

Report of the Scrutiny Task and Finish Group on Procurement and Contract Management

September 2016

Chairman's Foreword

In recent years there has been a sea-change in the way Suffolk County Council provides services to its residents. Nowadays nearly 70% of the Council's revenue budget, excluding schools, is spent on external contracts – equating to approximately £475m. This sum includes contracts for services from former "in-house" services which are either wholly owned or fully divested from Council control. The Council currently has around 2020 contracts with over 1200 suppliers, ranging from highways through to care, from waste treatment through to buildings maintenance.

This means that effective and efficient procurement and contract management is becoming increasingly important for the County Council. Indeed, it is essential in securing good quality and value for money services for our local residents, and in protecting the Council from financial and reputational risk.

As a greater proportion of the budget is spent on contracted services, so the scope for the Council to make savings also increasingly depends upon how well contracts are managed.

In February 2016, the Council's Scrutiny Committee conducted a review of procurement and contract management. As result of the review the Committee tasked a small group of councillors to investigate a range of specific issues in greater depth. Our investigation took place between May and July 2016.

The terms of reference, findings and conclusions from our review are set out in the report below, along with our recommendations. A summary of the recommendations is also included at the end of the report for ease of reference.

As Chairman of the Group, I would like to thank my fellow members of the Task and Finish Group for their thorough and focused approach to undertaking this investigation, all those who have contributed their time to provide evidence and especially our clerk, Theresa Harden, who has made an excellent job of pulling together the evidence and our conclusions and recommendations.

We are clear that we have further investigations to make into this complex and critical area of the Council's operations including, for example, looking in depth at the training the authority provides to our officers who manage contracts as well as the role and remit of our legal services team in contract negotiation.

Our recommendations seek to enhance the Council's approach to procurement and contract management for the future and we hope those to whom the recommendations are made will give them due consideration

County Councillor Mary Evans
Chairman of the Scrutiny Task and Finish Group

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Background

1. Approximately 69% of the Council's revenue budget, excluding schools, is spent on external contracts – equating to approximately £475m. This figure includes contracts for services from former “in-house” services which are either wholly owned or fully divested from Council control. At the time of writing, the Council's contract management system shows the Council has 3,306 contracts with 1,903 suppliers and 433 grants, awarded to 215 organisations (47 of which hold grants and contracts).
2. The County Council's Scrutiny Committee considered the Council's arrangements for procurement and contract management on 23 July 2014, 11 February 2015 and 10 February 2016. Scrutiny Committee and Audit Committee have also looked at the delivery of individual contracts, on a number of occasions, including with Care UK, Suffolk Libraries IPS Ltd, Concertus and Suffolk Highways.

Terms of Reference

3. The terms of reference of the Scrutiny Task and Finish Group were defined by the Scrutiny Committee on 10 February 2016 and are set out below:-
 - a) to establish in what circumstances alternative methods could be used instead of undertaking a procurement process such as grant funding and service level agreements and if there is merit in adopting this model for some types of activity;
 - b) to establish what reasonable steps might be taken during the procurement process to promote active engagement of local organisations in the Council's supply chain;
 - c) to examine the current arrangements for accountability and transparency of the Council's contracting and procurement activity and how this compares with best practice elsewhere in the public sector;
 - d) to consider whether the current level of councillor involvement in procurement and contracting activity and with the Contract Management Board is appropriate;
 - e) to explore the arrangements for developing and embedding commercial expertise within the Council's contracting staff;
 - f) to report the findings and recommendations of the investigation to Scrutiny Committee and to Cabinet.

Membership

4. The members of the Task and Finish Group were Councillors Mary Evans, Jessica Fleming and Len Jacklin.

Approach

5. The Group was established on a task and finish basis, and the review ran from May to July 2016. Evidence was received over the course of two full day meetings held on 23 May 2016 and 15 July 2016. The Group met again on 26 July 2016 to further explore the evidence it had received over the course of the review and to develop its recommendations.

Evidence Received

6. By presentation of a case study, the Group explored the County Council's commissioning and procurement process from the start to full mobilisation of a contract. The case study chosen was one of four recent significant procurements undertaken by Public Health (PH) and involved the re-procurement of an existing service previously commissioned by the NHS.

The Group also received a case study looking at the development of a procurement strategy for the Ipswich Wet-Dock Crossing and the third crossing for Lowestoft projects.

