

Agenda Item

Committee: **Cabinet**

Date: **28 April 2009**

Title: **Scrutiny Review of the Council's Procurement with local small and medium sized enterprises**

By: **Director of Law and Personnel**

Purpose: **To provide an opportunity for the Cabinet to comment on the report of the Audit and Best Value Scrutiny Committee**

RECOMMENDATION –

To consider any comments the Cabinet wishes to make to the County Council on the report of the Audit and Best Value Scrutiny Committee

1. Background Information

1.1 The Audit and Best Value Scrutiny Committee has completed its scrutiny review of the Council's procurement with local small and medium sized enterprises.

1.2 The Committee's report will be submitted to the County Council on 23 June and a copy is attached. The Cabinet now has an opportunity to comment to the County Council on the recommendations in the Scrutiny Committee's report, although it cannot alter the report. Elsewhere on the agenda is a separate report by the Deputy Chief Executive and Director of Corporate Resources commenting on the Scrutiny Committee's report.

ANDREW OGDEN

Director of Law and Personnel

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Scrutiny review of County Council procurement with local SMEs

Interim report by the Project Board

Councillor David Tutt (Chairman)
Councillor Michael Ensor
Councillor Brian Gadd
Councillor Francis Whetstone

March 2009

Audit and Best Value Scrutiny Committee – 4 March 2009

Cabinet – 28 April 2009

Full Council – 23 June 2009

Background

1. In June 2008 Audit and Best Value Scrutiny Committee established a scrutiny review Board to: a) consider the extent to which East Sussex County Council's procurement processes offer 'a level playing field' to local SMEs who wish to access contract opportunities with the Council; b) test whether the procurement processes designed to increase value for money and the participation of SMEs in East Sussex are working in practice; and c) make recommendations to enhance processes as appropriate.
2. The capital and revenue procurement elements of four County Council activities were investigated:
 - Adult Social Care – supporting people contracts
 - Children's Services – Looked after Children / fostering agency contracts
 - Transport and Environment – passenger transport – home-to-school transport coaches and taxi contracts
 - Corporate Resources Department (CRD) – Property Services contracts.
3. The Board took evidence from a broad range of witnesses including County Council commissioning and procurement officers for the four listed activities.
4. During the course of the review the Board advertised its work in the local press and wrote directly to 560 SMEs to gain their perspective of what it is like doing business with the Council and to invite them to attend a meeting with the Board. Responses were received from 25 businesses (5% of those contacted on average) plus the Federation of Small Businesses and Sussex Enterprise.
5. The percentage response rate from each category of SME were: 15% property services businesses; 3% passenger transport providers; 2% supporting people providers and 0% foster care providers. Six businesses (five property related and one supporting people provider) accepted the offer to attend the meeting with the Board to discuss their views directly.
6. Responses from SMEs were mostly constructive and in some cases complimentary about the way East Sussex does business with them, especially in comparison to other local authorities and agencies. In many cases, SMEs simply needed basic information about the procurement process which was then provided. A number of clear common concerns emerged from this exercise and these formed the basis for much of the Board's further investigations.
7. At February 2009, the Board felt that it needed further evidence and more time to complete its task satisfactorily. The Board will meet again in March and April to undertake further work in order to produce its final report in May 2009. It will consider the following issues in more detail:
 - The detailed operation of select lists and the implications of operating select lists differently, possibly using external agencies
 - Whether certain limitations designed to manage the risks associated with contracts can be implemented more flexibly – in particular the public liability insurance requirements and the permitted limits to the value of county council business for SMEs
 - The impact of the current economic climate on whether it would be advisable and feasible to 'refresh' some select lists before the end of the five year window period

- The relationship of select lists to the Buy With Confidence scheme operated by Trading Standards, in particular whether there is any scope to streamline the processes for companies who are suitable for both lists
- Framework agreements and the degree to which the County Council can help to improve the chances of local SMEs becoming part of the supply chain.

Definitions and local context

8. For the purposes of this scrutiny review, an SME is defined as follows:
 - Medium-sized enterprise – up to 250 employees or up to £40m turnover
 - Small enterprise – up to 50 employees or up to £8m turnover
 - Micro enterprise – up to 10 employees or up to £1.6m turnover.
9. There are thousands of SMEs carrying out ad hoc business amongst the 10,000 or so vendors currently active at East Sussex County Council. However the number under formal contract who have been awarded or won business worth more than the tender threshold of £50,000, or for a twelve-month supply period, is approximately 185. In addition there are select list approved suppliers chief amongst which is the Property Services select list of 20 categories and approx 200 SMEs.
10. The Council spent £317m in 2006/07 on revenue goods and services and approximately 30% of this was spent through local SMEs and voluntary and community organisations.
11. A *select list* (or approved list) is a *list of suitable prospective contractors approved for the purposes of the supply of goods or services or the execution of works in accordance with the provision of standing orders.*
12. A *framework agreement* means *an agreement for a defined range of goods, services or works, the terms of which are agreed through an initial competitive tendering exercise, and under which the contractor undertakes to enter into contracts for requirements called off as and when required.* Current framework contractors tend to be larger organisations and engage subcontractors to carry out parts of the work, although frameworks for lower value bands are in development.

