

Confidentiality in Tendering and High-Risk Procurement – Feasibility Study

Summary

1. The final report of the former Confidentiality and Transparency Scrutiny Panel was originally considered by the Executive on 17 February 2006. Some of the recommendations therein did not at that time have an appraisal of implications of approving them. Consequently these recommendations were re-considered by the Executive on 13 February 2007.
2. One of these recommendations was in relation to a possible future Scrutiny review, and it was referred back to Scrutiny Management Committee for consideration. Members are now asked to consider if they wish to form an Ad Hoc Scrutiny Sub-Committee to undertake a review of this topic in the current municipal year. This report is a feasibility study which provides information for members to assist them in deciding if there would be any value in undertaking this review.
3. The recommendation reads “That the use of confidentiality in tendering and contracting for high-risk procurement is reconsidered as a topic for scrutiny within two years of the restructure of Property Services”. If it was decided to review this topic then members would need to produce a clear remit for the project which outlines the objectives and scope of the work. There is also the question as to whether this proposed review should relate to procurement relating to Property Services or more generally across the authority.

Criteria

4. Public Interest – there is no evidence that a review of this topic would be in the public interest at this point in time.
5. Corporate Priorities – members might consider that the proposed topic is relevant to the Corporate Priority to “improve efficiency and reduce waste to

free up more resources” although there is no direct evidence to support this.

6. National, local or regional significance – there are implications for procurement in the Government’s Strong and Prosperous Communities White Paper, however these appear to be mainly connected with requirements for local authorities and other public sector bodies to work together and the utilisation of Local Area Agreements. Increased use of technology, the maximisation of efficiencies, collaboration between sectors and the intensification of competition are also issues however there are no requirements regarding confidentiality.
7. Under performance or service dissatisfaction – so far as is known there have been no complaints or other indications of dissatisfaction with the confidentiality of the tendering and contracting procedures.
8. Level of risk – so far as is known there are no risks which could be alleviated by the investigation of this topic.
9. Service efficiency –so far as is known there are no aspects of service efficiency which would benefit from this review being carried out.

Consultation

10. This topic was originally proposed as a result of the findings of the members of the former Confidentiality and Transparency Scrutiny Panel. This report had 48 recommendations in total which meant the assessment of the implications of approving them took longer than would usually be the case. Scrutiny topics are normally sponsored by one or more elected members, however in this case it must be considered to be the collective responsibility of the former Ad Hoc Scrutiny Panel formed to investigate Confidentiality and Transparency in Council services. The former Chairman of this Panel is no longer a member of the Council and is therefore not available to make any comment as to whether there would be any benefit in pursuing this issue any further.
11. The Assistant Director of Resources responsible for Audit and Risk Management is not aware of any problems with confidentiality in any matter regarding procurement . She advises that the new Financial Regulations and Procurement Rules are clear and transparent regarding the process to be followed. Following a European ruling in 2006 contract or tender information cannot be kept private for reasons of commercial confidentiality after the bid and award process has been completed. This means that during the tender period all bids will be treated in confidence, but once it is concluded and the contract awarded all tender and contract information becomes a matter of public record. This means that it can be revealed for a Freedom of Information (FOI) request or committee report and made public.

12. She does not consider that a future Scrutiny Sub-Committee could make any recommendations that would improve these principles or processes as the current situation meets the Council's commercial purposes during the tender process and all FOI and public interests thereafter. She questions why, if members did want to pursue this, it would relate in particular to Property Services? If members felt that confidentiality in procurement was an issue should this apply to all contract types regardless of where they originate from?
13. The Assistant Director of Resources was also asked for an estimate of how much staff time this review would be likely to take up as well as any other likely financial implications as well as the opportunity costs of the staff time being used for this project. At the time of writing no reply has yet been received.
14. The recommendation refers to this Scrutiny topic being considered within two years of the completion of the restructure of Property Services. It is not clear exactly what the relevance of this is, however members may be interested to know that this restructure took place in April 2005.
15. It is normal practice to ask the relevant Executive Member for his/her opinion on the feasibility of carrying out a proposed Scrutiny review. The Executive Member for Corporate Services was asked for comments, but unfortunately he ceased to be a member of this authority before he was able to reply.
16. In July 2005 the former Resources Scrutiny Board produced a report on Sustainability and Social Responsibility in Procurement. The recommendations of this report informed the consultation process for the Council's Corporate Procurement Strategy. The Assistant Director of Resources (Audit and Risk Management) updated members of that Board on the progress of the Corporate Procurement strategy in February 2006.
17. It was reported at that time that work on the corporate procurement strategy had been put on hold to await the outcome of the restructure of the Chief Executive's Department, the Comprehensive Performance Assessment (CPA) findings relating to the use of resources and developments in the Gershon efficiency agenda. The CPA review had concluded that there were significant improvements in the practice of procurement but that there was still a lack of an adequate competition policy and a policy framework around strategic procurement, setting down whether the authority was going to be a provider, commissioner or a mix of both. The corporate procurement strategy would be reviewed in the light of these developments and would take account of the recommendations from the scrutiny work.

Conduct of Review

18. If this review was to go ahead it would require the support of the Assistant Director of Resources responsible for Audit and Risk Management and her colleagues, in particular the Procurement team. These officers have a heavy work commitment over the next 12 months, for example the Corporate Procurement Strategy and Handbook, the Procurement Guidance Manual for Practitioners, implementation of the Supplier Contract Management System, management of the new Strategic Procurement Programme, management of the new corporate contracts Management Portfolio, management of budget savings for procurement and a wholesale review of procurement functions across the Council. This is all in addition to the everyday duties of this team of providing advice, guidance, support, compliance work, EU returns, remedial actions etc for officers, senior managers and members. The Assistant Director has made it clear that they are unlikely to be able to support this review during the current municipal year, possibly not until 2008/9 at the earliest.

Implications

19. There are no known financial, HR, Equalities, Legal, Crime & Disorder, IT, Property or other implications associated with this recommendation other than those mentioned in 17 above. The Assistant Director has been asked for an estimate of the costs of supplying the resources to service this review.

Risk Management

20. In compliance with the Council's risk management strategy, there are no known risks associated with the recommendations of this report.

Recommendation

21. Members are recommended not to form an Ad-Hoc Scrutiny Sub-Committee to consider "the use of confidentiality in tendering and contracting for high-risk procurement".

Reasons

- There is no evidence that the proposed topic meets the agreed eligibility criteria for scrutiny reviews
- There is no evidence that the proposed topic is in the public interest or that there is demand from residents for it to be examined.
- The necessary support from professional officers would not be available at the present time without considerable disruption to their planned programme of work.

- There is no evidence that carrying out this review could lead to recommendations which, if accepted by the Executive, could lead to significant improvements in the Council's services.

Contact Details

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**Feasibility Study
Approved**

Date *Insert Date*

Specialist Implications Officer(s)

None

Wards Affected: *List wards or tick box to indicate all*

All

For further information please contact the author of the report

Background Papers: None

Annexes: None

