

MEETING OF THE OVERVIEW SELECT COMMITTEE – 9 JULY 2015

EXTRACT OF MINUTE 16 - MEMBER INVOLVEMENT IN PROCUREMENT

The Monitoring Officer presented a briefing note on Member Involvement in Procurement, drawing particular attention to the following points:-

- The law largely determined what was considered to be procurement, but there was still opportunity for debate on whether some particular activities should be classed as procurement;
- There was a role for Members in deciding what should be included in a tender;
- Significant problems could arise if the law and contract procedure rules were not followed; and
- Members could, and should, raise concerns about the performance of contracts with officers responsible for those contracts. However, this should not be done at scrutiny commission meetings, as the Council had processes and mechanisms through which it should be done.

Members were reminded that a Task Group on procurement previously had been set up by this Committee and it was suggested that a further Task Group could be set up, either by this Committee or the Economic Development, Transport and Tourism Scrutiny Commission. This could consider the extent of Member involvement in procurement and the areas they should be looking at.

Councillor Willmott, Chair of the Economic Development, Transport and Tourism Scrutiny Commission, advised the Committee that there would be a presentation at the Commission's next meeting on the social value aspects of procurement. In addition, a social value policy was being drawn up and the Commission would contribute to that. This was welcomed, as Members suggested that procurement should not be considered to be the default position. Instead, systems were needed to advise when a contract should be used, or when an alternative would be more applicable.

It was noted that, although pre-qualification interviews of potential contractors were held, contractors were not interviewed when contracts were awarded, even when these contracts were large ones. Members therefore suggested that this should be introduced. In reply, the Monitoring Officer explained that procurement law set out how procurement decisions were to be taken objectively. This was a paper-driven process, with no subjectivity involved.

The Director of Finance explained that during the evaluation of tenders, face-to-face discussions/interviews often were held to clarify specific matters in relation to tender submissions. The procurement team advised contractors before they submitted bids for a particular contract whether there would be any face-to-face evaluation of tenders for that contract. Members asked for further information on how the method of evaluation to be used was decided.

The Committee asked that a way be found in which Members could look at the performance of individual contracts, as current procedures meant that major expenditure and major areas of the Council services could be excluded from scrutiny. This did not have to mean that Councillors saw every contract, as long as they could be assured that value for money was being obtained.

The Monitoring Officer noted these concerns, but felt that public scrutiny was not appropriate. He explained that the briefing note identified that there currently was not a role for Members in this performance monitoring, but he was not suggesting that there should be one. If one was established, this scrutiny would have to be undertaken in the private part of a meeting, due to commercial and financial sensitivities.

Concern also was raised that there appeared to be a lack of transparency. For example, section 2 of the briefing note, (“What and how much to acquire”), referred to the scrutiny role of picking-off key procurement activity early for work programmes, but did not indicate at what stage of the procurement process this should be. This was particularly relevant in view of problems experienced in the past with committees not receiving timely reports. In addition, Council expenditure over certain amounts had to be published on the Council’s website, so it was questioned why the process was not more transparent.

The Monitoring Officer noted that new contract procedure rules had been agreed at the Council meeting held on 18 June 2015, (minute 8, (“Reports of the Monitoring Officer – Revisions to the Constitution”, referred), and offered to speak to Councillors about any specific concerns that were not addressed by these. He also noted that, in law, draft papers did not have to be published, so as a courtesy to this Committee, the draft briefing note had not been published, to give Members a chance to discuss it before it was made public.

The Director of Finance also explained that contractors provided a lot of information for contracts, such as unit prices, and staff costs. The Council had a duty to keep such commercially sensitive information secret and it was recognised that contractors would not tender with the Council if they felt that such information would be released.

The Committee questioned how communication channels worked. For example, if separate people were told that a contractor was not performing to the required standard, but they did not tell each other, problems could arise. In reply, the Monitoring Officer explained that there was a lot of procurement activity in the Council and officers would not always know what Councillors would want to see. Discussions had been held with directors on these matters, as part of the process of developing a co-operative relationship between officers and Members on procurement.

Members questioned whether an ethical trading matrix could be developed, to ensure that the companies worked with were compliant to the Council’s requirements. The Monitoring Officer advised that he had discussed with officers whether this could be done. Procurement law stated that questions that were relevant and proportional to the contract could be asked and the law did not enable

the Council to decide against a potential bidder because the Council did not like what the bidder was doing elsewhere.

RESOLVED:

- 1) That the briefing note on Member Involvement in Procurement be noted;
- 2) That the Monitoring Officer be asked to consider how Members can be involved in monitoring the performance of individual contracts;
- 3) That the Director of Finance be asked to provide information on how the method of evaluation to be used for a particular contract is decided;
- 4) That the Monitoring Officer be asked to consider how Councillors can monitor the performance of contractors on major projects and/or services; and
- 5) That the Economic Development, Transport and Tourism Scrutiny Commission be asked to set up a Task Group to develop Member involvement on procurement, the final version of the procedure to be brought to the Overview Select Committee for endorsement.