7. In working through its terms of reference, the Group received evidence which led it to make additional recommendations which are set out in the second half of the findings section of the report.
8. Details of the written evidence considered by the Group and supporting information can be found at the end of the report.
9. The Group received verbal evidence from:
 - Councillor Richard Smith, Cabinet Member for Finance and Heritage
 - Aidan Dunn, Assistant Director, Resource Management
 - Richard Hall, Head of Procurement Policy and Enablement, Resource Management
 - Jo Avery, Contract Management Specialist, Public Health
 - Dr Caroline Angus, Senior Public Health Commissioner for the Healthy Lifestyles Project
 - Stephen Watt, Strategic Partnerships Lead, Localities and Partnerships
 - Kate Dyll, Consultant, Adult and Community Services
 - Sue Cook, Corporate Director – Children and Adult Services
 - Brian Foster, Senior Buyer, Resource Management
 - Dave Watson, Transport Strategy Manager, Resource Management
 - Sue Lowe, Senior Policy Adviser, Cabinet Office
 - Steven Reason, Business Representative

Findings and Recommendations under the terms of reference

10. In respect of its Terms of reference, the findings and recommendations of the Group were as follows.

In what circumstances can alternative methods to a procurement process be used, such as grant funding and service level agreements?

11. The Group received a copy of internal guidance, “Grants v. Procurement – A risk based approach to complying with procurement regulations”, developed by the Procurement and Legal team to assist managers in deciding when grant funding may be appropriate, as opposed to undertaking procurement in compliance with the Public Contracts Regulations 2015. The Group heard there are often circumstances where either procurement or a grant may be used and managers used judgement about whether, if allowable under guidance, grant funding was the best funding option.
12. The Group noted that grant funding could not be awarded to private organisations, or where a supplier intended to invoice the Council and charge Value Added Tax (VAT), as this was considered to be a supply of service. Grant funding was most commonly used for services provided by the voluntary and community sector and the Adult and Community Services/Children and Young People’s Services directorate tended to manage a large number of, often, quite small grants, which was labour intensive.
13. The Group wished to understand how grants were managed and monitored, and received evidence from Stephen Watt, Strategic Partnerships Lead, about arrangements for managing a partnership grant (£400k over 5 years). In terms of the grant v procurement decision, Mr Watt reported the Council could have decided to go out to tender instead of award a grant. However, going out to tender may have resulted in a number of small local voluntary sector organisations losing out to a larger provider from outside the county. The grant offer had incentivised agreement for 10 local voluntary sector organisations to merge, providing them with greater stability and sustainability.

14. The Group received a copy of the partnership grant agreement for Community Action Suffolk (CAS), which allocated “grant-in-aid” towards the delivery of joint priorities. “Outputs” and “outcomes” were set out in the agreement to identify a minimum standard of delivery expected in return for continued financial support. Quarterly meetings took place to monitor impact achieved against five key outcomes and funding could be clawed back if the agreement did not deliver.
15. The Group received a copy of the CAS Impact Report for Quarter 3, used to evaluate performance. Councillor involvement in monitoring the grant had been at Cabinet Member level and annual accounts were also provided.
16. The Group noted the SCC grant was only one of the funding streams the organisation received, and the outcomes required by SCC were only part of wider work undertaken. This meant it was not possible to tell from the impact report how much of the SCC grant was spent on each outcome, or to evaluate whether this presented value for money when compared to alternative methods of delivery.
17. The Procurement Team were working across the Council to identify all grants over £5k, to ensure that appropriate arrangements were in place for monitoring the performance of these. It was noted that third sector organisations often received grants originating from SCC, as well as from District and Borough councils, and there was currently little co-ordination of grant funding between local authorities. It was also noted that some organisations receiving grants had very similar, or overlapping, objectives (such as Community Action Suffolk, Suffolk Association of Local Councils, Suffolk Community Foundation) and that these organisations were looking at ways to work more effectively together.
18. The Group considered there was benefit in local voluntary and community sector organisations becoming better able to evidence outcomes, in order to become more sustainable and that there was a role for the Council in supporting them to do this.
19. The passion and commitment of local voluntary and community sector organisations was noted to be of great value.

Recommendation 1: To recommend to the Cabinet Member for Broadband, Rural Issues and Localities that, in awarding grant funding:-

- i) outcomes need to be measurable and able to demonstrate that the grant is providing value for money when compared with alternative methods of delivery;**
- ii) consideration should be given to paying grants in instalments, based on performance.**

What reasonable steps might be taken during the procurement process to promote active engagement of local organisations in the Council’s supply chain

20. Pre-procurement engagement with the market (including talking to potential suppliers) is not prohibited by EU procurement law, nor is it restricted, provided that it does not prevent an effective competition taking place once the procurement process has started. Engaging with the market before starting the formal procurement process is increasingly seen as best practice which helps to maximise value for money.
21. In the case study presented by Public Health (PH), the Group heard that, for procurement of a service, the commissioner did not usually dictate the model of service delivery, as this could restrict the ability of bidders to determine the most effective way of achieving the required outcomes. Public Health commissioners explained, for the Healthy Lifestyles contract, networking events had been held at the beginning of the commissioning process to help form relationships with, and between, potential providers. Commissioners reported this being valuable in promoting honest dialogue and improving understanding on both sides.

