

AGENDA ITEM:

<b>REPORT TO:</b>	<b>MERSEYSIDE FIRE &amp; RESCUE AUTHORITY ASSET MANAGEMENT &amp; SHARED SERVICES COMMITTEE</b>
<b>DATE:</b>	<b>10<sup>TH</sup> DECEMBER 2009</b>
<b>REPORT NO.</b>	<b>CFO/253/09</b>
<b>REPORTING OFFICER:</b>	<b>EXECUTIVE DIRECTOR OF RESOURCES</b>
<b>CONTACT OFFICER:</b>	<b>KIERAN TIMMINS, EXECUTIVE DIRECTOR OF RESOURCES, EXT. 4108</b>
<b>OFFICERS CONSULTED:</b>	
<b>SUBJECT:</b>	<b>OFFICE OF FAIR TRADING: ACTION AGAINST CONTRACTORS</b>

**APPENDIX A            TITLE            OFFICE OF FAIR TRADING FINDING  
ATTACHED – HARD COPY**

Purpose of Report

1. To provide a briefing on the recent Office of Fair Trading (OFT) action and fines against contractors.

Recommendation

2. It is recommended that Members note the OFT published finding (see Appendix A), and confirm that the Authority's position does not wish to take any further action in relation to future procurements.

Introduction & Background

3. The Office of Fair Trading (OFT) commenced an investigation in 2004 regarding allegations of price fixing and collusion between contractors.
4. On 22<sup>nd</sup> September 2009 the OFT finally announced its decision, imposing fines totalling £129.5 million on 103 construction firms found to have colluded with competitors in breach of the Chapter I prohibition.
5. The decision follows an OFT Statement of Objections in April 2008 after one of its largest Competition Act investigations. The OFT has concluded that the firms engaged in illegal anti-competitive bid-rigging activities on 199 tenders from 2000 to 2006, mostly in the form of 'cover pricing'.

6. Cover pricing is where one or more bidders in a tender process obtains an artificially high price from a competitor. Such cover bids are priced so as not to win the contract but are submitted as genuine bids, which gives a misleading impression to clients as to the real extent of competition. This distorts the tender process and makes it less likely that other potentially cheaper firms are invited to tender.
7. In 11 tendering rounds, the lowest bidder faced no genuine competition because all other bids were cover bids, leading to an even greater risk that the client may have unknowingly paid a higher price.
8. The OFT also found six instances where successful bidders had paid an agreed sum of money to the unsuccessful bidder (known as a 'compensation payment'). These payments of between £2,500 and £60,000 were facilitated by the raising of false invoices.
9. The infringements affected building projects across England worth in excess of £200 million including schools, universities, hospitals, and numerous private projects from the construction of apartment blocks to housing refurbishments.
10. 86 out of the 103 firms received reductions in their penalties because they admitted their involvement in cover pricing prior to the OFT's decision.
11. A number of the contractors have, in the past, provided work to MFRS or might be expected to tender for future work. One of the bidders for the PFI work is on the list.
12. The practice of "cover pricing" was endemic in the construction industry in the early 90's and this action by the OFT relates to activities carried out prior to 2004.
13. Appendix to this note is the official briefing note from the OFT and OGC (Office of Government Commerce).
14. The advice is that we should not exclude any of the involved contractors from any future tenders. This is because :-
  - (a) The Parties have received significant financial penalties appropriate to the infringement findings in the Decision;
  - (b) It would be wrong automatically to assume that construction companies that are not named in the Decision have not also been involved in bid rigging;
  - (c) As a result of the OFT's investigation, the Parties can be expected to be particularly aware of the competition rules and the need for compliance, and if anything, are more likely to be compliant; and

- (d) Many of the Parties have cooperated fully with the OFT's investigation and a significant proportion have taken measures to introduce or reinforce formal compliance programmes and to ensure that their staff are aware of their competition law obligations.
- 15. The OFT advises authorities to consider the specifics of their procurement, as well as the points outlined above, in deciding the most appropriate course of action on a case by case basis.
- 16. It is recommended therefore that no specific action is taken against suppliers.
- 17. The Authority's standard procurement documentation is being modified to include an Anti-Collusion Clause. The Authority has a whistle-blowing policy and arrangements to help identify frauds.

#### Equality & Diversity Implications

- 18. Corrupt bidding processes can be unfair and discriminating.

#### Financial Implications & Value for Money

- 19. Inappropriate behaviour by contractors can lead to Best Value not being achieved in procurements.

#### Health & Safety and Environmental Implications

- 20. None arising out of this report.

#### Contribution to Achieving the Vision:

"To Make Merseyside a Safer, Stronger, Healthier Community"

- 21. Good procurement ensures value for money.

#### **BACKGROUND PAPERS**

None.