CONTENTS

Membership .................................................................................................................. 3

Acknowledgements ..................................................................................................... 4

Executive Summary ................................................................................................... 5

Background ................................................................................................................ 6

Procurement Scrutiny Panel Methodology ................................................................. 7

Detailed Findings:

Contract Disaggregation .............................................................................................. 9

Officer Disciplinary Code & Procurement Procedure Rules ...................................... 9

Contracts Register ..................................................................................................... 9 - 10

Writing of Contracts and Contract Terms ................................................................. 10

Member Reporting Arrangements .............................................................................. 10

Contract Extensions and Waivers ............................................................................. 11

Contract Signatory / Contract Sign Off Process ....................................................... 11

Conclusion .................................................................................................................. 11 - 12

Recommendations ...................................................................................................... 12 - 14
Scrutiny Panel Membership

Councillor Bob Sullivan (Chair)
Member for Leyton Ward

Councillor Peter Barnett
Member for Wood Street Ward

Councillor Matt Davis
Member for Endlebury Ward

Councillor Geoff Hammond
Member for Higham Hill Ward

Councillor Michael Lewis
Member for Chingford Green Ward

Councillor Farooq Qureshi
Member for Forest Ward
Council Officers

The following Officers supported the work of the Procurement Scrutiny Panel by attending Scrutiny Panel meetings and providing information for Members of the Panel.

Daniel Fenwick: Head of Community Law
Ray Gard: Head of Audit, Fraud & Risk
David Levy: Assistant Director, Procurement & Commissioning
Althea Loderick: Executive Director Human Resources & Organisational Development
Ketan Mavani: BSF Programme Manager
John Raisin: Interim Director of Finance
Yvonne Sanders: E - Procurement Manager
Jeremy Walling: Head of Commercial Law
Rosalind Zalick: Senior Procurement Manager

Acknowledgements

Procurement Scrutiny Panel Members wish to thank those Council Officers who attended the Procurement Scrutiny Panel meetings as witnesses and who provided a range of information. Members appreciated Officers commitment and co-operation in support of the Scrutiny Panel’s objectives.
1. Executive Summary

1.1 This is the final report of the Procurement Scrutiny Panel. The Procurement Scrutiny Panel convened on six occasions, specifically to question Officers responsible for the delivery and support of the Councils procurement and contract management functions in light of the findings of the Independent Panels final report and Improvement Plan.

1.2 The Independent Panel comprised Sir Peter Rogers (Chief Executive, London Development Agency), Lucy de Groot (former Executive Director, Improvement and Development Agency) and David Parr (Chief Executive, Halton Borough Council). The Independent Panel was supported in their work by Sarah Wood, former interim Director of Finance, and Rita Sammons, a human resources specialist.

1.3 The Independent Panel commenced work in June 2009 and Cabinet considered a final report at its meeting of 3rd December 2009, at which Cabinet accepted all of the recommendations put forward by the Independent Panel.

1.4 The Procurement Scrutiny Panel subsequently convened on 23rd March 2010 for a Scrutiny Member round table planning meeting, at which the Panels terms of reference were agreed. The primary remit for the Panel’s future work was agreed as monitoring and challenging the implementation of the Independent Panels Improvement Plan and to ensure as so far as possible that full compliance with the Councils procurement and contract management procedure rules was taking place corporately. By the nature of the subject matter, the Scrutiny Panel did pursue other related lines of enquiry pertaining to procurement and contract management practice within the authority and these enquiries are referenced in the final report.
2. **Background**

2.1 The Council spends approx. £300m per annum on third party goods and services across 3,700 suppliers (2009/10 spend). There were 115,000 invoices processed and the top 4.7% of suppliers accounted for 80% of the spend.

2.2 The spend on major contracts in 2009/10 (aside from major capital works) includes Ascham Homes, Comensura (£17m - agency staff), Verdant (Waste collection - £8.9m), Kier Street Services (£7.6m), NSL (£5.5m parking management), JB Riney (£5m highways maintenance), Logica (IT service provider £1.7m) and NPS London (£1m).

2.3 This year there are major procurements being conducted and overseen by the Strategic Procurement Board including the new waste collection contract, agency staff contract, provision of temporary accommodation, transport for SEN children and vulnerable adults, the operator for the construction training centre and the third sector commissioning regime.

2.4 In May 2011, in order to improve procurement and contract compliance, the Council implemented a new electronic tendering and contract management system, ProContract, which mirrors the Council’s contract procedure rules and trained staff in the Procedure Rules.