22. Benefits which can result from pre-procurement engagement, include:

- helping to manage the market – through stimulating increased competition which can reduce the dependency on a limited number of suppliers.
- helping to define the requirement – by informing the business case and helping to identify or develop the requirements of what is needed.
- helping to provide a better understanding of the feasibility of the requirement, the best approach, the capacity of the market to deliver and possible risks involved.
- reducing procurement timescales – by minimising the dialogue needed during the formal procurement process.
- minimising the need for using complex and costly procedures such as Competitive Dialogue.
- encouraging a more responsive market – by giving the market sufficient time to prepare to meet demand e.g. by ensuring the right skills and resources are in place.
- providing the market with an opportunity to ask questions/raise queries and any issues addressed at an early stage.

Competitive Dialogue

23. “Competitive dialogue” is a public-sector tendering option that allows bidders to develop alternative proposals in response to a client’s outline requirements. Only when their proposals are developed to sufficient detail are tenderers invited to submit competitive bids. The process is primarily used to increase value by encouraging innovation and to maintain competitive pressure in bidding for large and complex procurements.
24. The Group heard from the case study that undertaking a competitive dialogue process could be lengthy. Public Health had therefore adopted a ‘lean’ process. The commissioners had developed their own templates to underpin this, working with examples from Norfolk County Council and with support from the County Council’s legal team. *(Norfolk County Council had recently delivered complex procurement projects through “lean” competitive dialogue which resulted in savings of 17% on a £480m highways works procurement and 22% on a highways professional services procurement, whilst also delivering the projects in around 45% of the average UK time).*
25. The PH commissioners reported this process had provided an opportunity to test and develop confidence in what was on offer and to “stretch” the potential providers. Feedback from providers had suggested that, from their perspective, the process had been resource intensive but valuable in providing an opportunity to drill down to what was needed from the contract. The Group noted the cost of the intensive work demanded by the procurement process would be recouped within the contract eventually, and there was therefore a question of balance and value for money with this approach.
26. Three providers had been taken to the “detailed solution” stage. Commissioners had then undertaken visits to see how their existing services were being delivered. This stage was not evaluated but was reported by the commissioner to be very useful for illustrative purposes, in order to better understand what was being referred to/discussed within the formal process.

Recommendation 2: To recommend to the Contracts Management Board that, where permitted by the Public Contracts Regulations, greater use should be made of procurement processes which permit dialogue throughout the tender process, balanced with the consideration of avoiding added cost to the contract due to the demands of the process.

Engagement of sub-contractors

27. In the PH case study, the commissioner had asked the principal contractor how they would work with sub-contractors. Potential sub-contractors were also invited to take part in the pre-procurement engagement events. The Group heard that commissioners could not give preference to Suffolk based organisations, but could ask a principal contractor to actively search/engage local businesses for sub-contract work. There were also opportunities to encourage local firms to get involved in the Council's supply chain through, for example, holding events aimed at raising awareness of opportunities and developing skills to bid for contracts.

Accountability and transparency of the Council's contracting and procurement activity and Councillor involvement in the process

28. The Scrutiny Committee (10 February 2016) heard it was difficult for those not directly involved in the procurement and contract monitoring process to understand fully whether a contract was producing the desired outcomes, particularly when some of the information was held by the service provider and/or was subject to commercial confidentiality. The Committee asked the Group to consider how the accountability and transparency of the Council's contract management arrangements could be improved, whilst continuing to protect commercial interests.
29. The Committee had been informed there was currently no councillor representation on the Contract Management Board (CMB) and that, after previous scrutiny where it was recommended that an external non-executive from the private sector be appointed, no formal appointment had been possible. The Contract Management Board was primarily a forum for officers to share experience and learning, rather than a decision-making body. Minutes of the 23 July 2014 Scrutiny Committee meeting note that the role of the CMB is to be the "focal point for the Council's commercial activity, disseminating good practice ... across the County with the ability to hold officers to account". The Group considered there was an argument that the make-up of the CMB should not be limited to Council officers.
30. Members heard that political accountability for delivery of services lay with the relevant Cabinet Member/s, although there were stages in the tendering process when they were not involved in the discussions. There was also councillor oversight of the Council's contracts through Audit and Scrutiny.
31. The Group heard that, in the PH case study, the Cabinet Member for Health had been briefed throughout the process and was involved towards contract award, in the context of being briefed about the local organisations who had been unsuccessful. There had been no political involvement in the evaluation of bids.
32. The Group received evidence from other Councils regarding arrangements for councillor involvement in commissioning, including Norfolk County Council, Calderdale Council (Scrutiny Panel) and the London Borough of Richmond. The Group noted recommendations of the Calderdale Council Scrutiny Panel which acknowledged many contracts, despite having a high value, were relatively routine. The Panel had recommended a scoring system to identify which contracts, due to reputation risk, complexity and/or value, should receive a greater level of councillor involvement. The Group also noted that, whilst councillors in other authorities were involved at various stages of the commissioning process, the early stage – identifying need – was often overlooked and this represented a missed opportunity.
33. The Group considered there was an opportunity for a greater level of councillor involvement in the wider commissioning process, for example, in oversight of contractor performance, but acknowledged this would need to be a balanced approach to avoid the process becoming unwieldy, as suggested in the Calderdale example above.

