

SELECT COMMITTEE - COMMISSIONING

MINUTES of a meeting of the Select Committee - Commissioning held at Wantsum Room, Sessions House, County Hall, Maidstone on Wednesday, 22 January 2014.

PRESENT: Mr M J Angell (Chairman), Mr M Baldock, Mr M A C Balfour, Mr H Birkby, Mr N J D Chard, Mr G Cowan, Mr T Gates, Mr C R Pearman and Mr M J Vye

IN ATTENDANCE: Mrs P Cracknell (Research Officer Scrutiny & Evaluation, Business Intelligence), Ms D Fitch (Democratic Services Manager (Council)), Ms J Sage (Assisting Research & Business Intelligence) and Miss T A Grayell (Democratic Services Officer)

UNRESTRICTED ITEMS

9. External Dean Benson, Contract Director Transportation, Amey
(Item. 3)

(1) The Chairman welcomed Dean Benson to the meeting and invited him to explain how Amey operated and to answer questions from Members.

(2) Dean gave an overview of Amey which was a Spanish owned company. It acquired Enterprise in April 2013. Enterprise was awarded the KCC term maintenance contract for highways in Sept 2011. It has 22k staff all over the UK from Scotland to Kent. The company focused on utilities and term maintenance of highways and railways. They had been working in Kent since 2011 and had a zero volume contract with KCC which was nominally £50m a year. They operated from six depots across the County. Their resource consisted of 323 people; the majority were operatives and supervisors on sites. Process 80,000 orders – no order no work except overarching work like winter maintenance. Their average order in 2013 was £400+ on a no order – no work basis. KCC raises the work orders to Amey. The rates are all scheduled. It is a robust system. This meant that KCC was in control of the amount of work to be carried out and knew what was going to happen and when. The lowest order amount from KCC was 29p for repainting of a white line. This gave a flavour of the scope and scale of the work that Amey carried out for KCC. The majority of SME's used by Amey were Kent based which gave greater flexibility and reduced travel costs, Dean gave the example of having people out on Christmas Day, Boxing Day etc to deal with the issues caused by the adverse weather. As the suppliers came from Kent the response time was reduced.

(3) Dean explained that Amey also had access to specialist services which may be from outside of Kent, a lot of these were based in the north of England. Using these services tended to be the exception rather than the norm.

(4) Amey carried out, for example, drainage, lighting and technical schemes for KCC and Amey has a 5 year contract, which they were in the 3rd year of, with an option of a year on year renewal up to a maximum of ten years. This length of contract was important to enable Amey to decide how to invest.

(5) Dean explained that their rates were open book. Kent inspectors and Amey operative gangs had hand held tablets which contained rates for the work. This allowed orders to be assessed and placed from site which greatly reduced the amount of paper to be processed and reduces the number of site visits.

Question – How did Amey decide whether to tender for the contract with KCC?

(6) Dean explained that before submitting a tender, Enterprise looked at whether they had the capacity to undertake the contract and took into account the geographical location, type of work and previous experience. Since the acquisition by Amey the team had the added benefit of being able to draw upon the services of its colleagues in Hampshire if necessary, e.g. localised snow emergency. Enterprise had a robust process for deciding whether to tender it was less about commercial factors and more about whether they had the practical capacity to carry out the work. The company had decided recently not to go for certain contracts if they did not feel that they could resource them.

(7) Dean confirmed that KCC tender documents were very clear with performance measures set out. The measures were summarised as follows: 6 strategic performance measures, and 30+ operational performance measures with pass marks up to 99%. The measures broadly mirror the company target and align with ISO9000 performance requirements. The performance measures were set out in KCC's tender but Amey also complied with industry safety standards.

Question – Your business is carried out in a tight regulatory framework?

(8) Dean confirmed that this was the case.

Question – One of the areas that we are investigating is how we can involve more Kent based SME's, could you tell us more about the how you balance due diligence with sub contractors and the risks involved?

(9) Regarding SME's – Dean gave the example of tree surgeons and the interface between the Kent Landscape Team and Amey, need small number of good 2 tier companies when the weather forecast indicated that there might be a need for these peoples Amey would contact them and make them aware. Amey ensured that all specialist local suppliers that they used had the necessary training etc. Amey focused on approximately a dozen tier 2 providers in Kent who were compliant with Health and Safety and other regulations Amey made sure that they could access specialist resources, if necessary, taking account of sole traders if they were appropriately trained etc. Dean confirmed that Amey only used Kent businesses unless the specialist skills were not available in Kent, on a practical level it was easier for them as a company to use local business.

