

PROTOCOL FOR SCRUTINY BOARD REVIEW OF CONTRACTS

Purpose

1. The Council's scrutiny boards intend, as part of their published programme of work, to scrutinise the Council's procurement and contract management processes and key Council contracts in order to:-
 - 1.1 Confirm that an effective procurement process is in place and that all procurement is operating in line with that process.
 - 1.2 Confirm that the Council's contracts are being properly monitored and managed in accordance with the Council's contract management procedures.
 - 1.3 Identify at an early stage any concerns about the performance of any contract.
2. The Council's contracts are commercially sensitive. This protocol is designed to ensure that scrutiny boards operate within their remit, as set out in the Council's Constitution, and that the confidentiality of the Council's contracts is not breached.
3. This protocol excludes contracts of employment, which are not available for scrutiny by scrutiny boards.

Remits of the scrutiny boards

4. Within its remit, the Council Overview Board can scrutinise:-
 - 4.1 The procurement process - why a decision was taken to procure externally by means of a contract; the process for letting the contract; competition and best value;
 - 4.2 The contract preparation process - how the contract was set up to achieve the benefits and minimise the risks identified by the Cabinet in its original decision; that robust performance indicators have been included in the contract appropriate to the identified benefits and risks.
 - 4.3 The contract management process - that an effective process for monitoring and managing the contract is in place and being followed; that steps have been taken to ensure that all staff managing contracts are properly trained and equipped.
 - 4.4 The performance of individual contracts within the Board's remit - how the contracts are performing against their agreed performance indicators.

5. Service-focused scrutiny boards can scrutinise
 - 5.1 The procurement process, contract preparation process and contract management process as set out in 4.1 –4.3 above in relation to those contracts that fall within the remit of that scrutiny board.
 - 5.2 The performance of individual contracts within the remit of that scrutiny board: how the contracts are performing against their agreed performance indicators; whether the contracts are meeting the needs of Surrey citizens and communities.

Access to contract documents

6. Scrutiny Board members are entitled to copies of any document “which is in possession or control of the Cabinet and which contains material relating to any business transacted at a public or private meeting of the Cabinet”, provided that:-
 - 6.1 It is not in draft form and
 - 6.2 It is relevant to an action or decision that it is scrutinising or intending to scrutinise as part of its agreed work programme.
7. A scrutiny board must agree a programme of work that demonstrably scrutinises decisions made by the Council or by the Cabinet/Cabinet Members and actions taken in connection with those decisions. Contractual documentation is only relevant as evidence of those decisions and actions. The relevant Scrutiny Officer will notify the Head of Legal, Democratic and Cultural Services and Head of Procurement in advance of any item of scrutiny on the board’s forward programme that is likely to require access to a contract.
8. The scrutiny board, or a task group or Member authorised by the scrutiny board, may have a photocopy of a contract provided that:-
 - 8.1 It is relevant to a decision/action being scrutinised by the scrutiny board and
 - 8.2 The Member(s) follows the procedure set out in paragraph 11 below.

Maintaining confidentiality

9. Paragraph 6 of the Members’ Code of Conduct specifies:-

“You will on occasions be privy to confidential and sensitive information, such as personal information about someone, or commercially sensitive information which, if disclosed, might harm the commercial interests of the Council or another person or organisation. This information must not be revealed without proper authority”.
10. Under Standing Order 61 and 62, any scrutiny board member with a disclosable pecuniary interest in a contract/party to a contract or has received a gift or

hospitality from a contractor/party to a contractor being scrutinised by that scrutiny board must disclose that interest and not participate in any scrutiny of the contract.

11. Any contract documentation made available to a member of the scrutiny board must not be copied, handed to or discussed with any third party, except another member of that scrutiny board or designated officers involved in the scrutiny process. A failure to conform with this will constitute a breach of confidentiality and therefore of the Code of Conduct.
12. Any Member receiving a copy of any contract will be required to confirm by signature their understanding of and agreement to maintaining the confidentiality of the document.

Status of task groups and individual scrutiny board members

13. A scrutiny board may appoint a task group or ask an individual scrutiny board Member to undertake a specified task of scrutiny and analysis on behalf of the committee. Any task group or individual must keep to the task that they have been given and report back their findings to the agreed meeting of the full scrutiny board in order that it can agree its course of action and/or formulate its recommendations to the Cabinet/Cabinet Member. Scrutiny boards should not appoint task groups or individuals to carry out a roving commission.
14. The Council's main contracts are extremely complex. A suggested list of questions for scrutiny board members to apply in order to effectively scrutinise a contract is attached at **Annex A**.

Ann Charlton
Head of Legal, Democratic and Cultural Services

CONTRACT QUESTIONNAIRE (SAMPLE)

Annexe A

| | | | |
|---|----------|---------------------|--|
| Reference | XXXXX | | |
| Contract Owner | | | |
| Type | Services | | |
| Commodity | | Sub Category | |
| Contract Description | | | |
| Supplier | | | |
| Start date | | End date | |
| Is there a provision to extend the term? | | | |
| What is the available extension period (months)? | | | |
| Has the extension option been taken? | | | |
| Total contract value | | | |
| Is this fixed or estimated? | | | |
| Approximate annual value | | | |
| Is this contract open to other local authorities? | | | |
| Was it subject to OJEU Procedures? | | | |
| What are the payment terms? | | | |
| Brief outline of the scope of supply: | | | |
| | | | |
| Are there provisions for measuring supplier performance? | | | |
| Are there financial recourses for poor supplier performance? | | | |
| Is there a provision that allows termination of the contract for poor performance? | | | |
| Is there a provision that allows either party to terminate for convenience? | | | |
| Is there a provision that allows only SCC to terminate for convenience? | | | |
| Is there a provision that allows for adjustment of the contract through benchmarking? | | | |
| The benchmarking includes the following | | | |
| Is there a provision that allows for a review of the price? | | | |
| Does this include indexation? | | If yes, what index? | |
| Does the contract allow for management reviews in line with the Procurement Governance Process? | | | |
| Is there a provision for transitioning to another supplier at the end of the contract? | | | |