

Public Accounts Select Committee		
Report Title	Response from Mayor and Cabinet to matters referred by the Select Committee –Fairness Review (Procurement)	
Key Decision	No	Item No. 3
Ward	All	
Contributors	Executive Director for Resources (Head of Business & Committee)	
Class	Part 1	Date: 9 February 2012

1. Summary

This report informs members of the response given at Mayor and Cabinet to the Committee's interim report and recommendations on fairness (procurement).

2. Purpose of the Report

To report to members the response given at Mayor and Cabinet to recommendations made by the Select Committee in October 2011.

3. Recommendation

The Select Committee is recommended to receive the Mayoral response to their Fairness Review of Procurement.

4. Background

4.1 The Mayor considered the attached report entitled 'Response to the recommendations of the Public Accounts Select Committee's Fairness Review' at the Mayor & Cabinet meeting held on 18 January 2012.

5. Mayoral Response

5.1 The Mayor received a report from the Procurement Strategy Manager and a presentation from the Cabinet Member for Resources.

5.2 The Mayor resolved that the response shown in the attached report be submitted to the Select Committee.

BACKGROUND PAPERS

Mayor & Cabinet minutes 18 January 2012

If you have any queries on this report, please contact Kevin Flaherty, Head of Business & Committee, 0208 314 9327

Mayor and Cabinet			
Report Title	Mayoral response to the recommendations of the Public Accounts Select Committee's Fairness Review (Procurement)		
Key Decision	No	Item No.	
Ward	All		
Contributors	Executive Director for Resources & Regeneration		
Class	Open	Date	18 January 2012

1. Purpose

- 1.1 In July 2011, the Public Accounts Select Committee held the first evidence session and discussions on their Fairness Review. This report sets out the response of the Executive Director for Resources & Regeneration to the recommendations that were made in respect to procurement in the the interim report of October 2011.

2. Recommendations

- 2.1 That the Mayor notes the responses attached as appendix 1 and agree that these responses are reported to the Public Accounts Select Committee.

3. Policy Context

- 3.1 Lewisham Council has an overarching vision, shared with the Lewisham Strategic Partnership (LSP). Our vision, set out in both the Sustainable Community Strategy and the Corporate Strategy is:

'Together we will make Lewisham the best place in London to live, work and learn'

- 3.2 To achieve this collective vision, the LSP and the wider community will help build and support sustainable communities that are:
- **ambitious and achieving** – where people are inspired and supported to fulfil their potential
 - **dynamic and prosperous** – where people are part of vibrant and creative local communities and town centres, well connected to London and beyond.
- 3.3 The Council has key priorities developed in the context of partnership working and designed to focus on delivering the Sustainable Community Strategy vision and priorities:
- **Community leadership and empowerment** – develop opportunities for the active participation and engagement of people in the life of the community.
 - **Strengthening the local economy** – gaining resources to regenerate key localities, strengthen employment skills, and promote public transport.

- **Inspiring efficiency, effectiveness and equity** – ensuring efficiency, effectiveness and equity in the delivery of excellent services to meet the needs of the community.

4. Background

- 4.1 At a meeting held on 14 June 2011, the Committee considered a scoping report outlining how an in-depth review into fairness might be carried out. The report included some information on Islington's Fairness Commission, set up in July 2010 to look into how to make that borough a fairer place. The Commission met seven times and produced a final report with 19 recommendations.
- 4.2 Following consideration of the scoping report, and the Islington Fairness Commission report, the Committee agreed to conduct an in-depth review into fairness in the Council's procurement policies and pay and employment practices.
- 4.3 The Committee also agreed that (a) it did not have sufficient time or capacity to scrutinise fairness in the Council's budget and (b) elements of the work of Islington's Fairness Commission other than the issues it would be scrutinising itself, were also worth considering. The Committee therefore requested that:

- 1) The Mayor give consideration to whether Lewisham could develop a fairness test, similar to the one developed by the Islington Fairness Commission, to test the fairness of budget proposals and their impact on residents; and consult the public on this issue via the local assemblies.

