

**DRAFT PORTFOLIO HOLDER DECISION NOTICE**

**PROPOSED INDIVIDUAL DECISION BY THE PORTFOLIO HOLDER FOR FINANCE & EFFICIENCY**

**TOPIC – SIGNING UP TO THE HAMPSHIRE & ISLE OF WIGHT STRATEGIC PROCUREMENT PARTNERSHIP MEMORANDUM OF UNDERSTANDING**

**PROCEDURAL INFORMATION**

The Access to Information Procedure Rules – Part 4, Section 22 of the Council's Constitution provides for a decision to be made by an individual member of Cabinet.

In accordance with the Procedure Rules, the Corporate Director (Governance), the Chief Executive and the Head of Finance are consulted together with Chairman and Vice Chairman of the Principal Scrutiny Committee and all Members of the relevant Scrutiny Panel (individual Ward Members are consulted separately where appropriate). In addition, all Members are notified.

Five or more of these consulted Members can require that the matter be referred to Cabinet for determination.

**If you wish to make representation on this proposed Decision please contact the relevant Portfolio Holder and the following Committee Administrator by 5.00pm on Wednesday 22 October 2008.**

**Contact Officers:**

**Case Officer:** Bob Merrett Tel: 01962 848 165 Email bmerrett@winchester.gov.uk

**Committee Administrator:** Nancy Howarth Tel: 01962 848 235 Email: nhowarth@winchester.gov.uk

**SUMMARY**

The County and District Councils in Hampshire have come together to work on procurement activities to achieve financial and other benefits.

Although not affecting nor diminishing individual authority rights and responsibilities, the Partnership intends to maximise benefits from collaborative procurement.

To cement the relationship, authorities are being asked to sign up to a Memorandum of Understanding and approval is sought to sign up to the Memorandum and take full part in the County partnership.

**PROPOSED DECISION**

That approval is given to sign up to the Memorandum of Understanding of the Hampshire & Isle of Wight Strategic Procurement Partnership (as attached as an Appendix to the Notice, subject to any minor amendments).

**REASON FOR THE PROPOSED DECISION AND OTHER ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

Signing up to the Memorandum of Understanding of the County Partnership provides an opportunity for collaborative working with the potential to deliver financial efficiencies in any procurement process but doesn't preclude any of the current alternative arrangements.

**FURTHER ALTERNATIVE OPTIONS CONSIDERED AND REJECTED FOLLOWING PUBLICATION OF THE DRAFT PORTFOLIO HOLDER DECISION NOTICE**

N/A

**DECLARATION OF INTERESTS BY THE DECISION MAKER OR A MEMBER OR OFFICER CONSULTED**

Councillor Allgood declared a personal (but not prejudicial) interest as a County Councillor.

**DISPENSATION GRANTED BY THE STANDARDS COMMITTEE**

N/A

**Approved by: (signature)**

**Date of Decision**

Councillor Frederick Allgood – Portfolio Holder for Finance & Efficiency

Appendices:

Appendix 1 – Memorandum of Understanding

# Hampshire and Isle of Wight Strategic Procurement Partnership

## Memorandum of Understanding

This Agreement is made the        day of                                2008

Between: the parties listed in Schedule 1 and Schedule 2.

### Recitals

- A) Full Members have agreed to join together to work in partnership for the purposes of developing and implementing a strategic approach to procurement for the benefit of all local authorities within the region of Hampshire and the Isle of Wight. This agreement is not enforceable but all partners agree to adhere to it as far as possible to ensure the success of the partnership.

### Definitions and Interpretation

“Agreement” means this Memorandum of Understanding together with the Schedules attached hereto.

“Programme Manager” means the member of staff employed by Hampshire County Council who provides support to the Strategic Partnership.

“Full Member” means any public authority in and adjoining the County of Hampshire which wishes to work in partnership to procure goods and services and agrees to abide by the terms of this Agreement.

