

Item No. 19.	Classification: Open	Date: 21 July 2015	Meeting Name: Cabinet
Report title:		Response to Recommendations on Commissioning and Procurement at Southwark Council (Overview & Scrutiny Committee)	
Ward(s) or groups affected:		All	
Cabinet Member:		Councillor Fiona Colley, Finance, Modernisation and Performance	

FOREWORD – COUNCILLOR FIONA COLLEY, CABINET MEMBER FOR FINANCE, MODERNISATION AND PERFORMANCE

Southwark Council has more than 400 contracts for the provision of goods and services to the Council. These range from a few thousand pounds to buy hanging baskets in Peckham all the way up to the 25 year PFI waste management contract with an estimated value of £665m over its lifetime.

It's important that as a council we procure and manage our contracts well to ensure we get value for money and high quality goods and services for our residents.

However, our buying power can achieve more than this. As the Overview & Scrutiny report highlighted, the 2012 Social Value Act allows us to take a wider view on the benefits being offered by bidders for council contracts. We already require companies to pay the London Living Wage and seek local employment and apprenticeship opportunities in larger contracts. The proposal from OSC that we should develop a council wide approach on Social Value that reflects our Fairer Future values is timely and welcome.

At the same time I am mindful that applying for local authority business can be a time consuming, cumbersome and costly process with no guarantee of success. For large and multi-national companies, who do a lot of business with local authorities, this is simply a cost of doing business and a system they are experienced with working in. For smaller companies and voluntary sector organisations, deciding to bid for a local authority contract is a huge and even risky decision. We need to take care as we develop our Fairer Future approach that we create a system that makes it easier rather than harder for local firms and VCS groups to bid and succeed.

So today I recommend that we take forward the OSC proposal for a new Fairer Future Procurement Strategy and also commit that we will take care to develop the detail of this strategy in consultation with VCS groups and local business.

However, there is another recommendation that we will take forward immediately. OSC were right to observe the importance of the right level of political involvement at the right time. We share their view that Cabinet Members should be deciding not just how a contract will be procured or reprocured, but whether it should be out-sourced at all. In recent years we have had significant success with in-sourcing previously outsourced services such as Customer Services and Revenues & Benefits. In-sourcing won't always be possible or the best choice, but it should always be explored as a serious option and new "gateway zero" reports to Cabinet Members will ensure this happens.

RECOMMENDATIONS

1. That the cabinet agree the proposed response to the Overview and Scrutiny Committee's review of Commissioning and Procurement at Southwark Council.
2. That the cabinet agree to the development of a new Fairer Future Procurement Strategy.

BACKGROUND INFORMATION

3. The overview and scrutiny committee undertook an investigation into commissioning and procurement at Southwark, and agreed their report on 18 January 2015.
4. The recommendations of the review were presented to cabinet on 10 February 2015 with a request for the relevant cabinet member to bring back a report to respond to the recommendations provided.
5. The report therefore provides a proposed response to the recommendations to be approved by cabinet.

KEY ISSUES FOR CONSIDERATION

Recommendation 1: A new Southwark "Fairer Future" Commissioning and Procurement Strategy

6. Cabinet support the recommendation to develop a new Fairer Future Procurement Strategy.

Recommendation 2: "Gateway zero" reports for all large scale commissioning processes.

7. Cabinet support the recommendation for a report prior to a Gateway 1 which explores the options and makes the case for the preferred mode of delivery (e.g. in-house, private sector, voluntary or community sector, shared service) and considers the broad methods by which a service is to be delivered (e.g. single provider/framework of providers etc.)
8. These reports will be for high value services above £10m in value and would exclude all capital investment works. This would also apply where requested by the relevant cabinet member.
9. The reports should also set out how the commissioning decision will address social value clauses, such as London Living Wage, apprenticeships, local employment and environmental impact.

Recommendation 3: "Gateway zero" decisions reserved for Cabinet Members

10. This recommendation follows from recommendation 2. The constitution would need to be updated to identify the decision making route for "Gateway zero" reports. For other gateway reports the contract standing orders identify the value and other factors which determine where decisions on contracts are reserved for cabinet or for individual cabinet members (IDM).

