

CONTRACTS SUB-COMMITTEE

Minutes of the meeting held at 7.00 pm on 2 November 2016

Present:

Councillor Stephen Wells (Chairman)

Simon Fawthrop, Russell Mellor, Keith Onslow and
Angela Wilkins

(Councillor Fawthrop left the meeting at 8.05pm.)

21 APOLOGIES FOR ABSENCE AND NOTIFICATION OF SUBSTITUTE MEMBERS

Apologies were received from Cllr Pierce and Cllr Huntington-Thresher. Councillor Fawthrop apologised as he would be leaving the meeting at 8pm.

22 DECLARATIONS OF INTEREST

There were no additional declarations of interest.

23 QUESTIONS FROM COUNCILLORS AND MEMBERS OF THE PUBLIC ATTENDING THE MEETING

No questions were received.

24 MINUTES OF THE MEETING OF CONTRACTS SUB-COMMITTEE HELD ON 24 AUGUST 2016 (EXCLUDING EXEMPT ITEMS) AND MATTERS ARISING

The minutes of the meeting held on 24th August 2016 were agreed, and signed as a correct record.

In considering matters arising, the Chairman sought an update on whether the implementation of the database for the Contracts System remained on track for December 2016. The Director of Commissioning reported that the implementation of the system was going well and was on track for December 2016. It was agreed that a live demonstration of the system would be provided to Members at the meeting of the Contracts Sub-Committee in January 2017. The Director of Commissioning confirmed that once the system was fully operational, in March or April 2017, Members would be in a position to fully interrogate the data on the system and drill down into individual contracts. In response to a question, the Director of Commissioning confirmed that the system had been developed by the London Borough of Bromley and therefore had the potential to be marketed to other Local Authorities in the future.

The Chairman confirmed that he had written to the Chairman of the Audit Sub-Committee in regard to ensuring a more active dissemination of audit reports to

PDS Chairmen. The Contracts Sub-Committee stressed the importance of adequate scrutiny of audit findings in order to ensure that lessons were learnt and practices changed to guard against similar errors arising in the future. The Sub-Committee noted that PDS Chairmen were made aware of reports considered by the Audit Sub-Committee that affected their service areas although it was not always clear that these reports were then scrutinised by the relevant Committee and that all members of the Committee were aware that there were Audit Sub-Committee reports relating to the specific service committees. It was agreed that the Chairman would write to the PDS Chairmen to stress the need for adequate scrutiny of Audit Sub-Committee reports in order to drive improvements in contractual procedures.

In relation to leaf fall clearance (Minute 16), it was agreed that the Sub-Committee should consider this issue, along with wider issues relating to street cleansing, in more detail. In line with its remit, the Sub-Committee would only seek to review and consider contractual issues, leaving service specific issues to be considered by the Environment PDS Committee. The Head of Neighbourhood Management should be invited to the meeting to provide the Sub-Committee with an overview of ongoing and emerging contractual issues. In addition to this, the Director of Commissioning reported that a paper had been written setting out the difference between contract management and contract monitoring. The paper was designed to support staff with understanding the distinction between the two different processes. The Sub-Committee agreed that it would be helpful for the paper to be circulated to Members of the Sub-Committee as soon as possible to enable detailed consideration of the paper at the Sub-Committee's next meeting as part of discussions surrounding the street cleansing contract.

In response to a question concerning processes and policies for mitigating against known and unknown risks, the Chairman highlighted that there was an extensive Risk Register which set out risks to the Council, copies of which were available to Members on request. A Member suggested that in addition to departmental risk registers, a Corporate Risk Register, sitting across the Council as a whole and setting out strategic as well as departmental risks, should be developed. The Director of Commissioning highlighted that Contract Summaries also required Assistant Directors to undertake a detailed evaluation of risk.

In relation to Minute 17 (Contracts Register), the Chairman queried whether any further action had been taken in terms of ensuring that key dates were highlighted. The Director of Commissioning reported that this was being worked on and that key dates should be picked up as part of the contract monitoring process.