“Hampshire and Isle of Wight Improvement Board” means the body comprising representative councillors from each of the local authorities who are members of the Hampshire and Isle of Wight Local Government Association. The Board’s terms of reference are to foster increased collaboration, partnership and joint working to maximise the efficiency and effectiveness of all members of the Hampshire and Isle of Wight Local Government Association.

“Hampshire and Isle of Wight Local Government Association” means the association comprising all local authorities in Hampshire, Portsmouth, Southampton and the Isle of Wight.

“Hampshire Marketplace” means the group of public authorities in and adjoining the County of Hampshire which have agreed to work collaboratively with each other to maximise the benefits from each authority’s investment in the IDeA:marketplace and manage a procurement area within the IDeA:marketplace specifically for Member Authorities.

“IDeA:marketplace” means the internet-based procurement service managed by e-Government Solutions Limited on behalf of the Improvement and Development Agency.

“Improvement and Development Agency” means the agency funded by local authorities to advise on how to achieve improvement in local authorities and whose office is at Layden House, 76-86 Turnmill Street, London, EC1M 5LG.

“Hampshire and Isle of Wight Strategic Procurement Partnership”, and sometimes referred to as the Strategic Partnership, means the body comprising senior representative officers from each of the local authorities who are members of the Hampshire and Isle of Wight Local Government Association, to provide strategic direction for procurement in the region.

“Hampshire and Isle of Wight Procurement Partnership” means the body comprising representative officers from each of the local authorities who are members of the Hampshire and Isle of Wight Local Government Association to discuss matters of common interest in the purchase of goods and services and the development of efficient procurement processes.

“Lead Authority” means any public authority which undertakes to contract on behalf of other public authorities.

“Member Authority” means either a Full Member or an Affiliate Member and can include any public sector organisation with agreement of the Strategic Procurement Partnership.

Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended extended or re-enacted.

Words importing the singular include the plural, words importing any gender include every gender, the words importing persons include bodies corporate and unincorporated; and (in each case) vice versa.

Reference to Clauses and Schedules are references to Clauses and Schedules of this Agreement and any reference to a sub provision is unless otherwise stated a reference to a sub provision of the provision in which the reference appears.

The Clause and paragraph headings and titles appearing in this Agreement are for reference only and shall not affect its construction or interpretation.

## **Purpose and Objectives**

1. The Hampshire and Isle of Wight Strategic Partnership comprises a group of public authorities in and adjoining the County of Hampshire. This is a positive statement of intent by Member Authorities to work together on procurement activities, in order to collectively achieve financial and other benefits across the area. However, it is recognised that this does not diminish the responsibility of Member Authorities to secure value for money through their approach to service delivery. As such, each Member Authority retains the right to refrain from participating in any aspect of the programme, if it is believed to be in the best interests of the authority to do so.
2. The main objectives of the Hampshire and Isle of Wight Strategic Procurement Partnership are to:
  - maximise the benefits from collaborative procurement
  - maximise purchasing power through collaborative procurement arrangements
  - share information, in confidence between the Member Authorities, on potential collaborative contracts and suppliers
  - deliver cashable efficiencies through joint purchasing arrangements, the sharing of procurement expertise, and standardised documentation and processes
  - share experiences of implementing the IDeA:marketplace
  - provide consistent processes for supplier adoption - omitted
  - To sponsor procurement projects, giving direction to, and monitoring the work of, the Hampshire and Isle of Wight Procurement Partnership

## **Membership**

3. Representatives, or their nominated substitute, of each Full Member Authority, shall have one voting right on the Strategic Partnership Group.
4. The Full Member Authorities of the Hampshire and Isle of Wight Strategic Procurement Partnership are given in Schedule 1.
5. Legal and procurement specialist advisors will be invited to attend Partnership meetings by agreement of the Members.
6. New Member Authorities of the Hampshire and Isle of Wight Strategic Procurement Partnership must be approved by an open vote of the Strategic Partnership Group.

