

Companies Governance Executive Sub-Committee
21 July 2020

Subject:	Commissioning and Procurement Support for Council-Owned Companies		
Corporate Director(s)/ Director(s):	Steve Oakley, Acting Director of Commissioning and Procurement		
Portfolio Holder(s):	Councillor Sam Webster – Portfolio Holder for Finance, Growth and the City Centre		
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Key Decision	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	Subject to call-in
	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Reasons: <input type="checkbox"/> Expenditure <input type="checkbox"/> Income <input type="checkbox"/> Savings of £1,000,000 or more taking account of the overall impact of the decision			<input type="checkbox"/> Revenue <input type="checkbox"/> Capital
Significant impact on communities living or working in two or more wards in the City			<input type="checkbox"/> Yes <input type="checkbox"/> No
Total value of the decision: Nil			
Wards affected: All	Date of consultation with Portfolio Holder(s): Councillor David Mellen; Councillor Sam Webster – 7 July 2020		
Relevant Council Plan Key Theme:			
Nottingham People			<input type="checkbox"/>
Living in Nottingham			<input type="checkbox"/>
Growing Nottingham			<input checked="" type="checkbox"/>
Respect for Nottingham			<input type="checkbox"/>
Serving Nottingham Better			<input checked="" type="checkbox"/>
Summary of issues (including benefits to citizens/service users): This paper considers the potential for support to be provided between Nottingham City Council and its group of trading companies, in order to maximise the value obtained overall in the use of Council resources. In particular, it considers options for the companies to be supported to operate commercially – maximising income revenue and efficiencies and improving services. It outlines how procurement support can be provided and sets out issues for further consideration in taking this forward.			
Exempt information: None			
Recommendation(s):			
1 To note the opportunities outlined in this report for support to be provided between the Council and its group of trading companies, and the issues for			

consideration in taking forward this support.

1 Reasons for recommendations

- 1.1 In the development of support and purchasing arrangements between the Council and its companies, there are some complex issues for consideration, which relate to the legal status of the companies and their relationship with the Council. In particular, the extent to which the company is owned and controlled by the Council determines what is permissible under the EU and UK Procurement Regulations. Broadly, there are two scenarios for consideration:
- Trading companies that are wholly owned and controlled by the Council – often set up as so called ‘Teckal’ companies. These arrangements benefit from exemptions in EU law, which allow the flow of services between the authority and its controlled subsidiaries without the need to comply with the procedural requirements of the public procurement regulations. In general terms, the ‘Teckal’ exemption applies when:
 - the Council controls the body like an internal department, and there is no direct private share or ownership participation in the company;
 - more than 80% of activities are with the ‘parent’ council.
 - Companies that do not meet the criteria for the ‘Teckal’ exemption to apply and therefore operate as private companies.

Council controlled/‘Teckal’ companies

- 1.2 Like the Council, ‘Teckal’ subsidiaries are deemed ‘Contracting Authorities’ subject to the EU and UK procurement regulations, and must comply with the procedural requirements these regulations in their purchasing activities. However, under the Teckal exemption, the Council and its wholly-owned and controlled companies can buy and sell freely from each other without the need for competitive tendering. Therefore, it is possible for the Council to procure services and supplies for all of its Teckal companies – this offers potential for savings through increased purchasing power and the economies of scale of larger contracts.
- 1.3 Joint procurement is possible when the requirements for goods or services are similar and timescales can be aligned. The Council could work with its companies to align procurement plans, with a view to ultimately carrying out all procurement for the group jointly. This would streamline procurement and contracting arrangements, saving the time and resources involved in managing these processes separately.
- 1.4 Teckal companies can benefit from purchasing through Council frameworks, provided they are named as potential users in the original procurement. If the Council wishes its Teckal companies to purchase solely under its frameworks, a directive will be needed to require this. This is only an option for companies solely owned by the Council and not in cases of joint ownership with another authority (e.g., Nottingham Futures).