2.5 The Strategic Procurement Board (SPB) has also been established since the formation of the Procurement Scrutiny Panel. It approves business cases for tenders prior to onward submission to Cabinet if required. The adoption of category management by Corporate Procurement has now enabled the Council to gain a view of the entire Council’s spend and develop strategies to identify and deliver savings in the respective categories.
3. **Procurement Scrutiny Panel Methodology**

3.1 The Procurement Scrutiny Panel convened on six occasions following publication of the Independent Panels report reviewing the Councils procurement and contract management arrangements:

- 23rd March 2010
- 14th October 2010
- 24th November 2010
- 12th January 2011
- 12th April 2011
- 11th July 2011

3.2 Cabinet considered the Independent Panels report at the Cabinet meetings held on 3rd December 2009 and 12th January 2010 respectively. The Independent Panels Improvement Plan, as agreed by Cabinet in December 2009, was scheduled to be implemented in its entirety by February 2011. The Procurement Scrutiny Panel was established primarily to monitor and challenge the progress made corporately with the implementation of the recommended actions detailed in the Independent Panel’s Improvement Plan.

4. **Remit of the Scrutiny Panel:**

4.1 To monitor the implementation of the Council’s Corporate Improvement Plan arising from the Independent Panel Report and proactively review the Council’s contract management and procurement arrangements to ensure that the Council’s contract and procurement arrangements are open, transparent and auditable.

5. **Terms of Reference**

1. To explore the potential to achieve an appropriate external Quality Standard / Accreditation for Procurement and Contracts Management practise within the Council.

2. To ensure that the Council continues to have in place and operates at all times a robust procurement framework, which supports all its objectives in delivering Value for Money in the services procured and delivered.
3. To review the contracts and risk registers and associated controls and processes in place to ensure that an effective framework of procurement is in place. These include:

   o Qualified procurement advisers are in place
   
   o Contract and procedure rules are updated regularly
   
   o That a suitable Contracts Register is in place, is actively managed and is fit for purpose in managing the Council’s procurement and contract management activities
   
   o Regular contract and procurement training is delivered to officers and Council Members
   
   o Regular monitoring and reporting of contact and procurement activities are undertaken to ensure compliance with the relevant financial and governance frameworks (national and local) and delivery of agreed outcomes

6. Objectives and Expected Outcomes:

6.1 The primary remit for the Procurement Scrutiny Panel was to test whether the actions and recommendations detailed in the Independent Panels Action Plan, as agreed by Cabinet (3rd December 2009), was being taken forward and implemented across the organisation. The Procurement Scrutiny Panel continued to convene past the February 2011 completion date for all actions to be fully implemented. This provided the Scrutiny Panel with the opportunity to further test the status of specific actions as being completed when reported to Cabinet via an implementation update report.

7. Scrutiny Panel Methodology

7.1 The Procurement Scrutiny Panel convened on six occasions in order to Q&A Council Officers responsible for the delivery and/or support of the Procurement and Contract Management functions within the Council. Officers appeared from procurement, internal audit, finance and legal services.

During the course of the Scrutiny Panel meetings, Members were supplied with information and data in response to their original queries and requests for further information and clarification pertaining to some matters.
8. DETAILED FINDINGS

Contract Disaggregation

8.1 The Scrutiny Panel sought clarification as to what safeguards were in place preventing the practice of disaggregation i.e. the splitting of a contract value across a series of purchase orders to avoid contract/tender threshold limits. The Scrutiny Panel was advised that the practice of disaggregation would be addressed as part of the staff training process, and that the annual spending analysis undertaken at the end of the financial year would show where any disaggregation had taken place. The Scrutiny Panel was of the opinion that further safeguards should be embedded via the new e-procurement system to address disaggregation practice.

The Officer Disciplinary Code in Relation to the Procurement Procedure Rules

8.2 The Scrutiny Panel stated that it would expect disciplinary rules to be applied in instances where Procurement Procedure Rules had not been complied with for those contracts in excess of the £250,000 range. Members were of the opinion that insufficient use had been made of Officer disciplinary procedures to support compliance with the Procurement Procedure Rules.

8.3 The Scrutiny Panel was of the opinion that there was an evident corporate need for an overarching disciplinary code to be put in place governing procurement and contract management practice, to which all employees should be subject. The Scrutiny Panel was of the opinion that the Contract Procedure Rules must be embedded in the corporate induction process for all new Council employees.

Contracts Register

8.4 The Contracts Register was not as well populated as it could be and Members felt that monitoring could be further improved. It was recognised that not all of the high value contracts were detailed on the register. All Council departments were required to maintain a Contracts Register for contracts below the value of £50,000.

