

Birmingham City Council

Report to Cabinet

Date: 13th February 2024



Subject: KEY DECISION PLANNED PROCUREMENT ACTIVITIES (MARCH 2024 – MAY 2024)
Report of: ASSISTANT DIRECTOR – PROCUREMENT
Relevant Cabinet Member: Councillor Brigid Jones, Cabinet Member for Finance and Resources
Relevant O & S Chair(s): Councillor Jack Deakin, Chair of Finance and Resources OSC
Report author: Steve Sandercock, Assistant Director, Procurement
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Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 012394/2024		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential :		

1 Executive Summary

- 1.1 This report provides details of the planned procurement activity for the period March 2024 – May 2024 which are key decisions. Planned procurement activities reported previously are not repeated in this report.
- 1.2 The report enables Cabinet to identify whether any reports for procurement activities should be brought to this meeting for specific executive decision,

otherwise they will be dealt with under Chief Officer delegations up to the value of £10m, unless TUPE applies to current Council staff.

2 Recommendations

- 2.1 To approve the planned procurement activities as set out in Appendix 1 and approve Chief Officer delegations, set out in the Constitution, for the subsequent decisions around procurement strategy and contract awards.

3 Background

- 3.1 The report approved by Council Business Management Committee on 16 February 2016 set out the case for introducing this process.
- 3.2 At the 12th July 2022 meeting of Council changes to procurement governance were agreed which gives Chief Officers the delegated authority to approve procurement contracts up to the value of £10m for key decisions over the life of the contract. Where it is likely that the award of a contract will result in staff employed by the Council transferring to the successful contract under TUPE, the contract award decision has to be made by Cabinet.
- 3.3 In line with the Procurement and Contract Governance Rules that form part of the Council's Constitution, this report acts as the process to consult with and take soundings from Cabinet Members and the Resources Overview & Scrutiny Committee.
- 3.4 This report sets out the planned procurement activity over the next few months where the contract value is between the procurement threshold £179,086.67 (excluding VAT) and £10m (excluding VAT) for key decisions. This will give members visibility of all procurement activity within these thresholds and the opportunity to identify whether any procurement reports should be brought to Cabinet for approval even though they are below the £10m delegation threshold.
- 3.5 It should be noted that the procurement threshold has changed from £177,897.50 to £179,086.67 (excluding VAT) and applies from 1st January 2024 for a period of 2 years.
- 3.6 Individual procurements may be referred to Cabinet for an executive decision at the request of Cabinet, a Cabinet Member or the Chair of Resources Overview & Scrutiny Committee where there are sensitivities or requirements that necessitate a decision being made by Cabinet.
- 3.7 Procurements below £10m contract value that are not listed on this or subsequent monthly reports can only be delegated to Chief Officers if specific approval is sought from Cabinet. Procurements above £10m contract value will still require an individual report to Cabinet in order for the award decision to be delegated to Chief Officers if appropriate.
- 3.8 A briefing note with details for each item to be procured is listed in Appendix 2.

4 Options considered and Recommended Proposal

4.1 The options considered are:

- To identify specific individual procurements as listed in appendix 1 for further consideration, along with clear reason(s) for such additional consideration, to Cabinet around the procurement strategy and contract award.
- To approve the planned procurement activities for all the projects listed in appendix 1 and approve Chief Officer delegations as set out in the Constitution, for the subsequent decisions around procurement strategy and contract awards.– this is the recommended option.

5 Consultation / Engagement

5.1 This report to Cabinet is copied to Cabinet Members, Cabinet Support Officers and to Resources Overview & Scrutiny Committee and therefore is the process for consulting with relevant cabinet and scrutiny members. At the point of submitting this report Cabinet Members/ Resources Overview & Scrutiny Committee Chair have not indicated that any of the planned procurement activity needs to be brought back to Cabinet for executive decision.

6 Risk Management

6.1 Members should note that in respect of any procurement projects which are sought to be referred back to Cabinet for further considerations these may impact on timescales around the delivery of those projects.

6.2 Details of Risk Management, Community Cohesion and Equality Act requirements will be set out in the individual reports.

