

**COMMERCIAL PROPOSALS PROTOCOL**

*To:* **General Purposes Committee**

*Meeting Date:* **15 March 2016**

*From:* **Chief Finance Officer**

*Electoral division(s):* **All**

*Forward Plan ref:* **N/a**

*Key decision:* **No**

*Purpose:* **To establish a set of broad guidelines that set out appropriate levels of Member engagement to be applied when developing commercial proposals for developing additional or new revenue streams.**

*Recommendation:* **It is recommended that the Committee approve the Commercial Protocol as set out in Appendix 2**

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## 1. BACKGROUND

- 1.1 In October 2015 Council received a report from Internal Audit following a review of the issues that arose regarding a proposal to commercialise the third floor of Cambridge Central Library. The report was approved by Council.
- 1.2 The report contained a number of recommendations that were deemed necessary in order to avoid a repeat of the issues that arose during discussions regarding the engagement of a private sector organisation to derive a new revenue stream from the Central Library in Cambridge, often referred to as the CLEC proposal.

## 2. MAIN ISSUES

- 2.1 One of the recommendations of the report was for the Council to agree a Commercial Proposals Protocol. The report included a draft to assist this process. The recommendation contained in the report was as follows:-

“Consequently, we recommend that the following action is undertaken:

An outline Commercial Proposals protocol has been developed (see **Appendix 1**, to enable officers to develop commercial protocols which involve working alongside the private and voluntary sectors. Audit recommend that this draft protocol is referred to the General Purposes Committee for their consideration and to agree a final version, which officers must follow if they are approached by or approach an external organisation with a commercial proposal.”

- 2.2 At the last Audit and Accounts Committee the Chairman requested that responsibility for this action be assumed by the Chief Finance Officer in order to bring the action to a close. As a result the draft protocol was taken to the Council's Strategic Management Team for consideration. A number of issues arose from that discussion the key elements of which are set out below:-

- There was acceptance that, as officers, the communication and engagement right regarding the development of the Central Library proposal.
- There was however a general feeling that the protocol as drafted was overly cumbersome and would not necessarily achieve the outcomes that Members were seeking from the process.
- If implemented, as drafted, it was feared that it would create a process that would stifle the Council's ability to do day-to-day business.
- There was also a concern that it also was contradictory to elements of the Constitution.
- The draft protocol didn't qualify what was meant by a commercial arrangement. Which require Member engagement in low-level routine activity which. SMT did not believe this was the intended outcome that Members were seeking from this process.

- 2.3 As a result of this discussion a revised version of the Protocol has been drafted for the Committees consideration and is attached as **Appendix 2** to this report. It is hoped that this reflects the general tenure of what was originally intended, delivering appropriate Member engagement, but avoiding the need for Member engagement in the routine operations of the Council.

### **3. ALIGNMENT WITH CORPORATE PRIORITIES**

#### **3.1 Developing the local economy for the benefit of all**

There are no significant implications for this priority.

#### **3.2 Helping people live healthy and independent lives**

There are no significant implications for this priority.

#### **3.3 Supporting and protecting vulnerable people**

There are no significant implications for this priority.

### **4. SIGNIFICANT IMPLICATIONS**

#### **4.1 Resource Implications**

There are no significant implications within this category.

#### **4.2 Statutory, Risk and Legal Implications**

There are no significant implications within this category.

#### **4.3 Equality and Diversity Implications**

There are no significant implications within this category.

#### **4.4 Engagement and Consultation Implications**

There are no significant implications within this category.

#### **4.5 Localism and Local Member Involvement**

There are no significant implications within this category.

#### **4.6 Public Health Implications**

There are no significant implications within this category.

### **SOURCE DOCUMENTS GUIDANCE**

<b>Source Documents</b>	<b>Location</b>
Audit and Accounts Committee Central Library Enterprise Centre Report 13 <sup>th</sup> October 2015	<a href="http://www2.cambridgeshire.gov.uk/CommitteeMinutes/Committees/AgendaItem.aspx?agendaItemID=12127">http://www2.cambridgeshire.gov.uk/CommitteeMinutes/Committees/AgendaItem.aspx?agendaItemID=12127</a>
Audit and Accounts Committee minutes 22 <sup>nd</sup> September 2015	<a href="http://www2.cambridgeshire.gov.uk/CommitteeMinutes/committee-">http://www2.cambridgeshire.gov.uk/CommitteeMinutes/committee-</a>

