

# **FINANCE AND CORPORATE SERVICES PORTFOLIO DECISION SCHEDULE**



**10 October 2012**

**at 3.00 pm.**

**in Committee Room A, Civic Centre, Hartlepool**

Councillor Paul Thompson, Cabinet Member responsible for Finance and Corporate Services will consider the following items.

**1. KEY DECISIONS**

No items.

**2. OTHER ITEMS REQUIRING DECISION**

No items.

**3. ITEMS FOR INFORMATION**

3.1 Delegated Powers for Minor Property Issues – *Assistant Director (Resources)*

3.2 Proposed Amendments to Contract Procedure Rules and Procurement Clarifications – *Assistant Director (Resources)*

**4. REPORTS FROM OVERVIEW OF SCRUTINY FORUMS**

No items

## **FINANCE AND CORPORATE SERVICES PORTFOLIO**

Report to Portfolio Holder  
10<sup>th</sup> October 2012



**Report of:** Assistant Director (Resources)

**Subject:** DELEGATED POWERS FOR MINOR PROPERTY  
ISSUES

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### **1. TYPE OF DECISION/APPLICABLE CATEGORY**

1.1 Non Key Decision.

### **2. PURPOSE OF REPORT**

2.1 To inform the Portfolio Holder of the Minor Property Issues dealt with under Delegated Powers

### **3. BACKGROUND**

3.1 At the Portfolio Holder meeting on June 2012 approval was given for decisions on Minor Property Issues to be delegated to the Director of Regeneration and Neighbourhoods.

3.2 It was also agreed that the Portfolio Holder would receive briefings on such issues and that they would be formally recorded in a Portfolio Holder Report on a quarterly basis.

### **4. CONSIDERATIONS**

4.1 In the last quarter two issues have been dealt with under the Delegated Powers.

- A lease for the provision of catering services at Summerhill
- The sale of a small strip of land at Villiers Street to assist in a commercial development site

4.2 Both issues have been discussed with the Portfolio Holder in briefing sessions.

**5. RISK IMPLICATIONS**

- 5.1 The agreements in place will deal with any risks to the Council, which are very low.

**6. FINANCIAL CONSIDERATIONS**

- 6.1 The Council will achieve income from both agreements.

**7. LEGAL CONSIDERATIONS**

- 7.1 Legal agreements in place will safeguard the Council's interests.

**8. EQUALITY AND DIVERSITY CONSIDERATIONS**

- 8.1 There are no equality or diversity implications.

**9. SECTION 17 OF THE CRIME AND DISORDER ACT 1998 CONSIDERATIONS**

- 9.1 There are no implications under Section 17.

**10. STAFF CONSIDERATIONS**

- 10.1 There are no staff implications.

**11. ASSET MANAGEMENT**

- 11.1 The attention of the portfolio Holder is drawn to the Asset Management element of the Business Transformation Programme. The decision by Cabinet in January 2009 requires a commercial, proactive approach to be taken on Asset Management issues, the proceeds of this transaction being a contribution to the Medium Term Financial Strategy (MTFS).
- 11.2 The decision to adopt a commercial approach to asset management requires the Council to realise the full value of any properties or property rights that it disposes of.

**12. RECOMMENDATIONS**

- 12.1 Portfolio Holder notes the report.

**13. REASONS FOR RECOMMENDATIONS**

13.1 To confirm property issues dealt with under Delegated Powers.

**14. APPENDICES AVAILABLE ON REQUEST, IN THE MEMEBRS LIBRARY AND ON-LINE**

14.1 There are no appendices.

**15. BACKGROUND PAPERS**

15.1 There are no background papers.

**16. CONTACT OFFICER**

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## **FINANCE AND CORPORATE SERVICES PORTFOLIO**

Report To Portfolio Holder  
10<sup>th</sup> October 2012



**Report of:** Assistant Director (Resources)

**Subject:** PROPOSED AMENDMENTS TO CONTRACT  
PROCEDURE RULES AND PROCUREMENT  
CLARIFICATIONS

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### **1. PURPOSE OF REPORT**

- 1.1 To outline proposed changes to the Contract Procedure Rules (CPRs) which will be considered by Constitution Committee prior to submission to Council for approval in line with the Council's Constitution.
- 1.2 These proposals are a combination of changes required to comply or fit with new legislation and other changes which look to facilitate the ongoing adoption of e-procurement across the Council and generally improve the processes we currently follow.
- 1.3 By way of further update for the Portfolio Holder, there were a number of procurement related questions raised by the Council's Audit Committee and the clarifications are included in this report for information.

