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**REPORT TO THE MEETING OF THE EXECUTIVE 19 JANUARY 2011****PORTFOLIO: ENVIRONMENT****REPORT FROM HEAD OF ENVIRONMENTAL SERVICES****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.

I confirm that the above recommendation does not depart from Council policy and that appropriate consideration has been given to any budgetary and legal implications.

SMT Lead Officer Signature: \_\_\_\_\_

**Head of Environmental Services**

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#### **Background Papers:-**

None.

For further information please contact Richard Evans on:-

Tel:- 01702 318044

Email:- richard.evans@rochford.gov.uk

If you would like this report in large print, Braille or another language please contact 01702 546366.