

CONTRACT SCRUTINY PANEL AGENDA



Monday 3rd December 2007

at 10.00 a.m.

**in the Red Room, Avondale Centre,
Dyke House, Hartlepool
(Raby Road entrance)**

MEMBERS: CONTRACT SCRUTINY PANEL:

Councillors Flintoff, Gibbon, Simmons, Sutheran and Worthy

- 1. APOLOGIES FOR ABSENCE**
- 2. TO RECEIVE ANY DECLARATIONS OF INTEREST BY MEMBERS**
- 3. MINUTES**
 - 3.1 To confirm the minutes of the meeting held on 19th November 2007 (*to follow*)
- 4. ITEMS FOR INFORMATION**
 - 4.1 Contract Scrutiny Panel – Purpose – *Chief Solicitor*
- 5. ANY OTHER ITEMS WHICH THE CHAIRMAN CONSIDERS ARE URGENT**

ITEMS FOR INFORMATION

- i) Date of Next Meeting Monday 17th December 2007 commencing at 10.00am
in the Blue Room, Avondale Centre, Dyke House.**

CONTRACT SCRUTINY PANEL

MINUTES AND DECISION RECORD

19th November 2007

The meeting commenced at 10.00 a.m. in the Avondale Centre, Hartlepool

PRESENT: Councillor Bob Flintoff (In the Chair); Councillors Steve Gibbon
Chris Simmons, Lillian Sutheran, and Gerald Wistow

OFFICERS: Denise Ogden, Head of Neighbourhood Management
Harland Deer, Marketing Assistant
David Wilson, Principal Engineer, Engineering Consultancy
David Cosgrove, Principal Democratic Services Officer
Sarah Bird, Democratic Services Officer

72. APOLOGIES FOR ABSENCE

None.

73. DECLARATIONS OF INTEREST

None.

74. MINUTES OF THE MEETING HELD ON 7 NOVEMBER 2007

Confirmed.

75. APPOINTMENT OF CONTRACTOR FOR THE PROVISION OF KERBSIDE RECYCLING COLLECTION SERVICE – *Director of Neighbourhood Management*

The Head of Neighbourhood Management reported that the Contract Scrutiny Panel were aware that appropriate contractors were being sought for the provision of the Kerbside Recycling Collection Service.

Eight companies had expressed an interest, five of which had been short listed following the pre-qualification questionnaire evaluation. This had been a joint procurement exercise for Hartlepool, Redcar & Cleveland and Middlesbrough Borough Council, with Hartlepool taking the lead role regarding procurement.

Two tenders had been received by the Contract Scrutiny Panel on 8 May 2007. In view of the joint procurement exercise, tenders were recorded and each Authority had been tasked with carrying out their own evaluation of each tender.

Redcar & Cleveland Borough Council and ourselves had undertaken a joint desk top exercise and had carried out interviews to clarify any issues identified in the tender submission and received a presentation as to the method of operation. Middlesbrough Borough Council received the tenders as part of a market testing exercise and extended their existing contract to terminate at the same time as our own.

The Council's in-house service provider had given costs to be evaluated at the same time as the tender evaluation following the Council's procurement guidelines. Despite the Neighbourhood Services Scrutiny Committee expressing the view that the service be provided by in-house teams, the set up and ongoing revenue costs did not make this a viable option at this stage. This would, however be something the Tees Valley authorities would explore over the length of this contract.

The tender submissions were evaluated in line with the specification and best and final offers analysed following the aforementioned interviewed.

Abitibi Recycling had been awarded a 28 month contract commencing 15 October 2007, for Hartlepool Borough Council which would bring it in line with other Authorities in the area.

Following questions from the panel, the Head of Neighbourhood Management confirmed that the recycling collections would be from back streets in line with the current refuse collections and that the service would be monitored on a monthly basis.

Decision

That the report be accepted.

