

	<p style="text-align: center;">Performance and Finance Select Committee 12th June 2007</p> <p style="text-align: center;">Report from the Director of Finance and Corporate Resources</p>
For Information	Wards Affected: ALL
Report Title: Factors Influencing Procurement in Brent	

1.0 Summary

- 1.1 This report provides Members of the Performance and Finance Committee with an overview of the factors influencing the procurement of large value contracts by Brent and some specific details of the market for Revenues and Benefits contracts.

2.0 Recommendations

- 2.2 Members are asked to note the report.

3.0 Detail

- 3.1 This report has been developed in response to concerns raised by Members of the Performance and Finance Committee in relation to perceived narrow procurement markets for certain large local authority contracts and the possible longer term issues arising from this. The report sets out specific details of the current market for providers for revenues and benefits services and the factors influencing this. In this context the report provides details of Brent procurement policies, guidance and frameworks, national issues affecting procurement, details of major contracts let or extended by Brent in the last 12 months and details of the tender and extension of the Revenues and IT contract with Capita.

3.2 The overall framework for Brent procurement

The overall procurement framework for Brent contracts, is set out in Contract Standing Orders supplemented by the Contract Procurement and Management Guidelines. The guidelines have been developed to ensure that Brent procurement complies with domestic and European legislation and the Council's Standing Orders as well as ensuring that procurement outcomes support the Council's wider service objectives as well as the Council's procurement strategy.

3.3 Brent Contract Procurement and Management Guidelines

- 3.3.1 Section 2, paragraph 9 of the guidelines sets out the general principles that should be followed in letting all contracts and gives guidance on considerations which should be undertaken prior to starting a procurement project. These principles, as with financial regulations and legislation, do influence the outcomes of procurement and the market place for procured services or goods. Appendix A is an extract of this section.
- 3.3.2 In order to prevent discrimination against non-member states European Union law precludes procurement from being limited to contractors and suppliers operating from within the geographical Brent area. The Council cannot therefore restrict bidders to those based in Brent nor can it favour Brent based bidders.
- 3.3.3 The guidelines require an early evaluation of the financial standing of bidders to ensure that they have sufficient financial standing to carry out the work, supply the goods and provide the services. This evaluation will vary depending on the value, type and size of the contract. A services and/or works contract with a significant value (e.g., the Revenues service) or where money is paid in advance will require more assurance that the contractor has sufficient financial standing to fulfil the requirements under the contract to mitigate risk to the Council. Small and medium sized suppliers may find that they are excluded from bidding for some contracts because they cannot satisfy these requirements. However the Council would be exposed to unreasonable and significant risk if these requirements were diluted or relaxed.
- 3.3.4 The Financial Regulations, Standing Orders and EU Procurement regulations state that contracts must be aggregated for the purposes of determining which procurement rules will apply to them. For example whether or not they must be tendered in accordance with EU rules. As long as all the contracts are tendered in accordance with the relevant rules (based on total value) the contracts can be packaged into smaller lots when tendered. This may still be a burden for SMEs and BMEs as they may be faced with an EU procurement process for a relatively low value contract. Not all contracts lend themselves to split award due to factors such as the need to maintain inter-operable software systems, data exchange, complexity or sensitivity of the service provision. These legal requirements are perhaps the largest stumbling block for smaller companies wishing to gain access to public sector contracts as our largest contracts and their associated demands are often only manageable by the biggest suppliers in the market. This can result in a limited or restricted market.
- 3.3.5 One of the other major factors influencing the range of bidders for major contracts is the extent to which contractors are able to mitigate and share risk. Smaller contractors may not be able to adequately mitigate the risks associated with large contracts or service failure and may not be able to sign
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up to shared financial risk The Revenues and IT contract with Capita, for example, has a maximum level of damages of £1M per annum. This provides the Council with a level of financial assurances should performance not meet contractual requirements that smaller contractors simply wouldn't be able to offer.

3.3.6 Some smaller contractors may find Brent's Health and Safety prequalification criteria difficult to meet. These requirements arise from legislative requirements on the Council but can be difficult or challenging for smaller providers to meet.