## **Governance**

7. Elected Member accountability and scrutiny for the Hampshire and Isle of Wight Strategic Procurement Partnership is operated through the Hampshire and Isle of Wight Chief Executive Group.
8. The Strategic Partnership Group shall be the main officer governing forum for the Hampshire and Isle of Wight Strategic Procurement Partnership and shall make decisions on behalf of Member Authorities based on a simple majority vote with a quorum of 70% of the Full Members.
9. The Chair of the Strategic Partnership shall have a casting vote at any meeting of the Group where such a vote is necessary to avoid deadlock on a decision.

10. The Hampshire and Isle of Wight Strategic Procurement Partnership shall elect its Chair and Vice-Chair (from Full Members only) on an annual basis starting 1 April each year. The current Chair and Vice-Chair are shown in Schedule 2.
11. Specialist legal and procurement advisors have no voting rights.
12. The Hampshire and Isle of Wight Strategic Procurement Partnership shall meet every two months and more often if required.

### **Roles and Responsibilities**

13. Hampshire County Council shall be the employing authority for the Programme Manager and Programme Support Officer and retains full responsibility for all employment matters relating to them. The Programme Manager and Programme Support Officer roles shall be determined by the Strategic Partnership, and continue as long as the Strategic Partnership agrees that these roles are required and as long as appropriate funding is in place.
14. East Hampshire District Council shall act as Secretary to the Strategic Partnership and shall be responsible for arranging the Group meetings and managing its agendas and minutes.
15. East Hampshire District Council shall manage and record all appropriate documents, agendas and minutes relating to the Hampshire and Isle of Wight Strategic Procurement Partnership on the Hampshire and Isle of Wight Local Government Association's intranet site.
16. Each Member Authority shall be responsible for providing an officer to attend each Hampshire and Isle of Wight Strategic Procurement Partnership Group meeting.
17. Each Member Authority shall be responsible for ensuring compliance with all legal, financial and personnel responsibilities when engaging with the Hampshire and Isle of Wight Strategic Procurement Partnership. This includes, but is not limited to health and safety, data protection, freedom of information, employment, equalities, financial and accounting.
18. The Strategic Partnership shall be responsible for agreeing the Strategic Procurement Plan and the evaluation and approval of all projects that form part of the Plan.

### **Funding Arrangements**

19. Costs relating to each Member Authority's operation, maintenance and administration arising from its membership of the Hampshire and Isle of Wight Strategic Procurement Partnership and attendance at the Strategic Partnership meetings shall be the sole responsibility of each Member Authority.
20. The Hampshire and Isle of Wight Improvement Board have made available £144,000 to fund the Procurement Efficiencies Programme for the period 2008 to 2011.:
21. These funding arrangements may be varied from time to time with the approval of the Strategic Partnership and shall be documented as a variation to this Agreement.
22. All funds available from the Hampshire and Isle of Wight Improvement Board shall be administered by Hampshire County Council. The Strategic Partnership will be required to claim for expenditure incurred on projects approved as part of the Procurement Efficiencies Programme.

## **Working Protocols**

### Confidentiality

23. Member Authorities shall treat all catalogue data, contractual and supplier information in the strictest confidence and shall not share such information with any party which is not a Member Authority without the express written agreement of the Strategic Partnership except in the case of appropriate external audit and Freedom of Information requirements as set out in Clause 34.

### Collaborative Procurement

24. The Strategic Partnership shall approve any collaborative procurement exercises in consultation with the Hampshire and Isle of Wight Procurement Partnership on behalf of some or all Member Authorities.
25. The Strategic Partnership in consultation with the Hampshire and Isle of Wight Procurement Partnership as appropriate shall nominate a Lead Authority for each collaborative procurement exercise.
26. The Lead Authority shall be responsible for ensuring compliance with all appropriate procurement legislation and their own authority's Contract Standing Orders and Financial Regulations.
27. Member Authorities shall endeavour to permit that any resultant collaborative contract is acceptable within their own Contract Standing Orders and Financial Regulations. **It is an accepted principle that *the Contract Procedure Rules of the lead authority will apply.***
28. Member Authorities shall endeavour to accept the collaborative contract terms and conditions as set out by the Lead Authority.