Recommendation 4: Pre-Scrutiny for “Gateway Zero” reports

11. All forthcoming gateway zero decisions will be included on the Forward Plan and cabinet members will attend pre-scrutiny sessions on request from OSC. The availability of reports will be dependant on meeting dates.

Recommendation 5: Lower Contract thresholds

12. Cabinet agree it is important to have the right political input at the right time and there may be cases where this has not happened. Contract value thresholds are one element of the need for political oversight, along with, for example, decisions to in-source, new outsourcing decisions, services provided to vulnerable people, the nature of the organisation to be awarded work, and the length or conditions of the contract.
13. Cabinet believes that the current thresholds in value, accompanied by the requirement to refer strategic procurement decisions to cabinet, are sufficient to meet the objective of oversight of this spending. There is visibility of contracts through the publication of upcoming cabinet decisions and decisions on contracts to be made by delegated authority by chief officers as part of the council’s forward plan, and on the council’s consolidated contracts register.

Recommendation 6: In-house as “preferred provider”

14. The council has a good record of bringing previously outsourced services in house to secure improvements in service quality and value for money. However, this will not always be the right option to ensure we deliver value for money, high quality services. We will consider this recommendation further as part of the development of the Fairer Future Procurement Strategy. In-house as preferred provider would not always mean all services are delivered in-house, for operational, statutory or business reasons. It is recognised that there will always be some goods, works and services contracts which can only be obtained through external contracts: for example services ranging from furniture acquisition to banking services to communications networks.

Recommendation 7: Departmental Contract Review Boards

15. Cabinet notes that all chief officers are committed to the proper scrutiny of contract proposals in their departments. Where a meeting is the most effective way of achieving this then the practice will be continued. The Procurement Advice Team will prepare a note to assist chief officers in standardising the DCRB process across all departments.

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

16. This recommendation builds on the Fairer Future promise to create 2,000 new apprenticeships and to make sure Southwark residents benefit from new jobs and apprenticeships. Cabinet agree that a target should be set for the number of apprenticeships and the number of jobs created by each £1 million of our procurement spending. These targets should be set on an annual basis along with a report on progress towards meeting those targets in the previous year. Consideration will also be given to how the council can help Southwark residents to take advantage of apprenticeships, including targeted advertising and training.

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

17. The use of the Public Services (Social Value) Act offers an important opportunity to achieve more from the council's spending on services. However any social value issues must be considered on a case by case basis and are subject to EU procurement directives and general local authority legislation. Cabinet agree that other social value issues will be considered as part of the new Fairer Future Procurement Strategy.

Recommendation 10: Standard contract clauses

18. Cabinet note that most contracts currently include the following provisions:
- 'Termination at will' clauses for major works contracts
 - Break clause allowing Southwark to conclude a contract should the ownership of contractor change during the life of a contract
 - Prompt payment of sub-contractors – is a requirement of the new EU Regulations (PCR15) and already included in many contracts. Where this requirement is absent it is implied by the Late Payment of Commercial Debts Regulations.
19. There are some low value contracts or contracts with SME where compliance with additional conditions may be considered too onerous or deter bidders. Many contracts include a requirement to comply with council policies but the following could be added as specific requirements:
- requirement for contractors to have a whistleblowing policy which meets requirements of the Public Interest Disclosure Act
 - Open book audits of contract accounts on request
 - Attendance at council committees such as cabinet or scrutiny by contractors on request

Recommendation 11: Openness and transparency for contracts

20. Cabinet notes that since the OSC considered procurement matters there have been changes in the law around local government contracts. These include the requirement that contract opportunities are published on an external portal "Contracts Finder". Current CSO require that Chief Officers record all contracts on a departmental contract register. The council publishes a list of current contracts and invitations to tender on its website which is updated quarterly and includes details of the provider, SME or charitable status, and London Living Wage.
21. There may be situations where an early termination may be subject to negotiation and a confidentiality agreement which would not allow certain information to be freely circulated to residents (and this might be the only way an exit can be agreed if the contract does not allow).

Recommendation 12: Codifying engagement with Cabinet Members

22. Cabinet note that the council's Contract Standing Orders do not require consultation with cabinet members in respect of some procurement decisions.