76. LOCAL GOVERNMENT ACCESS TO INFORMATION

Under Section 100(A)(4) of the Local Government Act 1972, the press and public were excluded from the meeting for the following item of business on the grounds that it involved the likely disclosure of exempt information as defined in paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 as amended by the Local Government (Access to Information) (Variation) Order 2006.

Minute 78 – Transport Interchange – Subway Infill Works (228) (para 3 – information relating to the financial or business affairs of any particular person (including the authority holding that information).)

77. TRANSPORT INTERCHANGE – SUBWAY INFILL WORKS (228) – *Senior Project Engineer*

Members were informed that tenders had been received in respect of the above project.

78. LOCAL GOVERNMENT ACCESS TO INFORMATION

Under Section 100(A)(4) of the Local Government Act 1972, the press and public were excluded from the meeting for the following item of business on the grounds that it involved the likely disclosure of exempt information as defined in paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 as amended by the Local Government (Access to Information) (Variation) Order 2006.

Minute 80 – Tall Ships Design Brief (237) (para 3 – information relating to the financial or business affairs of any particular person (including the authority holding that information)).

79. TALL SHOPS DESIGN BRIEF (237) - *Tourism Officer*

Members were informed that tenders had been received in respect of the above project.

R FLINTOFF

CHAIRMAN

CONTRACT SCRUTINY PANEL

3rd December 2007



Report of: Chief Solicitor

Subject: CONTRACT SCRUTINY PANEL – PURPOSE

1. PURPOSE OF REPORT

The purpose of this report is to respond to issues raised by Members of the Panel at their meeting on 22nd October 2007, regarding the role of the Panel.

2. BACKGROUND

2.1 The following is an extract from the minutes of the meeting of 22nd October 2007 –

“ Members also requested clarification as to their role and responsibilities. Particular concerns were raised as to the action of noting the authorisation of exception to Contract Procedure Rules and whether this constituted agreement. Other issues raised included the necessity for membership of the panel to be a cyclical basis and whether individual contracts were evaluated on an objective or subjective basis. Members suggested that a written list of the roles and responsibilities in relation to the Panel be provided to all new members. It was also requested that a meeting take place at which all members were present in order to discuss the issues raised.”

2.2 In this respect the Contract Procedure Rules provide the following summary –

The Contracts Scrutiny Panel

In order to ensure probity and transparency in the award of contracts, the Contracts Scrutiny Panel will participate in the letting of contracts by monitoring their compliance with the Contract Procedure Rules at a number of stages, both during and after the completion of the contract procedure. In respect of any contract the Panel will have the responsibility:

- *To receive and examine tenderers lists*

- *To open tenders*
- *To receive and examine reports on the outcome of price/performance and partnering contracts letting procedures*

2.3 In relation to the last element of the role as explained, the Contract Procedure Rules (“CPR”) provide, in a number of places, for matters to be referred to the Panel - for example

Rule 1(iii) – where the Chief Soliditor has exercised his delegated power to approve a departure from the CPR as a matter of urgency

Rule 9 - acceptance of a best price tender other than the lowest;

Rule 10(1)(b) – selected tenderers list compiled by officer

Rule 23(ii) – reasons for not inviting tenders in respect of nominated sub-contractor work.

2.4 In discussion elsewhere concern has been expressed at the requirement for members to be present at the opening of tenders. This is an issue that has previously been addressed in the course of review of the CPR, when it was suggested to members that for that function, it would be satisfactory for a single member to be present, to ensure the integrity of the process. However, it was members’ view at that time that it was unfair to place such a burden on an individual member.

2.5 Review of the remit of the Contract Scrutiny Panel has been the subject of recent consideration by both the Working Group and the Panel and is an on-going element of the working group’s work programme. Appendices 1 and 2 are extracts from the minutes of the panel and the working group from which members will note the intention to continue to develop this issue.

RECOMMENDATION

That Members of the Panel express their views and suggestions as to the future operation of the Panel.

