

Resources Overview and Scrutiny Committee

6 October 2022

Briefing From: Steve Sandercock, Assistant Director – Procurement

Briefing For: Resources Overview and Scrutiny Committee

Date: 6 October 2022

Title: To update on progress regarding the Procurement and Contract Governance Rules – Birmingham City Council's Constitution – Part D2

Purpose:

- To update Members on the work undertaken on the Council's Procurement and Contract Governance Rules, formerly known as Procurement Governance Arrangements.

Background and update

- Members will be reminded that during Winter 2021/ Spring 2022 Overview and Scrutiny Committee undertook a cross party review of the existing rules (Procurement Governance Arrangements – PGAs) and a list of 22 recommendations were approved for carry forward into the new Procurement and Contract Governance Rules and the accompanying guidance documents.
- A full review of Part D2 of the Council's Constitution has been undertaken and this was approved at Full Council on the 12th July 2022.
- In line with the recommendation of the July Cabinet further minor amendments to Part D2 of the Council's Constitution were approved on the 15th August 2022 which included sign off around the Waiver Procedure, Breach Procedure and minor amendments to the Rules themselves.
- The updated Part D2 of the Council's Constitution was uploaded to [The City Council's Constitution | Birmingham City Council](#) on the 25th August 2022, along with links to the new Waiver and Breach Procedures which were uploaded to [Procurement Procedures](#).
- Communications have been issued to all Senior Managers as to the changes with training sessions for Procurement staff both within CPS and the wider Council Directorates are being rolled out between Sep – Dec 2022. Training for non-procurement staff is being designed to include an e-

learning module which can be used as part of the Council's mandatory training.

- First quarterly reporting on Breaches, Waivers, Emergency Process, and a record of all decisions made by Chief Officers is due from October 2022
- To aid transparency changes have been implemented to the Planned Procurement Activity Report whereby now procurement activity that is deemed a Key Decision is captured as part of the Council's democratic Forward Plan.
- A full review and update of the accompanying guidance documents and templates is being undertaken and is due for completion by the end of November 2022.
- Specific commentary on the 22 recommendations from Overview and Scrutiny Committee is set out below:

No.	Recommendation	Recommendation detail	Update Comments - September 2022
1.	Introduce an Initial Make or Buy decision for pre-Procurement Stages;	<p>Use of in-house Council services, existing contracts (ensure relevant to directorate or corporate contract), or existing public procurement frameworks.</p> <p>To include contracts awarded under the Public Contract Regulations (PCR) 12(1) (formerly referred to as the Teckal exemption) and contracts awarded under PCR 12(7) (e.g. establishing or implementing a public contract with another public sector entity). Must be able to demonstrate Best Value (also covered in clause FR10 of the Constitution).</p> <p>Consideration on how this aligns to the Commissioning Strategy will also be taken. Evidence to be provided in the Pre-Procurement Report and must be proportional to the value of spend.</p>	<p>This has been included in the Council's Constitution as part of the update to the Procurement and Contract Governance Rules.</p> <p>Further guidance and training is being released Sep - Dec 22 including use of the Commissioning and Procurement Gateway to support the Make or Buy process.</p>
2.	Introduce proceed to purchase threshold for under £5,000;	<p>Authorisation to be obtained via the Scheme of Delegation.</p> <p>Recommendation 1 must have been undertaken prior to proceed to</p>	<p>A new threshold of "Proceed to Purchase" has been included in the Council's Constitution as part of the</p>

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		purchase. Must be able to demonstrate Best Value.	update to the Procurement and Contract Governance Rules.
3.	Introduction of new threshold to replace current £10k threshold with £5,000 - £25,000 level;	<p>Preference for three quotations (2 from local suppliers/ Small Medium Enterprises (SMEs) where possible), with a minimum of one quotation (local supplier/ SME where possible).</p> <p>Quotations to be attached to Purchase Order for audit purposes.</p> <p>One quotation will only be excepted where there is demonstratable and justifiable reason for exception to three quotations.</p>	Within the Council's Constitution as part of the update to the Procurement and Contract Governance Rules the threshold has been revised and incorporates the preferences around local suppliers / SMEs.
4.	Increase lower threshold to £25k; or Light Touch Regime (LTR)/ Concessions or Utilities Contract Regulations (UCR16) where applicable);		This threshold has been amended in the new Procurement and Contract Governance Rules including stipulations on minimum number of days for adverts, e.g. minimum of ten working days for submission of quotations
5.	Introduce new uppers thresholds (Works);	<p>£25k to £250k or to relevant PCR15 Threshold (Concessions or UCR16) – for improvement of clarity.</p> <p>Application of procedure in recommendation 4. Threshold in line with current sealing requirements for Works.</p>	This threshold has been amended in the new Procurement and Contract Governance Rules
6.	Over £250k (Works) or (Concessions or UCR16) up to PCR15 Threshold; Application of Light Touch Regime where applicable;	otherwise must follow a formal compliant tender procedure, must be advertised on Find a Tender and contracts finder, contract to be published on Contract Register. Must consult with relevant Head of Category (Procurement) and the Councils' E-tendering system must be used.	This threshold has been amended in the new Procurement and Contract Governance Rules