3.3.7 Some of these considerations can be amended or tailored to be more flexible to smaller businesses but can only be done by reviewing any potential risk to the Council. Areas related to legislation may not be amended and present much more of a challenge when considering means of opening up markets. Additionally the Council's financial standing orders cannot be varied or tailored for individual tendering processes.

3.4 Legal framework and Standing Orders

3.4.1 There are a range of legal and constitutional requirements that govern procurement exercises. These requirements increase in accordance with the value of the contract over its lifetime. These can be summarised as follows:

- Financial Regulations and Standing orders

Procurement with an estimated value between £20K and £144,371: 3 quotes required

Procurement with an estimated value between £ 144,371 and £ 499,999 for services and supplies and £144,371 and £1million for works: Formal tender process (including advertising) required

Procurement with an estimated value of more than £500K for services and supplies and £1million for works: Formal tender process (including advertising) required and approval to tender and decision to award must be referred to the Executive.

- EU Regulations

Service contracts estimated to have a value equal to or greater than £144,371 are subject to EU procurement regulations, which requires the tender to be advertised across Europe through an OJEU notice. The EU procurement regulations also set out a range of requirements in terms of the procurement process intended to ensure that the tender process is open and fair. (There are also EU thresholds applying to supplies (goods) and works (construction) contracts)

- Other regulations

There are a range of other regulations governing procurement including Health and Safety regulations, TUPE, IT technical regulations and data

protection regulations. The legal framework for procurement can be very complex and at times prescriptive. This is particularly the case where EU regulations apply.

3.5 Procurement strategy

3.5.1 The Council's procurement strategy was developed in 2005 and sets out an overall aim of Brent procurement, which is

"Basis of Procurement Decisions – The Council will make its procurement decisions on the basis of best value for money (most economically advantageous tender in the EU directives and UK regulations). Contracts will not be awarded only on the basis of lowest initial price with certain exceptions for appropriate works contracts. There will always be an assessment of quality, benefits and the costs that will be incurred by the Council throughout the life of the asset or contract period."

The strategy sets out a number of other key objectives for Brent procurement which are summarised in the following paragraphs:

3.5.2 The strategy sets out a broad aim to stimulate markets and achieve community benefit through procurement and in so doing help deliver corporate objectives, including economic, social and environmental. This is supported by specific actions namely:

- to actively engage with the suppliers market;
- to market the Council with suppliers;
- to sign up to the National Procurement Concordat for Small Medium Sized Enterprises coordinated through DCLG
- to adopt a positive approach to removing barriers to trading and building diversity considerations into business and people management processes.

3.5.3 In terms of our aim to remove procurement barriers, this forms part of our broader equalities plans and duty to have due regard to the need to promote racial equality. Contractors and potential contractors also need to be aware of the legal duty placed on the Council. The Procurement and Risk Management Unit are working with the Corporate Diversity Team to produce guidance to support the Council's Equality and Diversity Policy objectives and its obligations under the Race Relations Act.

3.5.4 The Procurement Strategy has already highlighted that the Council does not always procure on a strategic basis and must do more to make a greater contribution to the delivery of its strategic objectives via its management of suppliers and procurement. This evidenced by the large number of suppliers that payments were made to between 2003-2005, which amounted to over 16,000 different companies.

3.5.5 Plans are in place to continue to simplify procurement processes wherever possible and some work is also being undertaken to standardise processes across West London Authorities. Consultation with the business community will help to identify the main barriers that supplier face in accessing procurement opportunities in Brent and this consultation will be expanded to include:

- Chambers of Commerce
- Small Business Federation
- DTI's Small Business Unit
- Brent's Black and Minority Ethnic Forum

3.5.6 The strategy sets out to ensure that procurement outcomes support the Council's requirement to achieve Best Value but also to open up opportunities of access to contracts to Small and Medium sized enterprises. There are at times tensions between these aims and these tensions become greater when considering pressures arising from the need to deliver efficiencies.

3.5.7 The procurement strategy is currently being reviewed and the updated version will be presented to the Performance and Finance Select committee in the near future. The existing strategy is attached as Appendix B.

