

## **COUNCIL MEETING – 16 DECEMBER 2003**

### **RECOMMENDATION TO COUNCIL FROM THE COMMUNITY LEADERSHIP REVIEW PANEL**

#### 1. The Constitution

The Community Leadership Review Panel is responsible for overseeing the use being made of the Council's formal Constitution and to recommend changes when necessary.

Three such issues were considered at the Review Panel on 25 November 2003, namely:-

- (a) Contract Standing Orders
- (b) Substitutions
- (c) Proposals for a Corporate Governance Committee

#### **Contract Standing Orders**

The Council is legally obliged to adopt Standing Orders governing the way in which we let our contracts for goods, works and services.

The format of our existing Contract Standing Orders do not embrace modern procurement methods and have largely been in place since local government reorganisation in 1974. A major review of the current standing orders has been carried out and has resulted in a complete re-write in a more modern form. The proposed Contract Standing Orders are attached at Appendix A.

#### **Substitutions**

The procedural rules which govern the way in which the Council carries out its business are largely found in the Constitution which was adopted by the Council in October 2001.

A source of uncertainty since that time has been over the use of substitutes on Board, Panels and Committees – particularly as to whether such substitution could take place part way through a meeting – or for a single item.

The Review Panel considered the advantages and disadvantages of substitutions on both the Planning Committee and on the Review Board and Panels. They concluded that:-

- ❖ some restrictions should be placed on such substitutions at all such meetings; and
- ❖ rather than preventing any substitution at meetings of the Planning Committee provision should be made for some limited substitutions of members so long as some proper safeguards are in place.

## **Corporate Governance Committee**

In preparing the Constitution the aim was that all of the Council's functions both internal and external should fall within the remit of one of the "Overview and Scrutiny Panels", i.e. our Review Panels. One of the areas that is not specifically allocated in this way was the field of 'Corporate Governance'. It is now commonplace amongst councils to reflect the increased importance of this area by the setting up of an "Audit Committee" or "Corporate Governance Committee". Such a committee would have responsibility for the monitoring of the Council's approach to Corporate Governance i.e. the system by which the Council directs and controls its functions and relates to its communities.

By forming such a committee greater reassurance could be achieved that our existing arrangements are operating satisfactorily. The terms of reference of the committee are attached as Appendix B.

It is therefore RECOMMENDED that the Constitution be amended to the following effect:-

- (1) by the inclusion of the revised Contract Standing Orders;
- (2) As to the substitution of members at meetings:-
  - (a) by the inclusion of "Such formal notice must be given to the Member Services Manager not later than the beginning of the meeting concerned and such substitution will last for the whole of that meeting" in the Procedural Rules for Review Board and Panels (page 4-E3);
  - (b) by the insertion of a new paragraph (5.2) in Part 3 (Section 2 – Regulatory Powers of the Council) (Page 3-A6) as follows:-

"Planning Committee – Substitutions – substitution of members at meetings of the Planning Committee may only be effected as follows:-

Such formal notice must be given to the Member Services Manager not later than the beginning of the meeting concerned and such substitution will last for the whole of that meeting. Substitutes may only be appointed from those councillors noted by the Member Services Manager as having undergone recent and satisfactory Planning Committee training. (For the purpose of this paragraph those Planning Committee meetings which require the use of a 'reserve date' shall be treated as two separate meetings)."

- (3) by a Corporate Governance Committee being added to the Council's constitutional arrangements with terms of reference as set out in Appendix B.

- (4) by the Monitoring Officer being authorised to effect these amendments to the Constitution and to circulate the resulting changes to all councillors.

