

MAYOR AND CABINET		
Report Title	Response to comments by the Overview and Scrutiny Committee on the Council's Procurement Procedures	
Key Decision	No	Item No.
Ward	Borough wide	
Contributors	Head of Law; Strategic Procurement and Commercial Services Manager	
Class	Part 1	Date: 5 June 2019

1. Purpose of Report

- 1.1 To consider and respond to matters raised by the Overview & Scrutiny Committee and initially considered by Mayor and Cabinet on 13 March 2019.

2. Responses to comments by the Overview and Scrutiny Committee

- 2.1 On 13th March, Mayor and Cabinet considered comments of the Overview & Scrutiny Committee on matters including Procurement Procedures. Mayor and Cabinet considered officer reports.
- 2.2 Mayor and Cabinet agreed that:
- i. the Overview & Scrutiny Committee's comments be noted.
 - ii. the Head of Law be asked to provide responses on those matters.
- 2.3 This paper sets out the responses.

3. Recommendations

- 3.1 It is recommended that Mayor and Cabinet:
1. Note officer comments as set out in this report; and
 2. Consider whether to provide a response to the Overview & Scrutiny Committee in line with those comments; and
 3. Consider whether to provide a report to the Public Accounts Select Committee.

4. Overview & Scrutiny Committee comments

- 4.1 Overview & Scrutiny Committee have requested that Mayor and Cabinet consider the matters set out below. This paper contains the response to those matters, for consideration by Mayor and Cabinet.

4.2 The Council's Procurement Procedures

4.2.1 On 7 March 2019, Overview and Scrutiny Committee considered a referral made by the Overview and Scrutiny Business Panel on 19 February 2019. The Business Panel referral was in the following terms:

Business Panel:

1. *Notes that the scoring system and the balance between quality and price is not robust nor transparent when awarding contract to organisations.*
2. *Calls for the Council to re-examine its process of quality versus cost, and ensure there is a thorough examination of the factors within both price and quality.*
3. *Is not convinced continuity or proximity of provision are given sufficient thought in the transition period as part of the evaluation and that needs to be weighted accordingly.*
4. *In accordance with the Administration's Manifesto commitments to use an in-house provider and secure services locally whenever possible, prominent sections of the process should examine the advantages and disadvantages of in-house and local provision.*

[Business Panel] proposed that:

- *The scoring system should be very clear and easy to understand.*
- *Mayor and Cabinet should take time to consider proposals from officers before making a decision.*
- *Sufficient time and consideration must be given to responses to scrutiny in recognition of the need for parity of esteem.*
- *In future: quality, location, continuity and in-house consideration should feature largely when awarding contracts.*

4.2.2 Overview & Scrutiny Committee considered the above referral and asked that it be forwarded to Mayor and Cabinet for consideration. In addition, Overview & Scrutiny Committee asked that Mayor and Cabinet:

... asks officers to consider best practice, including with regard to social value, from other local authorities and report back to Mayor & Cabinet and the Public Accounts Select Committee. Salford City Council is cited as a potential example of good practice.

5 **Officer comments**

Officer comments upon those items of referral are set out below.

5.1 The scoring system should be very clear and easy to understand

- 5.1.1 The Council has agreed procedures and delegations setting out how to conduct procurements – these are set out in the Constitution (Contract Procedure Rules), supplemented by an internal three gateway process and the procurement handbook, and supported by additional advice from the procurement and legal teams as required / requested. Use of those procedures should result in a clear scoring system which is easy to understand. The adopted system will be that which is appropriate dependant on the size and complexity of the procurement.
- 5.1.2 That scoring system will be set out clearly in the procurement documents, so that potential suppliers will be informed of the approach including the weightings to be attributed to each item of the scoring system.
- 5.1.3 The Council adopts a consistent approach to assessment of bids and allocation of scores (and has developed standardised documentation), including discussion and adoption of a final moderated score which is agreed by the panel members involved in evaluation of bids for each tender submission.
- 5.2 Mayor and Cabinet should take time to consider proposals from officers before making a decision
- 5.2.1 Where decisions are to be taken by Mayor and Cabinet, the report will be made available to Mayor and Cabinet in accordance with the requirements for publication of reports. Officers will be available to answer questions on those reports.
- 5.3 Sufficient time and consideration must be given to responses to scrutiny in recognition of the need for parity of esteem.
- 5.3.1 It is accepted that sufficient time and consideration must be given to responses to scrutiny by Mayor and Cabinet.
- 5.4 In future: quality, location, continuity and in-house consideration should feature largely when awarding contracts
- 5.4.1 The matters referred to - quality, location, continuity, and in-house consideration – are taken into account throughout the procurement process. The relevance of each of those factors may be greater or lesser depending on the service involved; and the stage at which it is appropriate to consider them may vary. For example:
- **Quality**
The quality of the service will always be a major factor to be considered. The over-riding procurement policy requirement is that all public procurement must be based on value for money, defined as “the best mix of quality and effectiveness for the least outlay over the period of use of the goods or services bought”. This delivers against the Council’s overall duty when procuring works, goods and services

to obtain best value, and obligation under the Public Contracts Regulations 2015 to award contracts to the bidder who submits the Most Economically Advantageous Tender (MEAT).

