

Procurement Committee**On****3rd January 2006**

Report Title: **Amendments to Tender Opening Procedures in Contract Standing Orders**

Forward Plan reference number (if applicable): **N/A**

Report of: **The Head of Legal Services and Monitoring Officer**

Wards(s) affected: **All**

Report for: **Recommendation to General Purposes Committee**

1. Purpose

- 1.1 To explain to Members of the Procurement Committee the reasons for revising Contract Standing Orders on Tender Opening Procedures and the options for doing this.
- 1.2 To seek the support of the Procurement Committee in recommending these proposals to the General Purposes Committee and full Council as amendments to the Council's Constitution.

2. Introduction by Executive Member

- 2.1 That Members of the Procurement Committee agree to support the proposals to amend Contract Standing Orders on Tender Opening Procedures, as described in paragraphs 8.2 and 8.3 and set out in Appendix 1 to this report

3. Recommendations

- 3.1 That Members of the Procurement Committee agree to support the proposals to amend Contract Standing Orders on Tender Opening Procedures, as described in paragraphs 8.2 and 8.3 and set out in Appendix 1 to this report.
- 3.2 That Members of the Procurement Committee agree to recommend these proposals to the General Purposes Committee and full Council as amendments to the Council's Constitution.

Report Authorised by:

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4. Executive Summary

4.1 The current arrangements for higher value tender opening are a wasteful use of staff resources. The report contains proposals for a uniform tender opening process that should be more cost effective while maintaining the integrity of tendering procedures. There are also comments from the Heads of Corporate Procurement and Internal Audit which are intended to meet the concerns expressed previously by General Purposes Committee

5. Reasons for any change in policy or for new policy development (if applicable)

5.1 N/A

6. Local Government (Access to Information) Act 1985

6.1 The following background papers were used in the preparation of this report:

(i) report to the General Purposes Committee on this matter on 17 January 2005 (ii) report to CEMB on this matter on 26 October 2005 (iii) the Council's Constitution.

7. Background

7.1 At present Contract Standing Orders (CSO 9.3) require that all tenders with an estimated value over £150,000 must be kept safe until opening by an officer appointed by the Head of Legal Services. This officer must record the time and date of receipt of all such tenders.

7.2 Tenders for contracts with an estimated value of £150,000 or less are kept safe until opening by an officer appointed by the Director of the Service responsible for commissioning the tendering process ("the client Service").

7.3 For all contracts, whatever the value, CSO 9.4 requires that the tenders must be opened at the same time in the presence of two officers who have not been involved in the tendering process. These officers must record the relevant tender details (e.g. name of contractor and total price).

7.4 In the case of lower value tenders opened by the client Services, it is usual for the tender opening officers to come from a team other than the team that commissioned the tendering process. Generally, this will still be a team within the same Directorate.

7.5 The problem has arisen within the Legal Service. The only staff with the training and experience to undertake safe custody and tender opening reliably are the commercial lawyers. Commercial lawyers are expensive and hard to recruit. They have to be paid at the normal high market rate even when they undertake routine administrative tasks such as taking custody of, opening, and recording details of, tenders.

7.6 During the calendar year 2004 tenders relating to approximately 80 distinct contracts were opened in the Legal Service. On average each contract involved 8 tenders. The work of tender custody and opening was approximately 320 officer/hours over the year. This is diverting lawyers from real legal work and is not a cost-effective use of resources.

7.7 Tenders with an estimated value in excess of £150,000 constitute, very approximately, 50 % of all tenders received under the competitive tendering procedures in Contract Standing Orders.

8. Report to General Purposes Committee

8.1 A report was prepared jointly by the Head of Legal Services and the Head of Corporate Procurement for the General Purposes Committee (GPC) which is responsible for recommending to full Council any proposed amendments to Contract Procedure Rules (Contract Standing Orders) which form part of the Council's Constitution.

8.2 The proposal in this report was to abolish the special procedure for tenders over £150,000 in value and to have a uniform process for all tenders similar to that already existing - but not involving the Legal Service.

8.3 It was to be made express in Contract Standing Orders that the tender opening officers were to come from a different team from that involved in commissioning the tenders. The selection, training and arrangements for due independence of the tender opening officers were to be approved by the Head of Corporate Procurement. He was in the process of completing a Training Manual for the use of these officers.

8.4 GPC considered these proposals at its meeting on 17 January 2005. Members agreed that the use of commercial lawyers was expensive for these tasks and agreed, in principle, that the work should not be undertaken by lawyers.

8.5 However, GPC Members expressed concern that in the proposals there would be insufficient safeguards for the independence of the tender opening officers. Members considered that they should come from a different Directorate from the tender commissioning team, not merely a different team within the same Directorate. Accordingly, the proposals were not approved for recommendation to full Council as they stood.

