

Item No. 12.	Classification: Open	Date: 10 December 2013	Meeting Name: Cabinet
Report title:		Response to the Housing, Environment, Transport and Community Safety Scrutiny Sub-Committee on the Review of Major Works at Draper House	
Ward(s) or groups affected:		All	
From:		Councillor Ian Wingfield, Deputy Leader and Cabinet Member for Housing Management	

FOREWORD – COUNCILLOR IAN WINGFIELD, DEPUTY LEADER AND CABINET MEMBER FOR HOUSING MANAGEMENT

The Housing, Environment, Transport & Community Safety Scrutiny Sub-Committee undertook to carry out this review after the issue in relation to the extremely poor quality of the work carried out by the contractor (Breyer) and poor contract management by the council came before the Overview & Scrutiny Committee on 4 February 2013.

I am very pleased that the Overview & Scrutiny Committee considered this matter with due diligence, determination and in great detail. It took evidence from a wide range of relevant parties and gave due consideration to the experiences and difficult times that residents felt and underwent during the mutual conclusion of this contract. Like the Sub-Committee I am really disappointed that the contractors Breyer PLC were not prepared to stand in front of the sub-committee and provide an account of themselves in relation to this incident.

However I am delighted to present the recommendations of the Housing, Environment, and Transport & Community Safety Scrutiny Sub-Committee together with the responses from the Housing & Community Services department. I fully support and endorse all the recommendations and actions contained in the responses. They will be a real aid for establishing the criteria for contract procurement in the future and will build on the work over the last two years to give greater transparency and access for residents for the whole process of managing, monitoring and delivering major works.

I am also pleased to report that we have now set up a Major Works Core Group which I chair and which meets bi-monthly. It is attended by nominated tenants and leaseholders, the three partnering contractors and officers from the Major Works team. The group looks at Key Performance Targets set for the partnering contractors and will in the future invite representatives from estates where major works have been carried out to feedback on their experiences.

As part of this group's remit we will be reviewing the letting of contracts for housing works under the partnering arrangements and generally reviewing the effectiveness of those arrangements as recommended in the Overview & Scrutiny Committee's report.

RECOMMENDATION

1. Cabinet to note and agree the responses to the recommendations of the Housing, Environment, Transport and Community Safety Scrutiny sub-committee's investigation into the Major Works at Draper House.

BACKGROUND INFORMATION

2. Following the mutual conclusion of the contract with Breyer Group PLC and concerns raised by residents and leaseholders which were brought to the attention of the Chair of the Housing, Environment, Transport and Community Safety Scrutiny Sub-Committee, it was agreed that the committee would carry out a review into the Project Management of Draper House prior to the mutual conclusion and the letting of contracts for housing works under the partnering arrangements.
3. In May 2013, the Housing, Environment, Transport and Community Safety sub-committee completed its investigation. Overview and Scrutiny Committee considered and agreed the final scrutiny report at its meeting on 10 June 2013. The report was presented to Cabinet on the 16 July 2013 where it was resolved that the Deputy Leader and Cabinet Member for Housing Management would report back in more detail to a future meeting.

RECOMMENDATIONS FROM SUB-COMMITTEE/RESPONSE

4. The sub-committee made 9 recommendations, the responses to which are set out below.

- a. **Termination at will clauses:**

All major works contracts issued by Southwark council should contain termination at will clauses.

Response:

Major Works will include a termination at will clause in the new Contractors' framework which is currently being procured. With regard to other contracts, there is provision in the council's standard template documents to include such a termination provision, but it is advised that this should be considered on a case by case basis, as the effect of including this clause (particularly for contracts which require investment by the contractor) is that contract costs can increase.

- b. **Default notices:** Default notices should be considered a primary tool for escalating poor performance at the earliest opportunity. Project managers should be encouraged to use them as a matter of course as soon as sub-standard performance becomes apparent.

Response:

Over the last 9 months there has been an increased use of default notices across the partnering contracts. These are issued immediately if it is identified that performance does not meet expectations and are supplemented with partner contractor meetings with the Head of Major Works and Investment Manager.

With the reduction of the partnering contractors from 5 to 3 the partnership has grown in strength. The current partners work well together and there is a willingness and desire to work with the council to delivery the programme in true partnership.

Issues of performance have arisen but now there is an improving culture to resolve issues in a non-confrontational way to the benefit of the programme and the partnership as a whole.

- c. **Payment of sub-contractors:** In all future contracts the council should stipulate an acceptable period within which the primary contractor must pay sub-contractors for completed work.

Response:

Legal have been advised and will investigate how the provision can be added as a standard clause to all future contracts.

In the future, we will include a standard agenda item on monthly Contract meetings listing sub-contracting companies being used on the contract and confirmation that payments are being made. The council's Quantity Surveyor on each specific project will ask for proof of sub-contractors' payment included in any monthly valuation before issuing payment.

Under the Partnering Contracts the monthly meetings with the individual partners and the Investment Manager and Head of Major Works will include a standard agenda item reviewing their current sub-contracting arrangements.

- d. **Breyer:**
The sub-committee is aware that, due to EU Procurement law, the council must consider all future bids from Breyer Group Plc for work in Southwark. However, the sub-committee recommends that the conclusions of this scrutiny report be kept at the forefront of officers' minds in considering these future bids. We hope that the implications of this recommendation are clear.

Response:

The council is subject to the EU Procurement Regulations, and therefore is required to consider bids from any provider who satisfies the council's selection requirements, unless there are specific grounds to exclude under Regulation 23 (for example insolvency/criminal convictions). The officers and panel members who have been appointed to oversee the new Contractors' framework currently in procurement will ensure that the selection and award criteria are appropriate to the contract in question so that only suppliers who have the economic/financial standing and the technical/professional ability are invited to tender, and the evaluation methodology is set so that only providers who can satisfy the council's requirements for the contract are selected.