Question – do you feel that there are adequate checks and balances in using these suppliers for yourselves?

(10) Dean confirmed that he did and he stated that they were responsible to KCC for the suppliers that they used, if there was a problem with them then it was down to Amey. Amey had mechanisms to make sure that they carried out due diligence with their supply chain.

Question – The find and fix approach to repairing roads is a different way of working can you tell us about your approach to that and how this is accommodated within the ridged framework of the contract but also allowing a pragmatic approach to the work?

(11) Dean stated that the rates within the contract were fixed. In relation to Find and Fix, the costs depended on the size and depth of the pothole. The work was tracked on a daily basis to give KCC clear feedback on what was being done.

(12) Dean explained that in relation to developing ideas and best practice, they had a Technical Review group or “dragons den” type process for the workforce and supply chain where ideas could be put forward, this was done on a quarterly basis. The ideas put forward were all looked at in terms of their practical application. He gave the examples of a metal gully lock, a smart sponge to soak up hydrocarbons when cleansing gullies; one supply chain coming up with a type of motorised tree, verge and hedge cutter, ‘like a army knife on wheels’. Amey liked the idea and had possible investment from supply chain to of £250K into developing this. A number of the ideas put forward were taken up on a trial basis and if they proved effective in Kent, Amey then rolled them out across their other contracts.

Question – Regarding the Social Value Act which should be taken into consideration by KCC when commissioning, do you consider it right for KCC for example to say to Amey e.g. that they must employ apprentices?

(13) Dean stated that the civil engineering industry actively supported this. In the 1990’s this type of training stopped. This has lead to a knowledge and experience gap in the industry. Need to invest going forward. As a company Amey supported training, they employed 8 or 9 apprentices and last year ran an Apprentice of the Year award, the winner of that award was rewarded with a permanent job organising all their training. Dean stated that, all apprentices brought value to contract and the majority end up being employed full time and the approach was worthwhile and builds for the future.

Question – Are you happy that the standards in your contract with KCC are monitored fairly?

(14) Dean confirmed the monitoring process was carried out fairly. It covers at strategic performance measures on monthly basis. These drive behaviours – targets need to challenge and not be too easy. There was a joint analysis between KCC officers and Amey, they checked if orders were placed on time, completed on time and to the agreed quality standard on a monthly basis. There was a financial penalty attached to not meeting these targets. He stated that they had a pretty good pass rate, and had achieved 100% compliance, currently lighting maintenance was at 90%, this was due to the weather creating safety issues but he was confident that this would soon be back on track. He stated that KCC officers who carried out the monitoring were knowledgeable and challenging and he could see nothing wrong with that.

Question – What is the relationship between the supply chain and performance measuring.

(15) Amey and Kent have also agreed 2 performance measures for Kent - this is a new initiative and is supported by both parties. Dean suggested that Kent Performance Measure 1 was critical as it allowed the team to monitor order accuracy, including locations, type of work, local risks and expected costs. This development is testament to a good working relationship and enables commitment.

Question – Has the contract increased?

(16) Dean confirmed that the scope and scale of the contract was unchanged. However, Amey continually looked to see if the way they operated under the contract could be improved e.g. they made sure that KCC's "confirm" order system was compatible with Amey's system. Also Dean gave the example of possible innovative ideas - machine recycled tarmac from Kent roads as a commodity could benefit the contract rather than using brand new tarmac. This was an idea that could be taken for consideration with the 7 south east counties to acquire mobile recycling unit and share. The supplier could possibly invest 350K in unit and create a stockpile but they would need an effective return on investment especially on a zero return contract. Amey was also able to bulk purchase and negotiate with large suppliers which affected the rate that they were able to charge KCC.

Question – can you explain the third of your £50m a year being spent on sub contractor?

(17) Dean stated that some specialist treatments were more expensive and could distort the figures. Amey used sub contractors to supplement their workforce when volumes of work were higher than normal e.g. find and fix and winter emergencies.

Question – Do you allow sub contractors to sub contract?

