

Supplier Pre-qualification and Ethical and Social Procurement

SUMMARY

- 1.1 The Resources and Governance Board have requested a briefing on the subjects of Supplier pre-qualification and Ethical and Social Procurement.
- 1.2 The report details current Derby City Council practice regarding supplier pre-qualification and ethical and social procurement.
- 1.3 Contracts over £30,000 are open to all suppliers either directly, following an advertisement on our procurement advertising portal, Source Derbyshire or via framework agreements which are also openly advertised. Suppliers are asked to supply information in order to determine their suitability to fulfil the contract.
- 1.4 Requirements for Supplier pre-qualification are:
 - Tailored to suit the requirements to minimise unnecessary bureaucracy for low value, low risk contracts and ensure that suppliers are adequately assessed for higher value, high risk contracts.
 - Not duplicated when suppliers have already pre-qualified with accreditation bodies that we recognise
 - Standardised across East Midlands local authorities. A working group (including DCC procurement) is currently finalising the standard document.
- 1.5 The Procurement team consider the ethical implications of each procurement and include requirements in tender documents to mitigate negative impacts, particularly when procuring clothing, catering supplies and ICT products.
- 1.6 The Procurement team are seeking to boost Apprenticeships and training opportunities by including requirements in appropriate contracts
- 1.7 Both pre-qualification and ethical and Social sourcing are covered by EU procurement legislation. It is expected that some current restrictions will be relaxed in new regulations which are expected later in 2014.

RECOMMENDATION

- 2.1 That the Committee note the contents of the report.

REASONS FOR RECOMMENDATION

- 3.1 Committee members requested a briefing on Supplier pre-qualification, Ethical and social procurement including Apprenticeships.

SUPPORTING INFORMATION

SUPPLIER PRE-QUALIFICATION

- 4.1 **How does a potential supplier obtain a contract with Derby City Council?**
Derby City Council (DCC) procurement procedures are designed to maintain compliance with EU and UK procurement legislation. The legislation mandates the principles of 'Equal Treatment, Transparency, Proportionality and Non-discrimination'. Open Competition is fundamental to the regulations which reflect and reinforce UK policy which requires that all public procurement must be based on Value for Money (vfm) that is 'the best combination of whole-life cost and quality which meets the user's requirement.

For contracts valued £30,000 and above the procurement team in conjunction with the user department will decide the procurement method to be used from two options.

- An open advertisement via the Source Derbyshire website which allows all potential suppliers to download the contract details and submit a response, contracts over £172,514 are also advertised in the Official Journal of the European Union. For straightforward requirements the suppliers will submit the qualification details along with the method statement and pricing. (Open procedure), for requirements where there will be many responses and the cost of preparing the bid will be high, a two stage approach will be employed (restricted procedure), the suppliers will complete a prequalification questionnaire and the highest scoring suppliers, usually 5 to 8 will be issued with the tender documents to complete. Both the PQQ and the tender responses are assessed according to the criteria issued with the documents.
- Using a pre- negotiated Framework agreement. A tender is sent to suppliers who have bid and been awarded a place on a framework agreement. This is effectively a shortlist of suppliers who have qualified to supply goods and services following an open competition. Framework agreements are useful as they reduce the timescale for procurement as the pre-assessment of suppliers has already been undertaken.

For orders valued between £5000 and £30,000 a minimum of 3 quotations must be obtained with at least one local supplier included where possible.

4.2 Background to Supplier Pre-Qualification (PQQ)

Public sector tender processes can be broken down to two distinct stages.

- The pre-qualification, or selection stage, is the point in the procurement process where public bodies are able to assess a bidder's capacity and capability to carry out the contract and, where appropriate, to shortlist those bidders to invite to tender.
- The award stage, which involves examination of the merits of the bids.

The PQQ stage can therefore be pivotal to the successful operation of Council functions as it ensures that suppliers bidding to provide goods and services have the necessary financial standing, experience and capability to undertake the work.

DCC awards contracts of varying value ranging from very small to multi million pounds. It is recognised that the level of information required for a low value, low risk contract is not the same as a very high value or high risk contract.

As a result the PQQ is varied to suit the requirement.