23. Cabinet believe that the necessary oversight of contract decisions can be achieved by cabinet members through discussions with Chief Officers based on information in the council's forward plan, and on the council's consolidated contracts register.

Recommendation 13: Updating Contracts register

24. Cabinet notes that each department has an individual responsible for collating the departmental register, and that the Procurement Advice Team produces the consolidated register every quarter and now includes information on the London Living Wage. The new requirement to publish all contracts in excess of £25,000 on Contracts Finder will assist with transparency.

Recommendation 14: Update Community and Voluntary Sector Compact

25. Cabinet recognise that many organisations in the Voluntary and Community sector (VCS) provide valuable services to the Southwark residents and the council. Relationships with the VCS are subject to the VCS rules of engagement in the VCS compact. The Cabinet Member for Finance, Modernisation and Performance, along with the Cabinet Member for Communities and Safety will meet with CAS to discuss recognition of the VCS as a partner in service delivery.

Recommendation 15: Standardising commissioning and procurement

26. Cabinet notes that the Procurement Advice Team is recruiting a new Head of Procurement and other team members and that this recommendation follows the full implementation of recommendation 1.

Recommendation 16: Consultation with recognised trade unions

27. Cabinet values the input of the recognised trades unions which has been especially helpful around the development of the London Living Wage commitment and Ethical Care Charter. Cabinet notes that upcoming cabinet decisions and decisions on contracts to be made by delegated authority by chief officers are published as part of the council's forward plan. The publication of information on Contracts Finder allows for:
- notice that a procurement process is to commence
 - a timetable for the process
 - access to tender documentation
28. Cabinet notes that the council abides at all times with the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended from time to time) implementing the Acquired Rights Directive on the acquired rights of workers. Further consultation with trades unions can be considered as part of the development of the Fairer Future procurement strategy.

Recommendation 17: Protecting the workforce

29. When the council renews contracts or outsources services to the private or voluntary sector the following workforce issues must be considered and applied on a case by case basis as allowed by EU procurement, local government and other relevant legislation:

- Payment of the London Living Wage
- Pension provision
- The transfer and treatment of staff under TUPE
- Terms and conditions including sick pay, training and provision of equipment

30. Further consideration will be given to updating the suite of legal documentation to include trade union recognition and a requirement for an offer of guaranteed hours in any such transfers.

Recommendation 18: Small and medium sized enterprises included on tender lists

31. CSO require seeking tenders from local suppliers for goods and services from £5-£75k. SMEs interested in working with the council are directed towards Contracts Finder. Recent changes in procurement regulations require consideration be given to encouraging bids from SMEs and officers are therefore required to consider dividing contracts into lots and we may determine the size and subject-matter of those lots.

Recommendation 19: Social Value: Gender Pay Gap and Pay Differentials

32. Cabinet agree that all contractors should abide by existing legislation in these areas, and pay differentials can be considered as we develop the Social Value policies in the Fairer Future Procurement Strategy.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Overview & Scrutiny Committee Agenda 19 January 2015	Scrutiny Team Southwark Council 160 Tooley Street London SE1 2QH	Julie Timbrell 020 7525 0514
http://moderngov.southwark.gov.uk/ieListDocuments.aspx?CId=308&Mid=4900&Ver=4		
Overview and scrutiny recommendations report to cabinet	Constitutional Team Southwark Council 160 Tooley Street London SE1 2QH	Paula Thornton Paula.thornton@southwark.gov.uk 020 7525 7055
http://moderngov.southwark.gov.uk/documents/s51814/Report%20Overview%20and%20scrutiny%20recommendations.pdf		

AUDIT TRAIL

Cabinet member	Councillor Fiona Colley, Finance, Modernisation and Performance	
Lead Officer	Duncan Whitfield, Strategic Director of Finance and Corporate Services	
Report Author	Jennifer Seeley, Deputy Finance Director	
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CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
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Director of Legal Services	Yes	Yes
Strategic Director of Finance and Corporate Services	Yes	Yes
Chief Officers	Yes	Yes
Cabinet Member	Yes	Yes
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