Councillor Denington  
Chairman Community Leadership Review Panel

## APPENDIX A

### CONTRACT STANDING ORDERS

#### Compliance with Contract Standing Orders

1. Every Contract made by the Authority or officer acting on its behalf shall comply with these Contract Procedure Rules, all relevant Statutory Provisions, with any relevant EU Directives currently in force in the United Kingdom, the Councils Financial Regulations and the Strategic Objectives of the Authority.
2. A Contract is an agreement between the Council and an individual or organisation for the individual or organisation to provide works, goods or services (including the engagement of consultants) for which the Council will provide consideration. The following contracts are exempt from the requirements of these rules: contracts relating solely to disposal or acquisition of land; employment contracts and individual agency contracts for the provision of temporary staff.
3. Officers involved in the awarding of a Contract must ensure that the best value for money is obtained. Before commencing a procurement, it is essential that the authorised officer leading the procurement has identified the need and fully assessed the options for meeting those needs. The best use of purchasing power shall be sought by aggregating purchases wherever possible.
4. Exceptions from any of the following provisions of these Contract Procedure Rules may be made under the provisions of Contract Procedure Rule 14 or otherwise by direction of the Council, the Executive or the Executive Member where they are satisfied that the exception is justified in special circumstances. No exception shall apply to Contract Procedure Rule 19. Every exception and the reason therefore shall be recorded in the Tenders Register.
5. The Chief Architect or Procurement Manager or their nominated deputy must be notified of all procurements where the predicted spend is above Threshold 1 (see Appendix 1 for thresholds). They will seek to identify whether their involvement in the procurement will add value to the end result.
6. Arrangements for Contracts shall be made in accordance with the Council's Procurement Strategy

#### Risk & Project Management

7. For procurement where the estimated spend is greater than Threshold 3 the Procurement Risk Management policy must be applied and decisions recorded. Any high risks that exceed the accepted threshold must be reported to Corporate Management Team (CMT). The Corporate Project Management process must be applied.
8. For procurement where the estimated spend is less than Threshold 3 the Service Unit Manager must ensure that all risks are considered and managed, reporting to CMT any consequential risks that may seriously jeopardise the Council.

9. For procurement where the estimated spend is less than Threshold 3 the Corporate Project Management process should be used at the discretion of the Service Unit Manager particularly where the risk of failure would impact on the ability to deliver a service or create a significant consequential risk.

### **Specifications**

11. Enquiries and Invitations to Tender shall be based on a written specification. The specification shall adequately describe the required procurement in sufficient detail to enable effective procurement in accordance with these rules.

### **Supplier Pre-Qualification**

12. The Council shall only enter into a contract with a supplier if it is satisfied as to the supplier's eligibility, financial standing and technical capacity to undertake the contract. For contracts over Threshold 3 the Section 151 Officer will formally vet those companies that have been selected to receive an invitation to tender.

### **Requirement for Quotation / Tender and Public Advertisement**

13. Before entering into a Contract a written quotation/tender for the contract price must be secured. Consideration shall be given to other costs associated with the procurement (Lifetime costings including for example maintenance costs and power consumption). Where these could be significant such as in the final disposal of a product appropriate arrangements shall be put into place to consider these costs against alternative options.
  - a) Contracts below Threshold 1  
At least one written quotation must be obtained, preferably more where there are opportunities for competitive savings.
  - b) Contracts between Threshold 1 and Threshold 2  
Written quotations must be sought from not less than three individuals or organisations that could undertake the contract.
  - c) Contracts between Threshold 2 and Threshold 3
    - 1) A Public Notice must be made in the relevant section of the Council's website, setting out particulars of the contract and inviting persons interested to apply, within a period not less than 10 days, for permission to tender.
    - 2) After the expiration of the period specified in the Public Notice invitations to tender shall be sent to not less than four individuals or organisations that could undertake the contract (or, if fewer than four apply, to those that are suitable).
    - 3) Tenders are to be submitted and opened in accordance with Contract Procedure Rule 18.
  - d) Contracts above Threshold 3

