

Report to: **Scrutiny Committee for Audit and Best Value**

Date: **18 November 2009**

By: **Chairman of the Project Board**

Title of report: **Scrutiny review of County Council procurement with local Small and Medium sized Enterprises (SMEs)**

Purpose of report: **To present the outcomes of the scrutiny review and make recommendations**

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**RECOMMENDATION: that the Committee considers the report of the Project Board and makes recommendations to Cabinet for comment and County Council for approval.**

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### **1. Financial Appraisal**

1.1 The main financial considerations of the Project Board's recommendations are outlined in the appended report.

### **2. Summary**

2.1 The Project Board comprised Councillors David Tutt (Chairman) and Councillors Nick Bennett (from July 2009), Brian Gadd, Michael Ensor and Francis Whetstone.

2.2 The attached report contains the findings and recommendations of the Project Board. An evidence pack of supporting documentation is available on request from the contact officer.

2.3 The Committee is recommended to receive the Project Board's report for submission to Cabinet on 15 December 2009 and County Council on 9 February 2010.

### **3. Recommendation**

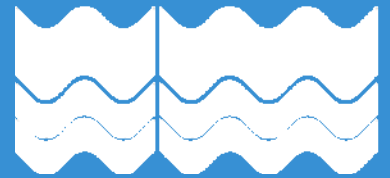
3.1 The Committee is requested to consider and endorse the report of the Project Board for submission to Cabinet on 15 December 2009 and Full Council on 9 February 2010.

COUNCILLOR DAVID TUTT  
Chairman of Project Board

Contact Officer: Paul Dean                      Tel No. 01273 481751  
Local Members:                      All

### BACKGROUND DOCUMENTS

The Report of the Project Board – appendix



# Scrutiny review of County Council procurement with local Small and Medium sized Enterprises (SMEs)

## Final report of the Project Board

Councillor David Tutt (Chairman)  
Councillor Nick Bennett  
Councillor Michael Ensor  
Councillor Brian Gadd  
Councillor Francis Whetstone

November 2009

Audit and Best Value Scrutiny Committee – 18 November 2009  
Cabinet – 15 December 2009  
Full Council – 9 February 2010

**Scrutiny review of County Council procurement with local small and medium sized enterprises (SMEs)**

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## Recommendations

	Recommendation	Page
1*	<p>Contracting departments should publish clear information on the Council's website, and elsewhere as appropriate, about how the select list process operates, to include:</p> <ul style="list-style-type: none"> <li>a) the list of approved contractors, subdivided into categories where appropriate</li> <li>b) the procedure by which firms are called off the list to deal with ad hoc work or invited to tender</li> <li>c) The principle of rotation being used including who decides how to allocate each piece of work and the factors used.</li> </ul>	13
2*	<p>Contracting departments should publish clear details about how the framework system operates including:</p> <ul style="list-style-type: none"> <li>a) the list of framework contractors for every framework to enable local SMEs to approach these companies directly to seek subcontracting opportunities.</li> <li>b) the procedure by which contracts are allocated to framework companies.</li> </ul>	13
3*	<p>All information published by the Council on its website about procurement processes, and details of select lists should include an email contact address to enable SMEs to communicate with the Council more easily.</p>	13
4*	<p>Council departments should be encouraged to arrange 'meet the buyer' events for SMEs where benefits can be identified. These informal meetings would enable the Council and framework contractors to explain the types of contracts and subcontracts coming up, and SMEs to indicate the kinds of contracts of interest to them.</p>	13
5*	<p>Contracting departments should publish forward procurement plans, together with lists of contracts awarded and forthcoming opportunities available that are likely to be of interest to SMEs; this will assist SMEs to better assess whether to engage in the procurement processes of the County Council.</p>	13
6	<p>To welcome, endorse and actively promote the Property Services Supply Chain Readiness Network initiative, with Member engagement, and for Audit and Best Value Scrutiny Committee to monitor its impact over time on East Sussex based SMEs.</p>	13
7	<ul style="list-style-type: none"> <li>a) Ensure that the nature and impact of the '25% of turnover' rule is clear in the documentation available to SMEs.</li> <li>b) Provide assurance that there is sufficient flexibility in the operation of the rule to ensure that any individual company is not unnecessarily disadvantaged.</li> </ul>	14
8	<ul style="list-style-type: none"> <li>a) To welcome the promotion and development of web based systems for publicising and advertising contracts. In addition, to endorse the use of electronic auctions for easily specified, low-risk procurement.</li> <li>b) To endorse the Council's current position that electronic tendering has the potential to disadvantage some SMEs who may not be sufficiently e-enabled to</li> </ul>	16

	respond electronically, and should therefore not be the sole access channel for participation.	
9	Property Services officers to review the structure, feasibility and benefits of refreshing or eliminating the Council's property related select lists once the Tier 2 and 3 contractor frameworks are in place at the end of 2009, with particular reference to specialist suppliers.	17
10	<p>a) To welcome the investigations being carried out to assess whether the Council can provide cost effective top-up public liability insurance for SMEs and report progress to Audit and Best Value Scrutiny Committee in due course.</p> <p>b) To welcome the flexible approach which permits a reduction of insurance cover below the default £10m for low-risk contracts, and ensure that procurement managers are made aware of this opportunity. Annual monitoring reports to Audit and Best Value Scrutiny Committee to include details of all contracts where flexibility has been exercised.</p>	18

\* Recommendations 1 – 5 were included in the interim report of the Board published in March 2009

## Background

1. East Sussex County Council now spends over £300m annually on revenue goods and services and approximately 30% of this sum is spent through local small and medium sized enterprises (SMEs) and voluntary and community organisations. There are thousands of SMEs carrying out ad hoc business amongst the 10,000 or so vendors currently active at East Sussex County Council. The number under formal contract that have been awarded business worth more than the tender threshold of £50,000, or for a twelve-month supply period, is 185.