34. Cllr Fleming reported that her involvement with the Rural Transport contract had been useful in that spending time with officers on the ground had enabled her to develop an understanding of contract delivery as a practical issue. The Group considered the political role could be of particular value in providing insight into how things were working “in the round” through developing an understanding of the perspective of the commissioner, the provider/s and the end users of services.
35. The Group considered a greater level of councillor involvement could help to provide improved accountability and reassurance that the service users views would be heard. The Group heard from Sue Cook, Corporate Director for Children and Adults, about the role of the Suffolk School Improvement Accountability Board, which met monthly to review the performance of the Raising the Bar Programme and provided a forum to hold officers to account for its successful implementation. The Group considered this would provide a good model for similar arrangements to provide oversight of Procurement and Contract Management.

Recommendation 3: To ask the Corporate Management Team to establish a Contracts Accountability Board to examine significant commissioning, procurement and contract management activity with a remit of holding County Council Officers to account and using as its model, the ‘School Improvement Accountability Board’.

Arrangements for developing and embedding commercial expertise within the Council’s contracting staff

36. The Group heard observations from Kate Dyll, a consultant engaged to work within Adult and Community Services (ACS) with a remit of developing and embedding commercial expertise within the Directorate. Ms Dyll had experience of working across sectors and had been involved in developing legislation to protect the public sector taking on large contracts in South Africa.
37. The Group heard that, in general and for historical reasons, the public sector was not well equipped to engage in commercial activity and often systems were not set up to enable this to be done well.
38. The Group received a report by the National Audit Office (NAO) (September 2014), “Transforming Government’s Contract Management”, which highlighted widespread problems in administering government contracts, including issues of poor governance, record keeping and capacity issues. The Group considered this report reflected a number of concerns which had been identified through previous scrutiny and therefore provided invaluable insight and recommendations which could benefit the County Council.

Recommendation 4: That the Contracts Management Board should consider the findings of the NAO report and how the learning from this could be used to inform improvements in contract management within the Council.

39. The Group heard there were £217m of contracts in ACS, equating to 64% of the Council’s spend. ACS contracted with over 2000 providers, and therefore required significant contract management capacity. The NAO suggested 2% of contract spend should be allocated to contract management in order to ensure best value from contracts was achieved. This would equate to a spend in excess of £4m for ACS. The Group heard the current spend was a fraction of this, although some additional funding had recently been allocated. Work was taking place within ACS on how the additional funds should be used and a costed model developed. Systems were being revised to provide greater financial visibility and work was also taking place to identify the top spends and risk assess contracts.

40. The Group heard there was a need for contractual under performance to be tackled at the earliest stage. In order to achieve this, contractual performance indicators needed to be strong and contract managers should not have to rely upon data supplied by contractors. There also was a need for contract managers to be supported at a political and managerial level in order to challenge poor performance. Ms Dyall expressed a view that a lack of challenge was a common cultural issue within the public sector, as staff often did not feel empowered, and private sector providers were aware of this. There was therefore a need for full visibility of data, sound commercial expertise, and supported/empowered staff to ensure that savings were identified, services were providing value for money and to avoid potential financial and reputational costs to the council.

Recommendation 5: To recommend to Cabinet and the Corporate Management Team that:

- i) in light of the Council's increasing spend on contracted services, consideration should be given to whether the current level of funding for procurement and contract management activity is adequate to undertake increasingly complex, commercial negotiations, given that it is below the NAO recommendation of 2%.**
- ii) the central Procurement and Contracting resource should be strengthened with personnel who have a proven track record of commercial expertise which can be called upon to support and advise Directorates undertaking significantly high value, high risk or complex contracts.**

Recommendation 6: To recommend to Directors that all staff within their service who are involved in contract management should be empowered, trained and supported to challenge provider underperformance.