All contain a number of core questions:

- Criminal Convictions / Business Probity
- Economic Financial Standing
- Insurance
- Experience – Technical / Professional Capability

Depending on the nature of the contract, value and risk other questions may be asked:

- Business Continuity
- Health and Safety
- Quality Assurance / Information Security
- Equality and Diversity
- Environmental Management
- Safeguarding (Vulnerable Adults / Children)

Example PQQ questions will be included in the presentation to the Board.

4.3 **PQQ's – the view of some suppliers, particularly SMEs**

The pre-qualification process is frequently cited by businesses as one of the main barriers to doing business with the public sector due to:

- lack of standardisation of pre-qualification questions;
- disproportionate qualification requirements, and
- the need to continually re-submit the same information time and time again.

4.4 **What has DCC done to mitigate this barrier?**

The DCC procurement team is keen for SMEs and particularly local SMEs to supply Council requirements. To this end the team has:

- Streamlined the PQQ questions and ensured that the Pass/Fail questions are clear and the evaluated questions have clear evaluation criteria which are available to suppliers at the outset..
- Introduced tailored PQQs to avoid unnecessary bureaucracy and ensure the questions are proportionate and relevant to the contract.
- Provided training to SMEs and voluntary groups on how to complete the PQQ.
- Offered debriefing to unsuccessful bidders to assist them with future bids.
- Accept accredited prequalification from bodies such as Constructionline. For example companies already accredited by Constructionline do not have to repeat some sections of the questionnaire.
- Encouraged the development of an East Midlands standard PQQ. Common questions have been agreed by Nottingham City, Nottinghamshire, Derbyshire, Leicester, Leicestershire, Eastern Shires Purchasing and DCC.

4.5 **Government action.**

For central government departments the Government has mandated that PQQ's should not be used for contracts under £100,000.

If DCC were to follow this example a large proportion of contracts would be awarded with only minimal accreditation and would introduce significant risk to the delivery of services.

Rather than abandoning the PQQ process a better solution would be for Government to establish a central database for suppliers so they register once and the data is then available to public sector buyers. This would provide the necessary assurances with a single accreditation by the supplier. Single accreditation already operates successfully in several industries such as rail and utilities.

SOCIALLY RESPONSIBLE OR ETHICAL PROCUREMENT

- 4.6 When contracting for goods and services the procurement team, as part of pre-procurement risk assessment checks, will consider ethical issues in order to reduce the incidence of employers in the DCC supply chain ignoring human rights, local labour laws and International Labour Organisation (ILO) conventions in developing countries and thereby avoid potential reputational damage to DCC.

4.7 **Commodity areas** which have been highlighted by Government as being at risk of having unethical practices in the supply chains are:

- Agricultural products – wages that barely cover basic living costs
- Garments / apparel - workers receive extremely low wages, long working hours, use of child labour, poor working conditions and poor safety facilities such as fire escapes.
- ICT products - reports state there is widespread exploitation of temporary agency workers in this sector and conditions of workers in subcontract suppliers are often very poor.

4.8 **Derby City Council (DCC) Legal position.**

All public procurement must be carried out in accordance with the EC Treaty and EC Public Procurement Directives.

This legal framework requires contracting authorities to award contracts, in line with EC Treaty principles, including the principles of non-discrimination, equal treatment, transparency, procedural fairness, mutual recognition and proportionality. In accordance with the procurement rules, it is therefore necessary to ensure that ethical issues are relevant to the subject matter of the contract and consistent with the Government's procurement policy based on value for money. This excludes public bodies from considering within the procurement process how companies providing the goods and services manage their business generally, beyond relevant legal obligations such as on health and safety and employment.

4.9 DCC actions.

DCC may work in partnership with suppliers, particularly in the areas highlighted as being at risk, to pursue wider ethical issues outside the public procurement process. This must however be done post-award and on a voluntary basis as contracts must not set standards that exceed EU law, as this may deter bidders from member states and could be challenged as a restriction on free trade.

Issues raised with suppliers could include that:

- Working conditions are safe;
- Good health is promoted;
- Employment is freely chosen;
- Working hours are not excessive;
- Wages meet at least national legal standards;
- Training is provided;
- No discrimination is practised;
- Diversity and good workforce practices are encouraged;
- Child labour is eliminated;
- No inhumane treatment is allowed.