Non-‘Teckal’ Companies

- 1.5 Trading companies that fall outside the Teckal exemption cannot buy and sell freely with their parent authority, as in these scenarios the EU and UK procurement

regulations apply. For requirements above the EU thresholds, the Council (and Teckal subsidiaries) cannot purchase from a non-Teckal company without undertaking a compliant tendering process. It is not possible to mix public and private procurement due to the specific legal frameworks that apply to the two sectors. Therefore, if the Council wished to purchase for both Teckal and non-Teckal subsidiaries, it would need to run separate procurement processes.

- 1.6 As private entities, non-Teckal companies are not subject to the public procurement regulations in their purchasing and therefore greater flexibility in how they choose suppliers. They may purchase supplies from the Council and its controlled companies, retaining business and funding within the group. However, all services that flow from a parent authority to assist the trading company (e.g., payroll, ICT and other back-office services) must be provided at market rates to avoid issues of state aid.
- 1.7 While non-Teckal companies are not legally obliged to comply with the procurement regulations, they may benefit from undertaking competitive procedures based on those in the regulations. Open market procedures are recommended as good procurement practice to secure best value. The Council can support this by undertaking procurement on behalf of its private companies – chargeable at full market rates. Procedures might be based on the principles and relevant elements of the formal procedures but with greater flexibility – for example, flexible negotiated procedures to encourage innovation at the best price. In all arrangements with non-Teckal companies, state aid is a key issue and compliance should be continuously reviewed.

Examples of support to Companies

- 1.8 For a number of requirements funding has been pooled with Nottingham City Homes (a Teckal company) to purchase through the same arrangements and improve value for money. Examples of procurement support include:
 - Work wear – through accessing this framework, Nottingham City Homes (NCH) will benefit from savings and efficiencies arising from: the economies of scale of purchasing from one supplier; and a streamlined products list, removing unnecessary and duplicated items. Additional value will be achieved by 'Just in Time' production and delivery methodology with no requirement for storage space; and branding in framework supplies;
 - Office supplies and computer consumables procured on behalf of NCH;
 - Personal protective equipment during the Coronavirus emergency;
 - Multi-Functional Devices.
- 1.9 An example of procurement on behalf of a non-Teckal company is the tendering of a concession (income-generating) contract that was undertaken by the Procurement Team based on best practice from formal procedures. The client wished to follow an open process to achieve best value and the commercial rate secured through the tender doubled the annual income to be generated from the contract.

Other potential areas of support

1.10 Other support to maximise the commercial potential of the Council's companies could include:

- access to expertise and intellectual property;
- shared services;
- planning for commercial growth and sustainability and pursuing opportunities, e.g., expanding customer base or service offer;
- preparing for contracts, e.g., opportunity appraisal and financial modelling; developing bid writing capacity.

1.11 There is potential for the Procurement Team to support bid writing to assist companies in securing new business. This could include practical help with tender documents, for example the standard Supplier questionnaire (e.g., information on insurances, health and safety credentials, etc.). The team could also potentially offer a wider support service for tenders, such as reviewing draft tender submissions

2 Background (including outcomes of consultation)

2.1 The Council aims to maximise the overall use of its resources across its group of companies in order to deliver best value overall for the City and its citizens. One means to achieve this is through providing support to Council companies, for example shared purchasing arrangements, which can achieve savings through the pooled purchasing power and efficiencies through streamlining and reduced duplication.

2.2 Trading companies have greater commercial freedoms than their parent authority and are able to provide their services to a wider market than a Council department (subject to legal parameters). This presents opportunities to increase income generation, maximise efficiencies and improve the service offer to customers. The Council wishes to explore how its companies can be supported with a commercial approach, particularly in their purchasing activities.

3 Other options considered in making recommendations

3.1 None

4 Finance colleague comments (including implications and value for money/VAT)

4.1 This report details areas where procurement can support Council companies in maximising value added, including opportunities around commercial income and efficiencies, specifically via pooling resources and procuring services together with Council companies.

4.2 Market rate charging and state aid impacts need to be considered in any further considerations following this report.