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7.	PCR15 Threshold (Supplies and Services, Works, Concessions, LTR or UCR16) - £10 million - Maintain current requirements		<p>No further action to have been taken regarding the Council's Constitution.</p> <p>Training being rolled out Sep - Dec 22 including creation of training for non-procurement staff, including an e-learning module for all new starters.</p>
8.	Over £10 million – Maintain current requirements		<p>No further action to have been taken regarding the Council's Constitution.</p> <p>Training being rolled out Sep - Dec 22 including creation of training for non-procurement staff, including an e-learning module for all new starters.</p>
9.	Remove clause 2.3 v. under exemptions within the Constitution	<p>Clause 2.3 - "Exemption from any Standing Order may be authorised by the Decision Maker PROVIDED THAT the Decision Maker is satisfied that the exemption is justified by special circumstances and the Decision Maker records in writing the ground(s) for being so satisfied as part of that decision."</p>	<p>Removed from the Council's Constitution with improved clarity on Emergency Process and incorporation of the Waiver procedure.</p>

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10.	Introduce a clear list of Out of Scope scenarios;	<p>Following scenarios to be included:</p> <ul style="list-style-type: none"> • A contract for or on behalf of a school with a delegated budget, where the contract has been procured in accordance with the school's own formal procurement and contractual rules; governed by Schools financial procedures manual. • Contracts regarding the purchase or lease of property, acquisition, disposal, transfer of land, or any interest in land which includes licenses; governed by the Head of Property Law. • Legal charges, awards and disbursements (including all associated costs and fees) in connection with any and all legal proceedings; governed by Civil Procedure Rules. • Offers of employment which makes an individual an employee of the Council. Governed by the Employment Rights Act 1996. For further clarity - If BCC put out a contract for services and that person was self-employed and won the tender, it would still be a contract for services rather than a contract of employment. If however authority has been granted to recruit a perm / interim / consultant etc then, for the latter, the commissioning gateway process would need to be followed and it might be helpful to include a reference to that to ensure compliance with the process. • Insurance claim compensation. 	Out of Scope section has been included in the Council's Constitution and will be covered in the training provided Sep - Dec.

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11.	Introduce a clear list of Waivers;		<p>Waiver Procedure included in the Council's Constitution and available to download from birmingham.gov.uk pages.</p> <p>Training included on the Waiver Procedure during training sessions Sep - Dec. Flow charts being produced as to approval routes and how this links with the Negotiated Procedure in some instances.</p>
12.	Strengthen clarity of when Single Contractor Negotiations (SCNs) / Multiple Contractor Negotiations (MCNs) should be applied;		<p>SCNs/ MCNs have been replaced by the Negotiated Procedure which provides greater clarity on when a Negotiated Procedure can be applied.</p> <p>This has been included within the updated to the Procurement and Contract Governance Rules.</p> <p>Training on Negotiated Procedures is included in training sessions Sep - Dec and flow charts are being produced to show authorisation levels and how this interlinks with the Waiver Procedure in some instances.</p>

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13.	Incorporate a clear Breach Procedure;	<p>proposed principles being:</p> <p>• Any exemption sought after contract award has been completed will be classed as a breach with initial referral to the Head of Category to undertake initial investigation. The investigation will consider intent, the individual circumstances and the impact of the alleged breach.</p> <p>• Investigations and actions taken will be proportionate to the nature and risk the breach poses to the Council.</p> <p>• Where the Head of Category upholds the breach, the matter will be referred to the Assistant Director - Procurement, to agree the appropriate course of action. Where required the Breach will be referred to the relevant Assistant Director within the service area to take the appropriate action, this may include the Council's Disciplinary and Capability Procedure or service sanctions where appropriate e.g. repeated and wilful breaches.</p> <p>• Report on the number of breaches raised to be sent to Cabinet on a quarterly basis.</p>	<p>Breach Procedure has been created and specific reference made within the updated to the Procurement and Contract Governance Rules.</p> <p>A copy of the Breach Procedure is available to download from the birmingham.gov.uk pages.</p> <p>Breach Procedure is covered within the training sessions being provided Sep - Dec.</p>
14.	Improve clarity of actions to be taken in case of emergency;	Consideration given to the Emergency Plan, Business Continuity Plan and the Proposed New Contract Regulations.	Emergency Process section has been included in the Council's Constitution.
15.	Align authorisations for sign off in line with Scheme of Delegation;	<p>following principles to be included:</p> <p>• Scheme of Delegation to cover entire contract life including all potential extensions</p>	Authorisation levels within the Council's Constitution Part D2 have been aligned to the Scheme of Delegations in the Council's Constitution Part E.

