

Item No. 8.	Classification: Open	Date: 10 February 2015	Meeting Name: Cabinet
Report title:		Commissioning and Procurement at Southwark Council (Overview & Scrutiny Committee)	
Ward(s) or groups affected:		All	
From:		Overview & Scrutiny Committee	

RECOMMENDATIONS

1. That the cabinet notes the recommendations of the review of commissioning and procurement at Southwark and that the relevant cabinet member bring back a report to cabinet within eight weeks, in order to respond to the overview and scrutiny committee.

BACKGROUND INFORMATION

2. Attached is the final report arising from the scrutiny review of commissioning and procurement at Southwark.
3. The report makes recommendations to help the council to do three things:
 - save money
 - improve services
 - improve social outcomes from procurement.
4. The committee sought to answer several key questions about how the council approaches commissioning and procurement:
 - how are procurement decisions made and scrutinised?
 - how much political/democratic input is there?
 - how open and transparent is the process?
 - how do we monitor the contracts?
 - are we getting value for money?
 - are the outcomes good enough?
 - given the risks, are we doing too much outsourcing?
 - what is the impact on the workforce?
 - do we need a new corporate procurement strategy?
5. The overview and scrutiny committee (OSC) completed its report at its meeting on 19 January 2015.

OVERVIEW & SCRUTINY COMMITTEE RECOMMENDATIONS

6. The committee's recommendations for consideration by cabinet are set out below. The committee's report is attached as an appendix.
 1. A new Southwark "Fairer Future" Commissioning and Procurement Strategy

Following consideration of the recommendations below cabinet should agree a new procurement strategy replacing the very technical strategy currently included in the medium term financial strategy. This would provide a rich, politically informed document which could guide future commissioning decisions by officers and cabinet members. This new procurement policy should be given a high status among council officers and should act as guidance for council officers engaging in commissioning and procurement. The new strategy should be presented by the cabinet member for finance, strategy and performance at full council assembly.

2. “Gateway zero” reports for all large scale commissioning processes

To ensure a decision to change the way a service is delivered is made with appropriate input from cabinet, elected members, staff, service users and residents, we recommend a mandatory report prior to a Gateway 1 which makes the case for the preferred mode of delivery – in-house, private sector, CVS sector, shared service etc. A gateway zero report would also ensure that the broad methods by which a service is to be delivered (e.g. single provider/framework of providers etc.) could be discussed before a particular approach becomes hard to unpick.

These reports should be reserved for high value *services* and would exclude all capital investment works. The intention of this recommendation is to improve decision making with particular regard to large scale services such as the examples given in table (street cleaning, repairs, IT, customer services etc.), rather than to introduce unnecessary bureaucracy. Therefore, OSC believes that the threshold level for a gateway zero decision to be required should be substantial and set following further consultation with interested parties.

Gateway zero reports should also set out how the commissioning decision will address social clauses, such as Living wage, apprenticeships, job creation for local people and environmental impact.

3. “Gateway zero” decisions reserved for cabinet members

Following on from recommendation 1, OSC believes that contract standing orders should make it clear that decisions about which large-scale services should be commissioned are reserved for members of the cabinet – not taken under delegated powers by officers.

4. Pre-scrutiny for “Gateway Zero” reports

Southwark should require gateway zero reports to come to scrutiny (sub-committee or OSC) prior to cabinet. This will allow changes to the proposed strategy to be suggested before key decisions are taken.

5. Lower contract thresholds

Currently, a £480,000 contract can be awarded by officers without any oversight by a cabinet member or elected members. A £2 million contract can be awarded by chief officers and “notify” councillors. Unlimited spending on contract variations can be signed off by of strategic director for finance.

In other London boroughs the thresholds are significantly lower and cabinet members formally sign-off far more decisions. Evidence is presented in this report showing that Southwark is out of step with the average thresholds for other London boroughs.

