

**Open Report on behalf of Pete Moore, Executive Director (Resources and Community Safety)**

Report to:	<b>Audit Committee</b>
Date:	<b>31 January 2011</b>
Subject:	<b>Exceptions to the Normal Procurement Procedures</b>

**Summary:**

This report provides information on the number of exceptions to the Normal Procurement Procedures defined in the Council's Contract Regulations. The report covers exceptions for the last twelve months following the development and implementation of the Contract and Procurement Procedure Rules issued in December 2009.

**Recommendation(s):**

The committee should:

Consider the level of procurement exceptions for each Directorate.

Note the findings in this report and approve recommendations shown in Appendix B to this report.

**Background**

- 1 The Audit Committee requested information on the Council's exceptions to the Normal Procurement Procedures outlined in the Contract Regulations and Contract and Procurement Procedure Rules.
- 2 The Contract Regulations require a central record of exceptions to the normal competitive procurement routes. Each Chief Officer (Executive Directors) was requested to provide their Directorate Contracts registers and supporting documentation, which shows their authorisation and justification for exceptions.
- 3 The Council's Contract Regulations identify six "normal" procurement routes:
  - Low Value (below £5k) – competitive quotes not required (costs must be reasonable), single supplier is acceptable with ESPO able to cover most purchases;

- Low Medium Value (£5k to £10k) – minimum of two written competitive quotations, where possible from the Council’s approved list of contractors;
  - Middle Medium Value (£10k to £25k) - minimum of three written competitive quotations, where possible from the Council’s approved list of contractors;
  - High Medium Value (£25k to £75k) – minimum of three written quotations based on a “Request for Quotation” document with simplified terms and conditions;
  - High Value (£75k and above but below EU limits) – at least six competitive tenders;
  - High Value (above EU limits) – EU Regulations must be followed.
- 4 In December 2009 Procurement Lincolnshire developed Contract and Procurement Procedure Rules to supplement the Contract Regulations. These procedures are a comprehensive guide to best value procurement and inform officers that the rules are mandatory and must be followed.
- 5 Following the development and approval of the Contract and Procurement Procedure Rules Procurement Lincolnshire held 17 workshops across the Council to highlight the requirements of these procedures and the Contract Regulations. The attendance was inconsistent.
- 6 Exceptions are provided for in the Contract Regulations and in exceptional circumstances. In these exceptional circumstances:
- A Chief Officer (Executive Director) has the power to approve an alternative procurement route where the Contract has a value between £10,001 and £75,000;
  - \*An Executive Portfolio Holder has the power to approve an alternative procurement route for Contracts with a value between £75,001 and £250,000;
  - \*The Executive has the power to approve an alternative procurement route for Contracts with a value over £250,000.
- \* A formal report is required to be completed.
- 7 Appendix A provides a summary of exceptions from December 2009 to 31<sup>st</sup> December 2010.
- 8 There should be a full explanation of the reasons for not following the normal procurement routes and the Contract and Procurement Procedure Rules requires Financial Advisors to submit the reports to the Assistant Director Commercial & Legal.

## Findings

- 9 It is critical that the Council’s procurement activities deliver Best Value. The Contract Regulations support the delivery of Best Value by explaining how competition should be applied to maximise Value for Money (VFM).

- 10 The Contract Regulations also set out that in exceptional circumstances exceptions can be used to limit competition. Whilst exceptions to the normal procurement route should not be utilised to substitute for poor procurement planning, exceptions can help to deliver Best Value and VFM for the Council. The use of exceptions should therefore not be seen as a negative practice rather the use of exceptions must demonstrate how they have helped to improve VFM and Best Value. The use of exceptions should be approved and transparent.
- 11 A key concern is that exceptions are used inconsistently across the Council and there is some uncertainty as to whether the use of exceptions are being recorded and reported robustly.
- 12 Procurement Lincolnshire have reviewed current practice across the Directorates and Appendix A sets out the findings of this evaluation.

## **Conclusion**

- 13 In compiling this report Procurement Lincolnshire found that:
  - Not all Directorates maintain one single record or register of their exceptions
  - The fragmented system for holding exception records does not provide assurance that we have a full picture of procurement exceptions for the entire Council
  - Individual exception forms are held by officers within each Directorate
  - No robust evidence to support that exception reports are submitted to the Assistant Director Commercial & Legal
  - There is no overall monitoring of compliance with the Council's Contract Regulation and Contract Procedure Rules
  - There is no consistency regarding the documentation held in support of the exception, each Directorate uses a different form
  - Some staff were unaware of the Contract and Procurement Procedure Rules
  - Contract Regulations require Chief Officers to authorise exceptions but this has been delegated to Assistant Directors or Heads of Service in some Directorates.
- 14 The information submitted to meet Audit Committee's request shows that although there are issues that require addressing, there is evidence that staff are obtaining the approvals to comply with the "exceptions to normal procurement procedures". However, the requirements in point 8 reduce the confidence levels regarding overall compliance.
- 15 Appendix B to this report sets out the actions required to improve the level of compliance with the Contract Regulations.
- 16 The Director of Resources and Community Safety will highlight the recommended actions at the Management Board of the Council.

## **Consultation**

### **a) Policy Proofing Actions Required**

Not Applicable

## **Appendices**

These are listed below and attached at the back of the report	
Appendix A	Exceptions to Normal Procurement Procedures from December 2009 - December 2010
Appendix B	Exceptions to Normal Procurement Procedures - Action Plan

## **Background Papers**

No background papers within Section 100D of the Local Government Act 1972 were used in the preparation of this report.

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