- 1) The procurement shall comply with the requirements of the EU Procurement Directives.
  - 2) A Public Notice must be made in the relevant section of the Council's website.
  - 3) After the expiration of the period specified in the Public Notice invitations to tender shall be sent to not less than four individuals or organisations selected in accordance with the applicable EU Procurement Directives (or, if fewer than four apply, to those that are suitable).
  - 4) Tenders are to be submitted and opened in accordance with Contract Procedure Rule 19.
14. Contract Procedure Rules 13a, 13b and 13c shall not apply to the following but, wherever possible, alternative quotations shall be obtained:
- a) Purchases by auction or at public fairs or markets
  - b) Contracts involving special technical, scientific or artistic knowledge
  - c) Contracts in respect of which there would be no genuine competition (following consultation with the Chief Architect or Procurement Manager)
  - d) Contracts comprising spare or replacement parts of existing machinery or plant or repairs to such machinery or plant
  - e) The Contract to be entered into is to be dealt with in a prescribed manner under agency arrangements entered into by the Council with another authority
  - f) Urgent situations as agreed with the client Director and Executive Councillor where the authority is put at significant risk or significant costs could be incurred by not taking urgent remedial action.
  - g) Emergency situations (as defined in the Council's Disaster Recovery Plans or Emergency Planning procedures)
15. Paragraphs 13a, 13b and 13c (up to Threshold 3) of these Contract Procedure Rules shall not apply to the entering into of contracts by the Deane DLO for the supply of goods or the engagement of sub-contractors where such transactions are necessary to enable the carrying out of contracts obtained by the Deane DLO after competitive tendering, provided that full details of all orders and contracts are maintained in such manner as required from time to time by the Section 151 Officer
16. Every written contract shall specify
- a) the work, materials, matters or things to be furnished, had or done;
  - b) the price to be paid, with a statement of discounts or other deductions (if any); and
  - c) the time or times within which the contract is to be performed.
17. Every contract which exceeds Threshold 3 and is either for the execution of work or the supply of goods or materials shall provide for payment of liquidated damages by the contractor in case the terms of the contract are not performed.

### **Submission of Tenders**

18. Submission Procedures for contracts between Threshold 2 and Threshold 3
  - a) Where an invitation to tender is made, each invitation shall state that no tender will be considered unless it is enclosed in a plain sealed envelope. The envelope shall bear the word '**Tender**' - in large emboldened lettering followed by the subject to which it relates and the Tender reference number (if applicable) but no other name or mark indicating the identity of the sender.
  - b) The tenders shall be kept in the custody of the appropriate Director's nominated officer until the time and date specified for their opening.
  - c) Tenders shall be opened in the presence of (at least) two Council Officers. Tenders shall be date-stamped and signed on all pages containing price information.
19. Submission Procedures for contracts above Threshold 3
  - a) Where an invitation to tender is made, each invitation shall state that no tender will be considered unless it is enclosed in a plain sealed envelope clearly addressed to the Member Services Manager. The envelope shall bear the word '**Tender**' - in large emboldened lettering followed by the subject to which it relates and the Tender reference number (if applicable) but no other name or mark indicating the identity of the sender.
  - b) The tenders shall be kept in the custody of Member Services Manager until the time and date specified for their opening.
  - c) Tenders shall be opened in the presence of (at least) two Council Officers and a Councillor. Tenders shall be date-stamped and signed on all pages containing price information.
  - d) All tenders which were received by the time and date specified shall be recorded in the Tenders Register maintained by the Members Services Manager.
20. Tenders received after the time and date specified in the invitation to tender shall be considered only in exceptional circumstances. A tender received late can only be considered with the approval of the Monitoring Officer or in his absence the Section 151 Officer.
21. Invitations to Tender may be issued by electronic means provided that evidence that the transmission was successfully completed is obtained and recorded.
22. Quotations and tenders may be submitted electronically provided that they are kept in a separate secure folder under the control of the authorised officer which is not opened until the deadline is passed for the receipt of tenders.

#### **Acceptance of Quotations and Tenders**

23. The tender that is most economically advantageous to the Council shall be accepted. Each tender shall be evaluated for price and quality to ascertain the most economically advantageous tender.
24. For procurements over Threshold 3 the questions and scoring system used to evaluate quality shall be written before tenders are received. The basis of this exercise shall be explained in any invitation to tender documentation





33. Where a sub-contractor or supplier is to be nominated to a main contractor, the procurement of the services of the sub-contractor or supplier shall be subject to these Contract Procedure Rules.