2. Over the last few years several initiatives have aimed to make life easier for companies to do business with East Sussex County Council. Many of these are targeted at local SMEs, most notably:

- In 2002 a *How to do business with the Council* supplier guide was published on the Council web site, East Sussex County Council being one of the first in the country to do so; a link was established with Sussex Enterprise to provide advice to local companies.
- In 2003 the Council established procurement portal on the web site to enable all companies, including SMEs, to view tenders and express interest electronically.
- In 2004 the East Sussex procurement group was created bringing together East Sussex districts and boroughs and Brighton and Hove City Council to provide opportunities for joint contracting. The ESCC procurement strategy and improvement plan was approved and contracts began to be packaged into more attractive business propositions for SMEs.
- In 2006 the County Council signed up to the Government's small business friendly *Concordat* – a non statutory pledge to engage actively with small businesses and to commit to good procurement practices.
- In 2007 all 15 Sussex councils in partnership with Sussex Enterprise engaged in a project focussed on making it easier for SMEs to do business with Sussex councils. As a result, each Council signed the Concordat and agreed a common format for pre-qualifying questionnaires. The Federation of Small Businesses rated East Sussex County Council as 6th most small business friendly south east council out of 52 surveyed.

3. A more recent survey of Sussex wide businesses<sup>1</sup> showed that over 70% of Sussex businesses have never tendered for work with councils. In most cases the reason was because the work available was not applicable to them. However 9% said they were not aware of what was on offer, 9% claimed it was "too bureaucratic" and 6% blamed poor communications with the councils. Of the businesses who had tendered, a quarter said that the procurement process has improved.

4. In 2004, Audit and Best Value Scrutiny Committee first became aware of a potential conflict between the move towards joint contracting through regional consortia to deliver 'Gershon' savings and a national strategy for local government procurement designed to encourage the use of local SMEs and voluntary and community sector organisations. In June 2008 the Committee decided to explore this potential conflict in more detail against the backdrop of the range of positive initiatives that had been put in place to assist SMEs. A separate scrutiny review of the Council's relationship with the voluntary sector (March 2008) indicated that there may be actions that might improve the Council's relationship with SMEs too. It therefore established this scrutiny review to:

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<sup>1</sup> Voice of Business 2009 Survey, March 2009, Sussex Enterprise

- a) consider the extent to which East Sussex County Council's procurement processes offer 'a level playing field' to local small and medium sized enterprises (SMEs) who wish to access contract opportunities with the Council;
  - b) test whether the procurement processes designed to increase value for money and the participation of SMEs in East Sussex are working in practice; and
  - c) make recommendations to enhance processes as appropriate.
5. During the course of this scrutiny review, Anne Glover (CEO of Amadeus Capital Partners) was appointed by the Chancellor to provide advice on measures to improve SME access to public procurement contracts. The Glover Review's report discussed the practicality of setting a goal for SMEs to win 30% of all public sector business over five years.
6. The coverage of the national and local initiatives relating to the topic of this scrutiny review are illustrated in Appendix 2 which compares the results of the *Glover review*, the *small business concordat* provisions, the scrutiny review of the Council's relationship with the voluntary sector to the recommendations of this scrutiny review.
7. The potential scope of this review was so large that the review Board prioritised its work by selecting the capital and revenue procurement elements of four County Council activities for scrutiny:
- Adult Social Care – supporting people contracts
  - Children's Services – Looked after Children / fostering agency contracts
  - Transport and Environment – passenger transport – home-to-school transport coaches and taxi contracts
  - Corporate Resources Department (CRD) – property services contracts.
8. The Board took evidence from a broad range of witnesses including County Council commissioning and procurement officers for the four listed activities. The review was advertised in the local press and 560 SMEs were contacted to gain their perspective of what it is like doing business with the Council. They were invited to submit written evidence and to attend a meeting with the Board.
9. Responses were received from 25 businesses (5% of those contacted on average) and the Federation of Small Businesses and Sussex Enterprise. The percentage response rate from each category of SME were: 15% property services businesses; 3% passenger transport providers; 2% supporting people providers and 0% foster care providers. Six businesses (five property related and one supporting people provider) attended the meeting with the Board to provide their perspectives directly.
10. In March 2009, the Board published its interim report containing recommendations 1 – 5. These measures were considered by the Board to be achievable and urgent given the difficulties faced by SMEs in the current economic climate. The Board welcomed the endorsement of the recommendations by Cabinet (28 April 2009) and the significant progress made with implementing these recommendations. It then undertook further investigations which have led to the publication of this final report. The findings and recommendations from this review are now grouped into the following sections:
- **Transparency:** ensuring procurement processes are fair and easy to understand by local SMEs seeking contracts
  - **Simplicity:** ensuring procurement processes are as simple as practicable to benefit both SMEs and the Council.