Suppliers can be informed at tender stage that these are the standards we expect but these elements cannot be scored. It is expected that changes to the procurement regulations due later in 2014 will allow social and ethical standards to be expressly stated as requirements.

- 4.10 **Uniforms and Clothing contract.** A tender is about to be issued for uniforms and clothing. Ethical Sourcing questions have been included in order to minimise the risk of poor practice in the suppliers supply chain.
The requirement for catering products to be 'fairly traded' is already included in our specifications.

Local Social Benefits from Procurement – Apprenticeships and training

- 4.11 The Procurement regulations do not allow the blanket use of 'social clauses' in contracts to deliver outcomes such as training opportunities. As a result recent practice has been to rely on voluntary agreements with contractors to deliver social benefits. Past examples of contractors actions are, agreements to recruit via the local jobcentre, providing work placements for students and apprenticeships. The focus on such voluntary agreements has been on regeneration contracts. There are no DCC wide statistics detailing the benefits resulting from such agreements.
- 4.12 During the past two years the procurement team have been focussing on how DCC procurement spend can improve the local economy whilst remaining compliant with the EU procurement regulations
- 4.13 To comply with procurement legislation a blanket mandate to include the requirements for apprenticeships cannot be imposed as 'addressing skills needs through procurement must be proportionate to the primary aim of the contract and must relate to the supplier's performance of the contract, not to the supplier's wider workforce'.
- 4.14 To achieve a compliant solution the procurement team ensure that, at the planning stage, the project is assessed to determine if the inclusion of a clause mandating the employment of an apprentice(s) is
- Compliant with the regulations and the need to demonstrate value for money.
 - Possible within the scope of the requirement for example a £3 million construction project which only lasts 25 weeks would not allow sufficient time for specifically recruited apprentices to complete their training.
- 4.15 Once agreed, the requirement will be stated in the tender documents at the start of the tender process. The requirement could be a simple statement for example:
- A requirement for one apprentice per £one million of contract value or
 - The Contractor shall ensure 5% of the employees or that a similar specified proportion of hours worked in delivering the contract (including administration and support staff and sub-contractors) are to be delivered by an employee on a formal Apprenticeship programme.
- The Procurement team advise on which is the most appropriate based on the type, duration and value of the requirement.

- 4.16 Potential suppliers will be asked to outline any employment and training opportunities that might be created within their organisation as a result of a contract awarded by Derby City Council. These should include:
- New vacancies and new entrants opportunities
 - 4 week work experience placements
 - Accredited training courses / apprenticeships (In recognition of the relatively short duration of the project, bidders should also indicate if they intend to employ existing apprentices / trainees on the project).
- 4.17 As the formal inclusion of apprenticeships and training requirements in tenders is a recent introduction there are as yet no results recorded.

OTHER OPTIONS CONSIDERED

5.1 Not applicable

This report has been approved by the following officers:

Legal officer Financial officer Human Resources officer Estates/Property officer Service Director(s) Other(s)	Martyn Marples – Director of Finance and Procurement
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IMPLICATIONS

Financial and Value for Money

- 1.1 The report describes ethical procurement activity included with the DCC procurement processes which are designed to deliver value for money. In addition the aim is to minimise the risk of costly reputational damage.

Legal

- 2.1 The Procurement team ensure that Procurement activity undertaken by DCC is compliant with the EU and UK Procurement regulations.

Personnel

- 3.1 None.

Equalities Impact

- 4.1 Ethical procurement supports the adoption of good equality and diversity practices.

Health and Safety

- 5.1 Ethical Procurement supports the adoption of good health and safety practice throughout the DCC supply chain.

Environmental Sustainability

- 6.1 Ethical Procurement supports the adoption of good environmental practice throughout the DCC supply chain.

Property and Asset Management

- 7.1 None.

Risk Management

- 8.1 Aims to reduce the risk of reputational damage as a result of being linked to poor practice in our supply chain.

Corporate objectives and priorities for change

- 9.1 Procurement strategy is designed to support council objectives for example:

A thriving sustainable economy
People achieving their learning potential
A skilled and motivated workforce