3.6 The Gershon Agenda and procurement

3.6.1 Sir Peter Gershon's report "Releasing Resources from the Frontline: Independent Review of Public Sector Efficiency" HM Treasury, July 2004 outlined new approaches and guidelines for achieving efficiency in public sector procurement. The report addressed the fact that many public sector bodies purchased the same or similar goods or services through a variety of individual contract methods. The report identified the potential these public sector bodies (including local authorities) had to combine their purchasing power and bring costs down by means of collaborative procurement. The opportunities afforded by collaborative procurement include:

- Lower prices/costs through greater economies of scale
- Increased efficiencies through the streamlining of processes
- Greater access to market innovation
- Greater opportunity to develop a buyer-controlled market through increased buying power

3.6.2 This drive towards collaborative procurement, coupled with the push to develop shared services as also outlined in the Gershon report, tends to lead contracting authorities towards an increased number of large contracts or framework agreements.

3.6.3 This collaborative approach first outlined in the Gershon report has been further developed by subsequent reports. Extracts from two of the reports clearly show the intent to continue the drive towards this type of procurement:

“Releasing the resources to meet the challenges ahead:”

Value for money in the 2007 Comprehensive Spending Review, HM Treasury, July 2006

- *“deepening the government-wide efficiency programme in the operational areas established by the Gershon Review, harnessing the benefits of greater collaboration across organisations and engaging with frontline professionals to identify opportunities for service improvements*
- *procurement – getting better value from the public sector’s £125 billion procurement budget, in particular through greater co-ordination of purchasing across organisational boundaries”*

“Transforming government Procurement”

HM Treasury, January 2007

- *“making greater use of the Government’s collective buying power and market engagement in collaborative procurement;*
- *giving the Office of Government Commerce strong powers to drive these improvements from the centre”*

3.7 Alternative methods of service provision: Shared service/partnerships

3.7.1 The Gershon agenda also actively encourages formal shared provision arrangements between Local Authority providers and partners. In practice however there are currently relatively few examples of shared services provision nationally, with only 29% of Local Authorities involved in shared back office arrangements (recent DCLG survey) However in the same survey, 60% of responding Authorities has been engaged in joint procurement and over 70% in purchasing consortia.

3.7.2 There are some examples of shared service provision in Brent including Trading Standards which is an active part-West London shared service as is the mortuary service More prevalent however is the emergence of a whole range of collaborative groups such as procurement officers, ICT, Environmental services, each developing collaborative work streams.

3.7.3 A report produced by PricewaterhouseCoopers on shared services for the West London Alliance, in January 2007, identified HR and Childrens and Adults services as areas that could benefit from shared service. This can be seen for example in areas such as social care where a more collaborative approach to the procurement of residential care, could iron out differing charging arrangements from providers for each Local Authority.

3.7.4 The Audit Commission has highlighted the potential savings that could be realised if transactional services such as Revenue and Benefits were provided on a shared basis. The assumptions made are that pooling of resources will enable economies of scale and reduced overheads. These assumptions are

yet to be comprehensively proved or disproved because experience of shared service provision is not well developed.

3.7.5 The following provides details of some developing or established partnerships which include Revenue and Benefit services:

- Breckland and Forest Heath: This partnership covers Breckland, Forest Heath and East Cambridgeshire District Councils – known as the Anglia Revenue and Benefits partnership. It was first established in 2003. By way of comparison with Brent –it employs 40 benefit staff and pays out £67M in HB/CTB compared to £130M and 100 staff for Brent.
- East and West Lindsay District Councils NNDR partnership: covering NNDR collection.
- Kent Benefits partnership: covering 12 Kent and Medway district councils who share some aspects of benefit processing.
- Selby and East Riding partnership – which has focussed on the joint procurement of IT systems.
- Welland partnership- which covers Melton, East Northants, South Kesteven, Rutland and Market Harborough.
- This partnership has focussed on 4 main service areas – with joint procurement of a new Customer Relationship Management system.