## **Definitions and local context**

11. For the purposes of this scrutiny review, SMEs fall into three bands as follows:

- Medium-sized enterprise – up to 250 employees or up to £40m turnover
- Small enterprise – up to 50 employees or up to £8m turnover
- Micro enterprise – up to 10 employees or up to £1.6m turnover.

12. A select list (or approved list) is a *list of suitable prospective contractors approved for the purposes of the supply of goods or services or the execution of works in accordance with the provision of standing orders*. These are generally for a large number of suppliers who may or may not be called off for work, and are particularly used for works under the EU threshold offering flexibility on terms and pricing.

- Example: the Property Services select list contains six categories. Different value bands apply in order to secure value for money so that for low value jobs, in general, smaller companies without large overheads tend to be more competitive. The categories and the number of value bands are: building (6); mechanical services (3); electrical services (3); roofing (3); asbestos (3); and flooring (3). There are approximately 120 companies on this select list.

13. A framework agreement is an *agreement for a defined range of goods, services or works, the terms of which are agreed through an initial competitive tendering exercise, and under which the contractor undertakes to enter into contracts for requirements called off as and when required*. Current framework contractors tend to be larger organisations and engage subcontractors to carry out parts of the work but frameworks for lower value bands are in development. Frameworks are particularly useful for buying standard goods or services and for various types of consultancy. Frameworks generally engage a smaller number of suppliers who have pre tendered and could normally expect to receive a slice of work.

- Example: One of the Property Services framework agreements for building design and maintenance consultancy is the multi-disciplinary design, project management and cost management services framework for capital projects; this comprises eight companies providing multi-disciplinary design services, six providing project management services and six providing cost management services.

14. 'Local' (SME) is defined as the whole of Sussex including Brighton and Hove because this is the area that Sussex Enterprise and the Federation of Small Businesses recognise and is the area against which all 14 Sussex councils continue to undertake the SME Concordat work. However, the Board considered that when assessing the impact of initiatives, over time, from an economic development perspective, 'local' will be taken to mean the county of East Sussex.



## Findings and recommendations

### ***Transparency***

15. There is widespread agreement that public sector organisations must be transparent in undertaking procurement from advertising and pre qualification requirements through to tendering processes. In particular, authorities should be able to explain clearly how they adjudicate between bids from competing companies.

16. The County Council aims to make procurement decisions which result in the most 'economically advantageous' contracts for the Council. This definition enables the Council to take account of factors other than just cost when choosing contractors. Non-cost factors become more relevant for larger, complex contracts and less important for smaller or low-risk works where price tends to be the main factor. Consideration of quality, social and environmental factors when judging tenders is welcomed by the Board providing that the way in which these non-price criteria are judged is fully transparent to SMEs.

17. From the perspective of SMEs, critical criteria used in appraising companies during the tendering process should be made transparent at the outset so as to minimise unnecessary administrative burdens by suppliers when applying for work.

### **Select lists of approved suppliers**

18. Some departments in East Sussex County Council maintain select lists of approved suppliers. Each list contains suppliers who have successfully passed a pre-qualification stage, but have not pre-tendered for specific jobs. In recent years the number of select lists has reduced as departments have moved towards using alternative contracting methods, particularly framework contracts. The operation of each of the select lists within the remit of this scrutiny is detailed below.

19. The Board paid particular attention to the Property Services select list which is complex and contains between 100 and 120 companies subdivided into different categories of work and different value bands. There are wider legal considerations which increasingly favour the use of frameworks rather than select lists; indeed contracts of cross-border interest preclude the use of select lists because there is an EU requirement to advertise such procurement.

20. Based on current trends, Property Services envisages that in future most work by value will go through the frameworks with just a small proportion remaining for the select list. Future select list work will be relatively low-risk or require specialist contractors. A select list also gives the ability to select companies on price criteria alone, enabling longer term value for money comparisons.

21. SMEs' experience of applying for and sitting on select lists has varied considerably. During 2007/08, 102 construction contracts were let which meant that some contractors on the Property Services select list received no work at all in that year, whilst others received more than one contract. For some SMEs, waiting a year without County Council work is acceptable; but for those who envisaged that joining the list would result in regular contracts this position has caused concern.

22. In some cases SMEs said they were left unclear as to exactly why they had been unsuccessful in being allocated work and therefore uncertain how to proceed in respect of future opportunities. Given the diminishing volume of business being directed through property select lists, SMEs were concerned to see that the available contracts are awarded as fairly and transparently as possible.

23. The Board received far fewer complaints about transparency from SMEs sitting on those Council select lists where there was sufficient work to go round and where all members of the list are informed of every job which becomes available; the bus and taxi select lists managed by Transport and Environment operate in this way.

## **Choosing companies from the select lists**

### ***Property services***

24. The method used by Property Services to select contractors from its list depends on the value of the work:

- For work valued over £1,000 several appropriate companies are invited to quote or tender depending on category or band value
- For building work between £15,000 and £100,000 and all other categories of work, four companies are asked to submit. If there is a term contractor retained for the category of work they are selected along with two local companies and one company selected on a 'rotation basis' starting at the top of the approved list. Those companies which receive the offer to tender then go to the bottom of the list, and so on
- For building work over £100,000 an initial pool of twelve companies is selected for consideration. This pool includes the last successful contractor at an equivalent value, the last contractor on that site for a major contract, the term contractor if appropriate, four local firms and the remainder on a rotation basis. The initial pool is then ranked in order of preference taking account of past tendering and on-site performance, locality and firms waiting at the top of the list for more than one project. The Assistant Director (Property) can also vary the process to take account of other value for money considerations. Once ranked, the firms are contacted in order of preference to establish whether they will submit a tender until a shortlist of six companies is compiled. Those which have not been invited to tender then go to the top of the list.