### **Bribery**

34. In every contract a clause shall be inserted to secure that the Council shall be entitled to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation if the contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract with the Council, or for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Council, or if the like acts shall have been done by any person employed by him or acting on his behalf (whether with or without the knowledge of the contractor), or if, in relation to any contract with the Council, the contractor or any person employed by him or acting on his behalf shall have committed any offence under the Prevention of Corruption Acts, 1889 to 1916, or shall have given any fee or reward the receipt of which is an offence under sub-section (2) of Section 117 of the Local Government Act, 1972.

### **Contracts Record**

35. A record of all contracts in excess of Threshold 2 in value placed by the Council shall be kept on the Council's Intranet site. This register shall specify for each contract the name of the contractor, the works to be executed or the goods or services to be supplied, the contract value and the contract period. This is the responsibility of the officer authorising the contract to ensure that a timely entry is completed.

### **Contract Management**

39. Project management shall be practiced at all times in undertaking procurement. However where significant risks or expenditure are identified particularly in procurement projects where the spend is greater than Threshold 3 the Corporate Contract Management process must be used.
37. Any third party who is required to supervise a Contract on behalf of the Council shall comply with the requirements of these Contract Procedure Rules.

### **Performance Monitoring**

38. On a quarterly basis the Chief Architect will publish to CMT and the Executive details as to the progress of all Works contracts in excess of DBDG Threshold 2. The Council's Procurement Manager shall periodically report on the performance of his unit in delivering Best Value.

### **Contract Extensions of Time**

39. In exceptional circumstances where it is in the interests of the Council and good value for money contracts may be extended in accordance with Financial Regulations.

40. For contracts where the value is over Threshold 3 or extension will take the contract value over Threshold 3 such an extension shall be with the prior agreement of the relevant Director and the Council's 151 Officer. A report on this decision shall be posted in the weekly bulletin. If the extension significantly alters the original contract value or purpose the extension can only be made with the additional agreement of the portfolio councillor, who shall post their decision for possible call in accordingly.

#### **Contract Variations to Scope**

41. Any necessary instructions to vary a contract shall be made in writing by the Chief Officer or persons responsible for supervising the contract. Where a variation occurs during the currency of the contract that is material and cannot be met from within the original contract sum an immediate report shall be made to the Council's 151 Officer who shall decide what further action is necessary. Where a supplementary estimate is required this shall be made in accordance with the councils Financial Regulations.

#### **Bonds, Guarantees and Insurances**

42. For procurement projects where the spend is greater than Threshold 3 consideration must be given as part of the pre-qualification assessment and evaluation process as to whether a performance bond and/or parent company guarantee (if applicable) shall be required from the successful tenderer.
43. Consideration must be given as to the appropriate type (employee liability, public liability, professional indemnity, etc.) and level of insurance requirements for each contract.

**CORPORATE GOVERNANCE COMMITTEE**

**TERMS OF REFERENCE**

1. Areas of Responsibility
  - Dealing with (and challenging) action plans arising from the District Auditor's Annual Management letter.
  - Having an overview role in relation to the Council's use of risk management – based upon annual reports.
  - Approval of the Council's annual statement of accounts.
  - Dealing with any related District Audit reports.
  - Acting as support for the Council's internal audit role.
2. Within these broad areas the Committee itself can refine its terms of reference.
3. Frequency of Meetings- it will be for the Committee to define its role more clearly but it is only likely to need to meet at around 6 monthly intervals.
4. Membership - As this Committee would be dealing with “non-Executive” business, and in view of its importance, its membership should be drawn from both the Executive and non-Executive members of the Council. For ‘proportionality’ reasons, the normal size of such a committee would need to be 11 (i.e. 6 Conservative, 3 Liberal Democrat, 1 Labour & 1 Independent).