41. The Group heard it was imperative that contract documentation was robust to in order to withstand challenge. Where it was evident a provider was not performing, the contract needed to be strong to ensure the Council was protected. There was therefore a choice to be made between investing in commercial legal expertise to ensure the contact was right (as a large provider would do), or saving money on legal expenses at the outset, which may not protect the Council's best financial interest over the life of the contract. The Group discussed the involvement of the County Council's legal department in the drafting of contracts and considered that further information would be useful to fully understand the relationship between Directorates and the legal function in undertaking this work.

Recommendation 7: To recommend to Scrutiny Committee that further work should be undertaken to evaluate the role of the County Council's legal support structure (both in-house and externally procured) in relation to procurement and contracting.

Recommendation 8: That the Contracts Management Board should take steps to ensure that the consequences of underperformance and associated penalty provisions are clearly written into contracts.

Corporate Training and Development

42. The Group received a written report outlining the work taking place corporately to upskill the workforce with a remit of contract management.
43. Corporately, knowledge of contract management varied extensively, from those who had specific skills in this area and whose sole responsibility was to manage contracts, to those for whom management of a contract was an added responsibility which they had inherited, for example, following staff re-organisation or redeployment.
44. Information and training on contract management was now held in one place on the Council's Learning and Development website. The site had the overarching theme of commercialism and would include information and training on commissioning, procurement

and contract management. The development of the site was being given priority and would contain a range of information and e-learning activities. Additional links were being added to support the contract manager with soft skills such as negotiating and influencing, building relationships and handling difficult conversations. This was still work in development.

45. A face to face course on basics of contract management had been developed and five sessions had been delivered with 43 contract managers having attended. Feedback from the course had been positive and every attendee had left with an action plan relating to the contracts they were managing. A further 4 sessions were planned for July offering a further 48 places.
46. An advanced contract management face to face course was in the design process, with the chosen supplier coming highly recommended by the Chartered Institute of Purchasing and Supply as one of their core professional training providers. The next design meeting was scheduled for 28 July and it was aimed to offer courses by early September. The course would take place over 2 days with candidates expected to do some preparatory work before and/or during the course.
47. The key risk identified was there appeared to be a lack of enthusiasm within the contract management population to attend the sessions on offer. For the first round of basic contract management courses, of the 72 places on offer only 43 were filled, and the next planned session looked likely to be cancelled due to low take up. To mitigate this, members of the Contract Management Board were being asked to use influence within their own service areas and e-mails were being sent direct to contract managers from the Director of Resource Management to encourage attendance.

Recommendation 9: Directorate Management Teams should identify which staff within their service area are involved in contract management, ensure they receive the necessary training and resources to undertake this role, performance manage staff to ensure continuous improvement to contract management processes and outcomes and identify further training and development needs as necessary.

48. The Group heard through the PH case study about the complexities and risks involved in the mobilisation of a new contract and noted the significant lead in time which needed to be built into the planning stage for any new contract. Mobilisation considerations included TUPE and redundancy costs, potential issues relating to staff morale/turnover due to uncertainty/change, recruitment issues, finding suitable premises, confidentiality and data transfer issues, communications and branding, induction for new staff, practical issues such as will the technology work on day 1, and managing the expectations of stakeholders. The Group noted the significant implications these issues could have for lead-in time and planning.

Recommendation 10: To recommend to the Assistant Director (Resource Management) that:

- i) **the training for contract managers should include the issues and risks involved in contract mobilisation and techniques for ensuring these risks are planned for and managed;**
- ii) **members of the Task and Finish Group should be invited to take part in the contract management training opportunities on offer and provide feedback/observations.**

Further Findings and Recommendations

49. In addition to its terms of reference, over the course of the review, the Group heard evidence which lead it to make the following additional recommendations:

