

Mayor & Cabinet		
Report Title	Response to Public Accounts Select Committee on Managing Contracts Review	
Key Decision	Yes	Item No.
Ward	All	
Contributors	Executive Director for Resources and Regeneration	
Class	Part 1	Date: 11 September 2013

1. Purpose

- 1.1 This report sets out the response from the Executive Director for Resources and Regeneration to the comments referred to the Mayor on the 22nd May 2013 by the Public Accounts Select Committee on managing contracts.
- 1.2 As part of the work programme for 2012/13, the Public Accounts Select Committee agreed to carry out a review looking at managing contracts in Lewisham. The review was scoped in June 2012 and evidence sessions held in October 2012 and January 2013

2. Recommendation

- 2.1 The Mayor is recommended to approve for submission to the Public Accounts Select Committee the responses on contracts management set out in this report.

3. Policy Context

- 3.1 The Sustainable Procurement Strategy 2012-16 outlines our aims and shows how procurement will contribute towards the Council's priorities in light of the numerous changes and challenges facing Lewisham. The Chief Executive's paper "Serving Lewisham Smarter" identified that the scale of savings required will necessitate a change in the scope and style of how Lewisham operates.
- 3.2 The refocused Sustainable Procurement Strategy is intended to respond to the current demands on the Council while sustaining strong ambitions for the borough, its communities and its people.
- 3.3 Getting procurement right is crucial for achieving the Council's vision to make Lewisham the best place in London to live, work and learn, and in particular to meet its priority to secure best value public services. Sustainable procurement that properly takes into account social, economic and environmental considerations can also help the Council meet wider objectives, offer opportunities for local businesses and regeneration, and minimise administrative costs.

4. Background

- 4.1. At the meeting of the Public Accounts Select Committee on 16th April 2012 the Committee resolved to undertake an in-depth review looking at how contracts are managed with Lewisham. At its meeting on 14th June 2012 the Committee approved the scoping report for the review.
- 4.2. Members were interested in how contracts were being monitored; how contract requirements were being enforced; and what the processes were around bringing contracts to an end. Contract management is becoming increasingly important as more council services are outsourced. Contracts for providing critical services for the public and council staff need to provide quality services and achieve value for money. Proactive contract management is needed to ensure that service expectations are met and that, if possible, further savings or social benefits are realised. Services face different challenges in managing contracts and the large number and diverse nature of council contracts means that different approaches have to be taken depending on the circumstances.
- 4.3. Throughout the review, the Committee should consider the following key questions:
- How contracts are monitored
 - How contract requirements are enforced
 - How responsive is the contractor to complaints of public/staff
 - What procedures are in place for ending the contract
- 4.4. The evidence sessions on 10 October 2012 and 10 January 2013 provided information on the general approach taken by the council to managing contracts and how corporate oversight of the various contract management activities taking place is achieved. This was coupled with information on best practice in contract management and examples of previous scrutiny carried out in Lewisham and across the country into contract management. Additionally evidence was provided on contract case studies.
- 4.5. The Committee concluded its review and agreed its recommendations on Tuesday 26 March 2013.

5 Response to Sustainable Development Select Committee views

5.1 Recommendation 1.

Officers who manage contracts should receive training on and support to achieve effective management of contract and professional individual relationships between client and contractor and their staff.

Response 1.

Contract Management courses are provided by the Learning and Development section and on-going advice and guidance is provided by the corporate procurement team.

5.2 Recommendation 2.

Where practicable, there should be continuity of contact on the officer side throughout the contract, and across periods of contractor changeover. Where changes in personnel take place, suitable handover and overlap procedures should be used to ensure continuity of relationship.

Response 2.

Lewisham generally seeks to maintain continuity of officers involved in contract management and monitoring, however, where changes in personnel are necessary handover and overlap procedures are implemented

5.3 Recommendation 3.

Lewisham should seek to increase the appropriate transfer of risk to the contractor in its contracts, particularly for service and customer failures. Contracts should be flexible enough to allow changes in the risk profile during its life as confidence in the contractor and the client-contractor relationship increases, with allowance for commensurate changes in reward for the contractor.

Response 3.