3.7.6 As can be seen, shared service provision between Local Authorities has so far developed outside the London area, in particular between smaller District Councils where there is most scope for achieving economies of scale.

3.8 Private/public partnerships

3.8.1 There are a number of examples of private /public partnerships. The following provides a summary of a sample of these for Revenues and Benefits services:

- Blackburn and Darwen: Strategic partnership with Capita which aims to promote regeneration and create local employment opportunities. Capita have developed a business centre in Blackburn that provides offsite back office functions e.g. for Revenues and Benefits services. Westminster's Benefits service is provided from here.
 - Capita also provide NNDR services for 12 London boroughs from their Bromley Business Centre(including Brent)
 - Southwark have a partnership with Liberata – through which Liberata provide Revenue and Benefit services through a business centre in Barrow in Furness.
 - Pendle District Council have a strategic partnership with Liberata which aims to regenerate the area through the creation of employment opportunities. As with the Blackburn and Darwen partnership a business centre has been developed, from which Liberata run a number of contracts.
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- Liverpool Direct which is a strategic partnership between Liverpool Council and BT covering a large number of services and a major transformation of IT and customer services.
- Middlesbrough Council have a strategic partnership with HBS which covers IT and customers services transformation and a number of key services.

3.9 Details of large value Brent contracts

- 3.9.1 Brent's largest external contract, which is for waste management, was re-tendered in 2006 with award subsequently taking effect in April 2007. The progression of this tender and award demonstrates how narrow the market is for this particular service despite an apparently robust initial response. Thirteen companies responded to our initial advertisement, all companies received the Pre-Qualification Questionnaire pack. Eleven of the companies returned completed questionnaires. After the initial evaluation process reviewing areas such as financial viability, health and safety matters and compliance with race relations legislation six companies were qualified to go forward to the tender process. During the next stages one of the six qualified companies was taken over by the lead contractor in this field, Veolia ES (UK) (formerly Onyx). The takeover was approved by the EU Monopolies and Mergers Commission.
- 3.9.2 Following this, three of the remaining contractors withdrew from the bidding process, citing inability to compete due to the lack of depot facilities within the Borough of Brent. Two companies remained part of the tender process and award was subsequently made to Veolia ES (UK). Despite an initial broad level of interest the council subsequently had only two potentially viable companies capable and willing to tender for the provision of waste management services.
- 3.9.3 Similarly the council's parking contracts (for enforcement and notice processing/IT support) initially received 39 expressions of interest in response to its advertisement. Only ten of these companies completed and returned Pre-Qualification Questionnaires. Shortlisting after PQQ evaluation led to 4 companies for the enforcement contract and 6 for the notice processing contract being invited to tender. 2 contractors dropped out of the notice processing tender resulting in four tender submissions for each service received.
- 3.9.4 Some of our markets are limited by the sheer size of our contracts which are only manageable by the larger companies in that market, particularly when considering some of the requirements included by the council in those contracts. A typical example of this would be the requirement for a contractor to have a performance bond in place, an expense that smaller companies would seek to avoid. Also, our inclusion of liquidated damages clauses where appropriate can be a concern to smaller companies and could potentially bankrupt those companies if implemented. However, to not include these
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clauses and requirements would in some cases be negligent and leave the council exposed to unacceptable risk.

