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Introduction

- 1 The Overview and Scrutiny Organisation Committee (OSOC) initiated the Procurement Scrutiny Review, on 21st July 2003. This followed a request for scrutiny, by letter dated 8th July 2003, submitted by Councillor Pat Drake and Councillor Kevin Allen to the Chief Executive David Panter.
 - 1.1 The letter requesting scrutiny is included at Appendix 1 to this report.
 - 1.2 OSOC agreed to establish a 5 Member Scrutiny Panel comprising two Labour, two Conservative and 1 Green Party Member. The Panel's remit was, to make recommendations on how to achieve a genuinely corporate approach to strategic procurement, to produce improvements in quality and cost.
 - 1.3 The Councillors nominated to sit on the Panel were Joyce Edmond-Smith (Chair), Juliet McCaffery, Ken Norman, Sue Paskins and Jan Young.
 - 1.4 The Panel held their first meeting on 7th January 2004 and held 16 meetings in total. During the course of their meetings the Panel received information, either orally or in writing, from 13 officers.
 - 1.5 In preparing this report of findings and recommendations, the Scrutiny panel have taken into account all the views expressed during the review.
 - 1.6 The Panel would like to thank all those who participated in the scrutiny review.

Objectives and Summary Findings of the Review

1 Procurement is an extremely important function of the Council. A significant proportion of the Council's budget is spent on services contracted out. During the financial year 2003-2004 £186 million was spent with external suppliers, which accounts for 57% of the annual budget. It is at the crux of all the Council's work and has a key role to play in delivering the Council's strategic objectives in economic, social and environmental well being. It is therefore at the heart of its commitment to sustainable economic and social regeneration, at the same time it involves the disbursement of very large amounts of public money, which the Council must spend to best effect. This is endorsed by Government's National Procurement Strategy.

1.1 Objectives

1.2 The Panel's remit was to make recommendations on how to achieve a genuinely corporate approach to strategic procurement, to produce improvements in quality and cost.

1.3 Summary of Findings

1.4 Meeting only one year after the Update on the Best Value Report, the Panel recognises that there have been indubitable advances. Nevertheless, it feels that the structural and/or cultural changes are not yet in place to ensure that procurement has the profile and commitment throughout the organisation that is required, nor the systems to enable it to be a truly corporate function. This requires cultural as well as organisational change.

1.5 Clearly, this is a very rapidly developing scene, with increasing Government interest and challenges and the most recent indications from the Gershon Efficiency Review are that required efficiency savings may well be linked to revenue grant.

1.6 Thus with an extremely complex subject, the Panel makes no claim to have been able to do any more than raise issues and point the direction. There are many and better documents (cf. Appendices) which should provide more guidance for the in-depth and continuing work which will be required.

1.7 The panel generally feels that the overall approach to procurement should not be, as too often in the past, "*where can we save money,*" but rather "*how can the money we have provide the best service!*"

1.8 The Scrutiny Panel has made 66 recommendations relating to all phases of the contract process - tendering, awarding contracts, monitoring, management and contract compliance. The panel also made recommendations regarding financial systems, training of officers and members, the situation of small and

local businesses, the procurement team and procurement as corporate function. These are detailed in the report.

Findings and Recommendations of the Panel

1 Raising the Profile of Procurement Team

- 1.1 The 5-person Procurement Team, whilst not taking on all procurement (some decentralisation has advantages, see below), nevertheless needs to be more central to the Council structures. There is a clear understanding of this and there is welcome ongoing work to progress it. However, the Panel feels that a greater sense of urgency is needed, and that relying on the spread of good practice may not be enough.

RECOMMENDATION 1

The Head of Procurement should have the same position, status and contacts within the Council and TMT as the Head of Human Resources.

