PROCUREMENT TASK GROUP – 23 MARCH 2011

A meeting of the Procurement Task Group will be held at 5.00 pm on Wednesday 23 March 2011 in Committee Room 1 at the Town Hall, Rugby.

Councillor Mrs Kaur
Chairman

A G E N D A

PART 1 – PUBLIC BUSINESS

1. Minutes - to approve the minutes of the meeting held on 8 February 2011.

2. Apologies - to receive apologies for absence from the meeting.

3. Declarations of Interest.

To receive declarations of –

(a) personal interests as defined by the Council’s Code of Conduct for Councillors;

(b) prejudicial interests as defined by the Council’s Code of Conduct for Councillors; and

(c) notice under Section 106 Local Government Finance Act 1992 – non-payment of Community Charge or Council Tax.

Note: Members are reminded that they should declare the existence and nature of their personal interests at the commencement of the meeting (or as soon as the interest becomes apparent). If that interest is a prejudicial interest, the Member must withdraw from the room unless one of the exceptions applies.

Membership of Warwickshire County Council or any Parish Council is classed as a personal interest under the Code of Conduct. A Member does not need to declare this interest unless the Member chooses to speak on a matter relating to their membership. If the Member does not wish to speak on the matter, the Member may still vote on the matter without making a declaration.
4. Contracts Database – presentation by Peter Aughton, Improvement Officer.

5. Contracts Standing Orders – Observations following circulation of draft to officers.

6. Dates of future meetings – please bring your diaries to the meeting.

*Any additional papers for this meeting can be accessed here via the website.*

Membership of the Task Group: -

Councillors Mrs Bragg, Cranham, Mrs Kaur, Roodhouse and Srivastava

*If you have any general queries with regard to this agenda please contact Linn Enticott, Democratic and Scrutiny Services Officer (01788 533523 or e-mail linn.enticott@rugby.gov.uk). Any specific queries concerning reports should be directed to the listed contact officer.*

*If you wish to attend the meeting and have any special requirements for access please contact the Democratic and Scrutiny Services Officer named above.*
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Observations following circulation of draft Contracts Standing Orders to officers

On 8 February, the task group made a series of recommendations on the amendment of the Contracts Standing Orders. On 10 February, Corporate Performance Committee noted the work that had been carried out. It was recognized that there would continue to be amendments and, since these meetings, the amended draft has been circulated to officers. Several comments and queries have been received. Those that are not contentious will be incorporated during the finalizing of the document.

However some of the observations do raise issues of which the task group should be aware. These are discussed below.

The paragraph numbers are those in the version of the draft Contracts Standing Orders that went to CORP. This can be looked at on the committee papers system, but it should be possible to understand the observations without doing so.

2.2 Contracts Standing Orders not applying to use of internal resources

It has been suggested that the standing orders should be amended to state that standing orders do not to apply to the use of internal resources or services, for example the Works Services Unit, where this is practicable in terms of skill, cost, quality or capacity. There is no legal objection to this and it will be incorporated in the draft, subject to the proviso that there must be an options appraisal and political agreement to the provision of the service internally.

4.1 Steps prior to purchase

As a consequence of the amendment to 2.2 described above, two new bullet points have been added in addition to the 13 already in this section, so the section will now begin as follows:

Before beginning a purchase the employee responsible for it must appraise the purchase, in a manner commensurate with its complexity and value, by:

- Considering if the services etc can be delivered through the use of internal resources e.g. The Works Services Unit
- Referring to the Procurement Toolkit and contacting the Procurement Team

Again, there is no objection to this on legal grounds and it should not be regarded as contentious.
5.1 Financial limits – minimum requirement for inviting competitive tenders.

The table on financial limits states that, for each of the contract value bands £A-less than £B, £B-less than £C, and £C-EU threshold, there need to be three written quotations (or tenders in the case of £C-EU), but **four if one of them is internal**.

It has been suggested that the words in italics be changed to **one of which can be internal**. In other words, the internal quotation or tender would be treated as just one of the three, as if it were an external tender.

Our legal advice is that we are required to prove best value for money in our tendering so, if we are required to tender, a reduction in tenders from four to three plus an internal bid could be challenged. This amendment has therefore not been included in the latest draft.

5.4 Financial limits – re-tendering when low response

A suggestion has been made to add the words in bold italics to clause 5.4, to make it read as follows:

For tenders which exceed £C, consideration should be given to re-tendering where two or fewer tenders are received and where prices are high and value for money cannot be demonstrated. **If one of these tenders is internal there is no necessity to re-tender.** If it is decided not to re-tender the written authority of the Head of Resources must be obtained, **unless the work is awarded to an internal supplier.**

This too is resisted on the grounds that we cannot assess value for money on just one external quotation of higher value.

9.2 – Pre-tender market research and consultation

Clause 9.2 says:

An employee must not seek or accept technical advice on the preparation of an Invitation to Tender or quotation from anyone who may have a commercial interest in them if this may prejudice the equal treatment of all potential contractors or distort competition. If in doubt seek advice from the Procurement Officer or the Legal Services and Elections Manager.

A question has been raised as to how we can then do any form of soft market testing to gain an understanding of the market in order to frame the work in the most effective fashion and thereby achieve best value.

The answer to this is that a distinction can be made between market research and discussing invitation to tender preparation with a potential supplier. As the clause indicates, Legal Services would be able to advise on the legality of any proposed market testing.

Paul Ansell, Scrutiny and Policy Officer
18 March 2011