### **2. BACKGROUND TO PROPOSED CONTRACT PROCEDURE RULES CHANGES**

- 2.1 There have been a number of recent changes, constitutionally, statutorily and in relation to new technology, which have impacted on the Council's procurement processes and practices and which have necessitated a review of the Council's Contract Procedure Rules (CPR's). Following this review it has become apparent that a number of changes are required to ensure that the CPR's accurately reflect these new and amended requirements.
- 2.2 To be more specific, details of these recent changes are described below:
  - i) Removal of the Contract Scrutiny Committee and the creation of a Sub-Committee of the Audit Committee
  - ii) Introduction of the Public Services (Social Value) Act 2012
  - iii) A variety of changes in the use of technology in procurement processes

- iv) The implementation of the “Right to Challenge” element of the Localism Act.
- 2.3 The Audit Committee at its meeting on 20<sup>th</sup> July 2012 considered a report outlining the potential changes and endorsed the proposals for onward submission to the Constitution Committee. There were also a number of procurement procedural issues raised at the meeting.

### 3. INTRODUCTION OF THE AUDIT SUB-COMMITTEE

- 3.1 The role and remit of the Audit Sub-Committee has been agreed by the Audit Committee at its 14 June 2012 meeting. The Sub-Committee is made up of three Members and has the responsibility of:
- i) Receiving and examining tender lists
  - ii) Opening and recording tenders
  - iii) Periodically reviewing its effectiveness and reporting its findings to the Audit Committee
- 3.2 The former Contract Scrutiny Committee is referred to on a significant number of occasions in the CPR's and as a result, all of these references require correcting in the document.
- 3.3 In addition to correcting the above invalid references, a number of elements have been added to the CPR's which relate to the implementation of e-procurement. Whilst the practicalities of these are described later in this report, there are a number of issues where the Audit Sub-Committee has a direct role to play in the e-procurement process. These are described in the following paragraphs:
- i) **Opening of e-tenders** – It is proposed that a change be made to the process of opening tenders to accommodate the new Sub-Committee and the corporate adoption of e-procurement processes.

The proposed opening process entails e-tenders being opened in the presence of the following:

- A representative of the Corporate Procurement Team
- A representative of the Service area involved in the procurement
- The Chair of the Audit Sub-Committee or a nominee of the Chair, at the Chair's discretion

This is a similar process to that being operated by the vast majority of public authorities.

Following this opening it is proposed that a report detailing the outcome of the tender opening be compiled and presented to the Audit Sub-Committee for formal receipt and recording in line with its remit.

- ii) **Opening of written tenders** – Although now in the minority, there are some occasions where an e-tender is not a suitable process and a traditional non-electronic process is required.

In such circumstances, it is proposed that the Audit Sub-Committee take responsibility for the manual opening process (supported by Council officers) in line with its remit.

- iii) **Management of e-auctions** – An E-auction is an electronic procurement process which seeks to maximise value for money through creating an 'event' or 'auction' lasting a period of time at which Bidders are encouraged to submit increasingly low prices in order to win 'lots'. Due to the dynamic nature of this process, it is potentially problematic to apply the e-tender opening process (described at i) above, given the demands this can make on Audit Sub-Committee Members' time.