(18) Dean confirmed that Amey did allow some sub contraction by sub contractors but they looked at this on an individual basis, go to third tier if qualified and can safely operate on network, bring in specialist skills etc.

Question – If KCC contracts to you and you contract to a sub contractor who then sub contracts, does KCC's expectation and standards get diluted?

(20) Dean stated that NEC contracts which had been developed in the 1990's created a back to back sub contract which had the same conditions but were a scaled down version of the main contract, but retained the essence of the main contract. Amey made sure that all their sub contractors knew the terms and conditions that they were working under e.g. timescale, rates and quality.

Question – If there is a complaint to the main contractor does this then get passed down the line to the sub contractor with no one wanting to take responsibility for any mistake?

(21) Dean replied that Amey would make sure that they knew who was responsible and if it was Amey then they would deal with it internally, if it was the supplier then Dean would speak to the managing director of the company. Amey could not pass the buck down the supply chain, because the OPM's relate to Amey and the main contract. Specific sub-contract penalties do exist and are employed if performance falls below agreed standards.

Question – Can you explain the impact that performance has on the renewal of the contract after the initial 5 year period?

(22) Dean stated that at the end of the 5 year period there would be a review of the performance level. If the level had dropped then KCC could go out to tender and Amey could submit a bid. If Amey had met the agreed performance criteria at the end of the 5 year period then the contract could be renewed on an annual basis. There were about 6/7 audits a month but they were not representative in relation to amount of work. Amey suggested changes a) poor performance go to process to disciplinary b) if learning points need them to come back (is it equipment or systemic problem). Now typically do 100/150 audits depending on level of work. Way of working with Kent allows positive working with subcontractors. It is measured on Amey if not deliver.

Question – I assume that the contract needs to be a minimum of 5 years to justify your investment in capital equipment and that the sub contracts can be for a shorter period?

(23) Dean confirmed that this was the case. He gave the example of the investment of possible £350k that supplier interested in making in mobile plant for recycling materials, if the contract had been for up to 3 years there would not have been a sufficient return on their investment. With a contract of 5 years even though it is a zero volume contract Amey were still taking a risk but it would give them a reasonable chance of getting a return over the 5 year period. Dean also gave the example of gritters which they had procured/long term hired at £60k each, they needed a 5 year contract in order to be able to make this type of investment.

Question – Is it possible for you to sub contract to the “voluntary” sector? For example the Ramblers Association for clearing of Public Rights of Way (PROW)?

(24) Dean stated that it was possible for Amey to sub contract work like this to for example, the Probation Service, as part of rehabilitation, but not work normally carried out under contract. There were a lot of rules around with probation service and PROW. It was necessary that the people that commissioned the worked with were happy with this arrangement. PROW was ideal for this type of sub contracting but, it had proved challenging to engage them.

Question – what makes a contract go wrong?

(25) Dean explained that one of the ways that a contract can go wrong is if the specification was not well briefed/understood, or the wrong contract was used – all parties need to understand operational performance measures. We understand the 30 performance measures in our contract with KCC and agree with them. It also comes down to the people involved, you can have the best specification and the best contract but if the people in the contractual relationship are not geared up to work together then it will fail.

(26) Dean referred to the whole TUPE mechanism which was difficult. Amey had TUPE'd 200+ people from the previous contract were only used to working with a cost plus contract rather than a SOR contracts, it took time for them to adjust to the new way of working.

Question – Is there anything that you feel that Kent County Council can do better in terms of commissioning and procurement?

(27) Dean stated that he had attended one of KCC's Facing the Challenge sessions so was aware of the financial situation that Kent was in. He stated that if there was a mature relationship between the contractor and the commissioner then trust was built. Dean gave the example of gully cleaning, KCC believed that it had 340k gullies – gully cleaners are expensive to hire/buy so a full survey was agreed and it was concluded that KCC has only 250k gullies in the county. As a result, a more focused service could be developed with the potential for cost and performance efficiencies to be developed.

Is the public happy is the ultimate measure!

Question – What can be done to balance the need to have detailed instructions/invoicing and reducing costs?