Lewisham's response to risk is based on the principles of Project Management and the Risk Management Strategy; which includes within its mission statement :

"The Risk Management Policy of the London Borough of Lewisham is to adopt best practice in the identification, evaluation and cost-effective control of risks to ensure that losses are minimised and opportunities are maximised.

Risk will be considered in every aspect of our business to ensure that we can deliver excellent, efficient services and the authority's exposure to risk will be effectively managed."

Our contracts include variation clauses which are used to address changes in both service provision and risk issues throughout the life of the contract.

5.4 Recommendation 4.

The use of model contracts, case studies and other methods of transparently explaining the risk transfers in contracts to potential contractors should be used so that the contractors are able to price the risk appropriately and reasonably in the bidding processes. The council should feel sufficiently confident in its contractor relationship management experience to push contractors to not over price the risks in contracting with Lewisham.

Response 4.

Clear and concise specifications are used to ensure that potential contractors are aware of the Council's requirements and understand the associated risks and who is responsible for managing them.

The Council's standard terms and conditions have been updated to reflect the Council's duties and responsibilities under various pieces of legislation on equalities, health and safety, and environment and sustainability.

As well as the Council's standard terms and conditions, there are a number of nationally recognised Standard Forms of Contract available. These are considered wherever possible, as they will have been agreed by employers' and trade organisations, and will be known and readily accepted by potential contractors. Any standard form can still be amended (within reason) to suit local requirements.

5.5 Recommendation 5.

Lewisham should explore, where appropriate and on a case-by-case basis, passing the responsibility of handling the customer interface and dealing with the public to the contractor.

Response 5.

In a number of contracts, currently let by Lewisham, the service provider handles the customer interface, this is considered as part of the contract review prior to undertaking a procurement process. The following contracts include the customer interface :

- Agency Staff
- Facilities Management
- Leisure Services
- Parking Services
- Parks and Open Spaces

5.6 Recommendation 6.

Wherever possible, remedies for contract failure on customer facing contracts should demand restitution as well financial loss. Likewise, outstanding customer service should be rewarded in the contracting framework.

Response 6.

Under English contract law liquidated and ascertained damages can be levied on contractors who are under-performing. The law does not, however, permit LADs to be used as a punishment against the contractor. Consequently, LADs are only enforceable if they constitute a genuine pre-estimate of the loss or are a reasonable amount.

In other contractual arrangements there are default mechanisms where contract failure results in financial deductions from the management fee. This system incorporates a reporting system that identifies non-availability of facilities and/or performance failures, and which also shows the deductions to be made for these failures, which increase over time and can in extreme circumstances result in contract termination.

Where the contractor is made insolvent or enters administration then either a performance bond or parent company guarantee are invoked to mitigate any losses suffered by the Council.

Most Lewisham contracts have an option to extend the service period and this is dependant on satisfactory performance during the life of the contract.

5.7 Recommendation 7.

Cross-service unit 'contract champions' - those officers with substantial positive experience of successfully managing contracts and contractor-client relationships - should be encouraged to spread good practice, advise on contracting processes and drafts, and identify potential efficiencies or service improvements that could be gained from the contracting process.

Response 7.

This inter-action between contract managers occurs on an ad-hoc basis and they are engaged to provide advice and assistance to 'new' client officers. The Commissioning and Procurement Board, that meets monthly, with representatives from all the Directorates is the forum where 'good practice' is identified and disseminated. Client officers are actively involved in reviewing service needs and identifying service improvements.

5.8 Recommendation 8.

There should be increased use of incentives in contracts, where profit for the contractor is generated only after the contractor has achieved specified performance levels.

Response 8.

Lewisham has included incentives within it's contracts for a number of years, including profit share (Downham Lifestyles Centre). Recently the Government has encouraged the use of 'Payment by Results' and certain contracts have incorporated this concept. The Head of Crime Reduction and Supporting People leads for the Council on this concept, and chairs the PbR Board, looking at how this style of contracting can be implemented across Council services.

5.9 Recommendation 9.

The tendering interest register that is being created should advertise upcoming tendering opportunities available with the council and allow companies to be able to register their interest in fulfilling them.

Response 9.

The e-tendering system will be used to advertise upcoming tendering opportunities, and companies will be able to register.