7 Compliance Issues:

7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

7.1.1 Details of how the contracts listed in Appendix 1 and Appendix 2 support relevant Council policies, plans or strategies, will be set out in the individual reports.

7.2 Legal Implications

7.2.1 Members are reminded that as a Local Authority the Council has specific duties under public sector procurement, specifically the Public Contract Regulations 2015.

7.2.2 Specific details of any implications related to public sector procurement Regulations are set out- in the individual reports appended to this report.

7.3 Financial Implications

7.3.1 Specific details of how decisions will be carried out within existing finances and resources will be set out in the individual reports.

7.3.2 Any cashable savings generated as a result of the procurement exercises are detailed in Appendix 2 to the delivery of procurement related savings and be removed from Directorate where identified in addition to the existing service area savings target as set out in the Medium-Term Financial Plan (MTFP) in line with the principles to treatment of identified savings against third party contracts as agreed by CLT on 24th January 2022.

7.4 Procurement Implications (if required)

7.4.1 As noted under the Legal Implications the Council has a duty to ensure that public sector procurement activity is in line with public sector legislation, specifically the Public Contracts Regulations 2015.

7.4.2 For each of the individual projects the specific procurement implications associated to the legislation are set out and detailed in the appendices.

7.5 Human Resources Implications (if required)

7.5.1 None.

7.6 Public Sector Equality Duty

7.6.1 Details of Risk Management, Community Cohesion and Equality Act requirements will be set out in the individual reports which should also give consideration to application of Equality Impact Assessments in line with Council Policy

8 Background Documents

8.1 List of Appendices accompanying this Report (if any):

- 1. Appendix 1 - Planned Procurement Activity March 2024 – May 2024
- 2. Appendix 2 – Background Briefing Paper

APPENDIX 1 – PLANNED PROCUREMENT ACTIVITIES (MARCH 2024 – MAY 2024)

No.	Type of Report	Title of Procurement	Ref	Brief Description	Contract Duration	Directorate	Portfolio	Finance Officer	Contact Name	Planned CO Decision Date
1	Approval to Tender Strategy	Community Engagement Partners	P0942	<p>To commission community engagement partners to identify local health need, map community assets, and co-produce solutions. This will be achieved through a variety of methods, including:</p> <ul style="list-style-type: none"> •Dissemination of Public Health key information through existing or new networks •Delivery of four focus groups per year •Delivery of one project to reduce health inequalities per year •Delivery of four training sessions for health professionals on cultural intelligence •Produce annual summary reports <p>These community organisations will be called deep engagement partners. The partners will be supported by an academic partner. The programme will feature 13 deep engagement partners each held under Lots that will work with the following communities:</p> <ol style="list-style-type: none"> 1. 5x ethnic communities and 3x faith communities 2. 2x LGBTQ+ communities 3. 3x communities with a disability 	2 years with an option to extend for a further 1 year	Strategy, Equalities & Partnership Insight Prevention	Health and Social Care	Ekbal Hussain	Joe Merriman / Manjit Samrai	18/03/2024
2	Strategy / Award	Library of Birmingham and The REP Theatre Mechanical and Electrical Maintenance Services	TBC	To deliver reactive, planned and cyclical maintenance of all specified Mechanical and Electrical and Plumbing systems situated within the Library of Birmingham and its conjoined neighbour The REP Theatre in order to maintain functionality of the shared Building Management Systems to maximise asset life and operate within any warranty requirements.	1 year with option to extend for up to a further 1 year	Adults Social Care	Digital, Culture, Heritage	Samantha Bloomfield	Dawn Beaumont / Jose Vitoria	18/03/2024
3	Strategy / Award	Programme Management for the Asset Disposal Project	TBC	<p>Programme Management support for the Council for the disposal of assets to contribute to the Financial Recovery Plan (FRP). The services to be provided where there is not capacity internally to undertake include:</p> <ul style="list-style-type: none"> •Programme design and set up •Establishment of functions and identification of resources and processes •Implementation of best practice methodologies in the delivery of asset disposals project •Ensure governance and approvals processes are in place •Information and data gathering for each asset •Utilising Reporting tools to analyse progress against individual or groups of assets •Programme delivery including risk management and mitigation 	10 months	Place, Prosperity & Sustainability	Leader	Azhar Rafiq	Eden Ottley / Charlie Short	18/03/2024
4	Strategy / Award	Highways PFI Legal Advice	TBC	Specialist external advocacy, legal advice and support for resolution of settlement issues, expert advice (including technical and commercial expert advice) and contract restructuring and litigation advice in relation to potential disputes. Ongoing risk of claims following DfT decision and pending judicial review process.	Up to 6 months	City Operations	Transport	Carl Tomlinson	Judy Johnson / Andrea Webster	18/03/2024

