

# **Statement of Scrutiny Board (Central & Corporate Functions) Cover Pricing**

# Introduction



## Introduction

1. At its meeting on 9<sup>th</sup> June 2008 Scrutiny Board (Central & Corporate Functions) established a Working Group to look at the issue of cover pricing amongst external firms tendering for work for the Authority.
2. Our decision to undertake this piece of work was based on the concern that the Office of Fair Trading (OFT) investigations into cover pricing practices indicated that the Authority was susceptible when inviting tenders for projects. We were particularly interested in whether there was any evidence that cover pricing was resulting in inflated tenders being submitted and therefore causing a direct cost to public money. We have noted that there appears to be little evidence that this is occurring, however, we understand that any cover pricing undermines the competitive nature of the tender process.
3. Our discussions centred on the distinction between cover pricing and 'price fixing'. We noted generally that cover pricing is the practice of companies colluding in order to submit realistic tenders with the purpose of not being competitive enough to win the

contract. We understood that this may be the result of, having agreed to submit a tender, a company's order book becoming full, or there being a change in a company's circumstances once the tender process is underway. This potentially makes the winning of a further contract undesirable or unsustainable. We learnt that there is likely to be a perception amongst some firms that declining an invitation to tender has a negative impact on further working relationships with a client (in this case the Council).

4. Whilst the practice of cover pricing reduces the competition involved in the tendering process, we understand that there is a distinction to be made with price fixing and cartels, which deliberately set out to inflate the cost of contracts. We noted that the OFT were unable to provide information on any serious price fixing cases.
6. The Scrutiny Board will have further opportunity to consider this issue once the OFT investigations are complete.
7. The Working Group would like to thank those officers who assisted us with this piece of work.

## Comments and Recommendations



1. We are pleased to say from the outset that the Chief Procurement Officer and the Senior Audit Manager have been clear, efficient and proactive in responding to the concerns raised. Following discussions we were satisfied that as an Authority we are equipped with the knowledge and systems to combat any unethical practices within the tendering process. Efforts made by the Authority are good and reflect largely what we suggest should be put in place.
2. We received information on the OFT investigation and detailed data taken from the Council's own procurement database in order to have some understanding of how patterns of tendering can be identified. We were informed that no discernable patterns could be found.
3. We noted that as the procurement process is based on a price/quality ratio, the opportunity to cover price is diminished. This is due to the type of quality statement that is required during the tender process and that winning a tender is not based on price alone.
4. We were also pleased to note that the high quality data available on individual tenders

and projects enables officers to monitor patterns and irregularities over a period of time. We are confident that this protects the Council, to a great extent, from the practice of cover pricing. We understand that this information also tells us that many companies regularly decline an invitation to tender, suggesting a general confidence in the fairness and transparency of the procurement process; this takes away the rationale behind cover pricing.

5. Having discussed the OFT investigations, we learnt that a number of companies are currently asking for leniency. We were interested in the guidance on leniency produced by the OFT and have requested that Members of the Board are furnished with a summary for future reference.

### Recommendation 1

**That Members of the Board are provided with a summary of the leniency guidance produced by the Office of Fair Trading.**

6. In terms of communicating between authorities, we were pleased to note that there are

## Comments and Recommendations



regional forums for procurement and for audit specialists, allowing the flow of information about practices undermining the tendering processes of local authorities. We feel that this is a further protection against unethical practices remaining unchecked.

7. We would like to recommend that the Authority continues to promote the transparency of the tendering process in order to dissuade firms tempted to engage in cover pricing. We feel this should include continued communication with other local authorities and with the firms we invite to submit tenders. We are keen to underline the investigative work done by officers to identify unethical practices within the tendering process and we feel this will be a deterrent in itself.
8. Whilst the Board is not intending to undertake a full inquiry at this point, we would like to remain open to the possibility of returning to the subject once the OFT has completed its work and there is a clearer picture of the scale and extent of the practice of cover pricing. Whilst we do not believe, currently, that this Authority has been significantly affected by cover pricing, we are advised that there is no certainty that the tendering process is not abused from time to time. We

therefore urge officers to remain alert to such possibilities and take appropriate action when appropriate.

### Recommendation 2

**That the results of the Office of Fair Trading investigation into cover pricing are brought back to the Board when available.**