25. Several SMEs suggested there should be a 'single point of contact' in the County Council to discuss contracting matters to help them access key information about the property services tendering process. This would help them to decide, for example, whether to invest in the time and resources to apply to become an approved contractor on a select list. Specifically, these businesses have requested greater clarity about:

- How the 'rotation' system is used in select lists, in detail, to identify which companies are offered contracts; and then what happens to companies that are unable to accept a particular piece of work or submit a tender when offered, or fail to get shortlisted
- How bids are judged, especially if factors other than price come into play
- Why some businesses on the approved list have received no business to help them understand what they need to do in future to gain work.

26. The Board considered that the list should be kept in such a way so as to enable companies on it to judge more easily their chances of receiving work by, for example, providing an indication of their relative position.

### ***Transport and Environment***

27. Transport and Environment operate three select lists:

- Highways and Bridges: a minimum of five tenderers are selected for each opportunity by selecting the lowest two tenders received from the previous tender exercise and then randomly selecting the remaining three or more from the list of 29 companies; the list covers all Highway & Bridge work outside the main term maintenance contract.

- Taxi Services: The process has recently been simplified and now all opportunities go out by email to all 173 operators on the approved list.
- Bus Contracts: all opportunities go out by email to all 68 operators on the approved list.

28. Operators may apply to join the taxi and bus lists of approved contractors at any time, ie. these operate as open lists. They are placed on the list once they have successfully completed CRB, licence and other appropriate checks.

## **Framework agreements**

29. Over recent years the Council has, along with most other counties, moved towards using framework companies to manage certain large and complex projects and procuring some goods and services. Frameworks enable the Council to better manage the risks associated with such activities and obtain lower costs and greater value for money for the Council and Council Tax payer.

30. For contracts valued at more than £3.8m for works and £139k for goods and specified services, the Council must advertise through a 'European tender' procedure or use an existing 'EU compliant' framework agreement. Therefore, contracts let under framework agreements, in general, tend to be awarded to larger companies who engage subcontractors to carry out most of the work.

31. Framework agreements are suited to the more risky, complex jobs requiring the early engagement of the contractor at a project's design and feasibility stages. The collaborative working that the framework is designed to foster better deals with the risks and complexities of such projects. County Council departmental officers argue that, in general, contracting with fewer, larger organisations through a framework is beneficial because it provides incentives for successful providers to grow and innovate. Subcontracting by framework contractors is seen a positive way of retaining specialist services from SMEs.

32. In summary, the advantages of the framework approach to the Council over the alternatives are:

- Significant time and resource savings in the operation of the tendering process
- An ability to engage collaboratively with the selected contractor at an early stage in the project which leads to more efficient processes and better value from project design through to procurement and completion.
- The "pre tendering" assessment, implicit in the process, means that each prime contractor's overhead costs and profits are known to the council in advance.

### ***Foster care framework agreement***

33. A new framework agreement came into effect in November 2008. The framework period is for two years with an option at the discretion of the Council to extend for a further two years. The framework agreement is not open to new providers during the initial two year period but after that new providers may be invited to apply in the event that current providers are unable to provide the required number of placements. The Council is seeking to ensure that the provision of foster care services will provide best value for its service users.

34. Following an evaluation of tenderers, each successful provider is placed into a 'matrix' comprising price banding categories against the types of placement being offered. When a particular type of placement is required, suitable providers in the lowest price category are contacted first followed by those in the higher price categories if necessary. If no placement is available through this process then the Council can spot purchase outside the framework agreement although this is expected to be a rare occurrence.

35. The volume of referrals is variable with no guaranteed business levels. To increase transparency and assist SMEs' understanding, the Board considered it important to publish how the matrix system operates and the basis on which placements are offered together with the list of agencies currently on the framework.

### ***Property Services framework agreement***

36. Property Services uses Improvement and Efficiency South East (IESE) frameworks which remove the need for individual European tender processes or competitive tenders; this approach represents a considerable efficiency benefit over the alternative contracting methods. These frameworks are organised along three tier contract price bands:

- Tier 1 is a regional framework for work valued over £1 million and contains 10 main contractors (now in place)
- Tier 2 covers £500,000 to £3 million and includes 7 main contractors; East Sussex is the lead authority for Sussex in developing and managing this framework tier (now in place)
- Tier 3 will eventually cover work between £100,000 and £750,000 and it is planned to include between 8 and 12 contractors (operational by the end of 2009).

37. Tier 3 is being developed for use by Sussex authorities with the intention that East Sussex will use these frameworks for up to 70% of all projects, with the select list being used for the remainder. The introduction of these frameworks will impact upon both the volume and type of work likely to be channelled through the select list in future.

38. When the Council selects a prime contractor under a framework agreement, it is possible either to go directly to one supplier on the framework provided the terms in the framework agreement are sufficiently precise to cover the particular call-off, or where the terms are not sufficiently precise or complete enough, a mini competition is held with the suppliers on the framework which are capable of meeting the particular need. Unlike select lists, over time *all* of the contractors in the framework are likely to receive work during the framework period.