8.5 The Scrutiny Panel had been informed that there were 300 contracts presently detailed on the Contracts Register. The Scrutiny Panel recognised that the 300 contracts registered did not reflect the true number of contracts currently in place. Consequently, the Scrutiny Panel expressed repeated concern that at this point in time there appears to be no comprehensive, corporate Contracts Register in place. The Scrutiny Panel did recognise that the recently implemented e-procurement system (Pro-Contract) would go some way to addressing this gap. However, the Scrutiny Panel did express the caveat that populating any Contracts Register would depend on strict compliance from all service areas and be dependent upon responsible Officers ensuring compliance.
The Scrutiny Panel was advised that the new procurement system would also in
time host the e-version of the contracts logged. Members did raise the prospect
of the contract in its entirety also being downloaded and made accessible via
the e-Procurement system, but were advised it had yet to be determined
whether the actual contract in its entirety would be pdf’d onto the system.

All the Scrutiny Panel Members agreed that the relevant authorising contract
signatory page should be included within the e-Procurement system as a matter
of course.

Writing of Contracts and Contract Terms

In respect of the writing of Contracts, Scrutiny Panel Members sought
clarification as to whether there was any review planned to address this area,
which they considered to have been of a poor quality in past years. The
Scrutiny Panel also expressed the view that contract expertise appeared to be
lacking when judged against past contract performance. It was recognised by
the Scrutiny Panel that standardisation of contract terms and conditions was
required (where appropriate) and that the Legal Practice was currently taking
this area of work forward. The Scrutiny Panel was advised, however, that in
some instances the authority was living with past contract conditions agreed a
number of years ago which were now recognised as not being the most
advantageous for the Council in the present financial climate.

Member Reporting Arrangements

The Scrutiny Panel sought clarification regarding corporate reporting
arrangements detailing the level of procurement and contract spend across the
organisation (i.e. significant contract spend, contract lettings generally, detail for
projected contract spend versus actual spend, contract renewals, extensions,
contract variations etc). The Scrutiny Panel learned that such spend was not
reported to all Members of the Council, although the information was available
and would be fully reflected in a new suite of corporate Key Performance
Indicators (KPI).

Scrutiny Panel Members were in agreement that this area was a key issue for
all Council Members, particularly the issue of contract variance against actual
contract outturn.

The Scrutiny Panel also considered the issue of how to corporately build in
Member requests to Officers to provide reports within the financial year
concerning contract compliance. The Scrutiny Panel agreed that it was
imperative to ensure that Members across the Council were kept informed and
adequately advised in respect of key procurement and contract management
matters.

The Scrutiny Panel Members discussed the feasibility of requesting a detailed
report addressing contract issues for submission to the Finance Scrutiny Sub
Committee and Full Council meeting prior to the Annual Budget setting meeting
of Council. The Scrutiny Panel agreed that this arrangement would keep all
Council Members informed of the most significant contract developments within
the authority.
Contract Extensions and Waivers

8.13 The Scrutiny Panel addressed the issue of contract extensions and waivers and queried why some significant contracts were subject to repeated extensions, and why the original contract end date was not acted on. The Scrutiny Panel noted that such extensions and waivers negated potential savings by preventing tendering on the open market. The Scrutiny Panel was advised that there were two significant issues to be addressed; firstly, service areas managing contracts should be aware of their contract end dates and related time tabling for future contract letting / tendering arrangements and, secondly, the Contracts Register in its current state did not have the systems / management functionality to support such activity.

8.14 The matter of contract extensions and waivers continues to be a matter of concern for the Scrutiny Panel and may be revisited in the near future.

Contract Signatory / Contract Sign Off Process

8.15 With regard to contract signatory arrangements, the Scrutiny Panel sought clarification as to who was authorised to sign off contracts at particular thresholds, what arrangements were in place to ensure that contracts were physically signed off and what future arrangements would be put in place to ensure that the correct Officers / Members did actually sign off contracts.

8.16 Members were advised that contracts over £100,000 were signed under seal and that from a legal perspective, whoever signed off a contract on the Councils behalf would not negate the terms of the contract. There was in existence a standard contracts template, which required both parties to sign off a contract.

8.17 Scrutiny Panel Members agreed that a contract signature would at the very least assist with addressing issues around accountability, transparency and compliance, as well as providing a future audit trail for specific contract sign off.

9. CONCLUSION

9.1 The Independent Panels report and detailed Improvement Plan has undoubtedly led to greater corporate attention and resource being paid to the organisations procurement and contract management arrangements. The Scrutiny Panel is of the opinion, however, that the present level of focus and monitoring of the Councils procurement arrangements must be maintained going forward. Transparent corporate challenge is seen as integral to this process.

