

## CABINET

23 JUNE 2023

### REFERENCE REPORT FROM THE RESOURCES AND SERVICES OVERVIEW & SCRUTINY COMMITTEE

#### **A.2 SCRUTINY OF PROCURMENT & CONTRACT MANAGEMENT**

(Report prepared by Keith Durran)

##### **BACKGROUND**

On 13 March 2023 the Resources and Services Overview & Scrutiny Committee (“the Committee”) received a report that detailed the outcome of the informal review of procurement and contract management at the Council to ensure that it was functioning as it should and was fit for purpose.

The Members heard from Lisa Hastings, Deputy Chief Executive & Assistant Director for Governance and lead officer for the topic who presented her report. The report outlined that informal meetings of the Committee had been held on 17 October and 7 December 2022, when Members had received a range of information around the subject of Council Procurement and Contract Management. Senior Officers across the Council, involved in the subject area and the specific contracts referred to within the scope of the review had supported the first informal meeting in October.

Members also heard that Full Council, at its meeting held on 12<sup>th</sup> July 2022 agreed (Minute 29) had approved the Committee’s Work Programme for the 2022-23 Municipal Year, that had included, inter alia:

##### **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”.*

It was reported to the Committee that the Procurement Team consisted of 2 FTE posts, both of which were currently vacant (that had been increased through the restructure in 2022 by 3 additional posts, all of which also remained vacant – see below). The budget for the service consisted of salaries and £22,670 for computer software. At its meeting held on 17<sup>th</sup> September 2021, Cabinet had considered in Section 2 of its Financial Performance Update 2021/22 a small number of in-year budget adjustments to the Portfolio Holder’s report, one of which had reflected a proposed service level agreement being entered into with Essex County Council (ECC) to enable this Council to ‘buy in’ procurement services from them.

The report had outlined that, following the last vacancy, discussions had commenced with ECC in terms of a shared service / collaborative approach as a way of providing a more comprehensive procurement service to the Council’s 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 had set out a proposed adjustment, which would see budgets transferred from direct employee costs to 'contract' payments to ECC. That approach would also support the accelerated delivery programme whereby the Council would have access to specialist / expert advice along with additional procurement capacity e.g. supporting the procurement of replacement cremators. That arrangement would be kept under wider review as it could form part of a longer-term solution, whereby the Council could continue to have access to such advice as part of the future delivery of projects and activities along with the 'usual' operational requirements expected of a procurement function / service.

The Committee had heard that paragraph 2.3 of the Council's Procurement Procedure Rules (as set out in Part 5 of the Council's Constitution) required alternative delivery options for whole or part of services to be achieved in accordance with the Council's Procurement Strategy. The Strategy expressly referred to: 'Our Partners in Procurement' and that the Council sought to work with a number of partners to maximise any procurement opportunities and provide best practice. That included other public bodies and shared services. Because the in-house procurement service had 100% vacancies, there were no employment issues to address and the Public Contract Regulations 2015 permitted public sector shared service and collaboration arrangements within certain criteria, which were observed in any Service Level Agreement arrangement. The Council's Procurement Procedure Rules had been 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".*

It had been reported to the Committee that, following consultation with the Portfolio Holder for Corporate Finance and Governance, a Partnership Agreement had been completed in August 2022; the services had however commenced in October 2021 and would continue until October 2023 for an annual payment of £60,000. The agreement could be renewed annually for up to 5 years.

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

- Category Planning
- Market Management
- Sourcing

Procurement 2022 Deliverables had been identified within the Partnership Agreement. In December 2021 and May 2022, an Introduction to Procurement and the collaboration arrangements had been presented to Council Officers as part of its Senior Managers Forum. The reasons why the Councils were working in partnership were covered i.e.to:

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

Potential Category Areas had 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 had been highlighted that there were various elements to the overall procurement process, with responsibilities being spilt across the Council, some functions were 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 report before the Committee explained that the Council's Procurement Procedure Rules stated 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**

The Members of the Committee had heard that contracts management was undertaken by the services and Key Personal and Contract Administrators and were named within the contract documentation and were added onto their individual and existing roles. In some projects, contract management had been commissioned as part of the project. The Council had produced a standard TDC Contract for Services, which covered the terms and conditions for suppliers to adhere to when entering into a contract with the Council for values above £25,000. That must be used unless an exemption was sought. JCT and NEC suite of contracts were 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 those documents and arrangements was essential for contract management. Contract management required a commercial understanding, appropriate skills and capacity to be undertaken with maximum potential. Presently services were conducting contract management alongside their usual service delivery requirements, which could be extremely time consuming.

### **Within the agreed Scope, the Committee had requested certain information as 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".*

### **RESOURCES AND SERVICES OVERVIEW & SCRUTINY COMMITTEE'S RECOMMENDATION(S) TO CABINET**

#### **RECOMMENDED TO CABINET THAT:**

- a) 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**

**b) a Social Value Policy for Procurement Purposes be produced for consultation with the Resources and Services Overview and Scrutiny Committee at a future meeting.**

**PORTFOLIO HOLDER COMMENT(S) AND RECOMMENDATION(S) TO CABINET**

**The response of the Assets Portfolio Holder is as follows:-**

*“Thank you to the Resources and Services Overview and Scrutiny Committee for its review in this area and to the previous Portfolio Holder for Corporate Finance and Governance being responsible for the Council’s procurement function. I endorse and support the recommendations from the Committee, the existing arrangement with Essex Council Council’s Procurement Team and the identified wider Shared Procurement Service project reported to Cabinet in March 2023, and I will update Cabinet and Members further throughout the year. We are committed to the Social Value Policy for Procurement Purposes, and this will form a work-stream for the team with our colleagues across Essex and workshops will be discussed”.*

**RECOMMENDATIONS TO CABINET:**

**That the recommendations made by the Resources and Services Overview & Scrutiny Committee be considered and that the response of the Assets Portfolio Holder thereto be endorsed.**