25 EDUCATION CONTRACT WAIVERS

The Director of Education and the Commissioner: Education introduced the item and explained that in the period from August to September 2016, three Education contracts had been put forward for authorisation from the Portfolio Holder for Education. In each case, authorisation for an exemption to competitive tendering was sought to allow continuation of existing contract arrangements – but with insufficient time given to the Portfolio Holder, before the existing contract terms expired, to reasonably allow consideration of alternative courses of action.

The Sub-Committee considered a report which provided background to the Education contracts in question, and information on management action taken to avoid further instances of late notified decisions on contract actions.

The Portfolio Holder for Education had expressed significant concern at being presented with multiple incidences of late notified requests for authorisation; and asked the Director of Education to ensure that management action was taken to ensure that all future requests for similar authorisations (contract extensions and exemptions) were sought with at least six months remaining on the existing contracts terms, in line with the latest version of the Bromley Contract Procedure Rules.

In June 2016, ECHS had been restructured so that commissioning support, previously separately based within the ECHS Commissioning Team, was transferred into the respective departments within ECHS. From August 2016 onwards, the Commissioner Education had been tasked with providing oversight and monitoring of the contract portfolio within Education. It was noted that responsibility and accountability for each contract still sat with the relevant Head of Service or Budget Holder. The Commissioner Education now maintained a regularly updated status report on every contract held within Education Services. This was closely cross referenced with the ECHS Contract Register, with updates provided to the ECHS Procurement Team on a regular basis. The status report was Red/Amber/Green rated with Red contracts identified as at risk with immediate action necessary and Amber contracts identified as requiring action imminently (or action was underway and on track). The timeline for contract action was clearly identified for each contract. The status report was regularly circulated to all Education Managers and, more importantly, was a standing item at the fortnightly Education Management Team meeting where the status of each contract was reviewed.

This action had demonstrated immediate improvement in the timeliness of contract actions within the Education department. All contracts due to end in March 2017, requiring Education Portfolio Holder authorisation for extension and/or exemption, had been successfully finalised six months in advance of the contract end date. Likewise, authorisation for similar contract actions below the threshold for Portfolio Holder authorisation, had been completed six months prior to the contract end date. For other contracts that were due to end in March 2017, a Request for Quotes or tender process was underway. Heads of Service had been informed that no authorisation for extension or exemption, at any authorisation level, would be supported for any contract that required a tender process or Request for Quotes process to take place – it would be up to the Head of Service to manage any issues that arose from any delay in completing the tender process.

It was not possible to guarantee that all exemption authorisation requests were finalised no later than six months prior to the existing contract end date as there were circumstances that could arise outside of officer control. However, the Education department expected that, notwithstanding exceptional circumstances outside of officer control, all future contract authorisation actions requiring Member decision would be presented at least six months in advance, allowing proper

consideration of alternative options to be given.

The Commissioner: Education provided assurances to the Sub-Committee that a series of management actions had been put in place to ensure that avoidable delays in contractual processes did not occur in the future. Contracts were being closely monitored and contractual processes were either already completed or underway for those due to expire in March 2017.

The Chairman reported that the robust management action that had been taken was in line with what he would have expected from his previous experience working with the Department. The Chairman sought further information concerning how the situation with James Dixon Primary School had arisen. In response, the Director of Education explained that the school had been in a period of transition with a change in Head Teacher. As a school they had been concerned about the impact of expansion on the school as a whole. Following months of discussion and negotiation a point was reached where the school declared they were not ready for permanent expansion. The Director of Education further reported that the school would shortly be converting to academy status.

In response to a question concerning the budgetary implications of a waiver that had been approved but not used, the Director of Commissioning confirmed that there would be no budgetary implications as the release of funding would only be triggered once the waiver was used. The Departmental Head of Finance would have been involved in identifying funding for the contract and would ensure that the necessary funding was available. A Member suggested that reports seeking contract waivers should provide an explanation of the budget from which the funding had come.

Turning to the Education Department Contracts Register, the Chairman noted that the SIMS Licenses for schools contract would not continue and queried whether another service would be put in its place. In response, the Commissioner: Education confirmed that the contract would not be replaced as academies were responsible for funding their own licenses and it was not financially viable for the Local Authority to fund licenses for the few remaining maintained schools. All affected schools were informed in September 2016 and no issues had been raised.