Initial findings and recommendations

13. The focus of this interim report is on the transparency of the procurement processes with regard to the operation of select lists and framework agreements. The recommendations are intended to enable the Council to respond quickly and effectively to calls from SMEs for certain information. This is important because some SMEs feel they need this information to enable them, amongst other things, to make more informed decisions about whether to invest in the time and resources required become a select list contractor, or to improve their chances of being considered as a subcontractor to a framework company.
14. These measures are considered by the Board to be achievable and urgent given the difficulties faced by SMEs in the current economic climate. They will be supplemented by further recommendations in the Board's final report.
15. This scrutiny review needs to be considered in the context of other work. At a national level, the Glover review has made recommendations on many of the same issues considered by the Board. An East Sussex County Council scrutiny review of the relationship between the Council and the voluntary and community sector (March 2008) also highlighted many parallel issues faced by voluntary and community organisations when undertaking work for the Council. Cabinet may find it useful

therefore to compare the outcomes of each of these separate pieces of work to gain a more complete picture. The table in appendix 2 provides this overview.

16. In April and May 2009 the Board will explore the operation of select lists in more detail in its final report but at this stage made the following recommendations. The Board would wish to see these recommendations implemented as cost effectively as possible and in a way that that does not facilitate collusive practices.

Recommendation 1.

Contracting departments should publish clear information on the Council's website, and elsewhere as appropriate, about how the select list process operates, to include:

- a) the list of approved contractors, subdivided into categories where appropriate**
- b) the procedure by which firms are called off the list to deal with ad hoc work or invited to tender**
- c) The principle of rotation being used including who decides how to allocate each piece of work and the factors used.**

Recommendation 2.

Contracting departments should publish clear details about how the framework system operates including:

- a) the list of framework contractors for every framework**
- b) the procedure by which contracts are allocated to framework companies.**

Recommendation 3.

All information published by the Council on its website about procurement processes, and details of select lists should include an email contact address to enable SMEs to communicate with the Council more easily.

Recommendation 4.

Council departments to be encouraged to arrange 'meet the buyer' events for SMEs where benefits can be identified: such informal meetings would enable two way communication: from the Council about the types of contracts and subcontracts coming up, also to involve the framework contractors; and from suppliers about the kinds of contracts they would be interested in.

17. The Audit and Best Value Scrutiny Committee at its meeting on 4 March 2009 added the following recommendation.

Recommendation 5.

Contracting departments should publish forward procurement plans, together with lists of contracts awarded and forthcoming opportunities available that are likely to be of interest to SMEs; this will assist SMEs to better assess whether to engage in the procurement processes of the County Council.

A summary of the recommendations from related reviews and studies:

- The Glover report: Accelerating the SME economic engine through transparent, simple and strategic procurement (November 2008).
- The East Sussex SME Concordat: a statement of principles to encourage effective trade between the Council and local businesses.
- Voluntary and Community Sector (VCS) scrutiny review (2008) and,
- This scrutiny review as at March 2009.

	Glover report recommendations	SME Concordat provisions	VCS Scrutiny 2008 recommendations	This scrutiny review (as at March 2009)
	Transparency			
1	Single regional portal for all business <u>opportunities</u> over £20,000 by 2010			Agreed and also recommended a single point of contact for each spend area.
2	Businesses permitted to submit electronic tenders by 2010			Agreed that electronic tendering is a welcome initiative. But for complex contracts, electronic tendering should not replace face to face client contractor discussions.
3	All contract <u>awards</u> on the single regional portal by 2010			
4	Flag tender opportunities particularly suitable for SMEs	Includes provision to hold pre-tender meetings with bidders (including SMEs) where feasible		Agreed
	Simplicity			
5	Single standardised pre qualifying questionnaire (PQQ) for SMEs	Includes commitment to this		Likely to be agreed

	Glover report recommendations	SME Concordat provisions	VCS Scrutiny 2008 recommendations	This scrutiny review (as at March 2009)
6	Take more account of SMEs' non-public sector relevant experience at evaluation stage	Takes into account long term cost and benefits as well as initial price.	Agreed	Under consideration
7	Businesses should be allowed to provide acceptable alternative accreditations where these are recognised by the public sector			
Strategic Procurement				
8	Publish forward plans for procurement	Includes commitment to this.		Agreed that select list and framework information /operation details should be made available on the Council's website and hold briefing meetings for SMEs
9	Specifications should be more outcome focused to encouragement to innovation			Under consideration
10	Prime contractors should use the single regional portal to advertise their sub-contracting opportunities	Encourages bidders for framework agreements to demonstrate potential for sub-contracting that will support the local economy		Under consideration
11	Ensure that sub-contractors do not receive less favourable terms from the prime contractor			Likely to be agreed plus review extent to which it is feasible to influence prime contractors to use approved Council sub-contractors.
Measurement				

	Glover report recommendations	SME Concordat provisions	VCS Scrutiny 2008 recommendations	This scrutiny review (as at March 2009)
12		Requires evaluation criteria and scoring system at early stages to be transparent and proportionate to the risks of individual contracts	Agreed	Agreed, especially the use of pass/fail criteria; plus review of public liability insurance requirements and financial appraisals (the 25% business rule)
13		Offer meaningful feedback to unsuccessful bidders	Agreed	Likely to be agreed
14			Develop skills and capacity of VCS to enable tendering via training toolkit	