APPENDIX 1

Extract from Minutes of Contract Scrutiny Panel 29th January 2007

84. REVIEW OF REMIT OF THE PANEL – *Chief Solicitor***Purpose of Report**

To acquaint the Panel of the proposal of the Constitution Working Group to review the remit of the Contract Scrutiny Panel and to invite the Panel to express their views in that respect.

Background

In the context of review of the Contract Procedure Rules, the Constitution Working Group expressed the view that the role and remit and other features of the operation of the Contract Scrutiny Panel should be reviewed. The use of the term 'scrutiny' within the title of the Panel was considered to be misleading and views were expressed that instead of the members of the Panel being selected from a rota the Panel should be appointed at the annual Council meeting. It was further considered that Officers should ensure that all appropriate information be presented to the Panel.

Proposals

Members were invited to express their views on the review of the remit of the Panel and the manner of appointment of members of the Panel. Their views would be incorporated in a briefing paper to be submitted to a future meeting of the Constitution Working Group, at which the Panel's Chair would be invited to participate in the discussion.

Members expressed the viewpoint that Contract Scrutiny Panel meetings were a meaningless formality, regarded as a chore by Councillors. The membership of the Panel changed so often that there was no chance for any consistency or ownership amongst members and it was suggested that a longer tenure would improve this situation. It was also felt desirable for Councillors to have more of an involvement in the decision-making process with officers, something which the Chief Solicitor reported had been expressed during a previous overhaul of Contract Scrutiny Panel. Other suggestions made included a requirement for one member only (possibly an executive member) to supervise the opening of tenders. However concerns were raised that this would place too much pressure on the member concerned.

Following the discussion the Chair requested that the views raised be taken to a future meeting of the Constitution Working Group. He also asked if officer viewpoints could be incorporated. The Principal Legal Executive would bring an answer on this query to the next Contract Scrutiny Panel meeting following consultation with the Chief Solicitor

Decision

That the views expressed be incorporated into a briefing paper to be submitted to a future meeting of the Constitution Working Group

APPENDIX 2

Extract from Minutes of Constitution Working Group 18th March 2007

34. Briefing Paper – Contract Scrutiny Panel – Review of Remit – Chief Solicitor

The Chief Solicitor indicated that at earlier meetings of the Working Group, consideration had been given to the review of the remit of the Contract Scrutiny Panel. The concept of review had initially arisen from comments made by members of the Contract Scrutiny Panel who appeared to perceive a wider role for the Scrutiny Panel and wished the working group to explore options for further involvement of the Panel in the procurement process. The Chair of the Contracts Scrutiny Panel, Councillor Geoff Lilley, was present at the meeting.

The Scrutiny Panel were asked to address and clarify their views further at the meeting of the Panel on 19th January 2007. Members were invited to express their views on the review of the remit of the Panel and the manner of appointment of members of the Panel. Members expressed the viewpoint that Contract Scrutiny Panel meetings were a meaningless formality, regarded as a chore by Councillors. The membership of the Panel changed so often that there was no chance for any consistency or ownership amongst members and it was suggested that a longer tenure would improve this situation. It was also felt desirable for Councillors to have more of an involvement in the decision-making process with officers, something which the Chief Solicitor reported had been expressed during a previous overhaul of Contract Scrutiny Panel. Other suggestions made included a requirement for one member only (possibly an executive member) to supervise the opening of tenders. However, concerns were raised that this would place too much pressure on the member concerned. The Chief Solicitor went on to consider Members' two main points in relation to the Panel.

The Purposes of the Contract Scrutiny Panel.

Despite Officers' diligence and integrity, reinforced with sound Contract Procedure Rules, the letting of contracts is one of the areas of local government administration that are most vulnerable to abuse and corrupt practices. The sums of money involved in local authority contracts are vast, and the opportunities for securing profits for contractors by manipulation of contract procedures are many and various. Officers and others involved in the procurement procedure may be exposed to corrupt approaches from interested contractors to interfere with the process in a variety of ways to improve the prospects of success for a dishonest contractor.