In order to address this, the following process is proposed:

- The Audit Sub-Committee will be advised of the e-auction event dates and times and arrangements made to accommodate any or all Members of the Sub-Committee at the live auction event.
- At an Audit Sub-Committee meeting in advance of the e-auction event, a report will be presented to the Sub-Committee which explains the structure of the e-auction event and the evaluation criteria which will be implemented.
- Following the e-auction event, a summary report will be compiled and presented at the next meeting of the Audit Sub-Committee to ensure the Sub-Committee formally receive and record the outcome of the e auction process.

#### **4. INTRODUCTION OF THE PUBLIC SERVICES (SOCIAL VALUE) ACT 2012 AND THE LOCALISM ACT 2011 – COMMUNITY RIGHT TO CHALLENGE**

##### **4.1 The Public Services (Social Value) Act**

This Act places a number of statutory obligations on the Council, in relation to certain elements of its procurement practices.

The Act applies to all contracts for services and framework agreements to which the Public Contracts Regulations 2006 ('the Regulations') apply, but not call-offs under those frameworks. In real terms this means that the Act only applies to services contracts with a value in excess of the current EU Public Procurement thresholds (currently £173,934 excl. VAT).

The Act does not apply to below threshold contracts or any works or supplies contracts. However, it is likely that 'mixed' contracts involving services will be subject to similar analysis as is currently undertaken in terms of the dominant value test.

As the Act covered service contracts as defined in the Regulations the duty appears to extend to Part B service contracts since these service contracts are covered by the Regulations albeit the requirements for the procurement of such contracts are less onerous.

The Act also includes an amendment to section 17 of the Local Government Act 1988 (exclusion of non-commercial considerations in the case of local and other public authority contracts) which basically enables the Council to consider non-commercial matters when awarding business, provided this is done in pursuit of the duties imposed by the Public Services (Social Value) Act 2012.

4.2 The obligations placed on the Council in respect of the procurement activities identified above are that Council's must consider the following when they 'propose to procure or make arrangement for procuring services:

- How what is being proposed to be procured might improve the economic, social and environmental wellbeing of the relevant area (and this is the Authority's own area (or combined areas if it is a joint procurement) in which it 'primarily exercised its functions')
- How, in conducting the procurement process, it might act with a view to securing that improvement (although the Act makes it clear, in order to remain inline with EU law, that anything under this limb must be relevant and proportionate in respect of the proposed contract);
- Whether they need to undertake any consultation about the two limbs of the duty as set out above.

4.3 Unfortunately there is currently no universal definition of 'social value' but Social Enterprise UK defines it as follows:

*'It involves looking beyond the price of each individual contract and looking at what the collective benefit to a community is when a public body chooses to award contract. Social value asks the question: 'if £1 is spent on the delivery of services, can that same £1 be used, to also produce a wider benefit to the community.'*

In other words, what are the additional benefits to the community, be they social, economic or environmental, which can come from this procurement process over and above the direct purchasing of the services?

In their 'Public Services (Social Value) 2012 – a brief guide', Social Enterprise UK provide a case study by way of an example of compliance with the Act. In this example, the London Borough of Waltham included a question in one of their tenders where they asked bidders to demonstrate how their operational model could contribute to the efficiencies and give added value to the service. The response to this question had a value of 10% of the available marks. This question gave bidders the space to set out the additional social impact of their approach, thereby allowing them to score highly on that section and satisfying the requirements of the Act.



This is a straightforward example and similar to questions the Corporate Procurement Team include in some of their tenders already. On that basis, compliance with the Act should not be unduly difficult.

- 4.4 In terms of the CPR's it is proposed that a new section be included which outlines the Council's approach to addressing the requirements of the Act. This proposed section would include the following:

- i) Reference to the Council's Key Social Values, as described in the Community Strategy
- ii) Confirmation that the Council will consider the issues outlined in the Act (see 4.2)
- iii) Confirmation that, where appropriate, procurement processes will include the facility to score added 'Social Value' as part of the evaluation criteria.

#### 4.5 **Localism Act 2011 – Community Right to Challenge**

This Act brings with it a whole raft of legislation, but the proposed CPR changes in this document relate solely to the Community Right to Challenge part of the Act.