APPENDIX 2

BRIEFING NOTE ON PLANNED PROCUREMENT ACTIVITIES CABINET – 13th FEBRUARY 2024

Title of Contract	Community Engagement Partners
Contact Officers	Director / Assistant Director: Dr Justin Varney, Director of Public Health Main Client Officer: Joe Merriman, Public Health Senior Officer Other Client Officers: Alice Spearing, Public Health Senior Officer and Jordan Francis, Public Health Senior Officer Procurement Officer: Manjit Samrai, Sub Category Officer
Relevant Portfolio	Councillor Rob Pocock - Cabinet Member for Health and Social Care
Briefly describe the service required	<p>To commission community engagement partners to identify local health need, map community assets, and co-produce solutions. This will be achieved through a variety of methods, including:</p> <ul style="list-style-type: none">• Dissemination of Public Health key information through existing or new networks• Delivery of four focus groups per year• Delivery of one project to reduce health inequalities per year• Delivery of four training sessions for health professionals on cultural intelligence• Produce annual summary reports <p>These community organisations will be called deep engagement partners. The partners will be supported by an academic partner. The programme will feature 13 deep engagement partners each held under Lots that will work with the following communities:</p> <ol style="list-style-type: none">1. 5x ethnic communities and 3x faith communities2. 2x LGBTQ+ communities3. 3x communities with a disability
What is the proposed procurement route?	An open procurement process will be advertised on Find a Tender Service, Contracts Finder and www.finditinbirmingham.com
What are the existing arrangements? Is there an existing contract? If so when does that expire?	This is a new requirement.
Will any savings be generated?	No cashable savings will be generated by this project. However, Public Health preventative interventions provide a whole system cost savings via increased health and wellbeing of the local population. It is estimated that local authority public health interventions cost approximately £3,800 per additional year of good health; this is 3-4 times lower than the cost resulting from NHS interventions of £13,500. This service will save approximately £3,136,500 primary healthcare interventions.
Has the In-House Preferred Test been carried out?	Yes, and the test demonstrated this is not suitable to be carried out in-house as the Council does not have the capability to undertake the requirements of the deep engagement partner. It is essential that the partners are well connected to the community, including seldom heard voices.
How will this service assist with the Council's commitments to Route to Zero?	This service will not assist with the commitments to 'Route to Zero'
How do these activities assist the Council with Everybody's Battle; Everybody's Business?	The opportunity fulfils objectives identified in the Everyone's Battle, Everyone's Business Strategy such as: <ol style="list-style-type: none">1. Understand our diverse communities and embed that understanding in how we shape policy and practice across the Council – by facilitating focus groups with seldom-heard populations on health topics prevalent within the community. Findings from the focus groups will be shared with Public Health teams and wider system partners.2. Involve and enable our diverse communities to play an active role in civic society and put the citizens' voice at the heart of decision making – by including the community engagement partners in