39. The selection criteria used to consider when awarding a framework contract include:

- the geography and location of the work and contractors; with priority given to companies operating closer to the location of the work
- the capacity of the contractor to carry out the work, and
- the familiarity with the type of project proposed.

40. Prime contractors break each framework contract into smaller packages and tender much of the work to a host of subcontractors. Indeed, the amount of work available to sub contractors through this route can be substantial:

*Within a particularly large County Council management framework contract valued at £36m, only £3m is paid to the framework contractor; the rest is spent by this contractor on a wide range of smaller sub contracts.*

41. The Council's policy is not to nominate specific subcontractors or suppliers to the prime framework contractors except in exceptional circumstances. This is because, despite any requirement for a nominated subcontractor to indemnify the main contractor, it would transfer a degree of risk back to the Council and thus offset a principal benefit of the framework. The Board endorsed this approach but went on to question the extent to which Council procurement through framework contracts conflicts with the aim of trying to improve the local economy by supporting local SMEs.

42. SMEs are normally too small to compete directly as property services prime framework contractors and are increasingly reliant on subcontracting work since there is a shrinking volume of work placed directly by the Council through its select lists. However, the Tier 3 framework would enable some of the larger SMEs to apply to become framework contractors for this band.

## **Influence of the County Council over the supply chain**

43. When the Council appoints a prime contractor, the selection process requires the contractor to *demonstrate* how it intends to manage the supply chain of subcontractors and looks at where likely subcontractors are based. Whilst this exercise is undertaken primarily to satisfy the Council that the prime contractor can properly deliver the works, it probably leads to local companies being appointed as subcontractors anyway because this is likely to be the most cost effective option. The Board endorsed the current policy that any specifications laid down by the County Council through its prime contractors for products or services should not specify the use of proprietary brands unless absolutely essential (ie. this should encourage the use of open specifications) thus potentially benefiting local SMEs.

44. The Board considered what would happen if the Council exercised greater control over the supply chain by, for example, *requiring* prime framework contractors to use certain subcontractors specified by the County Council. Potential benefits might be improved quality guarantees using companies with a known track record, and benefits to the local economy by directing more business to local SMEs. One case was cited where a framework company had engaged subcontractors from outside the local area only to find that they could not fulfil their contract obligations leading to the use of a local SME in the end. However, intervention by the Council in selecting or vetting subcontractors would transfer risk back to the Council and add to the cost of a contract, offsetting the other significant advantages of the framework.

45. The Board considered that the way forward is to adopt a two-pronged approach. On the one hand the Council should seek to *influence* framework contractors to use local SMEs but without adversely affecting the risks to the council. On the other there is an onus on local SMEs to identify, gear up and bid for work as subcontractors to framework prime providers. Some local businesses said that they would approach framework contractors for work if upcoming contract details were published. Others expressed concerns about working as subcontractors to some national companies because of previous bad experiences. However no specific complaints of this nature were received from local SMEs about East Sussex framework contractors.

### ***Encouraging engagement with SMEs***

46. There is evidence that other authorities are successfully engaging in supply chain improvement initiatives, for example helping prime contractors to meet and engage with local SMEs. During the course of the review, Property Services began to establish a Supply Chain Readiness Network for East Sussex. This network will launch in January 2010 with a trade fair event bringing together framework companies and SMEs. Funding of £50,000 to help initiate the network has been obtained from the Council's £1m Recession Fund and has the full support and input of the Council's Economic Development Unit.

47. The network itself will comprise a database of East Sussex SMEs to be managed by a third-party agency and would enable free entry to all sizes of business. It is designed to help market SMEs' products and services to framework contractors by acting as a 'matchmaker' between them. The network would enable the early publication of contract opportunities by framework companies and help to 'upskill' local companies to position them to have a better chance of winning work. There would be a common pre qualification standard to make life as easy as possible for SMEs wishing to register.

48. Links with other agencies such as Business Link have been made to assist with identifying and meeting SMEs' perceived training needs. The network could ultimately promote apprenticeships and career opportunities through working with vocational training organisations.

49. The Board welcomed and endorsed the Property Services Supply Chain Readiness Network acknowledging that the success of this initiative would be assessed over time by measuring:

- The number of East Sussex SMEs that register with the network

- The number of such SMEs that access business support help
- The amount of work which then gets directed through participating SMEs.

**Recommendation 1.**

**Contracting departments should publish clear information on the Council's website, and elsewhere as appropriate, about how the select list process operates, to include:**

- a) the list of approved contractors, subdivided into categories where appropriate**
- b) the procedure by which firms are called off the list to deal with ad hoc work or invited to tender**
- c) The principle of rotation being used including who decides how to allocate each piece of work and the factors used.**

**Recommendation 2.**

**Contracting departments should publish clear details about how the framework system operates including:**

- a) the list of framework contractors for every framework to enable local SMEs to approach these companies directly to seek subcontracting opportunities.**
- b) the procedure by which contracts are allocated to framework companies.**

**Recommendation 3.**

**All information published by the Council on its website about procurement processes, and details of select lists should include an email contact address to enable SMEs to communicate with the Council more easily.**

**Recommendation 4.**

**Council departments should be encouraged to arrange 'meet the buyer' events for SMEs where benefits can be identified. These informal meetings would enable the Council and framework contractors to explain the types of contracts and subcontracts coming up, and SMEs to indicate the kinds of contracts of interest to them.**