This request was presented to the Mayor on 13 July 2011.

- 2) Each Select Committee consider the recommendations made by the Islington Fairness Commission relevant to the remit of their committee and consider whether they might be applicable to Lewisham.

In response to this, officers completed a mapping exercise to identify the links between existing Select Committee work programmes and the recommendations arising from the Islington Fairness Commission. Most of the topics covered by the Islington recommendations mapped to existing Select Committee areas of work. A couple of potential gaps, however, were noted. Each Select Committee received the results of the mapping exercise at their September meeting.

- 4.4 The Committee agreed the following timetable for its review:

- 14 July 2011 – evidence session on procurement
- 12 January 2012 – evidence session on pay and employment practices
- 27 March 2012 – consideration of any work carried out by other Select Committees and any work carried out on developing a fairness test for the budget
- First meeting of the 2012/13 municipal year – agreement of a final report and recommendations.

4.5 Rather than wait until the new municipal year to present the recommendations on procurement arising from the evidence session held on 14 July, the Committee produced an interim report in October 2011.

5. Financial Implications

5.1 There are no specific financial implications arising out of this report. The impact of any changes in existing practices set out in appendix 1 will be contained within existing budgets.

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).

7. Equalities Implications

7.1 The Council works to eliminate unlawful discrimination and harassment, promote equality of opportunity and good relations between different groups in the community and recognise and take account of people's differences.

8. Crime and Disorder/Environmental implications

8.1 There are no specific implications.

BACKGROUND INFORMATION

If you have any queries on this report, please contact Charlotte Dale, Scrutiny Manager (0208 3149534), or Kevin Flaherty, Head of Business & Committee (0208 3149327).

Response

The Committee made the following recommendations:

Encouraging Local Businesses

1. **Formal Targets:** The Committee notes that currently only 14.88% of Council suppliers are based in Lewisham but accepts that Lewisham is not a particularly industrial or commercial borough and the Council is limited by the number of companies based in Lewisham. However, the Committee would like officers to set a realistic target for increasing the proportion of its suppliers that are based in Lewisham and a more ambitious target for the percentage of suppliers based in the south east London sub region.

Response :

The opportunity to increase the number of local vendors is linked to Recommendation 2a below, by making it mandatory to include local suppliers in the quotation process it is foreseen that this will lead to more commissions being placed locally. However, the quotation process will still be required to achieve 'value for money' for the Council in any decision to place a contract. Officers have reviewed practice in surrounding boroughs and this shows that formal targets are not set. Consideration will be given to setting an appropriate target for 2012-13 once baseline figures for 2011-12 are confirmed.

2. **Mandatory quotes from local suppliers:**

(a) The guidance issued on procurement and contained in the constitution should be amended (and re-issued to all staff able to let contracts) to require officers to obtain a quote from at least one local company in respect of all contracts under £40k and over £500, if a local supplier exists. This will include contracts under £10k where, currently, only one quote is required.

(b) In relation to this, the procurement team needs to offer guidance to officers in terms of finding appropriate local companies.

(c) Officers should also be encouraged to offer feedback to Lewisham companies in cases where they have been unsuccessful, so they can improve their chances in respect of future opportunities.

The Committee recommends that the e-procurement tool being developed by the procurement team is used for all Council procurement, including procurement under £10k, and incorporates recommendations (a), (b) and (c) above.

Response :

Recommendation (a) requires the revision of the Contract Procedure Rules contained within the Constitution. Officers in Legal and Procurement are progressing this action, which will be included in the next version of the Constitution which will be presented to the Constitutional Working Party and then Council for approval.

Recommendation (b) officers in the Economic Development team together with the Business Advisory Service are collating a database of local suppliers. This together with a web link to the South East London Chamber of Commerce membership database will form the basis of guidance to buyers within the Council to facilitate knowledge of local businesses.