	Health and Wellbeing subforums, such as the Creating a City without Inequality.
Is the Council under a statutory duty to provide this service? If not, what is the justification for providing it?	<p>There is not a statutory duty to provide this service. However, the service is in line with the statutory function of Public Health, in accordance with the Health and Social Care Act 2012, to :</p> <ul style="list-style-type: none"> • Protect the health of the local population. • Carry out research into health improvement, and provide information and advice (Section 12 of the Act) <p>Subsection 12(4) of the 2012 Act provides local authorities with the power to make grants or lend money to organisations or individuals in order to improve public health.</p>
Approval via Spend Control Board.	Approval for this requirement was obtained from the Public Health spend Control Board on the 15 th November 2023 and approved at Section 151 Board on 22 nd December 2023.
Estimated value of project (note: value estimated at time of submission of PPAR, this may change at time of advancing any related procurement activity)	The estimated value for the period of the contract is £410,000 per annum, with a maximum spend of £1,230,000 over 3 years.
What budget is the funding from for this service?	This is funded from the Public Health Grant (budget code AV0KR).
Proposed start date and duration of the new contract	The proposed start date is 1 st June 2024 for a period of 2 years with an option to extend for a further 1 year subject to funding availability and performance.

Title of Contract	Library of Birmingham and The REP Theatre Mechanical and Electrical Maintenance Services
Contact Officers	Director / Assistant Director: Kalvinder Kohli, Assistant Director Early Intervention & Prevention Client Officer: Dawn Beaumont – Chief Librarian Procurement Officer: Jose Vitoria, Assistant Category Manager
Relevant Portfolio	Councillor Saima Suleman - Cabinet Member for Digital, Culture, Heritage
Briefly describe the service required	<p>To deliver reactive, planned and cyclical maintenance of all specified Mechanical and Electrical and Plumbing systems situated within the Library of Birmingham and its conjoined neighbour The REP Theatre in order to maintain functionality of the shared Building Management Systems to maximise asset life and operate within any warranty requirements.</p> <p>The scope also includes the monitoring and management of systems to control the internal environment at optimum efficiency for the wellbeing of staff, customers and to deliver cost savings efficiencies where possible.</p>
What is the proposed procurement route?	A procurement process will be undertaken by way of a National Framework in accordance with its protocol via direct award. The Framework Agreement is free to access for all UK Public Sector Bodies The use of compliant frameworks, in accordance with the Framework call off conditions, is supported by the Council Constitution (Procurement and Contract Governance Rules) and complies with the Public Contract Regulations 2015 (PCR).
What are the existing arrangements? Is there an existing contract? If so when does that expire?	<p>The existing contract with Airtech Optimise Ltd expired 30th September 2023 and was not renewed on time due to other Council activities taking priority over officer time. Airtech Optimise Ltd are currently delivering the services to LoB on an ad-hoc basis. This contract will enable to now achieve contractual and legal compliance it is proposed to make a direct award for 1 year with an option to extend for 1 year if needed.</p> <p>This will allow the service area and The REP Theatre to conduct a full options appraisal and develop a joint maintenance strategy when procuring the any future strategic contract. The full options appraisal will consider the possibility of insourcing as per the Councils Constitution.</p> <p>The time above needed is to ensure a fully and competitively tendered procurement contract of this level of complexity is achievable/ Including the full options appraisal work needed with The REP Theatre Facilities Management, engaging with the Council’s wholly owned company (Acivico) is likely to be lengthy as they will need to source competitive subcontractors for specialist systems at LoB/The REP e.g. Hypoxic, Ground Source Cooling, Tannoy, CCTV etc and for that to include the new element of cyclical maintenance element as well as reactive and planned to define the contract specification.</p> <p>The ultimate outcome of which will be to appoint a suitable supplier for a 4 year contract either through insourcing or conducting a fully competitive tender exercise via a suitable framework.</p>
Will any savings be generated?	<p>No cashable savings can be guaranteed. Some cost savings are likely to be achieved via the direct award route but are not easily quantifiable. A 1 year stable maintenance supplier relationship will help deliver greater discounts through supply chains and subcontractors.</p> <p>The costs of an extended procurement exercise will be also be avoided. The Library of Birmingham is now over 10 years old having opened in September 2013. Equipment in the building has run 24/7</p>

