



Report of: Executive Member for Finance, Performance and Community Safety

Meeting of:	Date	Ward(s)
Executive	27 April 2017	All

Delete as appropriate		Non-exempt
-----------------------	--	------------

SUBJECT: Tax Avoidance – Response to the report of the Policy and Performance Scrutiny Committee

1. Synopsis

- 1.1 The Executive received on 21 July 2016 a report from the Policy and Performance Scrutiny Committee which considered the tax arrangements of organisations the council works with and the way we check those arrangements as part of our procurement process. The scrutiny report recommended 4 actions the council should take. This report presents the Executive's response to that report and those recommendations.

2. Recommendations

- 2.1 To note the changes to the procurement process introduced nationally that replaces the Pre-Qualification Questionnaire (PQQ) with the Selection Questionnaire (SQ). The SQ cannot be amended in relation to tax questions although it does go some way to addressing the committee's recommendation 1.
- 2.2 To agree to the changes proposed to the Council's standard contract conditions as outlined in paragraph 4.2
- 2.3 To note the actions undertaken by Strategic Procurement in response to the committee's recommendations 3 and 4.

3. Background

- 3.1 In June 2015 the Policy and Performance Scrutiny Committee commenced a review entitled 'Tax avoidance'. The objectives of the review were:
- To understand how companies avoid paying UK tax, including parent companies that L.B. Islington deals with or has business links to providing a service to the Council and its subsidiaries

- To understand our existing legislative requirements around procurement and contract management
 - To investigate how we can identify businesses that we contract with who avoid paying UK tax
 - To review and update our procurement processes, within the law, to exclude those businesses that avoid UK tax
 - To review and update, as necessary, our appointment process for consultants and agency staff
 - To explore whether the Council can use other powers it has e.g. licensing, to influence companies to pay their appropriate tax
- 3.2 Overall, the Committee concluded that whilst it is the responsibility of the Government, through Her Majesty's Revenue and Customs (HMRC), to ensure companies and individuals pay the appropriate amount of tax, there are actions that we as a Council can take to improve our contracting processes.

4. Response to the Scrutiny Committee's recommendations

- 4.1 **Committee Recommendation 1: The Pre- Qualification Questionnaire (PQQ) should require tenderers to provide information on their tax compliance. It is proposed that the section on tax compliance is enhanced for contracts over £5m to provide additional information and allow for exclusion, where appropriate**
- 4.1.1 Procurement Policy Note (PPN) 8/16 was issued by Crown Commercial Services (CCS) on 9 September 2016. The PPN set out the revised national standard Selection Questionnaire (SQ), which replaced the previous standard Pre-Qualification Questionnaire (PQQ). The PPN superseded all previous guidance on supplier selection and PQQs in PPN 03/15. To facilitate easy access to procurement from all suppliers, the standard Selection Questionnaire incorporated the exclusion grounds listed in the Public Contract Regulations 2015 (PCR 2015) (Regulations 56-58) and aligned with those listed in the European Single Procurement Document (ESPD) (Regulation 59) for public procurement.
- 4.1.2 The SQ applied to all contracting authorities in England, Wales and Northern Ireland, including the Council, when procuring above the relevant EU threshold. A pre-qualification stage is not permitted in contracts below the EU threshold. All contracting authorities were instructed to use the new SQ with immediate effect made available for organisations who express their interest in an opportunity free of charge. The national standard SQ was developed to simplify the supplier selection process for businesses, in particular smaller firms, across the public sector. Supplier selection is essential to decide whether an organisation is competent and capable of delivering requirements, prior to invitation of formal bids.
- 4.1.3 The purpose of the SQ was to introduce consistency and simpler approach across the public sector, through self-declaration in response to standard questions. Checks are only performed on winning suppliers, thus reducing the burden on unsuccessful suppliers. The SQ itself is in three separate parts and Part 1 and 2 cannot be amended. Part 1 is background information. Part 2 is a self-declaration on exclusion grounds, which is where tax questions are asked and the Council is not permitted to amend this. Part 3 is about financial and technical capacity and specific to the contract being procured.
- 4.1.4 Organisations which breach the exclusion grounds have an opportunity to explain how and what action they have taken to rectify the situation through self-cleansing. This process is only required to be completed once, even if you are establishing a framework agreement with call-offs over a period of time. The list of exclusion grounds can be found here: [https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/551130/List_of Mandatory and Discretionary Exclusions.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/551130/List_of_Mandatory_and_Discretionary_Exclusions.pdf)
- 4.1.5 Questions included in Part 3 of the standard SQ should include only questions which are relevant and proportionate to the contract. No deviations are permitted to Part 1 or 2 of the SQ as explained above. The expectation is that the Council not deviate from the questions set out in Part 3 of the standard SQ. However, where a deviation may occur, it must be reported to CCS outlining the changes in wording, additional technical questions asked as standard, an explanation of why, a

version of the template used and a letter confirming that the deviations have been approved by the Head of Procurement of the Council.