Briefly, this element of the Localism Act enables a 'relevant body' to make an expression of interest to a relevant authority (including the Council) to take over the running of relevant services. Relevant bodies as set out in the statutory guidance include voluntary and community bodies, charities, parish councils, two or more staff of the authority concerned and any other person or body specified by the Secretary of State by regulations.

The following proposed amendments are also contained in a report to Cabinet covering the introduction of the Community Right to Challenge legislation and the actions the Council needs to take to address these.

It is proposed that a new paragraph be included in the introduction of the CPR's under the heading '**Procurement Exercises undertaken as a result of a successful challenge under the Localism Act 2011**' which makes it clear that the CPR's will come into effect once a successful challenge has been made. The paragraph would also go on to emphasise the need for the Council to secure best value and to incorporate the requirements of the Public Services (Social Value) Act 2012 in any Localism related procurement activities.

Furthermore, reference would be made to the Council ensuring that evaluation and qualification criteria would not disadvantage the voluntary and third sector in competing for opportunities to run Council services.

Finally, reference would be made to the need for the Council to consider existing contractual obligations when timetabling procurement activity.

In addition to the above, it is proposed that an amendment be made to the paragraph which deals with '**The rules and an in-house provider**' to indicate that the Council's right to bring a service in-house as opposed to procuring it through a competitive procedure does not take precedence over our new obligation to competitively source a third party provider in the event of a successful challenge.

The final proposed 'Localism' related change to the CPR's relates to the '**Criteria for selection of Price/Performance and Partnering Contracts**'. It is proposed that an additional consideration point is added which introduces the issue of the Council pursuing its agenda in relation to the 3<sup>rd</sup> and Voluntary sectors when deciding its contracting strategy.

## 5. **CHANGES IN THE USE OF TECHNOLOGY AND OTHER PROCEDURES IN PROCUREMENT PROCESSES**

- 5.1 There are a number of additional proposed changes to the CPR's which revolve around changes in the use of technology.

Details of these changes and proposed amendments are provided below:

### 5.2 **The role of Officers – The Chief Officer/Officer Team**

It is proposed that an additional responsibility be added to this section of the CPR's, namely:

- To open electronic tenders

The above is not currently included and given the Council's move to electronic procurement it would be appropriate to make such a change and links with the change proposed in Paragraph 3.3 (i) of this report..

### 5.3 **Public Notice provisions**

It is proposed that the requirement for 28 days public notice be amended to 14 days. The rationale for this request is:

- Electronic communications and the wholesale movement of the Council to e-procurement has enabled a faster procurement process (EU procurement timescales are reduced when procurement is undertaken electronically),
- Increased availability of opportunity information to suppliers and;
- Increased speed in responding to opportunities.

In addition to these changes, there is a central government drive to reduce the time taken in procurement activities and, as we have the technology to support this, we should consider reducing our timescales in a similar manner to the EU procurement regulations (described above).

#### 5.4 **Reference to the Government Opportunities Portal – Supply2.gov.uk**

The above mentioned Government Portal has ceased to exist. As all tenders are now advertised across the North East via the NEPO Portal there is already significant publicity given to our contract opportunities.

It is proposed that all references to 'Supply2.gov.uk' be removed from the CPR's.

#### 5.5 **British Standards**

It is proposed that references to 'British standards' be widened, in order to accommodate organisations which have different accreditations or adopted other equivalent international standards.

#### 5.6 **Selected Lists**

It is proposed that the minimum size of a select list should be four 'persons' where practicable as opposed to the current three. Similarly, it is proposed that a minimum of four 'persons' where practicable are invited to quote in relation to work covered by a select list as opposed to the current three.

The rationale for these proposed changes is that due to the introduction of the Quick Quotes electronic quotation gathering system, the process of quotation gathering has been improved and it is now easier for officers to generate greater competition when securing quotes.

Greater competition should provide improved pricing for the Council.

In addition, the involvement of more suppliers in select list quotations will encourage suppliers to take part in our select list arrangements, on the basis that they will have a greater opportunity to win business once on the list.