- 1.2 The Panel welcomes the Procurement Strategy Group, which has recently been established. This should ensure the involvement and commitment of Senior officers. As part of its brief it should identify clear lines of accountability and the mechanisms for ensuring compliance with the Strategy and the Codes of Practice. This group should also be responsible for ensuring that the various documents, guidelines and their targets are implemented (see appendices).

RECOMMENDATION 2

A Council Gateway Review process should be established and agreed by Policy & Resources Committee, to include options appraisal, (Procurement Essential, Appendix 7)

RECOMMENDATION 3

The Procurement Team should be involved in Best Value review where necessary

RECOMMENDATION 4

The plan for a Procurement Handbook is welcome but this needs to be urgently implemented and posted on the web

- 1.3 The Panel also welcomes the revival of the Contract Officers Forum. However, it is a matter for regret that the Contract Monitoring Officer post seems to have disappeared.

RECOMMENDATION 5

Procurement Strategy Group could be responsible for monitoring progress. From a base line against which to assess progress after a year.

RECOMMENDATION 6

The Procurement Team should be involved in all major projects as a member of the Major Projects team. They will also need to be aware of all new contracts and renewal dates for all contracts, in order to assess when the work on the renewal of the contract should start.

RECOMMENDATION 7

Contract Officers should always consider whether they should go for advice to the Procurement Team and state reasons for not doing so.

RECOMMENDATION 8

The Procurement Team must be aware of what monitoring and quality control is happening across the Council. All service areas should have access to a database on start and end dates of contracts.

RECOMMENDATION 9

The Contract Monitoring Post should be reinstated.

RECOMMENDATION 10

There should be clear mechanisms to ensure that when officers involved in contracts

leave the Council there is a proper hand-over.

2 Member Involvement

- 2.1 One of the major lacunae is the involvement and commitment of elected members in the entire procurement process. They should have a strategic role in order to ensure appropriate policy outcomes and the implementation of the Procurement Strategy and the Codes of Practice. The present requirement that committee approval is required for contracts over £250,000 is not a sufficient requirement.
- 2.2 The Panel welcomes the fact that there is an identified elected member, Lead Councillor for Finance, but considers that wider member involvement is required.

RECOMMENDATION 11

The appropriate Executive Committee, (where procurement is within the context of a specific department), or Policy & Resources, should take greater ownership of the various stages of the Procurement process from the beginning, with regular reporting mechanisms: This should involve options appraisal, specification, bid evaluation criteria and a continuing role in scrutinising the procurement process and contract management in implementation and outcome.

RECOMMENDATION 12

Where necessary, in the event of short time scales and/or small contracts/purchases, a sub-group from the Committee, with involvement of ward councillors as appropriate, could be set up.

RECOMMENDATION 13

Committee Reports should include a statement to the effect that Contract Standing Orders and Procurement Codes of Practice have been followed in relation to the contract.

RECOMMENDATION 14

In order to be able to carry out their role **all** elected members should have access to training and consideration should be given to providing in-depth training for procurement “champions” on Executive Committees.

RECOMMENDATION 15

Such member involvement would necessitate much longer lead in times – probably on larger contracts, one to two years. This should be linked to greater attention to specification and financial and management control.

3 Training

- 3.1 Training is crucial to both changing the culture within the organisation and effective procurement. According to the skills audit undertaken as part of the Best Value review there is very little professional experience within the Council in purchasing. Although this is improving, training both of staff and elected members remains crucial.

RECOMMENDATION 16

Funding should be identified for an immediate in-house training scheme so that some one in each department has at least Foundation Level. The suggested course is the Chartered Institute of Purchasing and Supply (CIPS) Corporate Award Foundation Stage. This should be corporate training and compulsory.

RECOMMENDATION 17

All those who manage a contract should be trained to an adequate level suitable to the type and value of the contract.

RECOMMENDATION 18

Training should include workshops on the Codes of Practice, and particularly on the implementation of sustainable procurement and equalities (see below).

RECOMMENDATION 19

Procurement and information on the Codes of Practice should be included in induction for **all new** staff.

