

Review of Contractual Procedures
Report by Director of Change Management and Resources and
Director of Operations

Summary: At the last meeting a member raised a question relating to the Authority's contractual procedures, as a result of concerns expressed about the letting of a recent contract. In response to these concerns a review of the process has been carried out by the Director of Operations, and a number of actions are proposed which will improve the Authority's contractual arrangements. Details of these are set out in this report.

Recommendations:

- (i) That the proposed amendments to the Authority's contractual procedures as set out in paragraph 2 be noted.
- (ii) That the proposed changes to Standing Orders Relating to Contracts, as set out in paragraphs 3.1 and 3.2, be approved.

1 Background

- 1.1 At the last meeting of this Committee on 4 December 2012 a member raised a formal question about the contractual procedures with regard to the letting of works to replace markers in the Bure Mouth portion of Breydon Water.
- 1.2 Whilst it was ultimately concluded that all proper contractual procedures had been followed with regard to the letting of these works, and that the Broads Authority had secured best value in this instance, a review of the contracting process has been undertaken by the Director of Operations in view of the concerns which were identified regarding the development and delivery of the project. A number of lessons have been identified as a result of this review, and the following changes are recommended.

2 Proposed Changes to Contractual Procedures

- 2.1 The first proposal arises from the initial estimate of the value of the contract, which was significantly lower than the quotations received. Having reviewed the process which was completed in this case, it has been found that a thorough estimation of the cost of the works was prepared which considered both materials and labour costs. However, there was no provision identified for mobilisation, which proved to be a significant element (30%) of the total contract value. Additionally, quotes also added in costs for "preliminaries," which covered elements such as site supervision, the setting up of a site

office and similar items, which were also not addressed in the original estimation process.

- 2.2 It is therefore proposed that in developing future internal estimates of works, additional account is taken of the cost of mobilisation and preliminaries, as well as adding a further 20% for the profit element for a more realistic commercial price estimate.
- 2.3 The second concern raised related to the use of sub-contractors for the works. The standard conditions of contract used for such works are the NEC3 Engineering and Construction Short Contract (June 2005) which includes a provision that *“if the Contractor sub-contracts work, he is responsible for providing the works as if he had not sub-contracted,”* which was considered to be sufficient as no liability was transferred. However, in light of the concerns expressed, it is suggested that in future the Authority uses an alternative clause which will require any sub-contracting elements to be agreed in advance, in order to meet the requirements of the Standing Orders and provide assurance to Members. An additional condition will therefore be applied to the standard contract documentation to read:

“No part of the works may be sub-contracted except with prior approval of the Employer.”

3 Proposed Changes to Standing Orders Relating to Contracts

- 3.1 Standing Orders Relating to Contracts require that, before any procurement process is started, the Chief Executive must estimate the value of the contract, and then set out the appropriate procedures for procurement dependent upon this initial valuation. In this case, the initial valuation was less than £25,000, which resulted in application of section 11 of Standing Orders, requiring three competitive quotations to be sought. However, in this case the quotations received exceeded the £25,000 initial estimate. It is proposed that an additional paragraph be added to Standing Orders Relating to Contracts as follows:

“In the event that the contract estimate is incorrect and quotations are received which would have resulted in a different procurement process being applied, the procurement process should either be re-run following the appropriate process, or a Waiver of Standing Orders be completed, depending upon the circumstances.”

- 3.2 In addition to the change outlined in paragraph 3.1 above, it is proposed that a further change to Standing Orders be considered to allow for situations where another public sector organisation has already undertaken a tender process. Recent discussions regarding a contract which will be managed largely by the Broads Authority but funded entirely by grant aid provided by Natural England, and where the Environment Agency has undergone a European tender process which began in April 2012 and resulted in an advertisement of an open tender in October 2012, have highlighted the need for a further paragraph be added to Standing Orders Relating to Contracts to state:

“Where the Authority is undertaking work in partnership with another public sector organisation, and the work is being funded either entirely or largely by that organisation, the Authority need not necessarily seek competitive quotations or tenders if that other organisation or another public body has already undertaken such a process, subject to the Authority being satisfied that the process was fair and robust and that the expenditure represents good value in the use of public money.”

4 Conclusion

- 4.1 Whilst it is considered that best value was obtained in the letting of the contract for the markers at Breydon Water, the process did highlight a number of issues which have now been reviewed by the Director of Operations. As a result of this review a number of changes are proposed to the Authority’s contractual procedures and the Standing Orders Relating to Contracts, which it is considered will improve and clarify the process for the letting of contracts.

Background papers: Question submitted by Mr Broad to Financial Scrutiny and Audit Committee on 4 December 2012, and response provided by Chairman of the Committee

Statement submitted to Navigation Committee on 13 December 2013 by Mr Greasley

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Broads Plan Objectives: None

Appendices: None