<p>Council minutes 21<sup>st</sup> July 2015</p> <p>Council Report Central Library Enterprise Centre Report October 2015</p>	<p><a href="http://www2.cambridgeshire.gov.uk/CommitteeMinutes/committees/audit-and-accounts-ctte/2015-09-22/Minutes/9951/aac150922.doc">document.aspx/committees/audit-and-accounts-ctte/2015-09-22/Minutes/9951/aac150922.doc</a></p> <p><a href="http://www2.cambridgeshire.gov.uk/CommitteeMinutes/committees/cabinet-and-council/Council/2015-07-21/Minutes/10044/ccl1507.doc">http://www2.cambridgeshire.gov.uk/CommitteeMinutes/committees/cabinet-and-council/Council/2015-07-21/Minutes/10044/ccl1507.doc</a></p> <p><a href="http://www2.cambridgeshire.gov.uk/CommitteeMinutes/Committees/AgendaItem.aspx?agendaItemID=12183">http://www2.cambridgeshire.gov.uk/CommitteeMinutes/Committees/AgendaItem.aspx?agendaItemID=12183</a></p>
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## **Outline Commercial Proposals Protocol**

### **1. Introduction:**

- 1.1 Cambridgeshire County Council is committed to achieving best value for money, while maintaining the principles of transparency and openness. In the current economic climate, the Council must seek to maximize innovation and inward investment opportunities for the county.

### **2. Purpose:**

- 2.1 This protocol sets out the appropriate procedure for officers to follow in cases where Cambridgeshire is approached by or approaches an external organisation with a commercial proposal.
- 2.2 This protocol should be used alongside other protocols, guidance and policy relating to procurement, partnership working and Member engagement.

### **3. Delegation of Authority:**

- 3.1 In line with the Council's Scheme of Financial Management, maximum authorisation limits for officers seeking to procure goods and services are set as follows:
- Up to £5,000 – Officers at Scale 5 to SO2;
  - Up to £50,000 – Officers at MB1 to MB3;
  - Up to £150,000 – Officers at MB4 to HS2;
  - Up to £500,000 – Officers at HS3 to Director C;
  - Unlimited – Chief Executive, Executive Directors, Service Director Customer Service and Transformation and Chief Finance Officer.
- 3.2 Any decision to enter into a commercial arrangement following a specific approach made to the Council by a private company must be made in consultation with members, if the total value of the transactions relating to the arrangement (income or expenditure) is £5,000 or more.
- 3.3 Any decision to enter into a commercial arrangement following a specific approach made to the Council by a private company is to be considered a Key Decision if the total value of the transactions relating to the arrangement (income or expenditure) is £500,000 or more over five years.
- 3.4 Where this protocol is not followed, an exemption report outlining the reasons for this should be provided to the Monitoring Officer for approval.

### **4. Procedure:**

- 4.1 Minutes must be taken of all meetings and discussions with external organisations regarding commercial proposals.
- 4.2 The relevant Committee Chair must be informed of all commercial proposals which are put to the Council by private or voluntary sector organisations. The Chair and the Executive Director may then agree on the appropriate time to take the proposals to Spokes for an initial reaction.

- 4.3 Prior to undertaking further work on the proposal, the Council's standard due diligence checks must be carried out.
- 4.4 Officers should consult Legal Services; Finance; Procurement; and Property at the very earliest stages of reviewing a commercial proposal, for advice and guidance on key considerations which must be taken into account.
- 4.5 Market research must be conducted by Council officers at the initial stage of reviewing a commercial proposal, and should include consideration of:
- Whether there is already any similar provision available in the local market;
  - The potential impact of the proposal on the local market;
  - Whether there is likely to be sustained demand for the proposed services.
- 4.6 On the basis of the market research conducted, an initial options appraisal should be drawn up. As a minimum, this should compare the proposal with the 'do nothing' option and the possibility of attempting a similar in-house provision. Options should be appraised in light of:
- Their financial benefits;
  - Their non-financial benefits;
  - Their impact on the organisation and stakeholders, with the assessment of this being informed by initial public consultation;
  - The risks relating to each option;
  - and their resource requirements.
- 4.7 At this stage, if it is the opinion of officers that the commercial proposal represents the best value for the Council and local residents, a report should be taken to Committee outlining the proposal and the alternatives, for a decision to be taken on whether the project should be pursued further.
- 4.8 Where projects of a commercial nature are underway, but have not yet progressed to the point of requiring a decision paper to be taken to Committee, updates on progress should be a standing agenda item for Spokes meetings, to enable continued Member oversight and engagement with the development of major projects.
- 4.9 Where progress reports or other items relating to commercial proposals are taken to Spokes or to Committee, they should only be marked as 'confidential' if confidential information is included in the report.

