

RESOURCES AND SERVICES OVERVIEW AND SCRUTINY COMMITTEE

13 MARCH 2023

REPORT OF DEPUTY CHIEF EXECUTIVE

A.2 COUNCIL PROCUREMENT AND CONTRACT MANAGEMENT

(Report prepared by Lisa Hastings)

PURPOSE OF THE REPORT

To inform the Committee of the outcome of the informal review of procurement and contract management at the Council ensuring it is functioning as it should and is fit for purpose.

INVITEES

Lisa Hastings, Deputy Chief Executive – Assistant Director for Governance and lead officer for topic presenting the report.

Informal meetings of the Committee were held on 17 October and 7 December 2022, where the Members received a range of information around the subject of Council Procurement and Contract Management, most of which is contained within this report. Senior Officers across the Council, involved in the subject area and the specific contracts referred to within the Scope (see below) supported this first meeting in October.

SCOPE - THE AIMS AND OBJECTIVES OF THE REPORT

Full Council at its meeting on 12th July 2022 agreed (Minute 29) the Committee's Work Programme for the 2022-23 Municipal Year, as set out in Appendices Ai and Aii to item A.2, for the Resources and Services Overview and Scrutiny Committee this included:

Council procurement and Contract Management – using potential exemplars from:

- ***The housing maintenance contract awarded to Rapid, its delivery of work and the management of it.***
- ***The management of the previous cremator maintenance contract, the need to stop the use of those cremators and the process for securing replacement cremators given the sensitivity around this service and the budgetary implications for the Council while these cremators are out of action.***
- ***The Leisure Centre Investment – specifications, securing contractors and delivery of those works and maintenance of the equipment at the Centres.***

(Note: Details of why these contracts were chosen by the Committee were not provided at the outset however, the requested information on each contract was provided to the Members of the Committee at its informal meeting in October. In December 2022, Members decided no further information was required on the contracts and due to the exempt nature of the information, would not be presented within this Report.

BACKGROUND

RESOURCES

The Procurement Team consisted of 2 FTE posts, both vacant (this has been increased through the restructure in 2022 by 3 additional posts, all remaining vacant – see below). The budget for the service consists of salaries and £22,670 for computer software.

At its meeting on 17th September 2021, Cabinet considered in Section 2 of its Financial Performance Update 2021/22 a small number of in-year budget adjustments set out in Appendix B to the Portfolio Holder's report, one of which reflected a proposed service level agreement being entered into with Essex County Council (ECC) to enable the Council to 'buy in' procurement services from them.

Following the last vacancy, discussions commenced with ECC in terms of a shared service / collaborative approach as a way of providing a more comprehensive procurement service to our internal departments. This approach would involve the Council purchasing a range of procurement services from ECC on a proposed 'hourly rate' basis via a service level agreement. Appendix B to the Cabinet Report set out a proposed adjustment, which would see budgets transferred from direct employee costs to 'contract' payments to ECC. This approach would also support the accelerated delivery programme where the Council would have access to specialist / expert advice along with additional procurement capacity e.g. supporting the procurement of replacement cremators. This arrangement will be kept under wider review as it may form part of a longer-term solution, where the Council could continue to have access to such advice as part of the future delivery of projects and activities along with 'usual' operational requirements expected of a procurement function / service.

Paragraph 2.3 of the Council's Procurement Procedure Rules set out in Part 5 of the Council's Constitution requires alternative delivery options for whole or part of services to be achieved in accordance with the Council's Procurement Strategy. The Strategy expressly refers to 'Our Partners in Procurement' and that the Council will seek to work with a number of partners to maximise any procurement opportunities and provide best practice. This includes other public bodies and shared services. Because the in-house procurement service has 100% vacancies, there were no employment issues to address and the Public Contract Regulations 2015 permit public sector shared service and collaboration arrangements within certain criteria, which are observed in any Service Level Agreement arrangement. The Council's Procurement Procedure Rules are observed in any bids or tender exercises managed by ECC on behalf of TDC.