### Best Practice Procurement

29. Member Authorities shall follow best procurement practice in all dealings including, but not limited to:
  - The principles of the Small Business Friendly Concordat
  - Corporate Social Responsibility
  - Engagement of the Third Sector
  - Race and Equality Impact Assessment
  - Whole Life Cost techniques.
  - Sustainable Procurement

### Risk Management

30. Each Member Authority shall be responsible for undertaking risk management in relation to its membership of the Hampshire and Isle of Wight Strategic Procurement Partnership and for developing and maintaining its own individual risk register relating to the Partnership.

## **Annual Review**

31. The Member Authorities shall carry out an annual review of all aspects of the Agreement as soon as possible after 31 March in each year of the Agreement (the "Annual Review"). A written report of the Annual Review should be prepared by the Programme Manager and circulated to the Member Authorities no later than 90 days after 31 March in each year of the Agreement.

32. Where the Member Authorities identify issues or concerns relating to the Agreement these should be raised at the Annual Review and any disputes in relation to the Agreement should be dealt with in accordance with Clause 35.

### **Data Protection Act 1998 (DPA) and Freedom of Information Act 2000 (FOIA)**

33. The Member Authorities shall at all times comply with the Data Protection Act 1998 including, where appropriate maintaining a valid and up to date registration or notification under the Data Protection Act 1998.

34. Each Member Authority acknowledges that the others are subject to the requirements of the FOIA and shall assist and co-operate with the others (at their own expense) to enable the others to comply with these information disclosure obligations.

### **Disputes**

35. Any disputes between any Member Authorities relating to the Hampshire and Isle of Wight Strategic Procurement Partnership which cannot be resolved by the Member Authorities involved, shall be referred to the Chief Executive Group for arbitration and resolution. Should any Member Authority, which is a party to the dispute, not agree with the decision of the Chief Executive Group, an appeal may be made to the Hampshire and Isle of Wight Improvement Board. The decision of the Hampshire and Isle of Wight Improvement Board is final.

### **Variation**

36. No amendment to this Agreement shall be valid unless agreed in writing and signed by the Member Authorities.

### **Termination**

37. Termination of this Agreement may be effected by an open vote of the Hampshire and Isle of Wight Strategic Procurement Partnership in accordance with the governance arrangements as detailed in this Agreement.

38. Any Member Authority may terminate its membership of the Hampshire and Isle of Wight Strategic Procurement Partnership at any time, but must do so in writing, with 30 calendar days notice, to the Chair of the Strategic Partnership. Termination of membership shall remove any right of access to information within the Hampshire and Isle of Wight Strategic Procurement Partnership. All costs of termination of membership of the Hampshire and Isle of Wight Strategic Procurement Partnership are the responsibility of the terminating Member Authority.

39. If a Member Authority is in breach of any term of this Agreement, the Strategic Partnership reserves the right to hold a vote on terminating that Member Authority's membership of the Hampshire and Isle of Wight Strategic Procurement Partnership with 30 calendar days notice and in accordance with the governance arrangements as detailed in this Agreement. If a Member Authority's membership is terminated in such circumstances the Member Authority shall have the right of appeal to the Hampshire and Isle of Wight Chief Executive Group. Should any Member Authority, which is a party to the dispute, not agree with the decision of the Chief Executive Group, an appeal may be made to the Hampshire and Isle of Wight Improvement Board. The decision of the Hampshire and Isle of Wight Improvement Board is final.

### **Limitation of Liability**



40. Member Authorities involved in a joint procurement or collaborative procurement arrangement shall, as part of the arrangement, indemnify the others against any expense, liability, loss, claim or proceeding whatsoever arising under any statute or at common law as a direct result of that Member Authority's negligence, wilful default or fraud or that of any of the Member Authority's employees.