The Committee considered the challenges surrounding SEN Transport and the savings that were required in order to contain spending within budget. The Director of Commissioning stressed that a significant piece of commissioning work surrounding SEN Transport needed to be undertaken. Work to identify how money was currently being spent and whether more service users could be placed in Borough had already begun. The Director of Education reported that a paper, seeking to review an alternative framework for SEN transport to include a broader range of providers, would be presented to the Executive in due course. The Chairman agreed that a fundamental review of SEN transport was required as current options were limited which in turn limited the potential for savings. A new approach to SEN transport was required. The Director of Commissioning reported that she met regularly with the Chief Executive, the Director of Education, and the Head of ECHS Finance to review how the SEN transport service was delivered. In

the future, in order to address budgetary issues, a change in the policy approach to SEN transport may be required. Work had only just commenced on this and would continue until a viable resolution had been identified.

RESOLVED: That the report and the management actions put in place to ensure timely action in relation to Education contracts in future be noted.

26 PARKING CONTRACT - UPDATE

(Councillor Fawthrop left the meeting during consideration of this item)

In reviewing the contents of the report, a Member noted that it had been significantly redacted, did not contain any commercially sensitive information and therefore did not justify consideration in Part 2 of the agenda. It was consequently moved by Cllr Wilkins, seconded by the Chairman, and carried that the report be considered in public (Part 1).

In April 2013, the shared parking service between LB Bromley and LB Bexley for which it was agreed that LB Bromley would be the host borough formally came into being. The formal Collaboration Agreement between the two boroughs was approved in February 2013. The principal objectives of the shared service were to develop best service practice and to realise a saving in management costs and other overheads without detriment to the delivery of the front-line service.

A key element of the business case for establishing the shared parking service was the opportunity to realise further savings and efficiencies by bringing the boroughs together in a single shared parking contract when their existing contracts expired. Harmonisation of the boroughs' approaches to parking enforcement was already underway when the joint procurement of a single shared service contract commenced.

Bromley's current contract with Vinci Park Services (now known as Indigo) commenced in October 2006 and was due to end in September 2016. The contract included provision of the following services:

- Patrolling and enforcing on-street parking restrictions through the issue of PCNs.
- Patrolling and enforcing all council-owned car parks through the issue of PCNs.
- Car park management and maintenance.
- Equipment maintenance and management.
- Collecting cash from pay and display machines, and pay stations in multi-storey car parks.
- School crossing patrols, funded by TfL and individual schools.

Bexley's current contract with NSL commenced in April 2010 and was due to end in April 2017, following agreement to align the contract end date with LB Bromley. The contract included the following services:

- Patrolling and enforcing on-street parking restrictions through the issue of PCNs.
- Patrolling and enforcing car parks through the issue of PCNs.
- CCTV mobile units.

In March 2015, Bromley Council's Executive agreed the scope of the procurement and indicative timetables. Officers worked on and developed a Contract and Specifications with associated KPIs which was fit for purpose and meet the requirements of Parking Services and the Council over the next 10 years. A contract extension report was approved by the Portfolio Holder in July 2016 to ensure continuity of service through to 2 April 2017. The tender specification and process was drafted in such a way as to obtain quotes from companies for the provision of service to either one authority or both authorities for a period of 5 years with a possible extension of 5 years or a period of a straight 10 years. The shared service led on this joint procurement exercise. A management board was created comprising of officers at senior officer and operational level who worked closely together over a two year period to establish a specification which was fit for individual authorities or as a joint solution.

The Board provided close scrutiny and governance of the process and insured that all procurement and legal requirements were fully adhered to and monitoring procedures established as part of the contract to insure the highest standards were achieved and maintained by the successful contractor. The shared service would continue to monitor the performance of contractors as it had since the commencement of the service in April 2013.

The Assistant Director for Leisure and Culture provided the Sub-committee with the background to the item and reported that Officers were on track to deliver the outcome of the tendering exercise for consideration by the Executive in November 2016 as previously advised. The evaluation and scoring of the tender documents that had been received would be completed by Friday 4 November 2016 with final evaluation completed by Tuesday 8 November 2016. A two part report (Part 1 in public and Part 2 containing commercially sensitive information) would be put forward to the reporting PDS Committees during November and the Executive on 30 November 2016. The paper that had been circulated to the Contracts Sub-Committee was a very rough first draft of the report as officer time had been dedicated to tender evaluation rather than writing the report.