OSC believes we should lower our threshold levels to improve oversight of this spending. These new thresholds should be included in the new commissioning and procurement strategy

6. In-house as “preferred provider”

Because of the inherent risks associated with outsourcing large-scale services, cabinet could consider having a stated policy of in-house as the “preferred provider”, similar to the NHS preferred provider policy operated when Andy Burnham was Health Secretary. This would *not* mean that Southwark would cease to outsource services. Instead it would mean that the possible benefits of outsourcing, where it was considered appropriate, would need to be investigated and evidenced. One of the problems identified in this scrutiny process has been that, across local government, there has been a tendency to assume that outsourcing services to the private sector will “solve our problems” or “take it off our hands”. In reality, many local authorities have found that the lack of direct management control and the fragmentation of staff can be hugely frustrating in delivering some services. Also, in the eyes of residents, risk is never transferred to the private sector. If a service must be outsourced then this must happen with very careful consideration and with a clearly thought through justification. Putting in place an in-house preferred provider model would help that to happen. OSC recommends that the cabinet include this policy in the form of a statement in the new commissioning and procurement strategy.

7. Departmental Contract Review Boards

Clearly the departmental and corporate contract review boards are very important in allowing officers the space to analyse these decisions at an early stage. Informally, OSC was made aware of one department where the review board does not actually meet in person. Instead, the practice in this department is to have a “virtual” review board. This entails relevant documents and reports being shared via email and then officers relying on this information being reviewed by colleagues. This was confirmed in one of the procurement officer interviews carried out for this report.

The officer stated “DCRB is virtual. So you’ll prepare the report for DCRB and it will go through the checks and any queries will come back via email... It’s emailed out for us. We prepare the documentation and we send it to the secretariat, the person who is actually co-ordinating that and they send it out to DCRB... You always get something back, even if it is ‘this is OK’”

OSC does not consider this to be adequate to facilitate the level of scrutiny needed for procurement decisions. Further evidence that the departmental boards are not always providing the early challenge that might be expected comes from comments made by the strategic director of finance and corporate services in his interview with OSC. He said: “Once reports have gone through DCRBs, you often see reports where we have to ask

questions which you would have thought should have been asked and answered.” OSC recommends that all virtual DCRB arrangements are replaced by formal meetings, and that consideration is given to standardising the DCRB process across all departments. The model for this could be devised and circulated by the council’s central procurement team.

8. Using the Public Services (Social Value) Act 2012 – Jobs and apprentices

More could be done to encourage social benefits within Southwark via procurement activity. Southwark should set targets for the number of apprenticeships and the number of jobs created by each £1 million of our procurement spending. These targets should be set in the commissioning and procurement strategy on an annual basis along with a report on progress towards meeting those targets in the previous year should also be included in the report. Consideration should also be given to how the council can help Southwark residents to take advantage of apprenticeships, including targeted advertising and training.

9. Using the Public Services (Social Value) Act 2012 – other social clauses

Other social value issues which should also be introduced in our tendering processes are:

- Disqualification of bidders who have engaged in trade union black-listing (and have shown no commitment to ensuring this does not happen again in the future)
- Disqualification of bidders for licensed premises (Park Café’s etc) not prepared to sign up to Southwark’s Women’s Safety Charter
- Flexible working and family friendly policies
- Training and development of staff
- Environmental considerations.

10. Standard contract clauses

To improve scrutiny and monitoring of contracts, Southwark could introduce the following contract clauses for all contracts covering the following issues:

- Prompt payment of sub-contractors
- Adherence to Southwark’s whistle-blowing policy
- Open book audits of contract accounts on request
- ‘Termination at will’ clauses (See scrutiny of Draper House, 2013)
- Openness and transparency in the event of termination – allowing us to explain to residents why a contract has been terminated
- Attendance at council committees such as cabinet or scrutiny by contractors on request
- Break clause allowing Southwark to conclude a contract should the ownership of contractor change during the life of a contract.

11. Openness and transparency for contracts

Procurement is often shrouded in unnecessary secrecy. Southwark’s current approach of not publishing full contracts conflicts with the recommendation made in the Local Government Transparency Code 2014.

OSC recommends all contracts signed by Southwark Council with external contractors should be published in full online with a link from the contracts register. In those exceptions where commercial confidentiality is considered an issue, partial redaction could be used.

12. Codifying engagement with Cabinet Members

It is noticeable that Southwark's contract standing orders contain no reference to the importance of consulting with cabinet members over major procurement decisions. By contrast Lambeth council's contract standing orders contains the following stipulation:

"Where the aggregate value of the contract or purchase is valued at £100,000 and greater, the officer *must consult* with their departmental cabinet member before tender approval is given."

OSC believes Southwark Council should adopt similar procedures in its standing orders to ensure there is appropriate input from elected members.