RECOMMENDATION 20

All senior officers in the Council, including those in areas such as Finance need to be informed about the Procurement Strategy and Codes of Practice.

4 Financial Systems

- 4.1 The Panel identified an urgent need to improve the quality of Management and Financial information concerning procurement – The Powersolve system in place does not allow for adequate detail of expenditure and management information, nor the adequate control to ensure purchasing from an agreed supplier. Coding is not systematic and any errors which occur, although not significant in accounting terms, may make it difficult to obtain clear management information on products.
- 4.2 The Gershon report as well as the requirement in the National Strategy to move to e-procurement by 2006 makes this a top priority. Developing Powersolve, in so far as it is possible, could be an immediate and cheap short-term solution. However an e-procurement system would provide solutions to most of the problems identified, i.e. ease of use; control over online catalogue (and therefore maverick purchasers), correct coding and improved management information.

RECOMMENDATION 21

Financial officers should be consulted on both the financial evaluation of tenders, and the financial implications of significant contracts.

RECOMMENDATION 22

Move to e-procurement urgently, perhaps as a phased approach, but in the meantime the shortcomings of the present system need to be urgently addressed.

RECOMMENDATION 23

Coding systems should be reviewed to ensure codes are easily identifiable and information coded in the right place.

RECOMMENDATION 24

Evaluate the cost and desirability of developing a purchasing module within Powersolve.

5 Relations between the Procurement Team and Departmental Procurement

- 5.1 The Panel is of the firm view that wherever possible there should be a consistent approach to corporate purchasing.
- 5.2 However it is recognised that it is desirable, in some cases where there is a requirement for specialist knowledge, that the procurement function should be placed within the Department. There are some examples of good practice of this within the Council, such as the Social Care Contracts Unit within Adult Social Care. The team has good contacts with the Committee. Their strategy is to improve costs and they also pay attention to monitoring (with extra officer time) and the Codes of Practice. They have a good link with the PT and regular meetings. In other instances departmentalism still inhibits the input of the Procurement team as required in the BV report.

RECOMMENDATION 25

Identify areas of good practice where autonomous departmental procurement is considered necessary, and share such areas of good practice across the Council.—

6. Contract Management

- 6.1 The panel identified significant shortcomings in some areas of contract management and monitoring. In too many instances enforcement action is not taken soon enough and this in turn allows further contracts to be awarded, and whilst penalty clauses may exist they seem to be too often unenforced.

RECOMMENDATION 26

Officers responsible for monitoring contracts should be involved in the vetting process and drawing up who goes on lists.

RECOMMENDATION 27

Contractors should be required to declare whether they have relatives who are elected Members or employees of Brighton & Hove City Council, or closely involved in another capacity such as a Partnership responsible for procuring the work.

RECOMMENDATION 28

There should be clear processes and accountability with regard to monitoring.

RECOMMENDATION 29

When external consultants are responsible for contracts awarded by the Council they should have clear reporting lines and responsibility for monitoring.

RECOMMENDATION 30

Whoever oversees the contract should also be responsible for ensuring that the Codes of Practice are implemented.

RECOMMENDATION 31

Where a failing contractor is identified enforcement action should be taken immediately and the contractor taken off the list.

RECOMMENDATION 32

Enforceable contract compliance should be written into the contract and adhered to.

7 Local Businesses – Small and Medium Businesses

- 7.1 The Government has recognised that Small and Medium Enterprises (SME) constitute a vital part of Britain's economy as well as being a major engine of economic growth. The Better Regulation Task Force recognised that one of the principal ways of fostering business growth is by opening up procurement processes to greater innovation and competition. They also recognise that many small firms are effectively cut out of the procurement process due to the cost and complexity of making a bid and that there is a danger of selecting only major companies to which the client has previously contracted work. (Better Regulation Task Force report, appendix 15)
- 7.2 The Steer Special Policy Briefing on improving access for Small and Medium Enterprises, points out that where Local Government spends its money will have a substantial impact on the local and national economy (appendix 9)
- 7.3 Procurement has therefore an important role to play in local social and economic regeneration. The Panel found that there are barriers (e.g. pre-qualification questionnaires, size of contracts etc) and more needs to be done to enable small local businesses to be in a position to tender for Council contracts.