The Assistant Director for Leisure and Culture explained that a range of expertise, especially procurement and commissioning processes and practices, had been drawn upon during the qualitative evaluation process. The Chairman was pleased to hear this as it demonstrated that lessons had been learnt from earlier issues that had arisen in contractual processes. The Director of Commissioning stressed the importance of collaborative working between the commercial group, the commissioning group, and the service group. This type of collaborative working had been undertaken for the tendering process for the new parking contract and it was clear that this positive approach to collaborative working had delivered improvements within the tender process. Members stressed that this positive approach to collaborative working needed to be replicated and emulated across all service areas in order to ensure that the correct contractual processes and

procedures were followed.

A Member queried how the lessons learnt from audit processes surrounding the existing parking contract had been incorporated into the new contract. The Assistant Director provided assurances that the contract specification set out the Council's expectations on any new provider in terms of the processes they would be expected to undertake to ensure that any staff working for the London Borough of Bromley were eligible to work in the United Kingdom. The Head of Parking reported that he had personally seen the eligibility checks now being undertaken on new staff in terms of checking passports and work permits. The Head of Parking confirmed that he was confident that robust checks and balances were now in place. In terms of issues with hand-held units, all such units were password protected with passwords being checked and changed on a regular basis. Civil Enforcement Officers also wore body cameras that were regularly monitored. Managers were confident that hand-held devices were being used by the staff to whom they had been issued.

A Member queried the length of the new contract stressing that 10 years appeared to be a long time for a contract. In response, the Director of Commissioning explained that a more competitive price could be obtained for a 10 year contract as there was less risk to the company who were more likely to recoup costs over a longer period of time. A longer term contract would need to be considered in order to increase value for money. Once tenders had been received and evaluated, any additional risks of a longer term contract would need to be weighed against any reduction in cost to identify whether the risks were worth the reduced costs to the Council. The Assistant Director of Leisure and Culture confirmed that in order to extend the life of the contract innovation had been built into the specification. One such innovation being explored was a more to more cashless collection as this carried fewer risks to the Council.

RESOLVED: That the update be noted.

27 CORPORATE CONTRACTS REGISTER

The Sub-Committee considered the Contracts Register in detail. The Committee reviewed the contracts flagged on the register as 'red' and 'amber'. A number of issues with contracts displaying as 'red' on the published register had now been resolved and would revert to 'white'.

In relation to CEX1 (Information Management/SharePoint Review), the Director of Commissioning reported that the 10 month delay in the contractual process would not worsen and the new targets that had been set would be met.

In relation to ECHS 54 (Support Services to Children at Risk of Sexual Exploitation), the Director of Commissioning reported that she had been working closely with the Interim Director of Children's Services on this contract in response to the issues that had emerged from the recent Ofsted Inspection. It was clear that the current contract would not deliver the services that were necessary in order to protect young people at risk of sexual exploitation in the Borough now and into the future. A further 1 year extension to the current contract was being sought

in order to provide sufficient time for a detailed specification for a new contract to be developed. The Director of Commissioning was clear that this had to be the last contract extension as it was imperative that a contract was in place to protect young people at risk of sexual exploitation. The Sub-Committee requested that further details of the ongoing work surrounding this contract be provided at the next meeting. It was suggested that it may be helpful for the Interim Director of Children's Services to attend the next meeting to explain to the Sub-Committee the work that was being undertaken in relation to this Contract following the Ofsted inspection.

The Director of Commissioning reported that the Commissioning Board process appears to be working well with a number of issues being resolved and strategies being put in place. The Chairman noted the progress that had been made and stressed the need for action to now be taken on the contracts that were recorded as 'amber'. The Director of Commissioning explained that in certain circumstances contracts were flagged as amber to enable ongoing monitoring of the contractual processes.

RESOLVED: That

(1) The Contracts Sub-Committee be provided with an update in relation to ECHS 54 (Support Services to Children at Risk of Sexual Exploitation) at its next meeting in December 2016; and

(2) the updated contracts register be noted.