(28) Dean confirmed that KCC's costs were going down. Last year there was a business process review as better order quality and process was needed. This led to a refined process and sharing resources, e.g. use of electronic devices to place orders on site. In practical terms processing paperwork could cost £500k over 10 years compared to use of hand held devices at a one off cost of £44k. This brought the inspectors together with the workforce. This generated a saving in paper and time by being able to order work or download information on site, using current information and photographs as necessary, this was being introduced by Amey to their own staff.

(29) Dean stated that Amey/KCC carry out rate reviews annually and looked at every single rate to assess cost reduction opportunities.

Question - In relation to the current contract is there one element that your company would showcase?

(30) Dean highlighted the HMC and Work Manager system used throughout the contract. It allowed the team to automatically plot each order on a county map. This in turn allows crew deployment to be optimised and public disruption to be minimised. It also allows more effective countywide planning of works.

(31) The Chairman thanked Dean for attending the meeting and for assisting the Committee with their work.

10. Interview with Sam Buckland, Audit Manager, KCC Internal Audit
(Item. 4)

(1) The Chairman thanked Ms Buckland for attending and those around the table introduced themselves.

(2) Ms Buckland summarised the key points in her written paper, which she had prepared in response to themes sent by the Research Officer, and had been published with the Committee's agenda. The paper summarised the key points which the County Council might face and would need to address around its commissioning and procurement, seen from her professional point of view as an

internal auditor. She explained that she had been involved in the new commissioning and procurement processes in the Adult Social Care and Education, Learning and Skills directorates and in her role on the Accommodation Solutions Group, giving audit support and advice in the role of a 'critical friend'.

Barriers for new providers – key points are, in traditional procurement, the need to evaluate information which supports tenders (financial papers and evidence of previous quality for new providers), and the challenges around achieving this. A change in public procurement requirements could simplify the credentials which those tendering for a contract need to produce – e.g. the introduction of a self-declaration stage - and only bidders who pass this stage successfully will be asked to submit documentary evidence. This extra stage allows the County Council to acquire sufficient information to avoid risk while reducing the barriers to tendering processes. If the County Council were to move to a less risk-averse approach, it would need to back this up with a robust performance monitoring and commissioning mechanism. New and small providers bidding for a contract may lack the experience of preparing tender documents, while large and established providers have more practise and expertise at doing this. The County Council could work with new or smaller and inexperienced companies to give them support with the preparation process. This could be a role for Members. Ms Buckland emphasised that this support would be unrelated to any specific tender processes, so would not give those bidders any unfair advantage over other bidders. The County Council needs to engage across the Kent community about training.

Provider performance – the establishment of new Strategic Sourcing and Procurement teams has had an improvement in setting performance requirements and measures. Performance monitoring and length of contract are interdependent. Shorter contracts have the advantage of a clear exit point, but limited time to help providers develop, and, for new providers, to demonstrate evidence. This also allows limited time for monitoring of performance in terms of outcomes, yet does not carry the risk of the County Council being tied-in over a long period to a provider who may not be performing well. Longer contracts may give time to generate and develop relationships and allow scope for longer-term monitoring – and will need robust mechanisms to support that monitoring - but have a longer lock-in period and associated risk if a contractor's performance is not of the required standard. Therefore, if taking this route, we need clear exit strategies. More Framework contracts and Dynamic Purchasing Systems give flexibility on whom we use, and we can add and take off providers. This allows the County Council to spread the risk across several providers. There needs to be focus on both outcomes and outputs, as relevant. When monitoring and reporting outcomes, it is important to be clear about what is being measured, and to set realistic and achievable targets. For example, when measuring performance in a smoking cessation campaign, a long-term aim would be a reduction in the number of deaths from smoking-related diseases (which would be very difficult to identify within a contract period of three years, for example), while a target which could realistically be measured within a three-year contract would be a number of people having successfully ceased smoking and managed to remain smoke-free for six months or twelve months, for example.

Responsibilities in the Social Value Act – the County Council will need to identify 1) the Social Value requirements of its services and define what it is trying to achieve by contracting, 2) whether or not commissioning a certain service is the

best way of achieving that aim, and 3) how/what it intends to build into its contracting process to take account of its responsibilities under the Social Value Act and the need to evaluate its effectiveness in meeting these responsibilities. The County Council will need to reconcile its new responsibilities, the requirements of procurement legislation and the need to seek best value for public money. The new Public Procurement Directive will help with this. There is a need for flexibility around Social Value – it is about the value of spend of £1 – and what else the County Council may get for that sum.