Contract Procedure Rules are designed to diminish the opportunity for irregular and corrupt practices. It is, therefore, in the interests of both the Council and those involved in the procurement process that the procedures are generally followed. Additionally, it is important that the procurement process is transparent and monitored on a regular and rigorous basis.

The current arrangements, involving a contract scrutiny panel, were adopted at the time of introduction of the new executive management arrangements now in force. The letting of contracts is clearly an executive function and, in the absence of local checks and balances, the new executive arrangements had the potential for a single member to have immediate control over

- The decision to undertake a project involving the letting of a contract
- The determination of the specification and budget
- The receipt of tenders
- The selection of the successful tenderer
- Monitoring of the contract

It was felt that these responsibilities would make a member unduly vulnerable and that, although non-executive members could not be involved in any decision-making capacity, their involvement in a monitoring role would go a significant way to maintaining the transparency and integrity of the contracting process. The new procedures therefore continued the involvement of non-executive members in the opening of tenders, and provided a series of points within the contracting process at which reports are necessary. Involvement in this way at least gives non-executive members an opportunity to examine and raise issues, which is a merit in its own right – however, it also acts as a deterrent to corruption and unnecessary departure from the Council Procedure Rules.

Can the purposes of the Contract Scrutiny Panel be provided for by other, more convenient, arrangements?

The Chief Solicitor indicated that he was not aware that any other authority has taken a similar approach to Hartlepool Borough Council. Examination of the constitutions of a number of authorities on the internet reveals that Hartlepool appears alone in having a Contract Scrutiny Panel. The constitutions examined generally take the approach that contract opening is a matter for officers and there does not appear to be a body of members charged with overseeing contract procedures generally. In one case, the letting of Council contracts above a threshold (£50,000) is dealt with by an Executive Committee. In many authorities, scrutiny of contracts is clearly undertaken by one or other of the authority's overview and scrutiny committees.

The Chief Solicitor commented that while there were many models of dealing with procurement issues, the Working Group may wish to explore these and other options before developing further the remit of the Contract Scrutiny Panel.

The Chair commented that Members of the Panel did frequently feel frustrated at not being able to question officers on contracts. The rotation of member's on the Panel also removed any consistency. The Chair of the Contracts Scrutiny Panel, Councillor Geoff Lilley, commented that he had been informed by some contractors that it was very difficult to get on the Council's approved list of contractors. Councillor Lilley believed that the approved tenderers list were 'very clean' and had no evidence that they were not. However, there must be areas of concern but as the current Panel had little ability to investigate them, then there was possibly cause for this function to be transferred to a sub group of the Scrutiny Coordinating Committee.

Members agreed that the 'scrutiny' element of the Panel's name was something of an anomaly as it had no power at all to scrutinise tenders or contracts. The rotation of Members was a weakness and perhaps if the Panel was to continue in some revised form, then a permanent membership would be preferred. This would allow for a group of members who could receive training and develop knowledge and understand of the workings of the Council's Contracts Procedure Rules. A different situation for the future of the Panel was proposed, with it becoming a sub group of the General Purposes Committee.

During the discussion, members raised significant concerns at some of the practices that had allegedly occurred in the appointment of substitutes to meetings of the Contracts Scrutiny panel. Members were concerned that the Council Procedure rules were being flouted in order to ensure a quorum for Panel meetings.

The Chief Solicitor highlighted to the Working Group that the Panel did have a wider remit than just 'opening envelopes' and explained the wider elements of the Panel's remit. There were, however, obvious reasons to review the Panel and its operation. The Chief Solicitor indicated that the name of the Panel was one thing, that following Members comments, needed to be changed, as did the 'location' of the Panel within the wider Committee structure of the Council. The Chief Solicitor indicated that he would produce a further report for the Working Group examining these issues and potential revisions, and additions, to the Panel's remit for further consideration.