

## **REPORT ON TENDERING PROCEDURES**

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### **1. SUMMARY**

The Audit Committee at the September 2009 meeting agreed to continue consideration of the report on Tendering Procedures to allow for further information to be provided at the December 2009 meeting in respect of the first finding and recommendation. Further explanation of recommendation 1 as contained in the report issued in August 2009 is detailed below.

### **2. RECOMMENDATIONS**

2.1 The contents of this report are noted.

### **3. DETAILS**

3.1 The project agreed with management for review was the Upgrade of Helensburgh Swimming Pool. This project was selected as it was the first to implement a new set of procedures adopted to enhance conditions of effective competition in the procurement process for public works contracts.

Prior to the adoption of these new procedures it was assumed and understood that the required principals of transparency; non-discrimination and equality in conditions of effective competition were satisfied by adhering to the Council's contract standing orders and the EU procurement regulations and thresholds.

This was challenged by a local contractor and legal advice was obtained to clarify the position. The advice received indicated that our procedures may not have gone far enough particularly when there was a desire to limit the number of contractors invited to tender i.e. a process of pre-selection. Property Services amended their procedures in the light of this revelation and during our audit we sought to satisfy ourselves that the new procedures were in place and satisfied the legal advice given.

The implication of these new requirements was that the Council could be restricted in its flexibility to allow the award of contracts, especially those of relatively low value, to local contractors and consultants. This concern was highlighted in Appendix 1 of our report at clause 1.3. Our recommendation 1 makes the assumption that the circular SPPN 4/2009 issued on 22 June 2009 by the Scottish Procurement Directorate excludes Public Works Contracts as it does not expressly include them which would have been normal practice in previous statutory documents. This therefore leaves the Council with the flexibility it desires in respect of contracts below 10% of

the OJEU threshold 5,500,000 euro which translates to the figure of £349,731 as stated in our recommendation 1.

#### **4. CONCLUSIONS**

Our audit opinion was that the new procedures satisfied the legal advice received and any critical statement regarding procedures applies to the position prior to this contract.

#### **5. IMPLICATIONS**

5.1	Policy:	None
5.2	Financial:	None
5.3	Personnel:	None
5.4	Legal:	None
5.5	Equal Opportunities:	None

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