28 CHANGES TO CONTRACT PROCEDURE RULES

The Head of Procurement had provided a copy of the report considered by the Commissioning Board in relation to amendments to the Contract Procedure Rules and Associated Guidance and Practice notes to enable improved management and members scrutiny of Contract Waivers and Exemptions to reflect the Council's revised Commissioning Arrangements. The proposed amendments had come about as a result of concerns expressed by members and officers surrounding the application of the Council's Contract Procedure Rules with insufficient time being allow for the consideration of alternative action. There was also a need to update the Contract Procedure Rules to reflect the new structures being put in place around the Council's management arrangements and the creation of the Director of Commissioning posts, with responsibility for the overview of procurement and commissioning arrangements around service provision.

The Director of Commissioning provided an overview of the proposed changes explaining that they ensured that she was involved in any decisions surrounding contractual issues. The Chairman suggested that it would be prudent to refer somewhere in the "Steps Prior to Purchase" section to value for money.

In relation to "Exemptions to the Need for Competitive Tender", the Sub-Committee recommended that it be made clear within the Contract Procedure Rules that where authorisation was sought from a Portfolio Holder any report would also be considered by the relevant service PDS Committee.

The Sub-Committee noted that any amendments to the Contract Procedure Rules would need to be approved by either the Executive or the Council.

The Director of Commissioning reported that the new Commissioning Directorate appeared to be operating well. Processes were now becoming imbedded and whilst there was still work to be done, governance was much tighter and the Council was in a much better position than it was 6 or 7 months ago. The Chairman suggested and it was agreed that it would be prudent for the Sub-Committee to undertake a review of the first year of operation of the Directorate in June 2017.

The Director of Commissioning reported that the Head of Audit had undertaken a piece of work around what auditors looked at when undertaking audits. The resulting paper would provide an excellent basis for training in contract procedures across the Council. It was suggested that the papers also be circulated to Members of the Sub-Committee for information.

RESOLVED: That the proposed amendments to the Contract Procedure Rules be noted.

29 GUIDANCE NOTES ON CONTRACT TIMETABLING

The Sub-Committee considered a paper from the Head of Procurement which provided advice on the potential timescale which may be required when completing commissioning and procurement activity. It included an allowance for any necessary reporting/authorisation requirements set out in the Council's Financial, Commissioning and Procurement Procedures. The timescales took account of the need to consult and/or get the agreement of various corporate officers, and the proposed service delivery arrangements.

The Chairman recommended that it would be helpful to cascade the guidance notes through the organisation as the guidance provided staff with a clear indication of the complexity of the contractual process and how long it would take to complete. It was essential that sufficient time was allowed for developing a specification that was fit-for-purpose, the tendering process and the evaluation process. It was clear that in the past managers had significantly underestimated how long these processes would take. The Director of Commissioning stressed the need for a strong specification and strong KPIs as without these elements the contract was unlikely to deliver what was required. The guidance that had been developed was there to support the delivery of successful contracts. Members of the Sub-Committee expressed the view that if staff failed to take the advice of the Commissioning Directorate this failure would need to be managed through the annual performance appraisal process. A Member stressed the need to ensure that staff clearly understood that contract procedure rules would be enforced through a robust annual appraisal process. Not adhering to contract procedure rules should be considered to be poor performance.

A Member also stressed the importance of the legal team being involved in the process at the earliest opportunity. The Member stressed the importance of

officers from the Legal Service being involved in the development of tendering documents as these often formed the basis of a legal agreement and could place the Council at risk if they were not developed in line with contract law.

The Director of Commissioning highlighted that the Council currently outsourced services at a cost in excess of £190 million. A standard specification for outsourced services already existed and only needed to be altered to reflect innovations within services. The only time a specification would be difficult to write was when a service was being outsourced for the first time. In this circumstance it was essential that sufficient consideration was given to the needs of the service and what needed to be delivered by the contract and this process was complex and took time.

RESOLVED: That the Guidance Notes on Contract Timetabling be noted.