RECOMMENDATION 33

Procurement should be recognised as an important contributor to economic development and the appropriate knowledge and resources of the Economic Development department utilised.

RECOMMENDATION 34

Local citizens should be more informed and involved and contracts should be advertised on the web.

RECOMMENDATION 35

Information should be made available to small and medium businesses in good time to enable them to bid.

RECOMMENDATION 36

Consideration should be given to specifying contract and evaluation criteria in such a way that they are attractive to smaller organisations – so long as it is clear that value for money would be achieved.

RECOMMENDATION 37

Contract size should always be questioned and the decision justified to the appropriate committee and consideration should be given to the size of contracts and possibility of smaller contracts.

RECOMMENDATION 38

A single major contractor that sub-contracts, must produce a strong business case for doing so and should demonstrate reasons.

- 7.4 Small businesses are not obliged to have their accounts audited, and therefore the Council's requirement of three years audited accounts puts them at a disadvantage.

RECOMMENDATION 39

Pre-qualification questionnaires should be adapted by the Procurement Team according to the type and size of the individual contract.

RECOMMENDATION 40

More publicity is needed about the outcome of tenders.

RECOMMENDATION 41

The new Handbook is welcomed – this should link with Codes of Practice

RECOMMENDATION 42

The Council should monitor the value and proportion of Council contracts that are awarded to small and medium businesses, including within Brighton & Hove, and report annually to Policy & Resources Committee.

8 PFI Contracts

- 8.1 The panel identified problems with PFI contracts, one of which is the lack of a corporate approach. However it was felt that this was too large a subject for their terms of reference.

RECOMMENDATION 43

There should be an in-depth corporate review of existing PFI contracts so that lessons can be learned.

RECOMMENDATION 44

For any new PFI contract there should be a corporate not a departmental responsibility and greater sceptical probing. The Procurement Team should take a key role in the early stage of each new contract.

RECOMMENDATION 45

Serious consideration should be given to bringing in specialist help to augment the work of the team for PFI contracts.

9 Codes of Practice

- 9.1 The Panel found inconsistent use and adherence to the Codes of Practice, and felt that the Codes of Practice should be regularly reviewed in the light of new development and new knowledge.

RECOMMENDATION 46

Set a time-table for the review of the Codes of Practice

9.2 Environmental Sustainability

- 9.3 The IDEA document (Sustainability and Local Government Procurement Appendix 8) underlines the importance of involvement at the specification stage. Without this it is very difficult to add on and a valuable opportunity is lost. The Panel has identified the need for a longer lead in time on contracts, which should ensure each contract requests relevant sustainability criteria from successful bidders.

RECOMMENDATION 47

Full consideration should be given to all aspects of sustainability at all stages of the procurement process but especially at the specification stage.

- 9.4 The Pre-Qualification Questionnaire is not clear on the Code of Practice and bidders are unsure precisely what is being asked of them.

RECOMMENDATION 48

Council to write a statement of intent re sustainability for use in all contracts

RECOMMENDATION 49

Request an environmental policy from bidders setting out what issues it should address (keeping in line with EU procurement law).

- 9.5 There is a need for consistency in evaluation and appraisal of contracts. However, the Panel found that many officers are not familiar with the Codes of Practice, especially the Sustainability strategy.

RECOMMENDATION 50

Workshops on Sustainable Procurement should form part of the training of officers.

RECOMMENDATION 51

A clause should be inserted in the contract requesting a process of improvement in environmental performance through the life of the contract.

RECOMMENDATION 52

Part of the responsibility of the Executive Committees should be to scrutinise on-going contracts with regard to sustainability.

