

Date of meeting: 22 July 2019
Title of Report: **Award of Contracts**
Lead Member: Councillor Peter Smith (Deputy Leader)
Lead Strategic Director: Giles Perritt (Assistant Chief Executive)
Author: Linda Torney
Contact Email: linda.torney@plymouth.gov.uk
Your Reference: It/32850
Key Decision: No
Confidentiality: Part I - Official

Purpose of Report

To make recommendations about whether to adopt a general policy about dealing with announcements about the award of tenders as practice has varied in the past.

Recommendations and Reasons

The Committee is asked to consider the approach that should be adopted in relation to disclosure of the available budget when tendering for services and make recommendations to Cabinet about this.

The options appear to be:

- (i) To adopt a general policy to always disclose the available budget
- (ii) To adopt a general policy to never disclose the available budget
- (iii) To make decisions about whether to disclose the available budget on a project by project basis taking into account the commercial factors that apply.

The Committee is also asked to consider the approach that should be adopted in relation to the award of tenders in future in light of the issues highlighted in the report and make recommendations to Cabinet about this.

The options appear to be:

- (i) To have a general approach to always announce the name of the successful tenderer at Cabinet in every situation.
- (ii) To have a general approach to announce the name of the successful tenderer at Cabinet in all cases apart from those where an existing tenderer has put in a tender for a follow on contract
- (iii) To not have a general approach but to consider the merits of announcing the name of the successful tenderer at Cabinet on a case by case basis

Alternative options considered and rejected

The alternatives are included in the main recommendations.

Relevance to the Corporate Plan and/or the Plymouth Plan

Having a transparent process about dealing with the announcement of contract award decisions links into our corporate plan values of being fair open and honest about how we act,

Implications for the Medium Term Financial Plan and Resource Implications:

None directly arising from this report.

Carbon Footprint (Environmental) Implications:

None directly arising from this report.

Other Implications: e.g. Health and Safety, Risk Management, Child Poverty:

** When considering these proposals members have a responsibility to ensure they give due regard to the Council's duty to promote equality of opportunity, eliminate unlawful discrimination and promote good relations between people who share protected characteristics under the Equalities Act and those who do not.*

None directly arising from this report.

Appendices

**Add rows as required to box below*

Ref.	Title of Appendix	Exemption Paragraph Number (if applicable) <i>If some/all of the information is confidential, you must indicate why it is not for publication by virtue of Part 1 of Schedule 12A of the Local Government Act 1972 by ticking the relevant box.</i>						
		1	2	3	4	5	6	7
A	Contract Procedures- Options Available							

Background papers:

**Add rows as required to box below*

Please list all unpublished, background papers relevant to the decision in the table below. Background papers are unpublished works, relied on to a material extent in preparing the report, which disclose facts or matters on which the report or an important part of the work is based.

Title of any background paper(s)	Exemption Paragraph Number (if applicable) <i>If some/all of the information is confidential, you must indicate why it is not for publication by virtue of Part 1 of Schedule 12A of the Local Government Act 1972 by ticking the relevant box.</i>						
	1	2	3	4	5	6	7

Sign off:

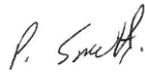
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Originating Senior Leadership Team member: Giles Perritt

Please confirm the Strategic Director(s) has agreed the report? Yes

Date agreed: 10/07/19

Cabinet Member approval:



Date approved: 12/07/2019

APPENDIX A – CONTRACT PROCEDURES - OPTIONS AVAILABLE**Background**

- 1.1 At present practice about whether to disclose the available budget when tendering for services and whether to announce the name of the successful tenderer when awarding contracts, varies depending on the situation. The Committee is therefore being asked to consider this issue and recommend whether to adopt a general policy in respect of these matters.
- 1.2 When the Council makes a decision to tender for services or to award contracts the starting point will always be in favour of disclosure of as much information as possible about the decisions the Council takes. The Council can only withhold information in limited circumstances, where there is a justification, in law, for doing so. Such justification does exist if disclosing the information would be likely to prejudice the Council or someone else's commercial interests. However, the Council also needs to make a judgment about whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
- 2.0 Should the Council adopt a general policy to disclose the available budget when tendering for services?**
- 2.1 Disclosing the available budget on a tender will prevent unaffordable tenders being submitted; allowing the market to tailor the cost of their bids to allow the Council to make a contract award. In cases where the available budget is believed to be "tight" then such an approach will mitigate against the risk of a failed procurement due to unaffordable bids.
- 2.2 On the other hand, if the available budget is realistic then advising the market that you have £x to spend will generally result in bids coming in close to that figure even though some may have bid £x minus y in the absence of that information.
- 2.3 The Council is likely to achieve the most commercial advantage if decisions about whether to disclose the available budget are made on a project by project basis. However there are wider issues of public interest in relation to how public money is spent which would justify a decision to disclose the available budget in all cases should this be the preferred option in line with the Council's commitment to transparency.
- 2.4 The Committee is asked to consider the approach that should be adopted in relation to disclosure of the available budget when tendering for services and make recommendations to Cabinet about this.

The options appear to be:

- (i) To adopt a general policy to always disclose the available budget
- (ii) To adopt a general policy to never disclose the available budget
- (iii) To make decisions about whether to disclose the available budget on a project by project basis taking into account the commercial factors that apply.

3.0 Should the Council announce the name of the successful tenderer when making awards of contracts?

3.1 Awards of contracts are made in three situations:

- (i) Where a contract is awarded for a new service, there is no existing contractor and the decision does not directly affect any of the Council's workforce.
- (ii) Where the Council outsources a service and its own workforce will be affected by the outcome of the decision.
- (iii) Where the Council tenders for a service supplied by an external contractor and that service that will be affected by the outcome of the decision.

3.2 Major contract awards are usually made by Cabinet. This means that if the name of the successful tenderer is announced in the meeting it will immediately be available to the public on the Council's website. In cases of new contracts this should not cause any issues in respect of existing services that are provided by the Council.

3.3 In cases where it is planned to outsource a council service, the Council's workforce will be affected by the decision. In these cases managers will know the date when a decision about the contract award will be made, have the opportunity in advance to discuss the potential impact of the decision to be made and have an opportunity to put in place arrangements to inform their staff of the decision as soon as it is known.

3.4 However different factors come into play when a follow on contract is awarded where a Council service is provided by a contractor. This is particularly the case in situations where that contractor is not successful in their bid to continue to run the service. They may be subject to immediate financial pressures as a result of the decision and will need to be prepared to respond to questions from their staff. Where it is a major contract they are also likely to have to deal with questions from the press. At the same time they need to continue to operate services for Council pending the transfer of the Service to the new provider at a point where staff who do not want to transfer may look for jobs elsewhere or leave.

3.5 In these situations, officers have found it helpful to have an opportunity to inform the contractor of the decision in private, before the decision is made public. This allows time to make plans about the continuation of services during the transition period and to give the contractor the opportunity to inform their staff, so that they do not become aware of the decision through the press. However, this approach is not in keeping with the Councils general approach for decisions to be made in public.

3.6 The Committee is asked to consider the approach that should be adopted in relation to the award of contracts in future and make recommendations to Cabinet about this.

The options appear to be:

- (i) To have a general approach to always announce the name of the successful tenderer at Cabinet in every situation.
- (ii) To have a general approach to announce the name of the successful tenderer at Cabinet in all cases apart from those where an existing tenderer has put in a tender for a follow on contract.
- (iii) To not have a general approach but to consider the merits of announcing the name of the successful tenderer at Cabinet on a case by case basis.