Recommendation (c) feedback is offered to all businesses that tender for work with Lewisham, this includes the strengths and weaknesses of their bids.

The Procurement team are currently assessing the e-tendering tools on the market and are planning to make a recommendation to the Director of Programme Management & Property in the new year.

- 3. Procure4london:** The Committee notes that the Greater London Authority (GLA) and all London local authorities are being encouraged to sign up to the *procure4london* portal which allows suppliers access to a single avenue for public procurement opportunities in the capital with standard procedures and policies. The Committee would like to be reassured that Lewisham is fully signed up, that a link to the portal is featured on the Council website and that the portal is actively promoted to local businesses.

Response :

Lewisham has registered with procure4london and a member of staff within the Procurement team has undertaken training as a 'Super User'. The portal is not yet fully functional but opportunities are being placed on the portal and the link to the portal has been added to the procurement page on the Lewisham website.

- 4. Data and events:** The Council should consider whether the data available on the website regarding spend above £500 can be made more useful for local businesses, to enable them to get a better idea of the type of Council contracts that are available, who lets these contracts and when they are up for renewal. Officers should also investigate ways of bringing together local businesses with Council buyers, including holding service based events.

Response :

Data is provided in CSV and PDF formats, which are the standard formats used by most Councils as the former can be manipulated and the latter is easy to read. Lewisham currently provides greater clarity in relation to its spend above £500 than other Council's, but will review content on a regular basis. In relation to the information regarding the contracts this has been included on the website for a number of years, but this is being reviewed in light of the Localism Act and the introduction of the 'Right to Challenge' (guidance awaited). On a number of procurement projects 'Supplier Days/Sessions' are held in advance of the formal tender period to raise the profile of the project and to engage with suppliers to ensure that the Council's requirements are understood. The Procurement team will ensure that colleagues consider the use of this activity, and the procurement guidance will be amended to incorporate this approach.

Social Considerations in contracts

- 5. More social considerations:** Procurement officers should seek comprehensive legal advice on what can and cannot be incorporated into contracts in terms of social considerations. Specifically, advice should be sought on whether suppliers can be asked to (a) adhere to a pay differential below a certain ratio and regularly report their pay differential; (b) aim for a 50/50 gender ratio in apprenticeships; (c) recognise relevant staff unions; and (d) reach a particular minimum level of Continuing Professional Development (CPD) for their workforce and adhere to the Skills for Care and Development (SCD) recommended minimum percentage for investment in training. If not legally possible, the Council should strongly encourage suppliers to adopt socially responsible practices such as these. The Committee would like officers

think more creatively about how social considerations can be incorporated into contracts, taking into account legal advice and also best practice from other local authorities and organisations, including TfL.

Response :

Lewisham is the leading London Borough in the implementation of the London Living Wage with its third party service providers. We are developing the requirement to include other social considerations within our contracts; for example provision of apprenticeships, offers of work experience or placements. This will be a contractual obligation.

On the 13th December 2011 Lewisham endorsed the 'The Procurement Pledge on Employment and Skills' sponsored by London Councils. The pledge, which will be developed on a borough by borough basis, relates to training and job opportunities created by procurement activity.

Legal issues: It is important to note that S17 of the Local Government Act 1988 is still in force which places a duty upon local authorities when exercising their functions in relation to letting contracts to do so without reference to non-commercial considerations. This Section defined non-commercial considerations to include the terms and conditions of employment by contractors of their workers or the composition of, the arrangements for promotion, transfer or training of or the other opportunities afforded to their workforces. It also includes the conduct of contractors or workers in industrial disputes between them.

The Local Government Act 1999 amended the 1988 Act referred to above to enable local authorities to take into account appropriate workforce matters in the award of contracts insofar as is consistent with their EU obligations and the achievement of value for money.