4.3 Any decisions or actions following this report that result in savings/benefits need to be considered in the Council's Medium-Term Financial Plan at the appropriate time.

4.4 VAT will be treated in accordance with HMRC guidance.

4.5 Further finance comments will follow once issues within this report are taken forward for consideration.

Advice provided by Philip Gretton (Strategic Finance Business Partner) on 3 July 2020.

5 Legal and Procurement colleague comments (including risk management issues, and including legal, Crime and Disorder Act and procurement implications)

5.1 Procurement Comments

The Council's Procurement Team can provide professional procurement support as required to Council companies. By utilising the Team's extensive experience, expertise and established good practice, we will ensure compliance with relevant Procurement Legislation, whilst achieving Best Value and realising additional benefits for those organisations such as securing Social Value objectives through the procurement process.

Advice provided by Nicola Harrison (Lead Procurement Officer) on 2 July 2020.

5.2 Legal Comments

The Council has power to establish companies to trade for commercial purposes. It has power to establish other types of legal entities such as Limited Liability Partnerships to undertake development activities. Where the Council has a power to create a company or other legal entity it will also have the power to enter into agreements with the company for the supply of, works, goods and services to the company, the transfer and secondment of staff and the provision of premises. The Council must recover its costs in providing those works, goods and services, etc. The types of services which can be provided from the Council to the company are typically payroll, IT and other back office services, which may be crucial to help the company carry out its business. This can also include procurement, legal and Human Resources services. These services will need to be provided at market value or risk issues arising around state aid. It is good practice for those services to be included in an agreement, often referred to as an SLA (service-level agreement) setting out the charges from the Council. This can be on a retainer basis or on an hourly charge.

While the focus of this report is about the opportunities for providing support to companies which the Council establishes, consideration should be given to whether a policy or set of guidelines should be adopted by the Council to ensure a consistent approach to the purchasing of services by new companies from the Council. This would enable the author of a business case for the establishment of a new Council company to understand whether the new company has to buy services from the Council or will have freedom to go elsewhere for back-office and other services if these can be secured at lower cost. Any such guidelines or policy will need to consider the impact of buying or having the freedom to choose not to buy will have on the Council's central services finances and staffing.

Advice provided by Andrew James (Team Leader – Commercial, Employment and Education) on 3 July 2020.

6 Social value considerations

- 6.1 The Public Services (Social Value) Act 2012 applies to public procurement that is subject to the EU and UK Procurement Regulations, therefore the Council and its Teckal companies must comply in their procurement activities. All Council procurement activity is driven by Nottingham City Council Procurement Strategy 2018-2023, which promotes the delivery of social value for the City through its economic, social and environmental themes and objectives. In providing procurement support for companies, the Council will be able to ensure full consideration is given to social value in each procurement in order to improve economic, social and environmental well-being. In procurements undertaken jointly or on behalf of subsidiary companies, steps can be taken to include requirements to maximise the economic, social and environmental benefits delivered, and to promote the Council's Business Charter.

7 Regard to the NHS Constitution

- 7.1 This will be considered where appropriate

8 Equality Impact Assessment (EIA)

- 8.1 Has the equality impact of the proposals in this report been assessed?

An EIA is not required because the report does not contain proposals for new or changing policies, services or functions, financial decisions or decisions about implementation of policies development outside the Council.

9 List of background papers relied upon in writing this report (not including published documents or confidential or exempt information)

- 9.1 None.

10 Published documents referred to in this report

- 10.1 The Public Contracts Directives 2014 (the Public Contracts Directive 2014, the Concessions Contracts Directive 2014, and the Utilities Directive 2014) (EU Procurement Regulations)
- 10.2 The Public Contracts Regulations 2015, The Concessions Contracts Regulations 2016 and The Utilities Contracts Regulations 2016 (UK Procurement Regulations)
- 10.3 The Public Services (Social Value) Act 2012
- 10.4 Nottingham City Council Procurement Strategy 2018-2023