4.1.6 Any additional questions must be considered on a case by case basis and be project specific, relating to the potential supplier's technical and professional ability. Any project-specific questions asked must be relevant and proportionate to the contract. The Council is therefore no longer in a position realistically to require potential bidders to provide information on their tax compliance in the SQ above and beyond what is outlined within the national standard SQ.

4.2 **Committee Recommendation 2: The Council's standard contract conditions be amended, for contracts over the value of £5m, to allow for contract termination in relation to non-compliance with tax payment obligations**

4.2.1 For contracts over the value of £5m additional contract clauses will be added to the council's standard conditions of contract which provide for a warranty from the supplier in relation to its declarations on Occasions of Tax Non-Compliance at contract commencement; an on-going obligation to inform during the term of the contract and a specific right to terminate the contract for breach of warranty or breach of duty to inform.

4.3 **Committee Recommendation 3: The published HMRC list of tax defaulters be periodically reviewed to ensure that no contractor that the Council uses is on the list, and if there is one, the contract be terminated using 2 above.**

4.3.1 Organisations with which the Council contracts are routinely questioned regarding the applicable exclusion grounds as part of the tendering process in the SQ, as part of a proportionate process.

4.3.2 Annually, we will review the HMRC list of tax defaulters and take the appropriate actions including potentially terminating the contract where there is a material breach of the contract terms or in accordance with the termination conditions within the contract.

4.4 **Committee Recommendation 4: That letters be sent out to companies that the Council contracts with to remind them of their tax obligations. A list of companies will be made available for Council officers to view on the internet**

4.4.1 Strategic Procurement undertook to write to companies to which the Council had made payments. This exercise was completed in December 2016. Organisations were reminded of their tax responsibilities in regards to paperwork, management and payment, taking of profits and responsibilities for losses. An information link with further information was also made available: <http://www.gov.uk/business-legal-structures/overview>

4.4.2 A list of companies with which the Council has contracts that exceed an aggregate annual value of £5,000 is available on the internet here: <https://www.islington.gov.uk/about-the-council/information-governance/freedom-of-information/popular-data/council-contracts> .

5. Implications

5.1 **Financial implications:**

There are no additional resources required.

5.2 **Legal Implications:**

The legal framework for dealing with non- payment of tax as part of the procurement process is set out in the Public Contracts Regulations 2015 (the Regulations).

Mandatory exclusion for non-payment of tax

The council *must* exclude an economic operator from participating in a procurement procedure where it has established, by verifying in accordance with regulations 59 and 60, or is otherwise aware, that that economic operator has been *convicted* of (Reg 57(1)):

- The common law offence of cheating the Revenue

- Fraudulent evasion within the meaning of section 170 of the Customs and Excise Management Act 1979 or section 72 of the Value Added Tax Act 1994
- An offence in connection with taxation in the European Union within the meaning of section 71 of the Criminal Justice Act 1993

The obligation to exclude an economic operator also applies where the person *convicted* is a member of the administrative, management or supervisory body of that economic operator or has powers of representation, decision or control in the economic operator (Reg 52(2)).

An economic operator *shall* be excluded where the council is aware of the breach relating to non-payment of taxes AND the breach has been established by a judicial or administrative decision having final and binding effect in accordance with the legal provisions of the country in which it is established or with those of any of the jurisdictions of the UK (Reg 57(3)).

Discretionary exclusion for non-payment of tax

An economic operator *may* be excluded where the council can demonstrate by any appropriate means that the economic operator is in breach of its obligations relating to the payment of taxes (Reg 57(4)).

The grounds for both mandatory and discretionary exclusion cease to apply when the economic operator has fulfilled its obligations by paying, or entering into a binding arrangement with a view to paying, the taxes due (Reg 57(5)).

5.3 Resident Impact Assessment

The Equality Act 2010 places an obligation on the Council to have due regard to:

- eliminating unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- advancing equality of opportunity between people who share a protected characteristic and those who do not; and
- fostering good relations between people who share a protected characteristic and those who do not.

There are no negative impacts envisioned by the amendments upon those who share a protected characteristic set out in this report.

6. Conclusion and reasons for recommendations

- This report details the Executive's response to the recommendations from the Policy and Performance Scrutiny Committee.

Background papers: None

Final report clearance:

Signed by:



31 March 2017

Executive Member for Finance, Performance and Community Safety Date

Report Author: Steve Key
 Assistant Director (Service Finance and Procurement)
 Tel: 020 7527 5636
 Email: stephen.key@islington.gov.uk