Subsequently, Cabinet agreed in September 2021 that:

(2) That, in respect of the Council's Financial Performance for 2021/22, Cabinet:

(c) agrees an exemption to the Council's procurement rules in order to enable a Service Level Agreement to be entered into with Essex County Council to enable the Council to 'buy in' various procurement services from them to support its day-to-day operational activities and the delivery of one-off projects, as necessary; and

(d) authorises the Assistant Director (Finance and IT) and the Deputy Chief Executive to agree the terms of the Service Level Agreement, in consultation with the Portfolio Holder for Corporate Finance and Governance.

Following consultation with the Portfolio Holder for Corporate Finance and Governance, a Partnership Agreement was completed in August 2022; the services however commenced in October 2021 and will continue until October 2023 for an annual payment of £60,000. The agreement can be renewed annually for up to 5 years. **The Partnership Agreement is attached to the Report as Appendix A.**

Both Councils have obligations and responsibilities. Schedule 1 to the Agreement sets out the Key Procurement Activities, split into three areas:

- Category Planning
- Market Management
- Sourcing

Procurement 2022 Deliverables have been identified within the Partnership Agreement.

In December 2021 and May 2022, an Introduction to Procurement and the collaboration arrangements were presented to Council Officers as part of its Senior Managers Forum. The reasons why the Councils were working in partnership were covered:

- Increase resilience
- Increase expertise
- Enable collaborative savings
- Market influence
- Reduction of duplication
- Staff retention

Potential Category Areas have already been identified:

- Vehicles
- Facilities Management (inc. cleaning and security)
- Corporate spend for e.g. stationary

The Presentation Slides included a summary of the Procurement Process covering:

- Basics
 - The Regulations
 - Value for Money
 - Processes for different values of TOTAL spend
- Low Value Procurement - £10K to £50K
- Request for Quote Process - £10K to £50K
- Tender process - £50K +

It is important to highlight that there are various elements to the overall procurement process, with responsibilities being split across the Council, some functions are devolved into services, with others being undertaken centrally by the procurement team:

- Project approval and budget allocation - services
- Specification – services
- Market analysis - central
- Identify suitable contract/framework – centrally with consideration by services
- Prepare procurement documentation – central in consultation with services
- Publication – central

- Collate tenders for evaluation – central
- Evaluation – services with central support if required
- Due diligence - centrally together with services
- Contract awards to suppliers – centrally together with services

PART 5 CONSTITUTION - PROCUREMENT PROCEDURE RULES

The Council's Procurement Procedure Rules state the following:

Before undertaking any procurement, Departments should satisfy themselves that:

- The works, goods or services are required and a need can be demonstrated
- There are no reasonable alternatives e.g. sharing or utilising spare capacity/inventories elsewhere within the Council
- Where relevant, they have considered the requirements of the Public Services (Social Value) Act 2012 and have recorded/evidenced the outcomes against the associated requirements:-
 - how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area
 - how, in conducting the process of procurement, it might act with a view to securing that improvement

Use of Local Suppliers: All Procurement should be in line with the Council's Procurement Strategy, which includes the recognition of the use of local suppliers and providing a fair basis for them to compete for the provision of goods, works or services required by the Council.

CONTRACT MANAGEMENT:

Contracts management is undertaken by the services and Key Personal and Contract Administrators are named within the contract documentation and are added onto their individual and existing roles. In some projects, contract management is commissioned as part of the project.

The Council has produced a standard TDC Contract for Services, which covers the terms and conditions for suppliers to adhere to when entering into a contract with the Council for values above £25,000. This must be used unless an exemption is sought. JCT and NEC suite of contracts are also used for construction works and engineering projects with widely recognised and accepted clauses within the industry, with differing options to be selected. Understanding the structure of these documents and arrangements is essential for contract management.

Contract management requires a commercial understanding, appropriate skills and capacity to be undertaken with maximum potential. Presently services are conducting contract management alongside their usual service delivery requirements, which can be extremely time consuming.

Within the agreed Scope, the Committee had requested certain information and are detailed below:

1. Confirmation of procurement and contract management requirements:

These are contained within the following documents: Council's Procurement Strategy and under Part 5 of the Constitution Procurement Rules of Procedure, which set out the policy and rules, the Council has adopted to be followed.