## **5. Unique Commercial Proposals:**

- 5.1 Officers must fully explore the opportunity to go out to tender for all commercial proposals received. Where a proposal is considered to be truly unique and may only be achieved by working in partnership with one specific organisation, the following steps must be followed:
- The service must obtain the agreement of the relevant Service Director.
  - A report must be produced which clearly outlines the reasons that the proposal is considered to be unique, including information on the options appraisal and market research carried out, and setting out how the Council will demonstrate that Best Value has been achieved.
  - The report should be submitted to the Contract Review Group for comment and challenge.
  - The report should then be submitted for approval along with a formal Exemption Request Form to the Chief Officer and the Head of Procurement, and any further officers specified by the Council's Contract Procedures Rules based on the value of the contract.

### Commercial Proposals Protocol

#### 1. Introduction:

- 1.1 Cambridgeshire County Council is committed to achieving best value for money, while maintaining the principles of transparency and openness. In the current economic climate, the Council must seek to maximize innovation and inward investment opportunities for and believes becoming more commercially minded will help the Council mitigate the implications of austerity.
- 1.2 Becoming more commercially minded will result in the Council driving revenue generating opportunities and taking greater commercial risks and developing proposals that are outside of what has traditionally been 'core business'. Not all proposals will be accepted and the Council must support and encourage the identification of all opportunities even if some are ultimately not pursued.
- 1.3 As a local authority the Council will need to balance the need to be open and transparent with the need to ensure that any commercial negotiation is not compromised. This can often be a difficult to articulate in a protocol as each proposal being considered will carry varying risks, be they reputational, financial, or regulatory.

#### 2. Purpose:

- 2.1 The purpose of this protocol is to establish a framework within which officers of the Council can operate when considering commercial proposals be they generated by officers, or where approaches are received from external organisations.
- 2.2 The approach adopted must be proportionate to the level of risks that are associated with the proposal. There is therefore a need to balance the need for transparency and appropriate Member engagement with the need to ensure that the process does not become embroiled within unnecessary bureaucracy.
- 2.3 This protocol is not a stand-alone document and should therefore be used in conjunction with other protocols, guidance and policy relating to procurement, partnership working and Member engagement.

#### 3. Scope of the Protocol

- 3.1 A commercial proposal, without definition, could be construed to include most of the transactions and day-to-day business of the Council. This was clearly not the intention of the report considered by the Council last year. It would neither be in the interests of the Council or that of Members were they to become embroiled in the operational running of the Council's business. Therefore the scope of what this protocol is intended to cover is set out as follows:

**A commercial proposal is one that is prepared, undertaken, or considered with the sole or chief emphasis on generating revenue, profit, or success.**

This will therefore exclude normal day-to-day business that is already well governed by standards and guidelines set out in the Constitution and the Contract procedure Rules.

#### **4. Delegation of Authority:**

- 4.1 In line with the Council's Scheme of Financial Management, maximum authorisation limits for officers seeking to procure goods and services are set as follows:
- Up to £5,000 – Officers at Scale 5 to SO2;
  - Up to £50,000 – Officers at MB1 to MB3;
  - Up to £150,000 – Officers at MB4 to HS2;
  - Up to £500,000 – Officers at HS3 to Director C;
  - Unlimited – Chief Executive, Executive Directors, Service Director Customer Service and Transformation and Chief Finance Officer.
- 4.2 In addition the Council's Contract Procedure Rules set out some specific requirements in relation to income generating opportunities as follows:

#### **11 Income Generating Purchases**

11.1 Where an Officer is proposing to enter into a Contract where either;  
(i) the Council will be the service provider, or  
(ii) the Contract may generate income for the Council possibly to off-set the monies otherwise payable by the Council to the supplier (e.g. a sponsorship agreement), in addition to the other requirements in these rules,

11.2 The Officer shall only enter into a Contract if the relevant Chief Officer is satisfied that:

- ☐ the services to be provided and any benefits to the Council have been clearly specified;
- ☐ the Council has power to provide the service, if applicable;
- ☐ the proposed Contract is in the best interests of the Council.