- 3.9.5 Some of our markets are limited by other factors, the lack of in-Borough waste management depot facilities for example, the specialist nature of the services we contract for or the way in which we qualify our contractors. These factors are not unique to the Local Government market but also issues for the private sector in markets such as raw materials (steel, paper etc.) where the specialist nature of the goods and markets and their response to supply and demand cause some challenges in developing truly competitive pricing. The volatility of some of these markets and the changing drivers can result in buyers developing a short-term multi-sourcing approach in an attempt to obtain some leverage in the market. Pressures on public sector spending: procurement legislation; political changes, budget cycles and transparency, can also drive us towards short-term sourcing, with the focus on single source to obtain value for money through economy of scale. Buyer/Supplier partnership working can open up markets through capacity building work with small to mid-sized suppliers. However, true partnerships seldom exist in the world of competitive markets, although private sector companies are working harder to develop this approach. Honda has been the most successful proponent of this type of working with its suppliers. To achieve this success Honda have , entered into very long-term relationships with its smaller suppliers, including them in the design process of its vehicles and component parts, offering financial support, developing joint negotiation approaches, open book accounting and joint trade union and personnel relationships. To all intents and purposes the supplier becomes part of the Honda organisation. It would be very difficult for public sector purchasing bodies to enter into this type of partnership outside of private financing vehicles. EU legislation would not permit some of these loosely defined long term partnerships, nor would they be facilitated by our budget and political cycle. .
- 3.9.6 In order to ameliorate some of these factors the council would have to take a view on the acceptability of increased risk and cost in the short term in order to truly partner with smaller suppliers and work together to capacity build for the long term. This type of capacity building work would also be contrary to the wider drivers towards collaborative, aggregated procurements. This approach cannot be recommended without first undertaking a review of potential risk and cost increase to the council.
- 3.9.7 A list of the major awarded or extended over the last twelve months in Brent is attached at Appendix E. This list reflects only those contracts which were brought to the attention of the Procurement Unit, there may be additional contracts of which the Procurement Unit has not been advised.
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3.10 Revenue and Benefits

- 3.10.1 The following paragraphs provide the background to the tender of the existing Revenue and Benefits contract to Capita in 2003 and the recent agreement to extend it for a further 3 years from May 2008 to 2011.
- 3.10.2 The Revenue and Benefits service was outsourced on a voluntary competitive basis in 1995 to EDS. The contract term was 8 years and the contract covered all aspects of Revenue and Benefits service delivery including back office, customer services, cashiering services and IT. In 1995 the market for these services was not well developed and was dominated by 2 main companies: Capita and CSL (now known as Liberata). EDS held a large number of significant central government contracts but had not at that stage entered the Local Government market. The contract subsequently let to EDS offered EDS the opportunity to develop a reference site for future Local Government bidding opportunities and Brent the benefits of significant investment in IT to modernise service delivery methods and ultimately achieve improved performance and efficiencies.
- 3.10.3 Over the next 5 years the Revenues and Benefits market developed further and a range of suppliers began to win contracts including Capita, CSL, WS Atkins, Vertex and ICL. A number of strategic partnerships also began to emerge with Capita, Hyder and Amey, and typically these covered transformation of IT, customer services and a number of services including Revenue and Benefits
- 3.10.4 In the early years of the EDS contract, performance did improve and service delivery was modernised through the implementation of Electronic Document management and a new Revenue and Benefits application (SX3). This put all 3 of EDS Revenue and Benefits contracts (Wandsworth and Kingston were subsequently won by EDS) onto common IT systems with the objective of facilitating greater pooling of resources across the 3 sites. Although the implementation of new IT systems was technically successful, the implementation was significantly delayed and EDS struggled to clear backlogs arising from system close downs and their performance plateaued from 1999. By this stage, the Revenue and Benefits market in general had been experiencing problems across a number of contracts and EDS had lost both the Wandsworth and Kingston contracts. By 1998 EDS had made a strategic decision not to bid for further Revenue and Benefit contracts and by 1999 Brent had become their only Local Government contract, with no plans to seek to expand this further.
- 3.10.5 EDS difficulties with their Revenue and Benefits contracts was mirrored across the market with a number of early contract terminations both inside and outside London. These included Ealing's contract with Vertex, Waltham Forest with ICL, Hackney with IT Net and Swindon's with WS Atkins.
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- 3.10.6 A fundamental best value review of the Brent Revenue and Benefits service in 2001, resulted in decisions to bring Housing Benefits, cashiers and customer services in house and to retender Revenues and IT services. These decisions reflected the fact that the market for Revenues and IT services was sufficiently mature to tender and also the conclusion that Revenues and IT had proved to be more suitable to outsourcing arrangements than Housing Benefits.
- 3.10.7 The original tender advert attracted 24 expressions of interest however only 5 companies submitted the pre-qualification questionnaire. These included Capita, Liberata, EDS, Loop customer services and Public Sector consultants. (PSC) Loop and PSC were both excluded at prequalification stage, the former because they had no experience of R&Bs service delivery and PSC because they had failed to satisfy a number of the pre-qualification criteria – including those relating to the financial standing of the company. EDS, Capita and Liberata all submitted bid, with Capita and Liberata progressing to Best and Final Offer stage.
- 3.10.8 The contract with Capita addressed many of the contractual constraints that had existed with the previous EDS contract, including a considerable sharing of financial risk. Capita were the only bidding company who were prepared to underwrite collection performance for arrears and levels of damages in any year are capped at £1m compared to the EDS contract where the cap was £100k per annum for Council tax collection.
- 3.10.9 Capita have delivered year on year collection improvements for both in year NNDR and Council Tax collection. They have struggled to achieve all Council tax arrears targets however this is a major focus for improvement for the remaining life of the contract.
- 3.10.10 The original contract term is 5 years however with provision to extend for a further 3 years subject to the agreement of both parties. The 5-year break point enabled the Council to decide whether to cease the contract with Capita on 30 April 2008 or to continue the contractual relationship with Capita for a further 3 years. In practice, plans for the future provision of the service will in any event need to begin in 2009 to allow an 18 month lead in for either a re-tender or change to service provision arrangements from May 2011. A decision to extend was made by the Executive on 9 October 2006. The contract extension price represents a saving of £200K per annum with the potential for further reductions should options to utilise Capita's offshore processing teams, be taken up.
- 3.10.11 The Executive report set out the issues that would need to be considered if the service was to be subjected to either a re-tender or returned to in house provision. Both options would have incurred additional costs and risks to performance whilst transition arrangements took place. There are also significant risks for the Benefit service arising from any changes to IT provision. These options will need to be reconsidered in 2009 at which time,
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Capita will have had 6.5 years of running the service, as opposed to the 3.5 years they had at the time the extension was agreed.