**Recommendation 5.**

**Contracting departments should publish forward procurement plans, together with lists of contracts awarded and forthcoming opportunities available that are likely to be of interest to SMEs; this will assist SMEs to better assess whether to engage in the procurement processes of the County Council.**

**Recommendation 6.**

**To welcome, endorse and actively promote the Property Services Supply Chain Readiness Network initiative, with Member engagement, and for Audit and Best Value Scrutiny Committee to monitor its impact over time on East Sussex based SMEs.**

## **Financial appraisal of SMEs – the ‘25% of turnover’ rule**

50. There are several ways in which the Council minimises its financial risk when procuring goods and services. These controls are set out in the Council’s Financial Regulations, Financial Procedure Rules and Contract Standing Orders. For contracts valued at £50,000 or over, chief officers are required to ensure that there is an adequate technical and financial appraisal of the tenderers; the financial appraisal is undertaken in consultation with the Deputy Chief Executive and Director of Corporate Resources.

51. The financial appraisal aims to establish from audited annual accounts whether applicant organisations have sufficient resources to support a contract, and whether they are financially sound and potentially stable enough to remain in-business for the duration of the contract. The appraisal examines levels of turnover and profits to ascertain if they are improving or not, and whether any losses have been incurred.

52. The ‘25% of turnover rule’ is that no individual contract should exceed 25% of a company’s turnover in order that a company’s resources should not be overstretched. In addition, a company should not be overly dependent upon individual contracts from the County Council. However, two issues emerged from the consultation with SMEs regarding this rule:

- Some SMEs said that the strict ‘pass/fail’ nature of this question on the PQQ was not obvious and had led some to incur unnecessary expense and effort in completing PQQs which were then automatically rejected on this rule.
- Some SMEs asked whether the rule could be relaxed under certain circumstances without due increase in financial risk such as to benefit, say, new companies or those offering a specialist service or product significantly more competitively than others.

### **Recommendation 7.**

**a) Ensure that the nature and impact of the ‘25% of turnover’ rule is clear in the documentation available to SMEs.**

**b) Provide assurance that there is sufficient flexibility in the operation of the rule to ensure that any individual company is not unnecessarily disadvantaged.**

## **Simplicity**

53. Unnecessary bureaucracy and costs appear to be barriers faced by SMEs to the successful engagement in local authority contracts. This is particularly apparent for micro businesses which are likely to have fewer resources available to manage any onerous pre entry requirements. The Board questioned whether pre qualifying requirements, as set out in pre qualification questionnaires (PQQs) and elsewhere, are all strictly necessary or whether there is scope to simplify the process beyond the improvements which have already been brought about.

54. Forms that have to be completed by SMEs before they can access County Council business depend on the value of the contract and the category of goods or services being provided:

- a) Select List business: the process for getting on the list is normally by completion of a PQQ.
- b) Quotation business for contracts valued at £5,000 to under £50,000 (under £100,000 in the case of construction projects): competitive quotations are sought in varying degrees of detail depending on the complexity of the project. Each business unit decides which companies to invite to provide a quote.
- c) Below OJEU (Official Journal of the European Union) tender business: for contracts valued at £50,000 (or £100,000 in the case of construction projects) or higher, a simplified invitation to tender document and a 'below OJEU' PQQ are used.
- d) OJEU tender business: for contracts valued above £140,000 (or above £3.8m in the case of construction projects) the full invitation to tender documentation and an OJEU level PQQ are used.

55. All 14 local authorities in Sussex have agreed to use a standard, simplified PQQ for all 'below OJEU' contracts (except for construction projects) where possible; this assists smaller companies by minimising bureaucracy. However a SME wishing to do quotation or tender business with the County Council (outside select lists) and any other Sussex council does have to complete a new PQQ each time.

56. Whilst the financial status and public liability insurance of a company does need to be updated annually, and a new financial check is carried out before letting any construction contract above £100,000, other types of information may only require less frequent updating depending on the type of service and the associated level of risk.

57. Adult Social Care keeps PQQs on a database and has reduced to a minimum the information which needs updating annually. It has arranged 'Question and Answer' sessions to inform potential providers about the PQQ process both before the tendering process and post-PQQ for those 'passing' the PQQ stage. All documentation has been reviewed to remove jargon.

58. Children's Services officers confirmed that they have not undertaken significant pre-PQQ briefing of all potential foster care providers, but instead they have convened meetings with those who have expressed an interest. Most engagement has therefore been after PQQs have been received.

## **Web based tendering**

59. The Glover review recommended that all public sector contract opportunities above £20,000 should be advertised electronically and should be accessible through online portals. Glover has also recommended that by 2012, the issue and completion of public sector tender documentation should be carried out entirely electronically.



60. Most local SMEs agree that web-based advertising and electronic provision of tender documentation is a good idea. However, care must be taken not to rely on electronic communication entirely between the County Council and SMEs because:

- Some complex contracts cannot be reduced to simple form filling and require discussion between client and contractor to define and clarify the scope of a contract
- Many smaller SMEs may not have adequate equipment and software to participate in full electronic-only tendering exercises.
- Bills of quantities and drawings etc. make for very large files.