## **Specific requirements in relation to the Data Protection Act 1998 and the Freedom of Information Act**

### **Data Protection**

The Member Authorities shall not disclose Personal Data to any third parties other than:

- (i) to employees to whom such disclosure is reasonably necessary in order to carry out the Agreement; or
- (ii) to the extent required under a court order

provided that disclosure under paragraph (i) is made with the approval of the other Member Authorities and subject to written terms no less stringent than the terms contained in this Clause and that that Member Authority shall give notice in writing to the others of any disclosure of Personal Data it or a sub-contractor may make under paragraph (ii) immediately it is aware of such a requirement.

Each Member Authority shall indemnify and keep indemnified the others against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by the others in respect of any breach of this Clause by the Member.

The Member Authorities are required to comply with the obligations set out in Principle Seven of the Data Protection Act 1998. In this clause "Personal Data" means personal data as defined in the Data Protection Act 1998 which is known to the Member Authorities.

Each Member Authority shall grant to the others the right of reasonable access to all records of Personal Data and shall provide reasonable assistance at all times during the currency of this Agreement to ensure the quality and security of data collected.

### **Freedom of Information**

Where a Member Authority receives a request for information in relation to information which it is holding on behalf of any of the others, it shall:-

- (a) transfer the request for information to the relevant Member Authority as soon as practicable after receipt and in any event within two working days of receiving a request for information;
- (b) provide the relevant Member Authority with a copy of all information in its possession or power in the form that the Member Authority requires within five working days (or such other period as the Member Authority may specify) of the Member Authority requesting that information ; and
- (c) provide all necessary assistance as reasonably requested by the relevant Member Authority to enable the Member Authority to respond to a request for information within the time for compliance set out in the FOIA.

Where a Member Authority receives a request for information which relates to the Agreement, it shall inform the others of the request for information as soon as practicable after receipt and in any event at least two working days before disclosure.

Where a Member Authority determines that information (including confidential information) must be disclosed pursuant to this Clause 34 it shall notify the others of that decision at least two working days before disclosure.

The Member Authorities shall be responsible for determining in their absolute discretion whether any information :-

- (a) is exempt from disclosure under the FOIA;
- (b) is to be disclosed in response to a request for information.

Each Member Authority acknowledges that the others may be obliged under the FOIA to disclose information without consulting with the others, or following consultation with the others and having taken their views into account.

**Schedule 1**

**Full Authority Members to this Agreement**

Basingstoke and Deane Borough Council	Signature:
	Name:
	Position:
	Date:
East Hampshire District Council	Signature:
	Name:
	Position:
	Date:
Eastleigh Borough Council	Signature:
	Name:
	Position:
	Date:
Fareham Borough Council	Signature:
	Name:
	Position:
	Date:
Gosport Borough Council	Signature:
	Name:
	Position:
	Date:

/cont.....

**Schedule 1 (continued)**

**Full Members to this Agreement**

Hampshire County Council	Signature:
	Name:
	Position:
	Date:
Hart District Council	Signature:
	Name:
	Position:
	Date:
Havant Borough Council	Signature:
	Name:
	Position:
	Date:
New Forest District Council	Signature:
	Name:
	Position:
	Date:
Portsmouth City Council	Signature:
	Name:
	Position:
	Date:
Rushmoor Borough Council	Signature:

	Name:
	Position:
	Date:
Southampton City Council	Signature:
	Name:
	Position:
	Date:
Test Valley Borough Council	Signature:
	Name:
	Position:
	Date:
Winchester City Council	Signature:
	Name:
	Position:
	Date:

## Schedule 2

### **Hampshire and Isle of Wight Strategic Procurement Partnership Group Chair, Vice Chair and Secretary**

Chair: Nigel Smith, Havant Borough Council

Vice-Chair: Neil Jones, Hampshire County Council

Secretary: Bill Price, East Hampshire District Council