## 5.7 Bribery Act 2010

It is proposed to change the reference to the Prevention of Corruption Acts 1889 to 1916 to the Bribery Act 2012 in line with changes in legislation.

## 6. CLARIFICATION OF PROCUREMENT PROCEDURES

6.1 Audit Committee identified a number of issues they and the Constitution Committee would want considering in their “Governance” role

6.2 The information requested was: -

1. *Explanation of, and how, the CPRs deal with a single bidder becoming a “preferred” bidder*

6.3 When inviting bids the CPR’s require that the documented ‘Public Notice Provisions’ are complied with.

6.4 Following the placement of the necessary advertisements and completion of the period in which we await responses to the advertisements the CPR’s require that ‘not less than four persons’ are invited to tender, however, ‘if fewer than four persons have applied’, all of those applicants should be invited to tender, provided they are considered suitable. This could be a single bidder.

6.5 The term “preferred bidder” is generally defined in contracts and is therefore the common term used to describe the contractor/developer that goes forward to carry out further work on a project. This is often, as in BSF and the Millhouse Masterplan on the basis that the “preferred bidder” must produce an approved delivery plan, usually prior to a financial close on the project, after which they would become the “appointed” developer/contractor rather than the “preferred bidder”. Even if there were only one bidder on a project (eg Millhouse) they would still be called the preferred bidder once asked to progress options which would be subject to approval. If there is no ultimate approval after option appraisal/negotiations then the bidder could then be rejected (ie would no longer be the preferred bidder).

2. *Explanation of PQQ process.*

6.6 The PQQ process is most visible when the Council undertakes a two stage procurement process. Such a process consists of the issue of a PQQ, followed by a shortlisting process, with the shortlisted applicants being issued with tender documents for them to complete and return.

6.7 Use of a PQQ can also occur during a single stage tender process. In such circumstances the tender documents are issued to bidders with the tender documents incorporating PQQ ‘type’ questions. On receipt of the tender the PQQ is evaluated and should the bidder not have passed the PQQ test the remaining elements of their tender would not be scored. The Council’s PQQ

has been refined over recent years in line with reviews undertaken internally, regionally and in conjunction with organisations such as the North East Chamber of Commerce.

### **Tenders**

- 6.8 Corporate Procurement carry out all tender activities for the Council (that is for all contracts with a value over £60k for goods and services and £100k for works). With all of these tenders one of the processes described above would be used (unless we were 'calling off' goods/services/works from a predetermined framework agreement or using a Council select list).
- 6.9 There has been a central government guidance (which does not apply to Local Government – although we will be working towards it which advises all central government departments to avoid using PQQ's for any procurement below £100k.
- 6.10 Whilst this may seem sensible it is important to consider the environment in which this requirement is intended to apply. Central Government departmental budgets are far larger than the majority of Local Authorities therefore the requirement that PQQ checks need not be carried out on contracts with a value below £100k probably affects a far smaller %age of that department's spend than would be the case for a Local Authority. Another shortcoming of this particular Central Government requirement is that it is a very blunt instrument and doesn't take account of the criticality or strategic significance of a particular contract, something which is not always reflected in its value.
- 6.11 It is important that the content of PQQs is reviewed on a continuous basis to ensure they are fair and equitable but also safeguard risks to the Council. As described below few PQQs are issued for below tender threshold work and services (i.e. below £100k and £60k)

### **Quotations**

- 6.12 Quotations (using the Council's Quick Quotes system) are required for all contracts with a value of £2000 up to the appropriate tender level. The minimum number of quotations required is 3 (where 3 suppliers are available).
- 6.13 Clearly there is a wide gap between £2000 and £60,000. There is no specific requirement for Departmental buyers to use a PQQ at any level of quotation and it is left up to Departments to decide whether such a mechanism is required for a particular procurement exercise.
- 6.14 As alluded to above, where a contract is for a critical service where it is essential that we do everything we can to ensure continuity of supply (e.g. Social Care type contracts), Departments may well feel justified in asking PQQ type questions to establish the financial stability and operational abilities of bidding organisations.