(3) Ms Buckland then responded to questions from the Select Committee, as follows:-

If there were a provider wishing to tender which you suspected of having poor financial practice, but who was otherwise good, do you have scope to address any doubts or problems before proceeding with their tender?

(4) Yes, we have scope to build into any contract that we give them a requirement that they agree to financial monitoring, which would give the County Council some protection against a provider's poor financial management. The County Council also has the opportunity to work with a provider who is in difficulty, with the aim of helping them deliver their contractual obligations. However, for example, if the County Council were contracting with a provider who also ran private care homes, the County Council would have no automatic right of entry to a private care home to check on conditions or practice, but could set up a system of checks through the terms and conditions of contracts, including a right to audit, to see if any problems present at the home were down to financial or operational issues.

What capacity does the Internal Audit team have to monitor performance on contracts? There are many contracts but a finite number of Internal Audit staff. If performance on a contract were poor, what would be Internal Audit's role in addressing this?

(5) Internal Audit does not have a role in monitoring individual contracts; we have an auditing role and can comment on the contracting process and give assurance on performance management and whether or not processes are in place and how well they work. The Directorate colleagues who commission the contract will have the role of monitoring it. For example, in the case of a care home provider, the monitoring role would be taken by Mark Lobban, Director of Strategic Commissioning for Adult Social Care, and if we find weaknesses in the process through the audit we would pass these back to Mark, who can take them up with the provider. We can look at a sample of contracts to assess the process.

It seems that it's hard to define the requirements of the Social Value Act in contracts in a way in which the public will understand it.

Can you give more information on a role that elected Members could have in this process?

(6) Members are well placed to interact and engage with the voluntary sector and other organisations. This engagement would not conflict with the contract process as Members can be impartial.

If the County Council were to enter a long-term contract, how easy is it, and what mechanism is there to change requirements part-way through, to meet new Council or public requirements?

(7) There is a risk in changing objectives part-way through a long-term contract. We would need to work collaboratively to address any issue.

(8) Part of a change in thinking around contracts is a move towards regional or framework contracts and dynamic purchasing systems which allow smaller providers to take part. These mechanisms are very good at allowing 'call off' to several smaller providers. It's about providing elements of service. The County Council could look at services or at geographical areas. As small providers may not manage a whole service, the County Council could look at smaller lots.

When the County Council contracts with EU companies and sets out terms and conditions, it includes stipulations around health and safety, but EU Health and Safety laws do not take account of UK Health and Safety laws. How can the County Council ensure that an EU company will comply with these?

(9) The County Council would build it into the contract conditions and the monitoring process. The same rules would apply to any company with which it contracted, and, as the contractor, they would need to comply with the County Council's conditions. Older contracts would need to be adjusted to take account of changes in health and safety laws. Robust monitoring is key, and the only way to pull out of a contract would be to have evidence, via monitoring, of a provider's poor performance.

In terms of robust monitoring and performance management, does the County Council have the capacity to react if poor results are shown up via monitoring?

(10) That is difficult to answer as it is difficult to judge capacity. For example, when looking at re-letting residential care contracts, each home would ideally be visited once a year by the Commissioning Team. However, there are large numbers of homes to visit, and this could mean more than 500 visits, and there is a risk that a visit will not be able to go into sufficient detail at every home to be really useful. Hence, capacity is something which needs to be considered as the County Council moves towards being a commissioning authority and monitoring becomes more important. It is important to be clear about what is being monitored, when and how. I believe that care homes should have face-to-face visits.

Do external auditors get involved in what you do?

(11) External auditors do not get involved in the detailed work around procurement and commissioning. Their role is to audit the County Council's accounts and assess financial resilience.

The human relationship between the commissioner and the provider is vitally important to working well together. How can this link be incorporated into the commissioning and procurement system so human relationships can contribute to the process?

(12) The commissioner/provider relationship is important to make things work well. I agree that good working relationships can minimise the risk of getting to the stage at which a contracting relationship has broken down and independent intervention and mediation is needed. I don't know how this element could be built into a contract, unless, instead of calling something just a 'contract', we start describing a contract document as 'an agreement to work together to deliver services...' or something similar, and have a mechanism by which feedback can be channelled both ways between parties.