- 9.6 The Panel are aware that the Office of Deputy Prime Minister (ODPM) offer a service called a Procurement Fitness Check. A representative from the ODPM can visit a local authority and look at all aspects of procurement, including sustainability. A review would then be produced highlighting the authority's strengths.

RECOMMENDATION 53

Consider taking advantage of the Office of Deputy Prime Minister Procurement Fitness Check

9.7 Equalities Code of Practice

- 9.8 There are of course legal requirements with regard to equalities. However, the Panel felt that, in reviewing the Codes of Practice improvements could be made.

RECOMMENDATION 54

In training make sure all staff with contracting responsibility are knowledgeable about the requirements of RRAA and other equality legislation affecting employment and the requirements of the Equality Standard in respect of women and disability as well as race.

RECOMMENDATION 55

Contractors should provide full employment statistics and demonstrate that equalities monitoring systems are in place for the workforce.

RECOMMENDATION 56

Contractors should demonstrate that mechanisms are in place to monitor equity in service delivery.

RECOMMENDATION 57

Provide guidelines, if necessary, to small and medium businesses including Black Minority Ethnic (BME) businesses, to develop appropriate systems of monitoring

RECOMMENDATION 58

The Council should check with DIALOGUE to investigate whether their standards can be used. Advice of the Equalities Team should be sought. The Council should ensure that BME businesses are included in any dialogue to encourage small and medium businesses to bid.

RECOMMENDATION 59

The Pre-qualification questionnaire is not sufficiently specific to ascertain whether equalities procedures are actually in place and monitored and needs to be reviewed to ensure this.

9.9 Health and Safety

- 9.10 The Panel recognised that as a statutory responsibility, and due to long experience, the Code of Practice on Health & Safety would be expected to be the most familiar of the Codes of Practice. However, as with the other Codes of Practice, the Panel finds that it could usefully be reviewed, particularly with the increasing recourse to contractors and sub-contractors and the large construction projects in the City. The Panel feels that, whether as direct procurer, or member of a project team, the

Council should use its influence to ensure that appropriate measures are adopted and followed through.

RECOMMENDATION 60

Ensure that contractors fully understand H&S requirements

RECOMMENDATION 61

Continually monitor the implementation through the lifetime of the project.

RECOMMENDATION 62

Identify appropriate procedures to ensure that contracts are not contracted down to an increasing number of sub-contractors

RECOMMENDATION 63

Where there is sub-contracting, ensure that principal contractors have robust procedures, including Codes of Practice, to follow through with sub-contractors.

RECOMMENDATION 64

Ensure the H&S team are involved and consulted on major contracts.

- 9.11 Construction is an area of particular danger to workers, both with regard to injury and ill health. The Council should therefore introduce and demonstrate to others a corporate commitment to health and safety in construction procurement decision making. It should be looking for excellence beyond simple compliance with statutory requirements.

RECOMMENDATION 65

The Council should ensure that all project officers and decision makers are familiar with and follow the Health and Safety Procurement Guide 10 from the Office of Government Commerce (Appendix 14).

- 9.12 The Panel notes the Council's involvement in the Healthy City process and Smoke Free City status, and believes that in its procurement it should seek to progress that agenda.

RECOMMENDATION 66

Investigate using contract procurement to progress a smoke free city.

10. The Gershon Review

- 10.1 The implications of the Gershon Review, which is due to be published soon (see Appendix 14, letter from Sir Peter Gershon), are not entirely clear at the point of writing this report. It is important that our existing policies are safeguarded and that a focus on local providers should not be thwarted.
- 10.2 It is unfortunate that the Council has not been successful in getting on the South East Centre of Procurement Excellence Management Board, but it is essential that it is involved.

RECOMMENDATION 67

The Council should use every effort to ensure involvement and potential influence on the progress of the Gershon process. To ensure the Council's policies are safeguarded.