

RESOLUTION

FROM: PROJECTS SUB (POLICY AND RESOURCES) COMMITTEE 25 June 2020

TO: PROCUREMENT SUB (FINANCE) COMMITTEE 6 July 2020
 CAPITAL BUILDINGS COMMITTEE 15 July 2020

6. PERFORMANCE BONDS AND PARENT COMPANY GUARANTEES

Members discussed the issue of performance bonds and parent company guarantees and the following points were made.

- The Property Projects Group Director noted that she had been in contact with the Sheriff to clarify the City's approach to performance bonds and parent company guarantees. The standard requirement of a performance bond was an on-demand bond of 10% of the contract and served to protect the employer should the contracted entity fail to meet its obligations. There were typically two types of bond: on-demand or conditional with the latter type of bond requiring evidence of contractor's default and loss to be provided by the client.
- The Chamberlain noted that performance bonds were not used by COL as a tool to check the financial standing of a contractor. The City had recently adopted a new process whereby potential contractors were both required to have a minimum turnover, and to undergo assessment by the City, as such, using requirement of a bond as an additional measure, could be disproportionate. The current assessment process establishes the 'risk appetite' on a contract, and then assesses the financial position of a bidder against that risk. Those with a high level of risk would be disqualified, and those graded 'amber' would be required to provide a bond or Parent Company Guarantee. This process notwithstanding, the City was mindful to be proportionate in applying the obligation to provide bonds. The question of how this would work in practice going forward would be considered by the Procurement Sub (Finance) Committee.
- The Chamberlain noted that there were protections in contract e.g. payment in stages, liquidated damages and a 'reserve' held back at end of contract.
- The Comptroller and City Solicitor added that Cabinet Office guidance stated that on-demand bonds should only be applied to high-value high-risk projects. This meant that conditional bonds were often the recommended approach which as noted previously did place a burden to provide evidence on the City. It was also common for contractors to include costs of bonds within overheads and profits – the City should request that bonds be reported as separate budget lines going forward.
- A Member queried whether this would make the costs of projects prohibitive for many contractors and whether a risk assessed balance could be struck when applying requirements for bonds. His preference would be for on-demand bonds as these would be a good indicator of the credit worthiness of potential contractors. (note earlier comment on being proportionate, where we already do checks)

- A Member commented that officers in City Procurement should be given the flexibility to decide whether bonds were appropriate on a case by case basis given it was a commercial decision.
- A Member agreed that a risk assessed approach was required and queried whether bonds were incorporated into existing City frameworks. In response, the Chamberlain noted that they could be built into the tender process but this could prove to be a disincentive for potential contractors. The Comptroller and City Solicitor noted that the JCT template contracts used under the City's Works Frameworks did include an option for performance bonds; and that potential bond requirements could be market tested with the Framework contractors in advance of a tender.
- A Member commented that the issue of bonds looked to be one for larger more high-risk contracts and cautioned against overcomplicating the project process. Members felt that it was important that the City's approach to bonds/performance guarantees was not out of step with the wider market.
- Given the issues raised related to business within the remit of the Procurement Sub (Finance) Committee and the Capital Buildings Committee, Members agreed that the minute of their discussions should be shared for information.

RESOLVED, that the minute of the Projects Sub-Committee's discussion regarding Performance Bonds and Company Guarantees be submitted to the Procurement Sub (Finance) Committee and Capital Buildings Committee for their consideration.