

## **APPENDIX B**

### **Proposed Amendments to the Procurement Procedure Rules**

#### **Replacement Section 2.1**

##### **2.1 Shared Service and Partnership Working**

2.1.1 The way in which councils and other public bodies make arrangements for the provision of services within their remit has changed over the years and continues to change apace. Two key areas of change have been:

- the increasing number and scale of shared or collaborative service provisions between organisations within the public sector and secondly,
- the increasing extent and complexity of partnership working between organisations within the public and not for profit sector.

The Council's Constitution addresses the governance requirements in two sections: Part I3 the Code of Procurement Governance and J3, the Partnerships Protocol.

2.1.2 Shared and collaborative service provisions may in some cases raise questions of procurement law and practice due to the developing legal framework underlying these arrangements, much of which has originated from the European Commission and Court of Justice. As such, this is an area where it is especially important that appropriate legal, procurement and finance advice and guidance is sought as each requirement may be very different. What follows is general advice and guidance.

##### **Processes for the Assessment and Implementation of Shared Service or Partnership Working.**

2.1.4 Inter-municipal collaboration or shared services in support of public functions, is an increasingly prevalent form of service provision within the public sector due to the potential for costs efficiencies to be derived from economies of scale and the relative flexibility they enable in establishing such arrangements. These arrangements are in many cases exempt from the procurement regulatory regime and as such not subject to the formal requirements of tendering.

2.1.5 However, it is essential that any proposed shared service arrangement is subject to open and rigorous challenge to establish the business case rationale for proceeding with such an arrangement as an alternative to pursuing a standard outsourcing procurement route or retaining in-house provision. The use of shared services is unlikely to be popular with private sector providers who view these arrangements as negatively

impacting upon the market for service provision and as such the potential for challenge is a real possibility.

2.1.6 The precise design of the selection processes will vary depending upon the nature of the arrangement and it is essential that appropriate professional advice is obtained in relation to the Legal, Procurement and Financial aspects of the arrangement.

2.1.7 In some cases, a competitive selection process may be appropriate but in all cases it is essential that the Council acts in accordance with general public law principles and good governance and the following list is intended as a guide in how to approach the assessment of such proposals.

- Ensure that all aspects of the process, including decision making and supporting evidence, are fully documented and available for audit purposes.
- Preparation of a business case is an essential element of this type of assessment.
- An options analysis should also be completed and signed off by a Director and elected members.
- Obtain legal, procurement and finance advice at an early stage in developing any shared service proposal.
- Ensure that processes followed in the selection or assessment of any proposal are objectively fair and reasonable.

2.1.8 Following the above general principles should avoid any sustainable challenges being brought and ensure that any decision making as to the appropriateness of any such arrangement is robust and objectively justifiable on the basis of financial and service benefits for the Council and its residents.