- e. **Complaints logs:**
During all major works projects, detailed complaints logs should be kept and reviewed on a regular basis to prioritise issues which need to be resolved for the benefit of residents.

Response:

All projects now have in place a complaints log which is kept on site and is reviewed at every monthly site meeting. The complaints log is also updated to include issues raised relating to the scheme through emails and other forms of communication, not just those recorded on site.

- f. **Leaseholder charges:** No leaseholder in Draper House should be forced to pay for more than the value of the original notices on which they were consulted. It is understood that this is already the intention of council officers, but the sub-committee felt it was important to underline this approach in our recommendations.

Response:

No Leaseholders in Draper House will be charged more than the value of the original notices on which they were consulted unless new works are added to the contract.

- g. **Sharing Information:** Southwark procurement team should investigate setting up a formal network with other London Councils to share information regarding the performance of construction contractors.

Response:

The Southwark procurement team are already members of a number of existing procurement networks, including South East London Procurement Group and London Heads of Procurement function, where matters like this can be raised.

The council's approved list function has a facility for users to record information regarding the performance of construction contractors. Monitoring the performance of contractors on the approved list should be conducted in accordance with approved list procedures, including the completion of quarterly control forms for all approved list contracts. Performance information can then be supplied to other officers who intend to use the Approved List of Works Contractors and Consultants.

However, in larger projects (over EU threshold of £ 4.3m) a quality evaluation must be undertaken, which requires each applicant (potential contractor) to be treated equally, and scored in a consistent, non discriminatory and fair manner. At Pre-Qualification Questionnaire (PQQ) stage this must be done only on the information contained in the PQQ returns (with the exception of objective information which has been obtained, e.g. an external credit report). References can be requested at this stage however any other information received by any means including personal knowledge or experience of the applicant cannot be taken into account.

The best way to secure good performance from a contractor is to have effective contract management and monitoring arrangements in place. Closer management of supplier performance against contract specifications enable comparison across contracts and business units. This helps identify efficient and inefficient contracts and suppliers, and helps achieve best value by ensuring best quality services are delivered while maintaining or reducing costs. Project managers can then deal with poorly performing contractors using the tools within the contract, which will target interventions to those contracts and or suppliers where improvement is necessary. Documentary

evidence of performance can be used to resolve any disputes and agree actions, and ensure that any performance bond and/or parent company guarantees are executed to protect the council from risk.

Guidance to officers also includes information about liquidated damages which can be used in contracts to establish in advance a set amount of loss per week which can be claimed by the council for delay in completing a project.

h. Appointing project management teams:

Officers should review how the original project management team for Draper House was appointed. Project management teams should not be appointed to complex projects unless senior managers are absolutely certain that the individuals have the training, qualifications and skills required to deal with the project. Measures should be put in place by senior officers to ensure this is the case in future.

Response:

For all schemes which prove very complicated then additional project management resources will be put in to the scheme. In Major Works there is a training schedule for the whole project management team as well as individual assessments done on an ongoing basis. This allocation of staff and review of training requirements is overseen by the Head of Major Works.

With the re-commencement of the major works at Draper House with the new contractor AE Elkins, we appointed an experienced project team to work on site. This includes additional resources of an on-site project manager and clerk of works. We have replicated this approach at other specific projects where the size and nature of the work needed a greater presence than the normal project management team arrangements.

i. Communications with residents:

The scrutiny sub-committee did hear evidence from officers that new procedures for ensuring residents are communicated with during major works have been put in place. These procedures should be strictly followed and failure to do so should be treated as a serious matter by senior managers.

Response:

For all new schemes within the Warm Dry Safe programme we have put in place a process that will ensure residents are kept up to date during the project. This started at the beginning of the financial year when all residents in the forthcoming year's programme received letters explaining that they were in the programme and should expect a call from our surveyors and contractors to arrange a survey of their homes. At the same time they received the names and contact details of the Project Team who will be delivering the works to their homes. This process has also been extended to those homes being brought forward from future years. Communications will continue throughout the project and include:

- Public meeting and drop in sessions at stages during the project.
- Established Residents Project Teams (RPT).
- Monthly meetings with RPTs which will review progress on site, expenditure and quality issues.

- Monthly newsletters and Coffee sessions.
 - Pre handover walk around with the RPT and local councilors.
 - Resident's satisfaction surveys including specific feedback on .any areas of dissatisfaction.
5. Managers monitor these arrangements with the project team on an ongoing basis and adherence to the process is reviewed as part of individuals 1:1's and at the monthly project review meeting that are held with the Investment Manager and Head of Major Works

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Director of Legal Services

6. There are no additional legal implications arising from this report. If cabinet are in agreement with the responses to the recommendations , officers from the contracts team in legal services will work with the relevant project teams to implement those recommendations, and particularly with regard to 4(a) and (c).

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Report into Major Works at Draper House (Housing, Environment, Transport and Community Safety Scrutiny Sub-Committee)	160 Tooley St SE1 2QH	Paula Thornton 0207 525 4395
Link http://moderngov.southwark.gov.uk/ieListDocuments.aspx?CId=302&MId=4549&Ver=4		

APPENDICES

No.	Title
None	

AUDIT TRAIL

Cabinet Member	Councillor Ian Wingfield, Deputy Leader and Cabinet Member for Housing Management	
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Report Author	Dave Markham, Head of Major Works	
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