30 TERMS OF REFERENCE
Report CSD16141

The Contracts Sub-Committee was established by the Executive and Resources PDS Committee in May 2016, with the following terms of reference:

“To undertake the policy development and scrutiny role in respect of the Council’s commissioning and contracts functions (whilst respecting the responsibilities of service PDS Committees) and report to Executive and Resources PDS Committee as appropriate.”

Further consideration had been given to these terms of reference with a view to clarifying the Sub-Committee’s role. The Chairman stressed that the role of the Sub-Committee was to review contracts that could teach the Council and its Members something, such as lessons learnt. The Chairman stated that he was not convinced that service PDS Committees were reviewing the contracts register for their services on a regular basis. He stressed the need to ensure that the Contracts Sub-Committee did not become a repository for all contract issues as a result of the service PDS Committee not adequately fulfilling their responsibilities in terms of scrutiny of the contracts register. This view was endorsed by the Sub-Committee Members who agreed that the contracts register should be regularly reviewed by the PDS Committees.

Following detailed consideration, it was agreed that the Sub-Committee should recommend the adoption of the proposed terms of reference for the Contracts Sub-Committee to the Executive and Resources PDS Committee:

“To undertake the policy development and scrutiny role in respect of the Council’s commissioning and contracts functions (whilst respecting the responsibilities of service PDS Committees) and report to Executive and Resources PDS Committee as appropriate.”

This will include –

- *promoting best practice across the Council on commissioning, contracts*

and contract monitoring issues;

- *reviewing the corporate contracts register and in particular the “commissioning journey” for contracts with a value of £500,000 and above, or any contracts where there is a defined risk, making recommendations as appropriate;*
- *considering contracts issues raised by the Executive, Policy Development and Scrutiny Committees and the Audit Sub-Committee;*
- *making recommendations to Audit Sub-Committee on the Contract Procedure Rules;*
- *making any other contractual related recommendations to the Chief Executive and the Executive as appropriate.”*

RESOLVED: That the Executive and Resources PDS Committee be recommended to approve the amended terms of reference for the Contracts Sub-Committee.

31 WORK PROGRAMME 2016/17
Report CSD16140

The Sub-Committee considered its work programme for 2016/17. Members agreed the following additions to the work programme:

December 2016 Meeting

- The Contracts Register would be circulated to Members of the Sub-Committee for information but would not be considered at the meeting.
- The following items would be added to the agenda:

Update from the Audit Sub-Committee on 29 November 2016
Review of the V22 Contract (to understand more closely how the contract can be monitored and managed)
Update on Support Services to Children at Risk of Sexual Exploitation
Stray Dogs Contract Update (to understand the contractual processes and how this contract failed)
CCTV Contract Update

January 2017 Meeting

In addition to the items reflected on the work programme, the Sub-Committee would also receive a live demonstration of the Contract Management System from the Director of commissioning.

A Member noted with disappointment that only 4 Members had attended the last contract briefing session. The Chairman stressed the need for all Members to attend the training and it was suggested that Political Group Leaders should

actively encourage Members to attend this essential training. The Chairman highlighted that it was the responsibility of the service PDS Committees to effectively monitor the delivery of contracts and questioned how any Member who had not attended the training could adequately fulfil their duties in relation to contract monitoring and scrutiny.

RESOLVED: that

- 1. The work Programme be approved, subject to the amendments outlined above.**
- 2. The future meeting dates, 8th December 2016, 31st January 2017, and 11th April 2017, be confirmed.**

32 EXEMPT MINUTES OF THE MEETING HELD ON 24TH AUGUST 2016

In reviewing the minutes, a Member noted that no commercially sensitive information was contained within the Part 2 minutes. The Senior Lawyer present suggested that there was a possibility that contractors could be identified from the minutes however, a Member highlighted that there was nothing within the minutes that was not already in the public domain. Referring to the requirement for transparency whenever possible the Member considered the minutes should be made public. It was therefore moved by Councillor Wilkins and seconded by the Chairman that the minutes be moved into Part 1 of the agenda. Following a vote, with 3 Members in favour of the motion and 1 against, the motion was carried and consideration of the minutes moved into Part 1. (Councillor Mellor requested that his dissenting vote be recorded).

The previously exempt minutes of the meeting held on 24th August 2016 were agreed, and signed as a correct record.

The Meeting ended at 9.40 pm

Chairman