AGENDA ITEM NO 15

REPORT NO 204/11

ANGUS COUNCIL

CORPORATE SERVICES COMMITTEE – 1 MARCH 2011

PROCUREMENT OF EXTERNAL LEGAL SERVICES

REPORT BY DIRECTOR OF CORPORATE SERVICES

ABSTRACT: This report informs members of the need to put in place a contract for legal services by external service providers and seeks authority to proceed with the required procurement.

1. RECOMMENDATION

It is recommended that the Committee authorises the Head of Law and Administration to procure external legal services for the Council on the basis set out in this report.

2. BACKGROUND

2.1 The Law and Administration Division provides a range of services to the Council including legal services. The work of the Legal Services Section includes litigation, conveyancing, preparation of Statutory Orders, bye-laws, research, advice to the Council and its departments and the representation of the Council in court, at inquiries and tribunals. The purpose of this tender is for the provision of legal advice and services which will, when necessary, complement or supplement the services provided by Legal Services. Examples include the use of Advocates or Solicitor Advocates for various matters, advice related to Employment Tribunal etc matters and independent planning advice. Throughout the contract, the Council shall be entitled, but under no obligation, to seek such services from the successful contractors, if and when these are required. At this stage, it is not possible to reliably determine the type or volume of work which may be involved. As a result, no guarantee will be given to the bidding external service providers of the expected levels of work. The main user of the proposed service will be the Corporate Services Department, although the contract may be utilised by other departments within the Council.

2.2 It is important that the provision of legal services is procured in accordance with the Council’s procurement strategy rather than on an ad hoc basis in order to establish transparent and robust contract arrangements and to ensure value for money.

3. PROCUREMENT AUTHORITY

3.1 Sourcing Strategy

The procurement is not considered to be a “major procurement” in terms of Financial Regulation 16.8.4. Approval of this Report would mean that the contract can be accepted without the need for further approval by the relevant committee. In accordance with the new arrangements the contract award will be reported to the Corporate Services Committee for noting only. The Head of Law and Administration considers that the provision of these supplementary services from time to time is an essential requirement to meet the Council’s need and such a tendering process will help ensure that the Council obtains the necessary service at a competitive price. Council staff resources are limited and the requirements for external services are mainly in specific areas where expert knowledge is not readily available internal to the Council.

It is proposed that the tender requirements will be divided into three lots.

Lot 1 Court of Session work and legal advice of a complex or specialist nature.
Lot 2  General legal work e.g. advice on planning and environmental law (to include representation at planning inquiries), employment law (to include representation at employment tribunals), construction law, company law, property law, social work, housing and education.

Lot 3  Legal work associated with securing permanent arrangements in respect of children, which is performed on behalf of third parties, but funded by the Department of Social Work and Health.

Lots 1, 2 and 3 cover services which have previously been procured by the Corporate Services Department on an ad hoc basis informed by relevant professional expertise and experience but for which no formal tendering framework existed and therefore the Department is unable to absolutely demonstrate that it has achieved best value. It is believed that there is a competitive market for all three lots.

No National Procurement Scotland or Scotland Excel contracts exist to meet this requirement and it is understood that there is no potential for co-operative procurement at present under the umbrella of the Tayside Procurement Consortium. It may be possible to collaborate with the TPC partners for legal services in the future.

Lot 1 will require the solicitors to have a presence in Edinburgh and therefore it is not likely that there will be any local suppliers.

Lot 2 may be open to some of the larger Tayside firms but Lot 3 will be open to local suppliers and indeed it will be necessary for these suppliers to have a local presence to meet the requirements of the tender.

3.2 Key Terms Proposed

It is envisaged that the contracts will commence on 3 August 2011 for a three year period with an option to extend for a further one year. The value of the services is difficult to predict but it has been estimated for indicative purposes, based on previous contract values, to be in the region of £150,000 for a three year period. The Council will enter into framework agreements with the successful tenderers and thereafter, throughout the period of the contracts, the Council shall be entitled, but under no obligation, to seek services, if and when these are required. However, the amount and cost of the services procured will vary from year to year depending on the exigencies of the Council and the availability of an appropriate service budget.

3.3 Procurement Procedure

It is considered that a two stage (“restricted”) tender procedure would be the best means of procuring the services. The value of contract circa £50,000 per year for a three year contract with a one year option to extend is above the European Union value contract threshold of approximately £157,000.

The services sought are considered Part B Services also known as “residual services” which are only partly regulated. The only parts of the regulations that apply to Part B services procurement (when above threshold) are those relating to specifications and standards and secondly the obligation to dispatch a contract award notice. Although the regulations do not impose an obligation to advertise the Part B services contract in the Official Journal of the European Union, the treaty principles still apply. In order to ensure that the Council adequately advertises this tender to ensure compliance with the principles set out in the European Treaty, the Head of Law and Administration recommends the advertising of the contract opportunity on the Public Contracts Scotland Portal as a means of securing value for money. An email will be issued to the local faculty highlighting in particular the tendering opportunity of Lot 3.

It is proposed that one service provider will be awarded the contract in respect of Lots 1 and 2 respectively whereas a panel of three firms will be appointed for Lot 3.

It is hoped that for each lot there will be a keen candidate interest shown which will result in a minimum of five following evaluation of the pre-qualification questionnaire who will then progress to the second stage of the procurement process and be invited to tender.
3.4 Contract Evaluation on Award Basis

All of the bidders who pass the pre-qualification test as to the required level of ability and capacity in terms of resources, experience, qualifications and track record will be admitted to the select tender list.

Completed tenders returned to the Council shall be evaluated and the contract will be awarded on the basis of the most economically advantageous tender, on a mix of quality and price. The price/quality split applied will 70/30% in accordance with Financial Regulation 16.14.2. The Corporate Procurement Manager on behalf of the Head of Finance will require to approve the evaluation criteria and methodology.

The Corporate Procurement Manager has been consulted on the proposed procurement process and outline requirement and advises that this will produce the required level of quality of service required by the Council.

3.5 Procurement Risks

A risk assessment has been undertaken for this tender and other than the normal risks inherent in any contract no risks have been identified. It is relevant to note, however, that the risk of the Council’s reliance on poor advice is potentially significant. The inclusion of quality assessment measures in the evaluation process addresses this risk.

4. FINANCIAL IMPLICATIONS

The use of external advisers for legal services is only triggered following approval of the instructing department and in the knowledge that they will be responsible for meeting the cost of the associated fees. These costs will require to be met from the revenue budgets for each respective department requiring the external legal advice/service.

5. HUMAN RIGHTS IMPLICATIONS

There are no Human Right implications specific to this Report.

6. EQUALITIES IMPLICATIONS

The issues contained within this Report fall within an approved category that has been confirmed as exempt from an equalities perspective.

7. CONSULTATION

The Chief Executive, all Directors and the Head of Finance have been consulted in the preparation of this Report.

8. CONCLUSION

The requirement for high quality legal services is essential to assist the Council in meeting its legal requirements. The proposed procurement process set out in this Report supports the achievement of high quality services, at a competitive price, to supplement the Council’s in-house providers.

COLIN McMAHON
DIRECTOR OF CORPORATE SERVICES

NOTE: No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to a material extent in preparing the above report.