5.10 Recommendation 10.

Lewisham's Procurement Strategy should be updated to reflect the changed and constrained circumstances of the Council.

Response 10.

Lewisham's Procurement Strategy was updated in recent months to reflect changes in Council funding and as well the impact of new legislation, including the Localism Act and the Public Services (Social Value) Act.

5.11 Recommendation 11.

Due to the obligation to the public by contractors who are delivering public services and spending public funds, contracts between the Council and their contractors should be as open and transparent as possible. This should include open contract specification documents, the understanding that contractors have a responsibility to be accountable to public scrutiny and the expectation that contractors should address public scrutiny and queries in a meaningful way.

Response 11.

Lewisham regularly includes contract clauses that provide open book accounting and access to contractor records and documentation. Contracts also include the requirement to facilitate the Freedom of Information Act (FOIA). The Act provides a general right of access to information on public contracts and procurement activity held by public authorities, subject to certain conditions. This means that the Council will be obliged under the Act to release certain information about the suppliers it contracts with, into the public domain, within certain limits and according to relevant exemptions.

6 Legal implications

6.1 The Constitution provides for Select Committees to refer reports to the Mayor and Cabinet, who are obliged to consider the report and the proposed response from the relevant Executive Director; and report back to the Committee within two months (not including recess).

6.2 The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual

orientation. In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- advance equality of opportunity between people who share a protected characteristic and those who do not.
- foster good relations between people who share a protected characteristic and those who do not.

6.3 The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.

6.4 The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:

<http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-actcodes-of-practice-and-technical-guidance/>

6.5 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

1. The essential guide to the public sector equality duty
2. Meeting the equality duty in policy and decision-making
3. Engagement and the equality duty
4. Equality objectives and the equality duty
5. Equality information and the equality duty

6.6 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at:

<http://www.equalityhumanrights.com/advice-and-guidance/public-sectorequality-duty/guidance-on-the-equality-duty/> "

Public bodies such as local authorities are legally required to consider the three aims of the Public Sector Equality Duty (set out in the Equality Act 2010) and document their thinking as part of any decision-making processes. The Act sets out that public bodies must have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation;
- advance equality of opportunity between people who share a protected characteristic and those who do not share that characteristic; and

- foster good relationships between those who share a protected characteristic and those who do not share that characteristic.
- 6.7 The following equalities characteristics are 'protected' from unlawful discrimination in service provision under the Equality Act 2010: age; disability; gender reassignment; pregnancy and maternity; race; religion and belief; gender; and sexual orientation.

7 Financial Implications

- 7.1 There are no specific financial implications arising from this report.

8 Equalities Implications

- 8.1 The Council's Comprehensive Equality Scheme for 2012-16 provides an overarching framework and focus for the Council's work on equalities and helps ensure compliance with the Equality Act 2010.
- 8.2 The Council's Equalities objectives are addressed in contract documentation and form part of the criteria used in the pre-tender evaluation process. The criteria usually include the following aspects:
- Compliance to equality and non-discrimination laws
 - Any findings of unlawful discrimination against the tenderer
 - Formal investigation for unlawful discrimination
 - Equality opportunity policies and where they are set out for employees
 - Equalities and non-discrimination codes of practice
 - Workforce monitoring.
- 8.3 The response in paragraph 5.4 sets out that "Clear and concise specifications are used to ensure that potential contractors are aware of the Council's requirements and understand the associated risks and who is responsible for managing them.
- "The Council's standard terms and conditions have been updated to reflect the Council's duties and responsibilities under various pieces of legislation". This includes the Equality Act 2010.

9 Environmental implications

- 9.1 There are no specific environmental implications arising from this report.

10. Conclusion

- 10.1 The management of contracts is imperative in providing the highest level of service to our residents and the Public Accounts Select Committee's review has provided an opportunity to reconsider our approach but also to show how this activity has kept pace with both legislative and policy changes. .

Background documents

Short Title Document	Date	File Location	File Reference	Contact Officer	Exempt
Managing Contracts – review and recommendations	2013	Civic Suite		Andrew Hagger	No
Managing Contracts – evidence sessions	2012 / 2013	Civic Suite		Andrew Hagger	No

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