

A CHANGE TO THE COUNCIL'S CONTRACT PROCEDURE RULES FOR WHEN THE COUNCIL RECEIVES FEWER THAN THREE BIDS BACK FROM A COMPETITIVE PROCESS

To: Constitution and Ethics Committee

Meeting Date: 20th June 2017

From: Supply Chain and Commercial Development Manager, LGSS Procurement

Purpose: A change to the Council's Contract Procedure Rules for when the Council receives fewer than three bids back from a competitive process.

Recommendation: The Constitution and Ethics Committee is asked

- a) to support the proposal that whenever a competitive procurement receives fewer than three bids, written approval to read and evaluate the responses is obtained from the following three senior officers without the need for the relevant Committee to grant approval:
 - 1) The Chief Officer for the area conducting the procurement
 - 2) The Monitoring Officer
 - 3) The Chief Finance Officer
- b) to recommend to Council that paragraph 4.7 of Part 1 of the Contract Procedure Rules be amended to read (additional text in bold):

4.7 Exemptions over the Council's Key Decision Threshold

Exemption requests cannot be sought for exemptions equal to or above the Council's Key Decision threshold, **except where the minimum number of bids cannot be obtained following a competitive process (tender/call off from a framework etc.).** In that case, written approval to read and evaluate the responses must be obtained from the Chief Officer for the area conducting the procurement and the Monitoring Officer and the Chief Finance Officer.

<i>Officer contact:</i>	
Name:	Gus de Silva
Post:	Supply Chain and Commercial Development Manager, LGSS Procurement
Email:	GDeSilva@northamptonshire.gov.uk
Tel:	01604 366769

1. BACKGROUND

- 1.1 The Contract Procedure Rules set out rules for all staff and Members to follow the Council's position on contracting and procuring goods, services and works on behalf of the organisation. This includes behaviour according to spend and according to types of procurement decisions.
- 1.2 These rules are available to staff on the intranet and are included in the Council's Constitution as Annex 2 to Part 4.6 – Financial and Contract Rules.
- 1.3 In any instance where the rules are not followed, an exemption process is used and documented to justify the rationale. Often there may be exceptional circumstances where it is in the best interest of the Council to deviate slightly from the rules. This exemption process and approval route is documented in the Contract Procedure rules. The exemption process operates solely up to the Council's Key Decision limit (£500,000). Thereafter it must go to the relevant Committee appropriate to the nature of the contract via the Committee process.
- 1.4 Following a recent audit of tendering and procurement processes conducted by various service areas in the council it was noted that on occasions a competitive tender process was conducted following EU laws, which include EU and national advertising and awarding the opportunity and set minimum times to keep an opportunity open for interest, but nonetheless the outcome was that fewer than three bidders responded.
- 1.5 There are various reasons this could happen, such as lack of interest, market conditions and appetite, or niche supply for the services.
- 1.6 In these scenarios it was difficult for Audit to evidence that permission had been given from Committee to move forward with fewer than three bids. In some instances there was no evidence at all and in other instances the premise was discussed for approval but not necessarily this point.
- 1.7 It is also difficult to determine the likely number of responses until the deadline has passed. Strict EU procurement rules ensure that responses cannot be reviewed until the closing date has passed.

2. MAIN ISSUES

- 2.1 If fewer than three tenders are received the exemption process must be followed. However when the contract/procurement is over the key decision threshold this means going to Committee specifically for this reason. This can delay the tender process, its timelines, and notice to those bidders who did take the time to formally respond to a tender under such circumstances. Tender responses are often only valid for 30 to 60 days and seeking specific Committee approval to read and evaluate the bids in the event than fewer than three bids are received can cause delay. ,.
- 2.2 Seeking permission to procure goods, services or works will and must always go to Committee for approval if it is a key decision, and there is no proposal to change this.

- 2.3 Seeking permission to award to the preferred bidder of procured goods, services or works will and must always go to Committee for approval if it is a key decision, and there is no proposal to change this.
- 2.4 What is being asked is that if the response to the number of bids is low, then the Officer does not need to go to Committee to seek approval to read and evaluate the responses.
- 2.5 From an audit point of view it becomes difficult to track which committee papers have this question raised and answered amongst the other decisions raised at Committee.
- 2.6 In terms of scrutiny the proposal is to change the Contract Procedure Rules (specifically paragraph 4.7 of Part 1) to include the **bold** addition to the existing clause:

4.7 Exemptions over the Council's Key Decision Threshold

Exemption requests cannot be sought for exemptions equal to or above the Council's Key Decision threshold, **except where the minimum number of bids cannot be obtained following a competitive process (tender/call off from a framework etc.). In that case, written approval to read and evaluate the responses must be obtained from the Chief Officer for the area conducting the procurement and the Monitoring Officer and the Chief Finance Officer.**

Source Documents	Location
Contract Procedure Rules	Part 4.6 Annex 2 of the Constitution at https://cmis.cambridgeshire.gov.uk/ccclive/Documents/PublicDocuments.aspx