It is permissible to require contractors to provide for apprenticeships and work placements under EU law and under UK law provided this represents value for money.

The requirement that contractors adhere to a pay differential below a certain ratio and regularly report on a pay differential (5a) presents a potential problem in that employers cannot release information relating to their employee's pay without that employee's consent under the Data Protection Act 1998 unless it is in the public interest. It could be argued that where contractors work for public authorities which is being paid for out of the public purse it is in the public interest to be informed of pay differentials. This has to be balanced against the freedom of employers to be able to determine the remuneration for their employees. It also has to be shown that it represents VFM if employers/contractors have a fairer pay differential.

The requirement at 5(b) that contractor employers aim for a 50/50 gender ratio in apprenticeships is problematic in that it could give rise to claims of discrimination in that the best applicant should be offered the apprenticeship and a potential breach of the Equality Act 2010 which makes it unlawful to instruct, cause or induce someone to discriminate against a person on the ground of gender.

The requirement that contractor/employers recognise relevant staff unions 5 (c) exceeds what is required under national law. The unions can in appropriate circumstances ask the employer to agree to voluntary union recognition and can ask for an order to be made by the Central Arbitration Committee for compulsory

recognition. Again a value for money argument would have to be made to justify use of this requirement which is expressly stated to be a non commercial matter under Section 17 referred to above.

The requirement that contractors/employers ensure that their employees reach a particular minimum level of continuing professional development 5 (d) again requires the value for money justification.

In relation to the London Living Wage it is unlawful under EU law to set a mandatory regional minimum wage although a national statutory minimum wage is recognised under EU law. It is however lawful on a case by case basis when procuring contracts to request contractors to price contracts on the basis of what it will cost if they pay all their employees working on the contract a London Living Wage and by contrast the price if they did not do so. The decision maker would then, on a value for money basis determine whether the bidder offering to pay the London Living Wage, all other things being equal offered value for money in that the improved pay levels would better guarantee a stable and more motivated work force.

- 6. More robust contract monitoring:** The Committee welcomes the fact that from September, all Council contracts will be more robust, contract monitoring will be improved and the code of practice will be updated for new suppliers. Contract monitoring needs to be rigorous across the piece, with robust enforcement and a range of formal targets - and informal targets (around best practice) where it is legally impossible to enforce formal targets. In relation to this, the Committee recommends that new contracts should require the provision of more detailed management information so officers can better monitor how social considerations are adhered to.

Response :

The Code of Practice was amended at the Mayor & Cabinet (Contracts) meeting held on the 7th December 2011. Included in that revision was sections in relation to Apprenticeships and Local Employment and Business, as well as the Bribery Act.

The Director of Programme Management & Property has instigated a review of contract management practices, and it is planned to spread best practice to cover all client areas. Another specific change in monitoring is also occurring due to the introduction in many contractual arrangements of 'Payment by Results'. It is also planned to incorporate strategic contract management and monitoring meetings with third party suppliers to address issues surrounding social considerations and equality issues.

- 7. More joint working:** The Committee is pleased that procurement officers are working with other councils on standardised contract specifications and joint clienting arrangements. This makes it easier for local suppliers to bid for work with local councils, particularly in south and south east London; and also ensures that suppliers do not charge different local authorities different prices for the same services. The Committee would like to see the Council increase joint procurement with other local authorities, so collective spending power can be used as a lever to introduce more social considerations into contracts.

Response :

Lewisham is actively working on a number of joint projects, including Closed Circuit Television Management & Maintenance (Bromley), Oracle Implementation (Barking & Dagenham, Brent, Croydon, Havering, Lambeth), Parking Enforcement (Southwark), Welfare Catering (Lambeth, Southwark). As part of the South East London

Procurement Group (Bexley, Bromley, Greenwich, Lambeth, Lewisham and Southwark) a co-ordinated work programme has been developed from an earlier Capital Ambition project with the aim of developing collaborative procurement opportunities.