2. The procurement project pipeline:

Is an evolving piece of work and relies on the input of services to ensure that it is a useful exercise, in terms of allocating procurement resource and identifying budgets. The exercise will also benefit service areas in managing the process and subsequent contract management.

RELEVANT CORPORATE PLAN THEME/ANNUAL CABINET PRIORITY

Procurement and contract management comes within the Strong Finances and Governance Corporate Plan theme and effective and positive governance priority. It is important to ensure the Council's resources are being spent observing the Value for Money principle and managed prudently in accordance with its Budget and Policy framework whilst delivering against the wider priorities.

DESIRED OUTCOME OF THE CONSIDERATION OF THIS ITEM

A number of actions have been identified which are necessary to ensure the authority is working to up to date best practice, within its budget and policy framework, constitutional requirements, following internal audit reviews and generally lessons learnt through its duty to ensure continuous improvement through delivery of its services and functions.

The Committee was requested to give consideration to these actions and endorse the improvements and deliverables identified for future monitoring

STRATEGY & PROCUREMENT PROCEDURE RULES REVIEW

- The Council's current Procurement Strategy was last reviewed in 2012, although changes have been made to the Council's Procurement Procedure Rules, taking into account legislation changes; the overarching strategy needs a review and refresh following the National Procurement Policy Statement being issued in 2021. This sets out the strategic priorities for public procurement and how contracting authorities considers the following national priority outcomes alongside any additional local priorities in their procurement activities:
 - creating new businesses, new jobs and new skills;
 - tackling climate change and reducing waste, and
 - improving supplier diversity, innovation and resilience.
- Consideration should be given to the Local Government Association's toolkit developed to support councils to set objectives in relation to their maturity levels in each of the key areas of the National Procurement Strategy for Local Government in England 2022, and to assess their progress against those objectives.
- New legislation - On 11 May 2022, the Procurement Bill 2022 was introduced in the House of Lords. The Bill is the next step in the Government's plan to reform procurement policy in the UK following Brexit, as set out in its December 2020 green paper "*Transforming public procurement*" and follows the Government's response to the accompanying consultation. It is designed to introduce a simpler, more flexible and more commercial system. Currently, the Bill is at report stage in

the House of Commons.

- Produce a Social Value Policy for Procurement Purposes or set of Principles for the Council building upon the Public Services (Social Value) Act 2012, which places a statutory duty (*when proposing to procure the provision of services, whether alone or together with the purchase or hire of goods or the carrying out of works, with by contract or through a framework agreement*) to consider:
 - (a) how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area, and
 - (b) how, in conducting the process of procurement, it might act with a view to securing that improvement.
- It's important for the Council to maximise opportunities for social value but recognising these additional requirements to contractors, can increase the price of the contract, therefore they need to be of real added value for the area and the delivering of the Council's Corporate Plan, such as:
 - Use of apprenticeships
 - Increase use of local suppliers
 - Support SMEs
 - Community engagement and initiatives
 - Climate change requirements
 - Access for the voluntary sector
 - Sign up to the Military Covenant and other such initiatives

As part of improving the Council's social value requirement, a targeted approach was deployed as part of the Tendring for Growth business event, asking key questions as to the barriers faced by small to medium sized enterprises (SME) may face when approaching tender opportunities. From the feedback provided, a guide will be produced explaining the process and this will be publicly available, along with a proposed training video covering frequently asked questions.

SPEND AND CATEGORY ANALYSIS

- Tackle any disaggregation within services and across the Council as a route to circumnavigate the procurement routes for higher value contracts
- Lack of utilising opportunities for Value for Money and efficiencies
- Conduct spend analysis to form part of the Category Plan
- Develop Market Strategy for categories

ONGOING AWARENESS OF PROCUREMENT RULES TO ENHANCE COMPLIANCE

- Preventing practices of approaching certain contractors direct without tendering processes at the right levels

- When relying on frameworks, value for money still needs to be demonstrated

SPECIFICATION REQUIREMENTS

- Consideration needs to be given to the right skills and capacity to prepare a specification, which can be very technical and built into project timelines.
- Balancing technical detailed v. flexible outcome based specifications and being realistic on price and contract management abilities for quality assurances.
- Focus should be on affordability and within the allocated budget, compromises and managing expectations may be necessary.
- Social value requirements need to be considered as part of the statutory duty to do so.

