
REPORT TO:	AUDIT SUB COMMITTEE	AGENDA ITEM: 7
DATE OF MEETING:	14th DECEMBER 2011	CATEGORY: RECOMMENDED
REPORT FROM:	CHIEF EXECUTIVE OFFICER	OPEN
MEMBERS' CONTACT POINT:	KEVIN STACKHOUSE (01283 595811) CHIEF FINANCE OFFICER Kevin.stackhouse@south-derbys.gov.uk	DOC: u/ks/procurement/gblc boilers report to Audit Committee
SUBJECT:	GREEN BANK LEISURE CENTRE: PROCUREMENT OF BOILER	REF:
WARD(S) AFFECTED:	ALL	TERMS OF REFERENCE: AS 04

1.0 Recommendation

- 1.1 That the Committee considers the non-compliance with the Council's Contract Procedure Rules for the replacement boiler at Green Bank Leisure Centre.
- 1.2 That the actions of the Chief Finance Officer are noted.

2.0 Purpose of Report

- 2.1 Under the Council's Financial Regulations, the Chief Finance Officer is required to report to those charged with governance, breaches of the financial procedural rules. In this particular case, the breach refers to the non-compliance with the Purchasing Code of Practice under Part 4 of the Council's Constitution.
- 2.2 This issue was brought to the attention of the Chief Finance Officer by the Procurement Unit. Consequently, Internal Audit was asked to follow-up the issue and report back after further investigation.

3.0 Detail

Background

- 3.1 Internal Audit was passed copies of orders that had been placed with a company for the replacement of boilers at the Green Bank Leisure Centre, refurbishment of a pump and legionella checks at various locations.
- 3.2 Concerns were raised by the Procurement Unit that the Authority's Purchasing Code and Contract Procedures had not been applied to these orders as the overall cost was in excess of £25,000. This is the trigger point above which a full tendering exercise must be undertaken and a proper contract entered into.

- 3.3 Initial investigations confirmed that the replacement pump and legionella checks were carried out within the procurement rules. These were for relatively small amounts where written quotations were received. In addition, the Legionella checks were carried out under a wider contract which is due to be retendered in 2012.
- 3.4 The main order that was placed was for the replacement of two boilers for a total of £30,369.60. The order was dated 13th July 2011, but was based on a single quotation from the same company dated 19th January 2011. No evidence was found that a tendering process has been undertaken and there is no sealed contract between the Council and the supplier.
- 3.5 Audit's investigation revealed that the boilers were to be replaced as part of a major refurbishment project starting in October 2011. However, they were not included in the original refurbishment specification and were procured separately.
- 3.6 Officers have confirmed that the boilers were in urgent need of replacement because there was a high risk of failure. Therefore, 2 quotes were obtained in January and February when this risk became known. Both quotes, including the one above, indicated a cost in excess of £25,000.
- 3.7 Officers have also indicated that the replacement of the boilers was wrapped up in protracted and difficult negotiations with the outgoing management contractor concerning responsibility. However, the new management contractor could claim against the Council if a plant failure forced the closure of the facility.
- 3.8 It would appear that the Council is responsible for replacing the boilers and in this instance, prior to the new Management Contract being awarded.
- 3.9 The issue came to a head quickly and a decision was made to replace the boilers in July as they had started to deteriorate quickly. However, the Council has not followed Procurement or Contract Procedure Rules when engaging this contractor and appears to have just taken up the quote from January.

Rules Governing Procurement

- 3.10 These are laid down in the Council's Contract Procedure Rules. These form part of Section 4 of the Constitution. In addition, there is also a Procurement Guidance & Procedures Manual (or Purchasing Code of Practice) which guides officers in ensuring value for money in the procurement process.
- 3.11 These documents explain the Council's procedures on placing orders for goods and services together with values that require quotations or where tenders must be sought.
- 3.12 They clearly state that at least three written quotes should be obtained for purchases in excess of £2,500 and that the tender process should be used for procuring goods and services above £25,000.

Emergencies

- 3.13 There are exemptions to the tendering rules in cases of emergency. Both the Director of Operations and the Head of Corporate Services may verbally authorise and record in writing an exemption provided that:
- The emergency was brought about by events which were not reasonably foreseeable by, or attributable in any way, to the Council, e.g. flood, and
 - There is a significant risk of danger to life, property or a major impact on the Council or its service users.
- 3.14 The Director of Operations must then at the earliest opportunity inform the Chief Finance Officer of the action taken in dealing with the emergency. They must also submit a report to the relevant Policy Committee that details the circumstances of and justifications for granting the exemptions made.

Conclusion

- 3.15 Having read through the correspondence and following discussions with several officers, Internal Audit found that the reason for urgent action to replace the boiler(s) was due to risk of a major failure of the one remaining boiler and possible shut down of a community facility.
- 3.16 Whilst this is accepted as a reason for urgent action it is evident from the correspondence that this risk was identified some six months earlier. In addition, officers were aware of the tendering rules.
- 3.17 Internal Audit found no evidence of a report to the Council to explain the situation or seek permission for the Contract Procedure Rules to be waived. The Finance and Management Committee have the power to do so. Waiving these rules (except in an emergency) is not a function delegated to any officer of the Council.
- 3.18 Therefore, the procurement process in this case has not complied with the Council's Contract Procedure Rules as laid down in the Constitution.
- 3.19 No evidence of fraud or corruption has been identified.

4.0 Financial Implications

- 4.1 None (directly from this report).

5.0 Corporate Implications

- 5.1 Following consultation with the Monitoring Officer, the Chief Finance Officer has since undertaken a compulsory briefing on the Contract Procedural Rules for senior managers, including project and budget officers. This included process, the role of Members and Directors together with support available for budget and project officers.

6.0 Community Implications

6.1 None directly.

7.0 Background Papers

None