	<p>365 days per year over that period with many systems now at end of life requiring increasing maintenance/replacement as a result.</p> <p>Shared Mechanical and Electrical plant systems serve both the Library of Birmingham and The REP Theatre. The REP Theatre will reimburse the Library of Birmingham for their element of the contract costs predicted at £75k per annum with the libraries share being £581k per annum total contract value circa £656k. A review of that split will be undertaken to determine if The REP should contribute more for their part of the shared systems.</p>
Has the In-House Preferred Test been carried out?	Yes, and the test demonstrated this is not suitable to be carried out in-house. Acivico have previously been invited to provide costs to undertake the maintenance of the Library of Birmingham but were uncompetitive. Acivico are a third-party option for The REP Theatre with prohibitive costs. The REP Theatre are not obliged to follow the Councils constitution and the In-House test.
How will this service assist with the Council's commitments to Route to Zero?	The Library of Birmingham has a Building Research Establishment Environmental Assessment Method (BREEAM) excellent rating and the maintenance provider always looks for efficiencies to reduce energy consumption. During the recent energy crisis, the supplier has optimised "dead bands" to reduce costs of heating and cooling and also through exchanging equipment for more energy efficient options including implementing low energy LED lighting schemes saving £1000s in energy bills.
How do these activities assist the Council with Everybody's Battle; Everybody's Business?	The maintenance supplier is an enabler through which keeping the building well maintained allows the Library of Birmingham to deliver a statutory service that is inclusive to all communities, faiths, beliefs, and cultures.
Is the Council under a statutory duty to provide this service? If not, what is the justification for providing it?	There is a statutory duty to provide planned maintenance checks for the safety of building occupants and to undertake repairs e.g. to prevent Legionella, to have safe electrical systems, to have legally compliant heating and cooling systems and airflows. In addition, the Council's powers to provide a statutory library service are contained in sections 7 and 12 of the Public Libraries and Museums Act 1964. Section 144 of the Local Government Act 1972 provides a power for the Council to encourage visitors to the Library of Birmingham and provide conference and other facilities.
Approval via Spend Control Board.	Approval for this requirement was obtained from the Adult Social Care Spend Control Board on 5 th December 2023 and approved at Section 151 Board on 5 th December 2023 - ID: 2656.
Estimated value of project (note: value estimated at time of submission of PPAR, this may change at time of advancing any related procurement activity)	The estimated value for the period of the contract is £1,313,000.
What budget is the funding from for this service?	This is funded from the General Fund Budget.
Proposed start date and duration of the new contract	The proposed start date is 1 st May 2024 for a period of 1 year with option to extend for up to a further 1 year. The project team will use reasonable endeavours to ensure that a new contract is in place on expiry of the initial term of one year. The extension option of up to 12 months is proposed to allow for unforeseen circumstances & delays that may impact the re-procurement timetable.

Title of Contract	Programme Management for the Asset Disposal Project
Contact Officers	Director / Assistant Director: Kathryn James - Assistant Director, Investment and Valuation Client Officer: Eden Ottley, Property Strategy Delivery Manager Procurement Officer: Charlie Short, Procurement Manager
Relevant Portfolio	Councillor John Cotton - Leader
Briefly describe the service required	Programme Management support for the Council for the disposal of assets to contribute to the Financial Recovery Plan (FRP). The services to be provided where there is not capacity internally to undertake include: <ul style="list-style-type: none"> • Programme design review • Establishment of functions and identification of resources and processes • Streamline systems and processes. • Implementation of best practice methodologies in the delivery of asset disposals project • Information and data gathering for each asset. • Utilising Reporting tools to analyse progress against individual or groups of assets. • Programme delivery including risk management and mitigation
What is the proposed procurement route?	A further competition exercise will be undertaken using a compliant third-party framework agreement identified as the most suitable for this requirement.
What are the existing arrangements? Is there an existing contract? If so when does that expire?	This is a new requirement.
Will any savings be generated?	No cashable savings will be generated by this project/ procurement process. However, this service will support the generation of capital receipts which will contribute to the FRP via the generation of £500m capital receipts and 2023-25 MTFP linked to the Commissioners and Section 151 Spend Control approval for the service.
Has the In-House Preferred Test been carried out?	Yes, and the test demonstrated this is not suitable to be carried out in-house as currently there is insufficient internal capacity and capability for the Programme Management services to support the generation of asset disposal programme required to support the financial targets.
How will this service assist with the Council's commitments to Route to Zero?	The works will be undertaken using online platforms and minimising paper usage. Car trips will be minimised, and public transport links maximised. Therefore, reducing carbon footprint.
How do these activities assist the Council with Everybody's Battle; Everybody's Business?	There is no direct impact on Everybody's Battle, Everybody's Business from the award of this contract.
Is the Council under a statutory duty to provide this service? If not, what is the justification for providing it?	There is not a statutory duty to provide this service. However, the services are essential to support the Council in the delivery of the asset disposals programme to support the FRP.
Approval via Spend Control Board.	Approval was obtained on 14 December 2023 by the Section 151 Officer Spend Control Board ID: Ref -2376 for programme management support for the delivery of £500m of capital receipts for the Financial Recovery Plan.
Estimated value of project (note: value estimated at time of submission of PPAR, this may change at time of advancing any related procurement activity)	The estimated value for the period of the contract is up to £900,000.
What budget is the funding from for this service?	The cost of Programme Management support will be funded from the capital receipts generated from the disposal of assets.
Proposed start date and duration of the new contract	The proposed start date is May 2024 for a period of 10 months.

