

Council of Ministers

**Response to the Social Affairs Policy Review Committee Social Care
Procurement First Report 2015-16**

To be laid before July 2016 Tynwald

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To the Hon Clare Christian MLC, President of Tynwald, and the Hon Council and Keys in Tynwald assembled

Foreword by the Minister of Department of Health and Social Care

The Council of Ministers welcomes the Report of the Social Affairs Policy Review Committee 2015/16 regarding Social Care Procurement. The Council of Ministers, the Department of Health and Social Care and the Treasury have considered the report of the Committee in detail and are grateful to it for the comprehensive report and recommendations made.

It should be noted that responsibility for the management and administration of the procurement process was moved in April 2016 from the Treasury to the Attorney General's Chambers.

The response to the Report has been provided by my Department and has been agreed with the Treasury to whom all bar one of the Recommendations were directed.

The first recommendation helpfully suggests that Tynwald reminds Accounting Officers of their responsibility to be cognisant with all regulations and procedures pertaining to the procurement process. This is essential if they are to fulfil their responsibilities under Financial Regulations.

The second and third recommendations require the Treasury to produce proposals that ensure officers involved in the procurement process are adequately briefed on the appropriate regulations and procedures and to consider the implementation of background checks on such officers and report to Tynwald on this matter. The Treasury have confirmed that they fully support the second recommendation. They did consider the matter of background checks following the failed procurement process examined by the Committee but have concluded this is not a viable option.

The fourth and fifth recommendations relate to the need for Treasury to develop a policy and definition on social value in the procurement process which goes as far as legally permissible in recognising the advantages of contracting with longstanding Manx organisations. Treasury fully support these recommendations and intend to bring forward a proposal to Council of Ministers in due course.

Hon Howard Quayle MHK
Minister for Health & Social Care

Part 1: General Response to the Social Affairs Policy Review Committee Report

This enquiry commenced following representations made by two unsuccessful bidders in procurement processes undertaken by the Department in conjunction with Treasury Central Procurement Team (now Attorney General's Chambers). It must be stated that, on the whole, the procurement processes and discipline implemented post the creation of the Central Procurement Team within Treasury have assisted Departments in meeting their obligations under Financial Regulations. Officers who may procure goods and/or services occasionally as part of their job role within a Department are supported by specifically trained, qualified and experienced officers to ensure the process is fair and equitable to all suppliers interested in fulfilling the Department's requirements. The Procurement Process and Procurement Team have moved things forward for Government both in terms of equity of process and achieving savings through a competitive approach to tendering for goods and services. Through the enquiry the Committee has heard that adjustments to administrative processes and Financial Regulations have already been made in response to issues that have arisen.

Tender processes require bidders to demonstrate their ability to meet the requirements set out in the specification; quality and cost are measured and balanced to identify the most economically advantageous tender. It is acknowledged that local 3rd sector organisations may find it a challenge to compete in such processes. Historically the Department has not routinely used this type of competitive process in awarding contracts therefore their experience and skill will not be as honed as organisations that have for some time had to compete for contracts in this way.

The Department of Health and Social Care is committed to working with local 3rd sector organisations and fully recognises the contribution that they can make within the service provision/contractor environment. The Chief Executive and Director of Commissioning have met with representatives of the sector very recently to talk about how this can best be facilitated. Discussions focussed on the possibility of a framework agreement with the 3rd sector and the Department, which ultimately could be extended across Government, whereby the Department:

- acknowledges its obligation to facilitate access for the third sector to its processes;
- routinely factors into each business case the implications for and potential to engage with the third sector;
- where a proposal would be expected to have a significant impact on the third sector, demonstrate that this has been taken into account;
- engage with the Third Sector Forum at senior level;
- recognises and supports the independence of the sector to comment on Departmental policy and its freedom to determine and manage its own affairs;
- clearly states Departmental objectives and priorities;
- values and strives to reflect the input of the Third Sector in identifying issues and challenges and determining objectives and priorities;
- works with the Third Sector to identify services and activities which the Sector could undertake with the Department enabling such to be delivered better and more cheaply by working together;

- consults where appropriate on new policies and procedures, particularly at the developmental stage to identify as far as possible implications for the sector;
- recognises the role of the Third Sector when constructing service delivery plans;
- ensures clear and accessible channels of communication;
- provides information, access and support to enable Third Sector organisations to contribute to the policy development process;
- promotes effective working relationships, consistency of approach and good practice between the Department and wider Government and the sector, particularly where cross-Departmental issues are concerned;
- continues to use a well-managed application process which is proportionate to the desired objectives/outcomes and will encourage a diverse range of organisations to apply helping to ensure that the most appropriate organisation, combination of organisations or strategic partner is found for the role;
- considers different ways of funding organisations working with Government to include grants, procurement, loan finance, training, use of premises and other forms of non-financial support;
- ensures that the size and scale of such funding arrangements reflects the project's objectives and attracts those organisations or combination of organisations best placed to deliver the required outcomes;
- recognises that it is appropriate to include relevant overhead, administrative and managing volunteers costs in applications;
- commits funding for up to five years, subject to compliance with agreed terms, communicate decisions at least three months in advance of the anticipated start date and provide constructive feedback to unsuccessful organisations including exploring, where appropriate, potential alternative funding arrangement;
- agrees payment terms which suit the type of service and the organisation involved;
- endeavours to carry out transition planning for the ending of contracts or grant funding in order to minimise the potential impact on beneficiaries and the organisation and to ensure long term sustainability;
- seeks to engage with Government where appropriate and consider the impact on Government of any Third Sector proposals.