Social Value

50. The Group received evidence from Sue Lowe, Senior Policy Adviser from the Cabinet Office about how public services were responding to the Public Services (Social Value) Act 2012, which requires commissioners to think at an early stage about what they are going to procure and how social value might extend from this.
51. The Group noted that the Social Value Act (2012) gives some degree of legitimacy for giving preference to local suppliers within relevant contracts (services < the threshold value, currently Euro 200,000).
52. A recent review by Lord Young had found that nationally awareness and take-up of the Act was a mixed picture; there was a varying understanding of how it should be applied and inconsistency of practice, particularly around:-
 - a) knowing how to define social value (ie, the economic, social and environmental well-being of the relevant area) and how and when to include it during the procurement process;
 - b) applying social value within a legal framework and procurement rules;
 - c) a need to clarify its use in pre-procurement.
53. The Group heard the question of how social value can be created from a procurement exercise should be considered at the start of the commissioning process, by determining what the public wants and their experience, rather than building social value considerations into the scoring process. It was suggested that social value should not be considered in isolation but in the context of other opportunities for social investment and capacity building. There was a need to better understand how the impact/outcomes from work to create social value could be demonstrated and measured.
54. The Group received a number of examples of good practice including:
 - a) The Association of Greater Manchester Authorities – where work took place with partners to develop a social value policy including a standard definition of social value; practical advice and suggestions on how social value outcomes could be incorporated into procurement approaches; an e-learning module to ensure the concept of social value was consistent for all commissioners and a growing body of case studies;
 - b) Halton Borough Council – which consistently considers social value in decisions and has implemented a social value policy, framework and charter, going far beyond the requirements of the Social Value Act for every procurement opportunity above £1,000.
 - c) Durham County Council – which had invested in understanding their region’s priorities and how their own social value procurement could help to achieve these priorities. Their commitment to social value extends beyond the requirements of the Social Value Act to include goods and works, as well as services, and formally considers social value in all procurement opportunities over £50,000.
 - d) Liverpool City Council - has set social value as a priority from mayoral level down. They have developed governance processes, including a Fair City Framework, that embed social value throughout the procurement and commissioning cycle from pre-procurement to contract management. A particular focus is capturing social value across the whole organisation, including frontline services, and working with the supply chain to help them understand how they can support the council’s social value objectives.
55. The Group noted that initial research had indicated the principles of social value had, on the whole, achieved greater traction at a District or Borough Council level than with County Councils. However, at the time of the evidence being received, none of Suffolk’s District or Borough Councils had published a separate social value policy.

Recommendation 11: To recommend to Cabinet that the County Council should develop a simple, but robust, social value policy which demonstrates how the County Council will consider the economic, social and environmental benefits deriving from its contracting programmes as required by the Social Value Act (2012), using best practice examples from elsewhere.

Recommendation 12: To recommend to the Corporate Management Team that, in an environment of reducing public sector resources, consideration of social value should be encouraged as part of the culture and ethos of the County Council.

Views from the business sector

56. The Group sought views from the business sector about the experience of contracting with the County Council. Two representatives of the business sector were invited to give views to the Group, only one of which attended. The business representative who the Group spoke with had been involved in bidding for contracts with the County Council over a number of years, and the company had been on the first and second framework for schools building work. In 2015 the company had bid to be on the third framework and were shortlisted but had been unsuccessful.
57. The Group heard the company was a novice in bidding for public sector work when making the first bid, and had employed guidance to help them through the process. For the first framework contractors would not lose money on the jobs undertaken and the Council expected the very best in service and initiative. At the time of the second framework the country was moving into recession and the framework had been revised. The bidders went through a Pre-Qualification Questionnaire (PQQ) exercise to assess the organisation's commercial, technical and financial competencies. They were then invited to tender on a competitive "overhead and profit" basis, which was capped. Successful contractors were banded, with four in each band, and had to compete within the band for jobs. This was reported to work well and was under market conditions, but had moved away from what was considered to be a partnership approach in the first framework.
58. The process for the third framework was similar to the second but six contractors were placed in a band. This was considered by the contractors to be less attractive, as there was greater competition for jobs within the band. The exercise to get onto the framework was reported to be expensive and lengthy for the contractor and was estimated to cost around £20k, before the company even got onto the framework. This was highlighted as representing a significant cost to the construction industry as a whole.
59. In competing to get onto the third framework, the company had reviewed its profit and overhead percentages and put in a bid which was considered to be reasonable and competitive, but would ensure reimbursement of costs. A lower bid could have been made which would have been more competitive and may have achieved success in getting onto the framework, but in practice, if the open market was providing a higher rate there would be little incentive to bid for jobs once on the framework. The Group noted the potential flaw in this process in that it provided an opportunity for bidders to put in a low rate for overhead/profit to get onto the framework and then cover any shortfall by charging individual jobs at rates which compensated for this.
60. The bidding process itself was electronic and was reported to be clear, transparent and professional. Contractor days were held which explained how to approach the process and the likely work which would be available. Feedback was provided to unsuccessful bidders, which had included their scores.
61. The Group heard the system in Essex was considered, in some respects, to be ahead of Suffolk in how it was organised. In Suffolk, the contractor was provided with a designed package which they would then price for. This meant by the time the contractor was

appointed, the planning stage was complete so if the contractor needed to change something it may have to go back to the planning system, which could lengthen timescales. In Essex the contractor was given the option as to how to build, which provided greater flexibility to keep costs and timescales down. The Group considered there was a benefit in having the contractors input at the design stage, to provide a practical approach (for example, a current knowledge of the costs and availability of materials).

Recommendation 13: To recommend to the Scrutiny Committee that it should seek further information to establish the effectiveness of the schools building framework and whether there are opportunities to improve this programme by providing for early/design stage contractor engagement.