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16.	Contract Extension rules to be updated during document update;	<p>Following principles to be included:</p> <ul style="list-style-type: none"> • Extensions to be signed off under Scheme of Delegation – where there is an existing option to extend. • Expired Contract End Date – commence new procurement in line with Procurement Governance Arrangements. • SCNs/MCNs are not to be used to extend contracts. Constitution Part D - Clauses 2.1 i. and vii.; to be reinforced during training. • Contract duration (plus any extensions) should be appropriate to the market for the contract – where practical use short extensions to create breaks for review (i.e. 2+1+1 instead of 2+2). 	<p>Contract Extensions and Modifications section has been included within the Council's Constitution.</p> <p>Training on extensions is included within the training sessions (Sep - Dec) and further ad-hoc advice being issued where required.</p> <p>Contract extension section to also be included in 'How To Guide - Procurement' which is an internal supporting guidance document.</p>
17.	Contract Management rules to be updated during document update;	<p>following principles to be included:</p> <ul style="list-style-type: none"> • Clear identification of Contract Manager for each contract whether Corporate or Directorate contract. • Contract Management and Social Value training to be given • Suite of templates for contract managers 	<p>Guidance documentation and suite of templates update is underway and due to be completed by the end of November 2022.</p> <p>Contract Management and Social Value training is being designed and will be rolled out to all staff.</p> <p>Contract manager details being updated on Oracle which will enable a spreadsheet of contract manager contact details to be produced moving forward.</p>
18.	Contract Variations procedure to be updated during document update;		<p>Contract Modifications section added to the Council's Constitution and will be covered in guidance documents such as the 'How To Guide - Procurement'.</p>

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19.	PPAR (Planned Procurement Activities Report) to be advertised on internet;	Opportunity for suppliers to review and allocate resource to upcoming tenders. This will increase opportunities for SMEs that do not have bid teams.	Website re-design underway, PPAR for upcoming three months to be published on the internet for suppliers to view, updated monthly. Date of publication start TBC.
20.	Expiring contracts report to be sent to Directorates and Scrutiny (monthly/ quarterly);	Report to directorates and scrutiny monthly/ quarterly highlighting contracts due to expire within the upcoming 12 months; enabling the commissioning process to commence and procurement activities to be included in Procurement Workplan for allocation of resource. Oracle will automate this.	Contract buyers on Oracle receive notification of contracts due to expire based on contract trigger dates on the Oracle system. Contracts due to expire will also be addressed at directorate meetings when compliance reports are presented.
21.	Clear clause in tender documents and quotations to highlight Route to Zero;		Templates are being updated and clauses will be sent to all Procurement Officers for inclusion in the documents where relevant to the contract.
22.	Open Audit recommendations to be addressed in the update of documentation.	<p>The Council's rules for extending contracts need to be made clearer in both Standing Orders and Operation of Procurement Governance Arrangements. In particular, there needs to be clarity and consistency regarding:</p> <ul style="list-style-type: none"> • which type of report template to use; • authorising officer(s); • under what circumstances a SCN as opposed to Contract Extension Report should be used; • under what circumstances a combined SCN and Delegated Award Report may be used. 	Tables of processes and authorisation levels have been included in the Council's Constitution. Guidance documentation and suite of templates update is underway and due to be completed by the end of November 2022. Flow charts being produced to show routes of procurement, including documentation to be used and authorisation to be obtained at each stage of the process. Training sessions being delivered Sep - Dec.

Options considered and Recommended Proposal

Members can either accept the proposed work carried out as being suitable and sufficient or seek additional insight and assurance on progress being made.

Appendices

Appendix 1 – Cabinet Report – Full Council (12 July 2022)

Appendix 2 – Procurement and Contract Governance Rules

https://www.birmingham.gov.uk/downloads/file/13655/part_d_constitution

Background reference document (available on request) - Resources Overview and Scrutiny Committee - 24 March 2022 - Task and Finish Group on Procurement Governance Arrangements

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