EVALUATION CRITERIA

- Ensuring competency questions and verification requirements are undertaken as part of due diligence prior to award of contracts
- Consideration and review of approaches to Price v. Quality weighting
- Social Value considerations

CONTRACT MANAGEMENT

- Choosing the right type of contract and preparing the contract data prior to tender (JCT, NEC or Standard TDC Contracts for Services)
- Identifying resources and skills for contract management
- Regular monitoring and compliance with the terms and conditions of the contract

CONTRACT REGISTER

- The current register is incomplete and requires further input to ensure it is correct and up to date

PROCUREMENT PROJECT PIPELINE

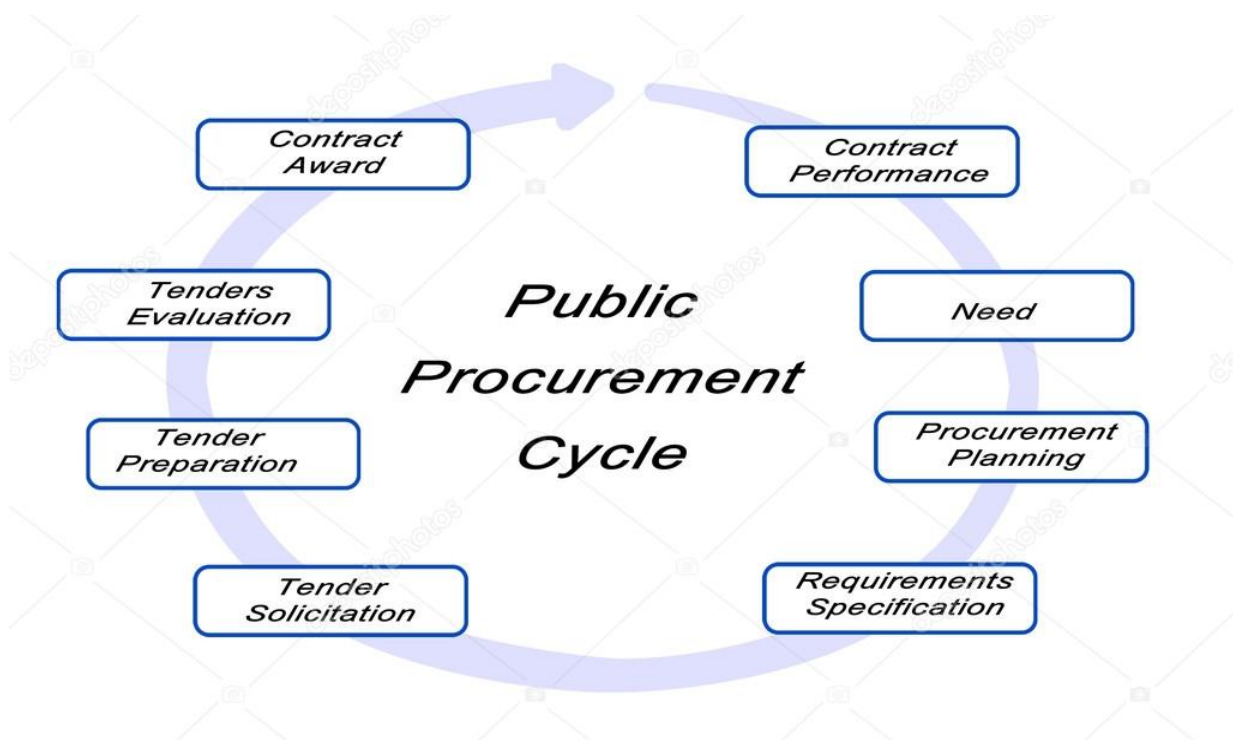
- New initiative evolving to dedicate resources and to programme delivery

DETAILED INFORMATION

Public sector procurement is subject to a legal framework which encourages free and open competition and value for money, in line with internationally and nationally agreed obligations and regulations. As part of its strategy, the government aligns procurement policies with this legal framework, as well as with its wider policy objectives.