13. Updating Contracts register

It has emerged through conversations with officers that the contracts register is not being updated with all the information which it should be. Sometimes contracts are signed and not uploaded to the register and sometimes it is uploaded with incomplete or inaccurate information. Given the very limited amount of information required to be placed on the register, it is reasonable to expect this important document to be kept fully up to date. Measures should be put in place to ensure all contracts of the required value are uploaded to the register.

14. Update Community and Voluntary Sector Compact

Southwark Council's Community and Voluntary Sector (CVS) Compact was last revised in 2010, before the publication of the Open Public Services White Paper. OSC recommends refreshing this Compact to include recognition of the CVS as a partner in service delivery. OSC is in agreement with Community Action Southwark that this should include:

- CVS engagement before procurement stage. Compact Voice recommends engagement with the CVS from the earliest stage in order to fully comply with the Social Value Act10
- A clear 12 weeks' notice of contracts ending. This does not always happen, and can cause problems for CVS organisations, particularly with regards to giving employees notice
- An appropriate length of time at Pre-Qualification Questionnaire and Invitation To Tender stage. CAS recommends a minimum of 5 weeks at the PQQ stage, and 6 weeks at the ITT stage. This would result in more targeted, higher quality submissions
- A commitment to providing time for the development of consortia, and a favourable approach to consortia bids from the sector
- Procurement approaches need to be varied to suit the individual circumstances. Grant funding may still be appropriate if the service is small.

15. Standardising commissioning and procurement

In their submission to this scrutiny Community Action Southwark point out that “There can be different rules and procedures across Southwark Council departments about how commissioning and procurement take place. This is confusing for the sector.” OSC recommends that the council’s central procurement support team runs training sessions for all procurement officers throughout the council to make clear the standard practices they are expected to follow. Clearly this will need to wait until the full implementation of recommendation 1.

16. Consultation with recognised trade unions

Consultation where commissioning decisions affect staff, unions should be involved at an early stage in the process. Southwark UNISON has stated “UNISON would also be willing to give serious consideration to signing confidentiality agreements if this is necessary to enable us to see the bids and procurement information.” This offer should be taken up by the council. OSC recommends that the council negotiate a procurement agreement with recognised trade unions to facilitate this involvement. OSC recommends that such an agreement should cover, although not be limited, to the following:

- notice that a procurement process is to commence
- a timetable for the process
- access to tender documentation
- access to bids
- involvement in stake holder consultations.

17. Protecting the workforce

When the council renews contracts or outsources services to the private or voluntary sector as a minimum the following workforce provisions should apply:

- Access to the LGPS
- Trade Union recognition agreements
- London Living Wage
- Payment of sick pay
- Appropriate training
- Defined hour contracts without unreasonable “availability clauses” (i.e. no zero hours contracts)
- Free access to personal protective equipment
- Guarantees that TUPE terms and conditions will last for the term of the contract.

18. Small and medium sized enterprises included on tender lists

Local small and medium sized businesses should be included on council tender lists for all council contracts.

19. Social Value: Gender Pay Gap and Pay Differentials

Cabinet should consider setting a threshold for both the employee gender pay gap and pay differentials (the gap between the lowest and highest paid) for organisations to qualify to provide services on our behalf.

Southwark Council should ask the companies we currently have contracts with to respond to the questions of pay differentials and gender the gender pay gap, giving us our baseline. This information would then help the council to look into setting a threshold.

Clearly legal advice would need to be sought to ensure that the way in which this was introduced did not breach procurement regulations.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Overview & Scrutiny Committee Agenda 19 January 2015	Scrutiny Team 160 Tooley Street London SE1 2QH	Peter Roberts 020 7525 4350
Link: Overview & Scrutiny Committee Agenda 19 January 2015		

APPENDICES

No.	Title
Appendix A	Report of the Overview & Scrutiny Committee

AUDIT TRAIL

Lead Officer	Shelley Burke, Head of Overview & Scrutiny	
Report Author	Peter Roberts, Scrutiny Project Manager	
Version	Final	
Dated	26 January 2015	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Director of Legal Services	N/a	N/a
Strategic Director of Finance and Corporate Services	N/a	N/a
Chief Officers	N/a	N/a
Cabinet Member	N/a	N/a
Date final report sent to Constitutional Team	26 January 2015	