3.10.12 In terms of the current Revenue and Benefits market, this is dominated by Capita and Liberata. Appendix C provides details of current Revenue and Benefit contracts. Most contracts cover revenue collection with Benefits provided in house with exception of a few larger strategic partnerships, which typically cover a number of large service areas. There are a number of London contracts provided from business centres in the north of the country- including Blackburn Manchester and Coventry. Off shore working is also beginning to develop but is still relatively new.

3.10.13 It is notable from Appendix C that only 7 London Boroughs have outsourced Council Tax services and only 24 nationally. For NNDR services, 10 London Boroughs have outsourced services and 28 boroughs nationally. The relatively small number of contracts nationally, is in itself a limiting factor to developing the market.

3.10.14 Appendix D shows details of Council Tax and NNDR collection performance for Local Authorities that have outsourced their service or have developed partnership working arrangements. Appendix E shows performance for in house services. It can be seen that there are examples of above and below average performance for each of the service provision methods.

3.11 **The issues in summary**

3.11.1 This report highlights the main factors that are influencing procurement in Brent and nationally in the local Government market. It is recognised that the market for large value contracts is limited and Brent's procurement strategy takes account of this by setting out broad aims to engage with SME suppliers and to actively market procurement in Brent. Notwithstanding this, the tensions that co-exist between key organisational drivers such as efficiency and legislative frameworks, and objectives to improve access to procurement opportunities, are difficult to reconcile. In practice, there is little likelihood of a significant change to the market place for major contracts in the short term and longer term change will require an acceptance of increased risk and a need for investment in supplier development.

4.0 **Financial Implications**

4.1 There are no direct financial implications arising from this report however all procurement decisions have financial implications.

5.0 **Legal Implications**

5.1 There are no direct legal implications arising from this report however there are a range of legal issues arising from procurement processes

6.0 Diversity Implications

6.1 There are no direct diversity implications arising from this report however the report highlights the difficulties that small and medium sized enterprises may experience in accessing procurement opportunities.

7.0 Staffing/Accommodation Implications (if appropriate)

7.1 There are no direct staffing or accommodation issues arising from this report. However any decision to change service provision models will have staffing implications.

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