- 4.3 When considering and evaluating a commercial proposal, where the potential proposal will create a potential additional revenue stream in excess of £50,000, the lead officer must engage the relevant spokes to inform them of the proposal that is being evaluated. This should be at the point that this becomes a proposal that is to be seriously evaluated. Whilst this is difficult to define the presumption is that if in doubt – engage.
- 4.4 Where the proposition has been included as a saving proposal within the Business Plan the matter should be highlighted to the relevant service committee as part of the briefing on the Business Plan proposals. This will ensure full committee engagement before the matter is progressed with any rigor.



- 4.5 Where the proposition involves the alternative use of a public facing assets or services the relevant local member (if applicable) will be notified of the potential options under consideration at the same point that this matter is raised with the relevant committee spokes.
- 4.6 Any decision to enter into a commercial arrangement following a specific approach made to the Council is to be considered a Key Decision if the total value of the transactions relating to the arrangement is £500,000 or more over five years.
- 4.7 Where this protocol is not followed, an exemption report outlining the reasons for this should be provided to the Monitoring Officer for approval and be retrospectively reported to the relevant service committee.

## **5. Procedure:**

- 5.1 Where meetings are held with external organisations regarding the development of new, or extensions to existing commercial proposals, that are likely to result in new or additional revenue streams in excess of £50,000 notes of those meetings will be taken.
- 5.2 The relevant Committee Chair must be informed of all commercial proposals, in excess of £50,000, which are put to the Council by private or voluntary sector organisations as soon as is practical. The Chair and the relevant Director may then agree when it is appropriate to take the proposals to Spokes for an initial reaction.
- 5.3 Prior to undertaking significant work on evaluating the potential of the proposal, the Council will undertake appropriate due diligence checks on the option under consideration, the organization with whom the Council is engaged, the power under which the Council will be entering the arrangement, and any other key issues that could affect the successful delivery of the project.
- 5.4 Officers should consult the Council's relevant professional services at the very earliest stages of reviewing a commercial proposal, for advice and guidance on key considerations that must be taken into account in the evaluation of the proposal.
- 5.5 Market research must be conducted by Council officers at the initial stage of reviewing a commercial proposal. This evaluation must include consideration of:
- Whether there is already any similar provision available in the local market;
  - The potential impact of the proposal on the local market;
  - Whether there is likely to be sustained demand for the proposed services.
- 5.6 On the basis of the market research conducted, an initial options appraisal should be drawn up. As a minimum, this should compare the proposal with the 'do nothing' option and the possibility of attempting a similar in-house provision. Options should be appraised in light of:
- Their financial benefits;
  - Their non-financial benefits;

- Their impact on the organisation and stakeholders;
- Where appropriate the assessment of the impact on stakeholders can be informed by initial public consultation (any such consultation needs to be proportionate to the proposal under consideration);
- The risks relating to each option;
- The resource requirements.

5.7 At this stage, if it is the opinion of officers that the commercial proposal represents the best value for the Council a report should be taken to Committee outlining the proposal and the alternatives, for a decision to be taken on whether the project should be pursued further.

5.8 Where progress reports or other items relating to commercial proposals are taken to Spokes or to Committee, they should only be marked as 'confidential' if confidential information is included in the report.

## **6 Unique Commercial Proposals:**

6.1 All commercial proposals are subject to the same contract procedure requirements as contracts for the delivery of services. Officers must therefore explore the opportunity to go out to tender for all commercial proposals in line with the requirements in those rules. Where a proposal is considered to be truly unique and may only be achieved by working in partnership with one specific organisation, the following steps must be followed:

- The service must obtain the agreement of the relevant Service Director.
- A report must be produced which clearly outlines the reasons that the proposal is considered to be unique, including information on the options appraisal and market research carried out, and setting out how the Council will demonstrate that Best Value has been achieved.
- The report should then be submitted for approval along with a formal Exemption Request Form to the Chief Finance Officer, the Monitoring Officer and the Head of Procurement based on the requirements of the Council's Contract Procedures Rules.