEE

Major Contract Review

- 1.1 This item of business was referred by the Executive on 19 January 2011 to Full Council with a recommendation relating to changes to the Council's Contract Procedure Rules contained within the Constitution. An extract of the key elements of the report of the Head of Environmental Services to the Executive is appended.
- 1.2 The Executive agreed an amendment to the content of the paragraphs proposed for inclusion in the Constitution.
- 1.3 It is proposed that Council **RESOLVES** that the Contract Procedure Rules, which commence on page 4.63 of the Constitution, be amended with the insertion of the following paragraphs:-

'1.2 Contract Principles to be Applied

- 1.2.7 Each quarter Members of the Council will be provided with the estimated values and a brief description of contracts that are proposed to be subject to competitive tendering. Such detail to be published in the Members' Bulletin and, more formally, through a report into the Executive for noting.
- 1.2.8 The competitive dialogue approach will not be utilised in procurement arrangements unless it is expressly sanctioned by the Executive.'
(HLEMS)

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SUBJECT: MAJOR CONTRACT REVIEW

1 DECISION BEING RECOMMENDED

- 1.1 To recommend to Council that the Contract Procedure Rules, which commence on page 4.63 of the Constitution, be amended with the insertion of the following paragraphs:-

“1.2 Contract Principles to be Applied

1.2.7 the Executive should be consulted on the scheduling arrangements for all contracts over the European Union Contracting threshold.

1.2.8 the competitive dialogue approach should only be utilised in EU procurement arrangements where this is sanctioned by the Executive.”

2 REASONS FOR RECOMMENDATION

- 2.1 The Portfolio Holder for the Environment appointed an Advisory Group to review the procedures adopted for letting major contracts by the Council. The Group met on 17 December 2010. Discussion centred on the EU procurement arrangements, the opportunity for Member involvement and the safeguards that would need to be put in place should the competitive dialogue process be contemplated.
- 2.2 Following consideration of the Contract Procedure Rules and procedures, it was considered that there were risks associated with the competitive dialogue approach to contracts. Whilst information needs to be ascertained for the Council to frame a specification, it was considered that this should be away from the formal invitation to tender enabling the contract specifications to be as precise as possible.
- 2.3 The Advisory Group considered that, while it could be preferable to avoid competitive dialogue per se, the possibility that exceptional circumstances could arise point to it being pragmatic to have a general policy whereby the competitive dialogue approach is avoided unless there is clear justification for using this procedure.
- 2.4 Minor changes to the contract guidance notes for officers were also discussed.
- 2.5 The Advisory Group concluded that the Executive should be consulted on the scheduling arrangements for all contracts over the European Union Contracting threshold (currently £156,442 in value for supplies and services and £3,927,260 for works). Further, that the competitive dialogue approach

should not be utilised in future EU procurement arrangements unless this is sanctioned by the Executive.

3 ALTERNATIVE OPTIONS CONSIDERED

- 3.1 The Contract Procedure Rules provide officers with a broad range of procurement options that carry varying degrees of risk.

4 RISK IMPLICATIONS

- 4.1 Adopting a more basic approach to procurement is likely to present significantly less risk in terms of the potential for legal challenge. While the competitive dialogue process is very transparent, the nature of the complex rules and the need to maintain an up-to-date and in depth knowledge of these is challenging and, in consequence, the risks can be significant.
- 4.2 The competitive dialogue process provides good opportunities for the development of bespoke solutions. There is a potential risk that such solutions may not materialise when using conventional procurement methods.

5 RESOURCE IMPLICATIONS

- 5.1 None arising directly from this report.

6 LEGAL IMPLICATIONS

- 6.1 EU procurement is a highly regulated environment.