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16
Public

CREATION OF A COUNCIL OWNED TRADING COMPANY

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Summary

The Council's company, ip&e Limited, currently benefits from an exemption from procurement legislation which allows the Council to award service contracts directly to ip&e Limited as if it were an 'in-house' part of the Council. This exemption places limitations on the amount of trading that ip&e Limited can undertake with third parties. In order to provide the Council with the ability to undertake more commercial trading via a company structure, whilst protecting the exempt status of ip&e Limited, a separate trading company is required to deliver services to third parties.

Recommendations

1. That delegated authority is given to the Chief Executive Officer in consultation with the Leader to establish a Trading Company, operating in parallel to ip&e Ltd.
2. That delegated authority be given to the Chief Executive to agree a loan to Trade Co. based on, and no more than, the loan agreed with ip&e.
3. The signatory on behalf of the Council as sole shareholder of the Trading Company will be the Head of Legal & Democratic Services

Report

1. Risk Assessment and Opportunities Appraisal

Ip&e Limited benefits from the 'Teckal' exemption meaning that there is no requirement for formal procurement by the Council for contracts that it awards to the company. As ip&e Limited looks to grow its business and undertake work for third parties as well as the Council this could put the Teckal exemption at risk, as to benefit from the exemption, the 'essential part' of ip&e's work must be undertaken with the Council.

The creation of a Trading Company will enable services to be provided to third parties, whilst protecting the Teckal status of ip&e Limited, and allow the Council to award contracts for services to ip&e Limited without the need to undertake a formal procurement process.

4. Financial implications

- There will be costs associated with the establishment of Trade Co. which will be funded from the Council's existing transformation budget.
- Once established Trade Co will require staff and will incur staff costs and overheads. It is suggested that Trade Co will share part of the management structure with ip&e. This will significantly reduce costs. Initially Trade Co will require a loan facility in order to cover costs. It is recommended that a loan is agreed with Trade Co on a similar basis to the loan agreed with ip&e.
- As services transfer to Trade Co., the service contract will identify all associated budgets. Any budget identified to transfer to Trade Co. will be clearly identified and the implications for the Council's budget will be included in the Council's financial strategy. Services transferring to both Trade Co and ip&e will be expected to find at least the level of savings required from other Council services in future years.

Background

- 4.1 A report went to Cabinet in February 2013 indicating that advice was being taken to determine how best to protect the Council and maintain ip&e's Teckal status into the future.
- 4.2 The ip&e structure is based on it qualifying as a Teckal company - a company that is controlled by an authority with which it does the *essential* part of its business, meaning that the controlling authority can award contracts to it without an open procurement process.
- 4.3 Where ip&e's business development could involve trade with third parties, either because of the transfer of work which the Council already undertakes for external bodies, or through ip&e growing its business outside of the Council, there is a risk that the accepted thresholds of the Teckal principle could be exceeded and thus be open to legal challenge.
- 4.4 To mitigate this risk, it's recommended that a parallel Trading Company (Trade Co) is set up, with the same legal company structure as ip&e – with the Council as its sole shareholder. Its Articles of Association will provide for the Council to have rights of appointment to the Board, again mirroring arrangements for ip&e. To protect ip&e's 'Teckal' status by demonstrating that TradeCo is a distinct entity, the most robust approach is for TradeCo to have separate management arrangements and a different Board of Directors, albeit a common Director or Managing Director could be appointed to provide a consistent approach by each company. TradeCo would have separate contractual and funding arrangements with the Council.
- 4.5 Service areas could transfer direct to TradeCo where appropriate, but in practice it could be difficult when transferring services to separate the staff and resources for those elements that are traded externally from those which will provide services to the Council. In this instance the Council could transfer all staff and resources to ip&e and also commission ip&e to support Trade Co to provide the services to the third parties by assisting TradeCo with the provision of the necessary staff, information and materials.

- 4.6 There may also be circumstances where a contract with a third party that can't be carried out by ip&e isn't dealt with by TradeCo and in those instances the Council will use other options depending on the circumstances of the service area for transfer.
- 4.7 [As per the process for the approval of the transfer of Council activities and services to ip&e, a report will be brought forward to Cabinet to approve the transfer of any activities and services to TradeCo.]
- 4.8 It is therefore recommended that to enable this work to progress, delegated authority is given to the Chief Executive Officer in consultation with the Leader to establish a Trading Company, operating in parallel to ip&e Ltd, and this will include authority to:
- a) incorporate a new company (with the Council as sole shareholder) and approve the new company name and registered office;
 - b) appoint the initial company Directors upon incorporation of the new company and thereafter appoint any additional or replacement Directors as necessary for the operation of the company;
 - c) to approve the Articles of Association of the new company;
5. Once established Trade Co will require staff and will incur staff costs and overheads. It is suggested that Trade Co will share management structure with ip&e. This will significantly reduce costs. Initially Trade Co will require a loan facility in order to cover costs. It is recommended that a loan is agreed with Trade Co on a similar basis to the loan agreed with ip&e and that delegated authority be given to the Chief Executive to agree a loan to Trade Co. based on, and no more than, the loan agreed with ip&e.

List of Background Papers:
Cabinet Member (Portfolio holder): Cllr L Chapman
Local Member: All
Appendices: None