61. The South East Business Portal [www.businessportal.southeastiep.gov.uk](http://www.businessportal.southeastiep.gov.uk) has emerged as the prime website for council tenders across the south east region. East Sussex County Council tender opportunities are now published there as they come up for renewal. The site allows the sharing of information about existing contracts and forthcoming tendering opportunities across 74 councils and 9 fire and rescue services of the south east region.

**Recommendation 8.**

**a) To welcome the promotion and development of web based systems for publicising and advertising contracts. In addition, to endorse the use of electronic auctions for easily specified, low-risk procurement.**

**b) To endorse the Council's current position that electronic tendering has the potential to disadvantage some SMEs who may not be sufficiently e-enabled to respond electronically, and should therefore not be the sole access channel for participation.**

**Refreshing select lists**

62. Some Council select lists operate as 'open lists' which means that a SME may apply to join the list at any time and, providing it meets the published criteria, is then accepted on to the list immediately. The bus and taxi operators' select lists work in this way. Other select lists operate as 'closed lists' meaning that there is only a limited time window for SMEs to apply to join which is then closed to new applicants until the next opportunity arises. The timescale between refreshing the Council's closed lists varies between two and up to five years, the maximum permitted under the Council's Standing Orders.

63. SMEs stated a preference for 'open' select lists to save worrying about missing application deadlines and because the current economic climate is likely to affect the circumstances of individual SMEs. Over time, they argued, some companies on the lists would find themselves no longer in a position to bid for work whilst new entrants to the market, potentially able to offer excellent value for money, are excluded until the end of the 'closed' period.

64. The Board was satisfied with the operation of select lists in general across the Council but noted a number of issues with the closed select list operated by Property Services:

- some contractors on the list currently never receive any offers of work or opportunities to tender; converting this list to an open list would exacerbate this problem resulting in a longer list and a diminished likelihood of any particular company gaining work.
- The list is currently renewed only every five years primarily because renewing it is a major administrative and costly exercise.

65. The introduction of framework Tiers 2 and 3 (see paragraph 36 on page 11) at the end of 2009 will also impact upon the volume and nature of work for the property select list. For example, the select list may need to contain more specialised categories than the current list but it is unclear what extent there will need to be a select list at all.

**Recommendation 9.**

**Property Services officers to review the structure, feasibility and benefits of refreshing or eliminating the Council's property related select lists once the Tier 2 and 3 contractor frameworks are in place at the end of 2009, with particular reference to specialist suppliers.**

**Contractors' public liability insurance cover**

66. Contractors who do business with East Sussex County Council are required to put in place a minimum £10m public liability insurance cover; also known as third party liability insurance. This level of insurance relates to the assessment of risk judged from the Council's perspective and is designed to take account of possible compensation payments made to claimants. It does not take account of level of premiums payable which will vary considerably between contractors depending on a range of factors.

67. Whilst companies appear to be able to acquire public liability insurance cover up to £5m fairly easily, some have said that it is difficult and/or very expensive to extend the cover to the £10m required by the Council; doing so represents a significant burden for companies sitting on a select list particularly if there is no guarantee of work from the Council. SMEs have welcomed recent improvements to the system so that they currently only need to put the additional insurance in place *after* work has been offered. This arrangement resolves many of the concerns expressed by SMEs on this matter.

68. The Board wished to explore whether the Council could better assist SMEs by providing top up cover from £5m to £10m more cost effectively. Normally, the County Council would not be able to purchase third party insurance cover in respect of the liability of its contractors to third parties and no such facility exists anywhere in the public sector at the moment. Nonetheless, the Insurance and Risk Manager has undertaken to enquire as to whether the Council could arrange such insurance and how the various problems might be overcome.

***The requirement for £10m cover***

69. The Council's procurement guidance allows for discretion in the £10m requirement and the Insurance and Risk Manager may agree a lesser limit following a risk assessment of the work in question and of the environment in which the activity occurs. If the risk is assessed as being relatively low, a lower indemnity level of either £5m or, for virtually risk-free situations, £2m is possible.

70. However, the Council's Insurance and Risk Manager advises against any reduction below £10m for contractors undertaking major construction works, major refurbishment and maintenance, or in respect of services provided directly to children. There is no centrally-stored list available showing which contracts have a reduced level of public liability cover.

71. Whilst the Insurance and Risk Manager is responsible for decisions to permit a change to the level of insurance cover he considers that departmental contracting officers are often best placed to assess the risks associated with activities within their remit, taking his advice as required. For example, contracting officers ought be able to take a decision based on previous experience for repeat contracts where they are already fully aware of the risks.

72. The Board considered that the flexible approach was welcome and its value dependent upon department procurement managers being aware of when and how to use the facility.

**Recommendation 10.**

**a) To welcome the investigations being carried out to assess whether the Council can provide cost effective top-up public liability insurance for SMEs and report progress to Audit and Best Value Scrutiny Committee in due course.**

**b) To welcome the flexible approach which permits a reduction of insurance cover below the default £10m for low-risk contracts, and ensure that procurement managers are made aware of this opportunity. Annual monitoring reports to Audit and Best Value Scrutiny Committee to include details of all contracts where flexibility has been exercised.**

## Appendix 1: Project support, membership and evidence

### ***Board membership and project support***

Review Board Members: Councillors David Tutt (Chairman), Nick Bennett (from July 2009), Michael Ensor (from September 2008), Brian Gadd and Francis Whetstone.