This would need a culture change and a change of mindset. Could Members be mediators, if these are needed?

(13) A group of Members could take an objective view, which could be useful, but Members would need training to take on this role. As the County Council moves towards becoming a commissioning authority it will need people with contract management skills.

So could there be a group of lay Members with some technical support which could have a role to play?

(14) Yes. A group of Members with legal advice and support could have an advisory capacity, but there also needs to be a process by which an issue can be escalated if the Member advisory group is unable to deal with it.

I think the role of Internal Audit as a 'critical friend' is good. The County Council seeks to encourage more small and medium-sized enterprises (SMEs) to take part in its tendering processes but this brings with it a greater risk (financially, and to the reputation of the County Council), even with the monitoring systems you have described. Perhaps a role for the Member Group which has been suggested would be to try to offset this risk. It could be useful to have an objective Member group with, for example, audit/procurement/legal advice as relevant. This group could possibly have a role in oversight of social value.

How much value will the or should the County Council put on the requirements of the Social Value Act, and how does this fit with Bold Steps? As Members, we all care about our local communities, so is there another role for Members, to do with Social Value?

(15) In my view, the Member group feeds into the process and has value, but needs to be clear how it fits into the process and who makes the 'final call'. The key question is 'does this achieve what we want for Kent?' Members have a scrutiny function to see what the County Council achieves for the people of Kent.

Could a Member group have input into the specification stage of the process?

(16) Yes, Member input on the Social Value element could be built into that stage. Members' input will depend on what role they choose to have, on which contracts (dependent on size), and what proportion of contracts the group wants to examine (it is unlikely that it will have capacity to look at all contracts) and how it will select which contracts it will look at. Bold Steps alone does not include sufficient detail to guide this role.

Could the Member group have a role as mediators?

(17) No, Members would have a 'critical friend' role, looking at how Social Value can be added, to meet the needs of the people of Kent.

There are two areas of responsibility when letting contracts; for delivery of the service, which the County Council passes to the contractor as part of the contract, and the overall accountability for the services, which the Council retains.

(18) This depends on the relationship between the host organisation and the key contractor. The host organisation will make the usual checks, including asking for three years' accounts, before a potential contractor gets through the initial filter process and is interviewed. The host and the contractor would need to agree a joint monitoring mechanism to be used and build this into the contract. Good working relationships between the host and the contractor are important, especially in areas such as social care, as this benefits both parties. If it is agreed between the two that they will evaluate performance jointly, as part of the contract agreement, there could be a role for Members. (19) There is a need to change the present culture, as currently there is a need to develop better monitoring and scrutiny of a contract once it is set up, and this practice needs to be established. While the culture is changing, people will need guidance and support to achieve sensible contract management.

Can you suggest any ways in which the County Council can improve its commissioning and procurement practice?

(20) The County Council needs to understand clearly that, when it contracts with an external body, it still retains overall accountability for the service being contracted. It can't transfer risk to the contractor, and must ensure that it does not become complacent. There is a potential lack of understanding in the County Council about contract monitoring and the need for training and guidance. For example, for a new contract/provider, if performance data is based only on complete years, there may not be sufficient data to monitor performance until 18 months into the contract (as year one would set a baseline, year two would monitor year three anticipate re-tendering) and by the time two years' data is available to monitor it is too late to find out that a three-year contract is not progressing well. Hence, it is very important to understand outputs and measures. If performance measures are set which cannot be assessed, then intelligent monitoring will not be possible. Performance measures and set outcomes need to be meaningful and measure the quality of performance.

Could performance be monitored from day one of a contract?

(21) Performance needs to be measurable in a meaningful way, and target setting needs to be intelligent. If the County Council cannot measure performance, it cannot hold the contractor accountable. If the County Council seeks to be less risk-averse, it will need to work with providers more flexibly. The County Council needs to consider who should monitor, and if monitoring can be done differently.

What you have told us shows that Internal Audit is a very powerful tool. Has attending the Select Committee today stirred you to think differently about how you work?

(22) Yes, it has been a very interesting conversation, and has made me think about what we do and how we do it.

(23) The Chairman thanked Ms Buckland for attending and added that any further thoughts she wished to add could be sent direct to the Research Officers.