The Department welcomes the focus the Committee has brought to the procedural difficulties experienced and the issue of conflict of interest and concur with the conclusion reached on page 15 that a lack of communication from the Department to the Procurement Division was at the root of this issue. Had the potential conflict been the subject of a discussion between the Department and Head of Procurement, appropriate advice could have been taken and a decision made about which individuals would be included in the procurement process. The Committee's statement "We conclude that both the Department and the Procurement Division followed procedure correctly; unfortunately, they were each following a different procedure" highlights a mismatch in procedure which has been rectified. The Department withdrew Lot 1 of the tender process and awarded the remaining 3 Lots, the Department is pleased that the Committee concurred with the view of the Audit Advisory Division within Treasury and our legal advice that these Lots were not tainted by the perception of conflict of interest and it was therefore safe to award them.

The Committee can be assured that the Department has taken a wider view (outside of just within the procurement setting) of the issue of conflicts of interest (or the perception thereof) and now routinely tables the opportunity for declarations of interest to be made at the commencement of business meetings.

The Department agrees with the Committee's conclusion that Social Value is an important concept that when used appropriately in procurement can produce a greater impact with the money spent than simply the purchase of the specified goods or services. However, clarity on the definition and meaning of Social Value and how it is to be objectively described, evidenced and measured in procurement processes is vital to achieve equity in the tendering process for all parties concerned. This would mitigate the risk of potential legal challenge once a contract has been awarded. The evidence before the Committee clearly highlighted the variety of interpretations there is of the meaning of 'Social Value' and how it should be included in a procurement process. Such discrepancy in understanding, if not corrected by a comprehensive policy, will only lead to further frustration on the part of local bidders.

Part 2: Specific Responses to the Social Affairs Policy Review Committee's Recommendations

The Social Affairs Policy Review Committee First Report for the Session 2015/16 Social Care Procurement made a number of recommendations, the Council of Ministers' response to which, together with associated commentary, is set out below:

Recommendation 1	That Tynwald is of the opinion that it is of the utmost importance that Accounting Officers be familiar with all regulations and procedures pertaining to the procurement process.
Response/Commentary	Although this is a matter for Tynwald this Recommendation is fully supported. Accounting Officers have to be equipped to make defensible decisions regarding involvement of officers in procurement processes which a thorough understanding of the relevant procedures and practice guidance notes would support. The small, but important, clarification made within Financial Regulations to Financial Directive 8 in August 2015 requires that any conflict of interest is reported to both the Accounting Officer and Head of Procurement. It is impossible to have hard and fast rules for each scenario that may arise, some decisions are finely balanced, the Conflicts of Interest Guidance Notes 2007 reflects this where it states "decisions taken in a compact jurisdiction such as ours, whilst being appropriately robust, should not be overly sensitive." This helpful addition to Financial Regulations gives Accounting Officer a sounding board within Procurement Services which can only support the application of a consistent approach to such decisions across Government.
Recommendation 2	That Treasury should develop proposals for ensuring the regulations and procedures pertaining to the procurement process are fully understood by officers, and report to Tynwald.
Response/Commentary	This Recommendation is fully supported. Treasury is currently considering how best to implement this proposal and indeed how awareness of all financial regulations and procedures can be promulgated and improved. Revised arrangements are anticipated to be introduced in the autumn of 2016. One option under consideration is to make awareness training a mandatory prerequisite for the delegation of spending authority. In effect an officer would not be permitted to spend Government money if they had not first received awareness training.
Recommendation 3	That Treasury should consider implementing background checks on officers involved in the procurement process, and report to Tynwald.
Response/Commentary	Immediately following the incident in question a review of the procurement process was undertaken and recommendations for change were presented to Treasury in February 2015. It was at the time, as it is still, considered

	that instigating a regime of background checks on Government staff would in the most part be ineffective and possibly divisive. It was further considered that the added bureaucracy would be unlikely to outweigh the potential benefits. It was however recognised that the process, as it was in 2014, required improvement. Process changes have been introduced, the situation is being continually monitored and it will be reassessed if it becomes necessary to do so.
Recommendation 4	That Treasury should develop a policy on social value in the procurement process, including a clear definition of what is to be understood by this term, and report back to Tynwald.
Response/Commentary	This Recommendation is fully supported. This matter will be addressed within the terms of a full review of Government's Procurement Policy. It is currently intended for the revised policy to be prepared for the consideration of the Council of Ministers following the formation of the new administration.
Recommendation 5	That any social value policy should as far as possible recognise the particular advantages of contracting with longstanding Manx organisations.
Response/Commentary	This Recommendation will also be addressed within the scope of the policy review referred to in the response to Recommendation 4 above.