9.2 The Scrutiny Panel did address the management of project funding for the Better Neighbourhoods Initiative (BNI) through the course of its review. Members were advised that a number of investigations of the BNI process had taken place over the past three years. The external auditing firms Deloittes and PWC had undertaken audit work in relation to the BNI project. Members concluded that substantial resource had been assigned to a number of BNI investigations and that the Scrutiny Panel was unlikely to add anything further to the findings and conclusions arising from these investigations. All of the
Scrutiny Panel Members unanimously agreed, however, that it was imperative for the Independent Panel’s Improvement Plan to be fully implemented and robustly monitored to verify that procurement and contract management rules were complied with across the Councils services. Members of the Scrutiny Panel therefore agreed that the focus of the Scrutiny Panels activity should be towards ensuring implementation and compliance with the Improvement Plan, and that the revised Procurement Procedure Rules were fully complied with by Officers with procurement and contract management responsibilities.

9.3 The introduction of the new procurement system, ProContract, is seen as a positive step in supporting on-going improvements in procurement processes and related governance arrangements, but the technical functionality of the system should not be solely relied upon to ensure compliance with procurement procedure rules. At the time of writing, the Panel noted that there were still some quite fundamental areas of the Improvement Plan requiring completion, for example, the establishment of a comprehensive corporate Contracts Register. Members of the Scrutiny Panel also continue to hold the opinion that explicit links be established between the Officer Code of Conduct, Procurement Procedure Rules and Corporate Induction process, but recognise that work is on-going in this area through the Human Resources Directorate.

10. Recommendations

10.1 Based on the evidence taken through the course of the six Procurement Scrutiny Panel meetings, Members of the Scrutiny Panel have identified fourteen recommendations which in their opinion, if implemented, would further support the Councils Contract and Procurement Procedure Rules; support transparent governance procedures and procurement practice, and further support the aims and objectives detailed in the Independent Panels Improvement Plan. Accordingly,

The Cabinet is RECOMMENDED to:

1. Charge the Audit & Governance Committee as part of its remit to ensure that the Council can continue to demonstrate:
   
   o its procurement function has the necessary authority, position and resources;
   
   o that it has an appropriate strategy governing its procurement activities;
   
   o it has addressed the legal and governance frameworks for contract management and procurement;
   
   o it has sound business processes throughout the procurement cycle;
PROCUREMENT SCRUTINY PANEL

- it has modernised its approach to procurement to reflect current working practices acknowledged and applied in the wider procurement sector;

- robust performance management arrangements for contract and procurement management are in place and are properly audited, which adds to organisational efficiency and safeguards the authority's position in financial and governance compliance terms.

2. Agree to convene an Annual Joint Compliance meeting in respect of procurement and contract management matters between the Audit & Governance Committee and Finance Scrutiny Sub Committee.

3. Agree that the Councils Officer induction processes feature the Procurement Procedure Rules as mandatory.

4. Ensure that integral to the Officer induction process and corporate procurement training programme for managers, the requirements for Member approval and sign off in the contract letting process are specifically addressed.

5. Agree that a comprehensive report addressing significant procurement and contract management issues which have arisen over the municipal year, and for those matters anticipated to arise in the new municipal year, is submitted to the Finance Scrutiny Sub Committee and Full Council meeting prior to the Annual Budget setting meeting of Council. The Scrutiny Panel agreed that this arrangement would keep all Council Members sufficiently informed of the most significant contract and procurement developments arising within the Council.

6. Agree that the Council Members report addresses the following areas and includes any other related procurement and contract management issues which are deemed to be corporately significant in the professional opinion of the Assistant Director, Procurement and Commissioning, and Head of Audit, Fraud and Risk:

- significant contract spend i.e. in excess of 150,000

- contract letting activity over the financial year given as a percentage of individual Directorate budget

- detail for projected contract spend versus actual spend against contract size

- contract renewals by value

- contract extensions

- contract waivers
7. Agree that the report recommended in 5A and 5B includes reporting detail for the fiscal status of all Council subsidiary arms length organisations

8. Agree that existing arrangements for Member level reporting concerning procurement and contract spend throughout the organisation are reviewed, specifically in respect of the robustness of any such arrangements currently in place.

9. Agree that greater links be established between the Officer Disciplinary Code and Council Procedure Rules, specifically in cases of wilful non-compliance with the Procurement Procedure Rules, and that these links be written into the Officer Disciplinary Code.

10. Agree that the progress achieved in putting in place a substantive corporate Contracts Register be reported to the Audit and Governance Committee on a programmed basis throughout the municipal year.

11. Agree to the regular review and reporting via the Audit & Governance Committee with regard to the status of the individual Directorate Contract Registers.

12. Agree to put in place monitoring arrangements to ensure that final contract documentation details the appropriate Council Member/s and Officer/s signatures responsible for the letting of the contract.

13. Agree that the relevant authorising contract signatory page be included on the new e-Procurement system (Pro-Contract) as a matter of common practice.

14. Agree that any future arms length contract arrangements entered into by the Council be subject to the Councils procurement and contract management rules and processes; are pro-actively managed and monitored through the Councils procurement systems and are regularly reported on a formal basis through the Councils governance processes.