### 3. *Explanation of price/quality split in contracts.*

- 6.15 There are a variety of issues which have to be taken into account when considering the application of a price/quality formula for the evaluation of tenders/quotations.

The CPR's are silent on the issue of price/quality splits for quotations, however they do describe a number of requirements in relation to tenders, e.g. advertising requirements etc.

- 6.16 The logic behind the introduction of a price/quality split is based on the need to evaluate offers on the basis of more than just price.

- 6.17 The assessment of price is essentially straightforward, provided a true picture of costs for each bid can be developed, quality, however is far more subjective and covers the whole range of non-financial aspects of a bid. Some of the elements which come under the banner of 'quality' are listed below:

- Local economic and social benefits
- Aesthetic & functional characteristics
- Environmental characteristics
- After sales service
- Technical support, references and track record
- Lead times
- Power consumption
- Quality of staff delivering service

- 6.18 In developing a contract award criteria it is vital that the client department understand what it is they wish to achieve and what is important to them in terms of decision making. One of the benefits of clients jointly developing award criteria with the corporate procurement team is that a mixture of expertise and objectivity are combined, resulting in a workable solution which makes sense to the client and the supply base and which works when it comes to evaluating offers.

- 6.19 Only rarely is evaluation criteria based solely on price. This would really only work for the procurement of commoditised, off-the-shelf type products where the only differentiator would be price.

- 6.20 Development of the evaluation criteria forms part of the process of developing a tender strategy and its accompanying documentation. As part of its approach to tendering the Council's evaluation criteria is included in the tender documentation and serves to advise bidders of which bid attributes are important to the Council and which are less so.

#### 4. Use of sub-contractors.

- 6.21 The Council's standard terms and conditions for services contain a clause which relates to Contractor's permitted use of sub-contracting which reads:

*'Subject to any express provision of this Contract, the Contractor shall not without the prior written consent of the Council, assign all or any benefit, right or interest under this Contract or sub-contract the provision of the Services.'*

*The Council shall be entitled to:*

*Assign, novate or dispose of its rights and obligations under this Contract either in whole or part to any contracting authority (as defined in the Public Contracts Regulations 2006); or*

*Transfer, assign or novate its rights and obligations where required by law.*

*The Contractor shall remain responsible and liable for the acts and omissions of any other members of a consortium arrangement, sub-contractors, servants, agents and Employees as though they were its own.'*

- 6.22 This clause provides us with the necessary power to control any activities current contractors may wish to undertake with regard to sub-contracting services they currently deliver to the Council.
- 6.23 In terms of controlling sub-contracting activities for forthcoming contracts, we are able to incorporate a requirement in our tender documentation for bidders to identify key subcontractors and the nature and value of work they would be engaged to deliver on behalf of the main contractor.
- 6.24 This facility gives us an early sight of possible sub-contractor issues, before entering into any contractual arrangement.

#### 5. "Dealing with "unrealistically low" bids"

- 6.25 Procurement guidance to officers includes the following:-

*"Unrealistically high or low tenders should be challenged, as they may be due to errors or misunderstandings etc. Challenging such tenders does not automatically exclude them from the process – the tender may include innovation which has resulted in a vastly different price compared with others received."*

- 6.26 If it is suspected that there are unrealistic bids there are procedures in place to reject those bids.

*6. Details of the decision making process for officers in relation to identifying the appropriate procurement route.*

- 6.27 The diagram on the following sheet provides details of the various considerations officers make when determining the appropriate procurement route for their requirements.

**7. EQUALITY AND DIVERSITY CONSIDERATIONS**

- 7.1 There are no equality or diversity implications.

**8 SECTION 17 OF THE CRIME AND DISORDER ACT 1998 CONSIDERATIONS**

8. There are no implications under Section 17.

**9. RECOMMENDATIONS**

To note and provide comment.

**10. BACKGROUND PAPERS**

- 10.1 There are no background papers to this report.

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