9. Proposals and Options

9.1 Officers from various Directorates have since met to discuss the practicality of complying with the views of the General Purposes Committee. A major problem is that moving all tender custody and opening from the commissioning Directorate to a different Directorate would entail significant extra expense, difficulty and delay as

compared to the present arrangements. This would not be helpful in the current financial climate where the Council is being required to find efficiency savings.

9.2 After careful appraisal of the possible administrative arrangements, a report was submitted to the Chief Executive's Management Board (CEMB) on 26 October. This set out 6 options and listed their perceived advantages and disadvantages. The options are now attached to this report as Appendix 2.

9.3 CEMB considered that Option 6 was to be preferred. This involves asking GPC to re-consider the view its Members took in January 2005 and to approve the original proposals but with additional safeguards to be provided by undertaking an Internal Audit Review and spot checks to provide assurance that the agreed procedures are being followed. These safeguards are further described in the Comments of the Head of Internal Audit and Risk Management at paragraph 13.3 below. The comments of the Head of Corporate Procurement are set out more fully than before.

9.4 Although GPC must make any formal recommendations to full Council for the amendment of Contract Standing Orders, the Procurement Committee has the primary responsibility for the application of Contract Standing Orders in practice. Any views expressed on this subject of Tender Opening by Procurement Committee Members would be an important factor for GPC Members to take into account.

10. Recommendations

10.1 That Members of the Procurement Committee agree to support the proposals to amend Contract Standing Orders on Tender Opening Procedures, as described in paragraphs 8.2 and 8.3 and set out in Appendix 1 to this report.

10.2 That Members of the Procurement Committee agree to recommend these proposals to the General Purposes Committee and full Council as amendments to the Council's Constitution.

11. Equalities Implications

11.1 There are no specific equalities implications.

12. Comments of the Head of Procurement

12.1 The changes proposed to Contract Standing Orders would make the Head of Procurement responsible for approving the suitability of tender opening officers including their seniority and training. This would involve setting up the arrangements to secure the separation of the tender opening officers from the tender commissioning team within the same Directorate.

12.2 Each Directorate would be asked to supply four officers who could be trained and called upon for tender opening duties. They would be drawn from several different teams. This would ensure that for any tendering exercise there would be at least two tender opening officers available from outside the tender commissioning team.

- 12.3 The officers selected would be of appropriate seniority and reliability for this routine but responsible task. They would be given training on the processes and standards to be applied. The officers to be selected have yet to be identified in all Directorates. Nonetheless, it is certain that the staff costs of undertaking tender opening in the commissioning Directorate would be considerably less than continuing to use lawyers
- 12.4 Ending the existing distinction between contract values estimated at more than £150,000 and those below that figure would help ensure consistency of process and standards across all the Council's Procurement activity.

13. Comments of the Head of Internal Audit and Risk Management

- 13.1 Internal Audit has considered the proposals contained in this report and also the concerns expressed by GPC Members last January about the possible risks of fraud and corruption if tender opening officers were drawn from the same Directorate as the tender commissioning team. The Internal Audit view is that any extra risk from the arrangements now proposed would be mitigated provided an appropriate framework is agreed and implemented effectively.
- 13.2 A framework must be agreed and put in place which defines the standard practices to be followed by all Directorates. This will ensure that appropriate controls, including the segregation of tender opening from commissioning, are in force and that there are audit trails which can be reviewed and monitored by service management and Internal Audit.
- 13.3 As an additional safeguard, Internal Audit can include a Review of the tender opening processes as part of the annual audit programme of work which would provide assurance that the risks are being managed effectively and that the controls in place are operating as intended. The Review would highlight any problems, areas of non-compliance or issues of control weaknesses. Spot checks by managers on compliance should be included in the agreed framework and made part of the routine checking process signed off by managers. This would demonstrate good risk management and improve controls.

14. Comments of the Director of Finance

- 14.1 The proposed amendments to tender opening procedures would result in more cost effective use of staff resources and should assist in achieving efficiency savings.

15. Comments of the Head of Legal Services

- 15.1 The proposed amendments to tender opening procedures would remove from commercial lawyers a routine administrative task that could be performed equally well by officers in other Service without any prejudice to the integrity of tendering procedures. It would enable the lawyers to focus on their proper roles i.e. giving legal advice to client Services and helping to improve Service delivery.
- 15.2 It would not be practicable or cost effective to employ extra administrative staff within the Legal Service just to carry out the tender custody and opening functions.

16. Use of Appendices / Tables / Photographs

- 16.1 Appendix 1 to this report sets out the amendments proposed to Contract Standing Orders at section 9 on the Receipt and Opening of Tenders.
- 16.2 Appendix 2 to this report sets out the options for tender opening procedures considered by the Chief Executive's Management Board on 26 October 2005.