For each contract, consideration is given to how MEAT should be assessed. One factor is that the Council sets a price:quality ratio as the criteria it will use to assess bids. Following adoption of the Council's Procurement Social Value Policy a default weighting of 50:50 for price:quality is adopted which can be varied depending on the appropriate factors including social value factors. Application of that approach may present risks, and consideration is given to whether any adjustment needs to be made, whether to the weighting or to other factors, in particular cases.

If application of the default weighting may present risks to quality, consideration will be given to how that risk might be addressed. That might be done by applying minimum thresholds to elements of the quality scoring; and/or checking for and rejecting Abnormally Low tender prices; and/or altering the default weighting (which is possible and is approved by the Strategic Procurement and Commercial Services Manager).

- **Location**

There may, depending on the service to be delivered, be a need for the contractor to provide a service from a location within the borough. That is an issue which will be addressed by the specification for the particular procurement.

- **Continuity**

Continuity of provision will again be a matter to be considered. Where this is a material issue for the particular procurement, the bidders will be asked to set out their approach (for example, to mobilisation of the Service) in their response. For every contract, there is a transition period between award of and commencement of the contract. This will be used to address both mobilisation and any relevant handover issues; that is when issues regarding continuity are likely to be addressed in practice.

This will also involve, where applicable, sensitive and responsible management of any staff transfers from the outgoing provider to the incoming provider (under the provisions of the Transfer of Undertaking (Protection of Employment) Regulations 2006 - TUPE).

Further, final due diligence checks will be carried out; and officers will manage the transition period, and closely monitor service delivery during the transition and into the new contract.

- **In-house**

The Corporate Strategy states that "*When we are considering whether to commission services, we will have an assumption that the*

Council is our preferred provider and in-source our contracts.”

Officers have developed and implemented an options appraisal framework (based on an Association of Public Sector Excellence APSE model) which will allow all services currently under contract to be assessed at the appropriate point of the procurement cycle via the internal three gateway process. This assessment will be undertaken at a minimum 12 – 24 months prior to the end of the current arrangements by the service responsible for the contract, and presented to the appropriate decision making forum as required under the Council’s regulations. This will ensure that there is sufficient time to plan for or re-tender and implement the chosen service delivery model.

This approach has been used in various cases. One example is the consideration of the Council’s facilities management contract which has been partly in-sourced.

- 5.5 Officers to consider best practice, including with regard to social value, from other local authorities and report back to Mayor and Cabinet and the Public Accounts Select Committee
- 5.6 The Corporate Strategy sets out that *“We will review public sector procurement to maximise investment in local independent businesses and support local inclusive growth”*.
- 5.7 On the 6 February 2019 the Council adopted a new Procurement Social Value Policy. The new policy extends the current consideration of social value for the procuring service to include when inviting tenders. Is a step change in that it now provides for a greater and specific weighting for social value within all tenders in excess of £50k, ranging from 5% - 10% and which clearly identifies a range of Key Performance Indicators (KPIs) which providers are expected to meet as part of their service delivery, where that approach is legally possible (only those social value objectives which are relevant to the subject matter of the particular contract may be considered). Maximising investment in local businesses and supporting local inclusive growth are reflected in the defined KPIs. The KPIs are regularly reviewed. This approach supports and delivers on the Corporate Strategy and will also defend against the potential for future challenge to contracts being let.
- 5.8 In drawing up the new policy, best practice elsewhere was considered and taken into account.

6 Financial Implications

- 6.1 None except as set out in the body of the report.

7. Legal Implications

7.1 None except as set out in the body of the report.

8. Crime and Disorder Implications

8.1 There are no specific crime and disorder implications arising from this report.

9. Equalities Implications

9.1 There are no specific equalities implications arising from this report, but equalities issues are taken into account in relation to each procurement process and were considered during the development of the policies referred to in this report.

10 Environmental Implications

10.1 There are no specific environmental implications arising from this report but environmental implications are taken into account in relation to each procurement process and were considered during the development of the policies referred to in this report..

11 Conclusion

11.1 This report sets out the matters to be considered by Mayor and Cabinet with regard to the matter referred for consideration by Overview and Scrutiny Committee, so that Mayor and Cabinet can decide whether to provide a response to the Overview & Scrutiny Committee in line with those comments, and can Consider whether to provide a report to the Public Accounts Select Committee.