The Project Manager was Paul Dean (Scrutiny Manager) with logistics and support provided by Sam White (Scrutiny Support Officer). Jonathan Campbell (Procurement Strategy Manager) provided ongoing support to the Board throughout the review.

***Project Board meeting dates:*** 18 September 2008, 7 November 2008, 13 November 2008, 14 January 2009 (meeting with SME representatives), 5 February 2009, 13 October 2009 and 6 November 2009.

### ***Witnesses providing evidence***

The Board would like to thank all the witnesses who provided evidence in person and members of the public who responded to press coverage.

#### **Witnesses appearing in person:**

<b>Name</b>	<b>Position / Organisation</b>
John Morris	Assistant Director – Property, Corporate Resources Department (CRD), ESCC
Phil Tucker	Deputy Capital projects Team Leader, CRD, ESCC
Robin Hayler	Team Leader, Procurement, Transport and Environment Department, ESCC
Neil Maguire	Passenger Transport Services Manager, Transport and Environment Department, ESCC
Sue Dean	Interim Head of Supporting People, Adult Social Care, ESCC
Jude Davies	Project Manager, Performance and Quality, Adult Social Care, ESCC
Mark Sands-Smith	Procurement Manager, Adult Social Care, ESCC
Jane Carter	Contracts Manager, Children’s Services, ESCC
Jane Lever	Senior Contracts Officer, Children’s Services, ESCC
Sally Carnie	Head of Looked After Children, Children’s Services, ESCC
Sean Nolan	Director Corporate Resources, ESCC
Duncan Savage	Assistant Director, Audit and Performance, ESCC
Councillor Rupert Simmons	Chairman of the County Council, ESCC
Councillor Tony Reid	Lead Member Corporate Resources, ESCC
Ken Stevens	Regional Organiser, Federation of Small Businesses
SME representatives attending the witness session on 14 January 2009.	

## ***Evidence papers***

<b>Item</b>	<b>Date</b>
Miscellaneous submissions from SMEs	January 2009
Accelerating the SME economic engine: through transparent, simple and strategic procurement – the Glover report	November 2008
Voice of Business 2009 Survey, Sussex Enterprise	March 2009
Property Services, contracts analysis snapshot	June 2009
Agenda and terms of reference for the East Sussex Supply Chain Readiness Network meeting	5 October 2009
Smaller supplier ... better value: the value for money that small firms can offer	2005
Examples of pre qualification questionnaires used by East Sussex County Council	2008/09
East Sussex County Council Procurement Strategy	2007 – 2010
South East Business Monitor: Spotlight on public procurement	March 2009
East Sussex County Council contracts procedure rules (Contract Standing Orders)	July 2009
Procurement and local firms: report to Audit and Best Value Scrutiny Committee	23 November 2004
Council website: Approved supplier lists	2009

An evidence pack is available on request.

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## Appendix 2: Recommendations from related reviews and studies

- The Glover report: Accelerating the SME economic engine through transparent, simple and strategic procurement (November 2008).
- The East Sussex SME Concordat: a statement of principles to encourage effective trade between the Council and local businesses signed in 2007.
- Voluntary and Community Sector (VCS) scrutiny review (2008).

	Glover report recommendations	SME Concordat provisions	VCS Scrutiny 2008 recommendations	This scrutiny review as at November 2009
<b>Transparency</b>				
1	<b>Single regional portal for all business <u>opportunities</u> over £20,000 by 2010</b>			Agreed and also recommended a single point of contact for each spend area.
2	<b>Businesses permitted to submit electronic tenders by 2010</b>			Agreed that electronic tendering is a welcome initiative. But for complex contracts, electronic tendering should not replace face to face client contractor discussions.
3	<b>All contract <u>awards</u> on the single regional portal by 2010</b>			
4	<b>Flag tender opportunities particularly suitable for SMEs</b>	Includes provision to hold pre-tender meetings with bidders (including SMEs ) where feasible		Agreed
<b>Simplicity</b>				
5	<b>Single standardised pre qualifying questionnaire (PQQ) for SMEs</b>	Includes commitment to this		Endorsed initiatives already in place across Sussex
6	<b>Take more account of SMEs' non-public sector relevant experience at</b>	Takes into account long term cost and benefits as well as	Agreed	

	<b>Glover report recommendations</b>	<b>SME Concordat provisions</b>	<b>VCS Scrutiny 2008 recommendations</b>	<b>This scrutiny review as at November 2009</b>
	<b>evaluation stage</b>	initial price.		
7	<b>Businesses should be allowed to provide acceptable alternative accreditations where these are recognised by the public sector</b>			
<b>Strategic Procurement</b>				
8	<b>Publish forward plans for procurement</b>	Includes commitment to this.		Agreed that select list and framework information /operation details should be made available on the Council's website and hold briefing meetings for SMEs / develop supply chain network.
9	<b>Specifications should be more outcome focused to encouragement to innovation</b>			Agreed specifications should wherever possible not require the use of a specific brand or product, rather should be an "or similar" approach (current practice).
10	<b>Prime contractors should use the single regional portal to advertise their sub-contracting opportunities</b>	Encourages bidders for framework agreements to demonstrate potential for sub-contracting that will support the local economy		
11	<b>Ensure that sub-contractors do not receive less favourable terms from the prime contractor</b>			The approach built into the newly established Supply Chain Network is designed to build up greater trust between prime contractor and SMEs.