Development of a Procurement Strategy – Case Study - Ipswich Wet Dock and Third Crossing, Lowestoft)

62. In order to understand issues relating to the development of a procurement strategy the Group heard evidence from Brian Foster and Dave Watson about early thinking taking place to develop a procurement strategy for the forthcoming procurement of projects in Lowestoft and Ipswich. These projects were considered to be high profile, expensive and complicated.
63. The Department for Transport had committed 80% of the funding for the projects (available until March 2021), subject to a final business case. The Group heard there was a risk in terms of committing the funds within the timescale, which was tight, and that the projects were large in terms of what the Council had done before. The initial business case had been developed based on costs and benefits, but a construction price would need to be obtained through the procurement process and the business case would then need to be remodelled in light of this.
64. Design work would be needed in advance of the submission and require detailed information including what the bridges would look like, how they would operate and environmental considerations. The procurement would therefore have an element of early design work completed but still leave an opportunity to work with the successful contractor once appointed. Ground investigation works and traffic modelling were currently being ordered as required through the existing Highways contract which included consultancy services.
65. The Group heard about further considerations for development of the strategy including consultation, early market engagement, choosing a framework and the type of contract, governance arrangements and stakeholder engagement.
66. The Group expressed concerns about the Government imposed timetable for these projects, and the implications this had for decision making and the Council's ability to commission the early investigation work.
67. In light of the significant scale of the projects, the Group also sought reassurance that robust accountability arrangements and commercial expertise would be in place to successfully see the project through from commissioning of design to delivery.

Recommendation 14: To recommend to Scrutiny Committee that it should add an item to its Forward Work Programme to consider how the Ipswich Wet Dock and Lowestoft Third Crossing Projects are being progressed.

Summary of Recommendations

To Cabinet

- that the County Council should develop a simple, but robust, social value policy which demonstrates how the County Council will consider the economic, social and environmental benefits deriving from its contracting programmes as required by the Social Value Act (2012), using best practice examples from elsewhere. (Rec 11).

To Cabinet and Corporate Management Team: (Rec 5)

- i) in light of the Council's increasing spend on contracted services, consideration should be given to whether the current level of funding for procurement and contract management activity is adequate to undertake increasingly complex, commercial negotiations, given that it is below the NAO recommendation of 2%.
- ii) the central Procurement and Contracting resource should be strengthened with personnel who have a proven track record of commercial expertise which can be called upon to support and advise Directorates undertaking significantly high value, high risk or complex contracts.

To the Cabinet Member for Broadband, Rural Issues and Localities (Rec 1):

That, in awarding grant funding:-

- i) outcomes need to be measurable and able to demonstrate that the grant is providing value for money when compared with alternative methods of delivery;
- ii) consideration should be given to paying grants in instalments, based on performance.

To Corporate Management Team:

- to establish a Contracts Accountability Board to examine significant commissioning, procurement and contract management activity with a remit of holding County Council Officers' to account and using as its model, the 'School Improvement Accountability Board (Rec 3);
- that, in an environment of reducing public sector resources, consideration of social value should be encouraged as part of the culture and ethos of the County Council (Rec 12).

To the Contracts Management Board:

- that, where permitted by the Public Contracts Regulations, greater use should be made of procurement processes which permit dialogue throughout the tender process, balanced with the consideration of avoiding added cost to the contract due to the demands of the process (Rec 2);
- that it should consider the findings of the NAO report and how the learning from this could be used to inform improvements in contract management within the Council (Rec 4);
- that it should take steps to ensure that the consequences of underperformance and associated penalty provisions are clearly written into contracts (Rec 8).

To Directors:

- that all staff within their service who are involved in contract management should be empowered, trained and supported to challenge provider underperformance (Rec 6);
- that Directorate Management Teams should identify which staff within their service area are involved in contract management, ensure they receive the necessary training and resources to undertake this role, performance manage staff to ensure continuous improvement to contract management processes and outcomes and identify further training and development needs as necessary (Rec 9).

To the Assistant Director (Resource Management) (Rec 10):

- i) that the training for contract managers should include the issues and risks involved in contract mobilisation and techniques for ensuring these risks are planned for and managed;
- ii) that members of the Task and Finish Group should be invited to take part in the contract management training opportunities on offer and provide feedback/observations.