The over-riding procurement policy requirement is that all public procurement must be based on value for money, defined as “the best mix of quality and effectiveness for the least outlay over the period of use of the goods or services bought”. This should be achieved through competition, unless there are compelling reasons to the contrary.

The Public Procurement Process is described as a circle and its various stages are shown in the diagram below (contract management would be in the contract performance step). Attention must be given to all stages and at the core would be the Council’s Strategy, Policies, Rules and Procedures.



SOCIAL VALUE CONSIDERATIONS:

Although the Council is required to give consideration to Social Value in its procurement cycle, more could be achieved with earlier scoping through specification and evaluation criteria. As with other Essex Councils, it is now best practice to adopt a dedicated Social Value Policy, to set out how the Council wishes to achieve the social, economic and environmental strands through its commissioning.

It is considered that any Social Value Approach being drafted for adoption, should be scoped and shaped in consultation with Members, services across the Council, other local authorities, either as part of joined up working across Essex or through the Anchors organisations together with our stakeholders. A Draft Social Value Approach for Procurement Purposes is being considered with partners and will contain very high level principles on which further engagement can take place. In the interim, TDC will rely on its existing Procurement Procedure Rules and link to the Council’s Corporate Plan, Priorities and Projects.

FINANCIAL:

The Procurement Procedure Rules, set out the Constitutional requirements to ensure the correct budget is in place and value for money is demonstrated through any

procurement/contract award process.

LEGAL:

Procurement for wider public sector bodies, such as local government, health and education, is also subject to the **Public Contracts Regulations 2015**. Procurement within the meaning of the Regulations is defined as *“the acquisition by means of a public contract of works, supplies or services by one or more contracting authorities from economic operators chosen by those contracting authorities, whether or not the works, supplies or services are intended for a public purpose”*. These regulations apply to above threshold contracts with local authorities following the principles of non-discrimination, equal treatment, transparency, mutual recognition and proportionality where possible for lower value contracts.

The **Public Services (Social Value) Act 2012** is referred to within the body of the report.

In accordance with the **Equality Act 2010**, the Council is required to comply with the Public Sector Equality Duty when conducting public procurement.

The **Local Government (Transparency Requirements) (England) Regulations 2015** requires information about public contracts to be published in accordance with the Local Government Transparency Code 2015.

Part 5 of the Constitution contains the Council’s Procurement Procedure Rules, which must be adhered to.

DELIVERY:

A procurement process and contract management are resource intensive and should be factored into delivery timescales and milestones.

IMPACT ON THE PUBLIC:

There are no additional implications to identify other than to ensure the Council acts openly and transparently in the manner in which it spends the Council’s budget and manages its resources. Equality and Diversity policies and statements are sought through the procurement processes and contract requirements.

RECOMMENDATION

That the Resources and Services Overview and Scrutiny Committee:

- (a) is requested to give consideration and endorse those actions already identified as improvements and deliverables for the procurement and contract management framework, monitoring progress through a future work programme for the Committee;**
- (b) recommend to Cabinet and the Portfolio Holder for Corporate Finance and Governance that:**
 - (i) the Council’s Contract Register is brought up to date as soon as possible, with services across the Council providing the necessary data on contracts held within their respective areas; and**
 - (ii) a Social Value Policy for Procurement Purposes be produced for consultation with the Resources and Services Overview and Scrutiny**

Committee at a future meeting.

PREVIOUS RELEVANT DECISIONS

Full Council 12th July 2022, minute no. 29

BACKGROUND PAPERS AND PUBLISHED REFERENCE MATERIAL

Policies and Procedures

Article 14 Finance Contracts and Legal Matters
Draft TDC services contract

Procurement Service

Projects Register to demonstrate work undertaken with ECC since Oct 21
Contract Management training slides

APPENDICES

Appendix A – Partnership Agreement for the provision of procurement services for Tendring District Council 2021/23

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