Title of Contract	Highways PFI Legal Advice
Contact Officers	Director / Assistant Director: Mark Shelswell, Assistant Director Highways & Infrastructure Client Officer: Judy Johnson, PFI Procurement Manager (Commercial) (Commercial) Procurement Officer: Andrea Webster, Sub Category Manager
Relevant Portfolio	Councillor Liz Clements – Cabinet Member for Transport
Briefly describe the service required	Specialist external advocacy, legal advice and support for resolution of settlement issues, expert advice (including technical and commercial expert advice) and contract restructuring and litigation advice in relation to potential disputes. Ongoing risk of claims following DfT decision and pending judicial review process.
What is the proposed procurement route?	The award of a further call off contracts under the Council's existing Highways PFI Legal Advice framework agreement. The ordering procedure in this framework allows for multiple call off contracts to be let.
What are the existing arrangements? Is there an existing contract? If so when does that expire?	There is an existing contract (call off contract #1) with DLA Piper UK LLP that is set to expire on 30 th June 2024 but will expire on value earlier that anticipated in February 2024. Due to an extension to the procurement process of the Highways PFI procurement and unexpected delays awaiting a decision from Department for Transport and Treasury with regards the OBC spend under this contract has been more than originally anticipated.
Will any savings be generated?	No cashable savings will be generated by this project.
Has the In-House Preferred Test been carried out?	The In-House Preferred Test has been carried out and shows that this service cannot be undertaken in house.
How will this service assist with the Council's commitments to Route to Zero?	The use of these external resources will assist the Council in obtaining service delivery that supports Route to Zero (through maintenance of the city's roads).
How do these activities assist the Council with Everybody's Battle; Everybody's Business?	These activities will assist the Council in meeting its EBEB objective 'Deliver responsive services and customer care that is accessible and inclusive to individual needs'.
Is the Council under a statutory duty to provide this service? If not, what is the justification for providing it?	The Council is under a statutory duty to maintain its public highways as Highway Authority under the Highways Act 1980. The PFI contract also supports statutory duties under the New Roads and Street Works Act 1992 and Traffic Management Act 2004. These statutory obligations are delivered via the Highway Maintenance and Management PFI Contract. Completing restructuring of the contract is essential to continuing to provide these services.
Approval via Spend Control Board.	Approval was obtained by the Section 151 Spend Board on 21 st December 2023 - ID3907.
Estimated value of project (note: value estimated at time of submission of PPAR, this may change at time of advancing any related procurement activity)	The estimated value for the period of the contract is £1,850,400 for call #2.
What budget is the funding from for this service?	This is funded from the Highway Maintenance and Management PFI budget and reserves.
Proposed start date and duration of the new contract	The proposed start date is March 2024 for a period of up to 6 months. It is anticipated that there will be an ongoing need for this service beyond this 6-month period. During this 6-month period a procurement process will be undertaken to ensure that new replacement arrangements are in place on expiry.