To Scrutiny Committee:

- that further work should be undertaken to evaluate the role of the County Council's legal support structure (both in-house and externally procured) in relation to procurement and contracting (Rec 7)
- that it should seek further information to establish the effectiveness of the schools building framework and whether there are opportunities to improve this programme by providing for early/design stage contractor engagement (Rec 13)
- that it should add an item to its Forward Work Programme to consider how the Ipswich Wet Dock and Lowestoft Third Crossing Projects are being progressed (Rec 14)

Summary of written evidence received:

Briefing and case studies on the requirements of the Public Services (Social Value) Act 2012 Calderdale Council Use of Resources Scrutiny Panel (August 2010); Member Involvement in Procurement; Available from: <http://tinyurl.com/jqpzdpd>

Commissioning Academy (<https://www.gov.uk/government/news/cabinet-office-commissioning-academy-relaunched-by-social-enterprise>)

Contract Management Training Update – 15 July 2016

Grants v. procurement – a risk based approach to complying with procurement regulations

Local Government Association (July 2013); A councillors guide to procurement; Available from: <http://tinyurl.com/zfb4dpl>

London Borough of Richmond – presentation to Association of Democratic Services Officers – Scrutiny in a commissioning council; Available from: <http://www.adso.co.uk/wp-content/uploads/2013/10/Scrutiny-in-a-Commissioning-Council.pdf>

National Audit Office “Transforming Government’s Contract Management” (September 2014); Available from: <https://www.nao.org.uk/report/transforming-governments-contract-management-2/>

New Local Government Network (April 2016); “All Together Now” Available from: http://www.nlgn.org.uk/public/wp-content/uploads/All-Together-Now_-PDF-FINAL.pdf

Norfolk County Council (27.5.2014): Members Protocol for Contracts and Purchasing: Available from: <http://tinyurl.com/hrylbs2>

Social Value Act Review – February 2015; Available from: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/403748/Social_Value_Act_review_report_150212.pdf

The Public Services (Social Value) Act 2012: <http://www.legislation.gov.uk/ukpga/2012/3/enacted>

Working with the Voluntary and Community Sector (VCS); Available from: http://committeeminutes.suffolk.gov.uk/LoadDocument.aspx?rID=0900271181ceaa08&qry=c_committee%7e%7eScrutiny+Committee (see item 3)

Supporting Information

Audit Committee

Commissioning, Procurement and Contract Management – 31/1/2013 (General update on procurement and contract management arrangements)
http://committeeminutes.suffolk.gov.uk/LoadDocument.aspx?rID=0900271180b4a484&qry=c_committee%7e%7eAudit+Committee

Commissioning, Procurement and Contract Management – 23/7/2013 (covers the Care UK Outsourcing)
http://committeeminutes.suffolk.gov.uk/LoadDocument.aspx?rID=0900271180dc8ec0&qry=c_committee%7e%7eAudit+Committee

Suffolk Libraries – 18/3/2014
http://committeeminutes.suffolk.gov.uk/LoadDocument.aspx?rID=09002711811501ac&qry=c_committee%7e%7eAudit+Committee

Concertus – 20/5/2014
http://committeeminutes.suffolk.gov.uk/LoadDocument.aspx?rID=09002711812464b4&qry=c_committee%7e%7eAudit+Committee

Highways Services – 22/7/2014

http://committeeminutes.suffolk.gov.uk/LoadDocument.aspx?rID=09002711813404d2&qry=c_committee%7e%7eAudit+Committee

EFMS Divestment and Contract Management Arrangements – 29/1/2015

http://committeeminutes.suffolk.gov.uk/LoadDocument.aspx?rID=090027118163ecce&qry=c_committee%7e%7eAudit+Committee

Scrutiny Committee

Highways Contract – 7/5/2014

http://committeeminutes.suffolk.gov.uk/LoadDocument.aspx?rID=0900271181218f93&qry=c_committee%7e%7eScrutiny+Committee

Procurement and Contract Management – 23/7/2014

http://committeeminutes.suffolk.gov.uk/LoadDocument.aspx?rID=090027118134fdac&qry=c_committee%7e%7eScrutiny+Committee

Minutes of meeting of 23 July 2014; Available from:

http://committeeminutes.suffolk.gov.uk/LoadDocument.aspx?rID=090027118146fd8e&qry=c_committee%7e%7eScrutiny+Committee

Highways update – 12/3/2015

http://committeeminutes.suffolk.gov.uk/LoadDocument.aspx?rID=09002711816d212d&qry=c_committee%7e%7eScrutiny+Committee

Highways Contract – 29/10/2015

http://committeeminutes.suffolk.gov.uk/LoadDocument.aspx?rID=090027118199d1f5&qry=c_committee%7e%7eScrutiny+Committee

Suffolk County Council Procurement Rules <https://www.suffolk.gov.uk/assets/Jobs-careers-and-business/tenders-and-supplying-us/2016-01-05-Suffolk-County-Council-Procurement-Regulations-v2Final.pdf>

Glossary

ACS – Adult and Community Services

CAS – Community Action Suffolk

CMB – Contracts Management Board

CYP – Children and Young People’s Services

NAO – National Audit Office

NHS – National Health Service

PH – Public Health

PQQ – Pre-Qualification Questionnaire

SCC – Suffolk County Council

VAT – Value Added Tax

VCS – Voluntary and Community Sector

