

Changes to the Contract Procedure Rules and Standing Orders

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1. Summary

1.1. The purpose of this report is to highlight a change to section 28 Most Economically Advantageous Tender of the Contract Procedure Rules and Standing Orders (the “Rules”) that in the interest of our obtaining better value for money Somerset County Council’s (SCC) Senior Leadership Team (SLT) has recently recommended.

2. Recommendations

2.1. **That the Constitution and Standards Committee endorse the proposed changes; the first of which has been set out with the purpose of ensuring better value for money through our commissioning and procurement activities and the second of which provides an additional exemption from the scope of the Rules.**

2.2. **That the amended Rules are formally adopted in to the Constitution.**

3. Background

3.1. SCC Officers remain diligently focused on achieving good value for money for its citizens and closing the budget gap through its various Medium Term Financial Plan (MTFP) initiatives and as part of that SLT’s attention has turned to the Rules and the commercial and quality considerations that can legitimately be made through SCC’s procurement activity. Within the version that was formally adopted in to the Constitution on 24 May 2017 it was laid out within section 24 Most Economically Advantageous Tender that,

“Award Criteria shall be comprised of both commercial and quality considerations, which shall be represented in the Procurement Documents as a ratio of 60:40 weighted in favour of price, although the Officer may vary the given ratio in favour of price. Where the Officer wishes to vary the given ratio in favour of quality, the Officer must gain the approval of the CPT to do so. Where the Officer and the CPT is unable to reach an agreement and therefore the Officer fails to gain the CPT’s approval, the Officer must develop a business case justifying the deviation and obtain the approval of the Director of Commercial and Business Services.”

It is in relation to this section that the first change is proposed to be made, as the original drafting was considered by SLT as not going far enough towards considering price as part of the overall procurement evaluation. It is worthy of note that this drafting and the proposed change is driven by SCC’s financial

position, as opposed to procurement best practice and as such there is no precedent of another County Council including such a statement within its Rules to draw comparison with for the purposes of understanding whether or not the proposed ratio is contemporary with others' thinking.

In relation to the second proposed change upon a review of the Rules by SCC's Finance and Performance directorate, more specifically its Funds and Investments Manager, it was noted that an exemption from the previous iteration of the Rules, dated January 2016, was omitted from the version agreed and adopted in to the Constitution on 24 May 2017. This omission reads as follows:

"Pension Fund administration and governance arrangements are separate from main Council affairs and consequently not all of the Contract Standing Order requirements to apply to the fund. Exclusions will in the main only apply to approvals and reporting whilst all other principals surrounding the Contract Standing Orders and statutory requirements will remain. Where exemptions apply, these will be stated in the Pension Fund Scheme of Delegation and updated and approved periodically, concurrent with these Contract Standing Orders."

This second proposal to the Committee seeks to redress this omission.

3.2. Fundamental change

The first change, if agreed, would see the tender evaluation criteria ratio change from 60:40 to 70:30 weighted in favour of price. As such the amended section 24 would read as follows:

"Award Criteria shall be comprised of both commercial and quality considerations, which shall be represented in the Procurement Documents as a ratio of 70:30 weighted in favour of price, although the Officer may vary the given ratio in favour of price. Where the Officer wishes to vary the given ratio in favour of quality, the Officer must gain the approval of the CPT to do so. Where the Officer and the CPT is unable to reach an agreement and therefore the Officer fails to gain the CPT's approval, the Officer must develop a business case justifying the deviation and obtain the approval of the Director of Commercial and Business Services."

The ratio has been proposed at 70:30 in favour of price so as to communicate clearly to Officers' the importance of best value within the current financial climate. It was also felt that giving a 30% weighting for quality also allowed scope to sufficiently consider all of the related quality factors such as good service delivery, and social value. Were the ratio to be weighted more heavily in favour of price, i.e. 80:20, it is felt that this would not provide sufficient focus on quality, which may be to the detriment of best value in any case should a poor quality service (or good and works) give rise to additional cost throughout the lifetime of the contract to provide for alternatives, replacements and/or supplementary services (or goods and works).

The second change has been proposed to respond to a previous provision that afforded the Pensions Committee (the "Committee") the opportunity of

exempting its activities to take account of the different constitutional set up and operating structure of the Pensions Fund (the "Fund") where it is not possible to reconcile this with the full application of the Rules. An example of this is to say that Cabinet has no jurisdiction over the Fund so constitutionally it is not appropriate that over the stipulated thresholds it is required to seek a Cabinet Member's approval. Rather, the Fund's proposed approach is to place the responsibility for all approvals with the Section 151 Officer following a discussion with the Committee.

It is relevant to note that there is no desire to exempt the Pensions Fund from good practice or its legal obligations in respect of the Rules, rather that the approvals procedure should be allowed to take an alternative approvals route than that otherwise stated therein.

4. Consultations undertaken

- 4.1. SLT is comprised of Council Officers representing the entirety of SCC and all were in broad agreement with the proposal for the first of the two changes. With regard to the second of the proposed changes, consultations have taken place with SCC's Strategic Manager for Community Governance and its Funds and Investments Manager.

5. Implications

- 5.1. Legal & Risk: the Contract Procedure Rules and Standing Orders set out the legal and procedural framework within which the Council manages its third party spend through the procurement of goods, services and works. It must be kept up to date and compliant with the relevant legislation and is an important part of the Council's Constitution.
- 5.2. Impact Assessment: the Council's duty under Section 149 of the Equality Act 2010 is to have "due regard" to the matters set out in relation to equalities when considering and making decisions on the provision of services. There are no direct impacts on equalities, sustainability, health and safety, or community safety as a result of this report.
- 5.3. Financial: SCC has a statutory duty to ensure that it operates under the principle of Best Value.
- 5.4. HR: none.

6. Background papers

- 6.1. None.