

# Procurement and Contract Management

## Report for the Resources O&S Committee

### 1 Purpose

This report provides members with an overview of the process and landscape within which Procurement and Contract management services are delivered. The report aims to address concerns raised by the Resources Overview and Scrutiny committee about the effectiveness of how contracts are procured and managed. The report sets out the actions that are in progress to minimise the risk of late procurements and the number of single contractor negotiations as well as provide an improved understanding of the process moving forward. The report considers the main concerns raised by the Committee, chiefly around:

- Adherence to procurement processes;
- The use of and need for late decisions and SCN's and
- The levels of compliance, understanding and interpretation of the constitution \ Procurement Governance Arrangements at officer and member level.

The report will also make reference to the specific points raised around the waste procurement, CAZ mitigations and National Express and address the procurement related concerns within these points.

### 2 Procurement landscape & context

Primarily, it is important to note that procurement legislation and the Council's governance arrangements are complex procedures and not straightforward with the need to account for many variables. With an organisation of the size and complexity of the Council there are invariably many dynamics and drivers at play when procurements are required. These need to be considered when navigating processes and governance arrangements to ensure that the most appropriate route to market and specification of requirements is achieved. Dependent on the nature of the requirement, procurements may also require multiple governance routes for example through DMTs, ICT Gateway, Capital Board and Cabinet plus other consultees. It is also important to note that the ability to deliver successful procurements can also vary considerably dependent on the complexity of the requirement and the time available to carry it out.

To contextualise this, the procurement service can be broadly summarised in numbers as set out below;

410 live contracts above OJEU threshold;

101 live procurement projects, the majority of which are one-off (not repeat) procurements and;

A further 58 projects that cannot be resourced at present.

146 Agreements expiring within the next 24 months.

The routes to market and associated governance are dependent on total contract value as represented in the table below.

Value	Process	Decision Maker
Upto £10k	3 quotations using suppliers registered on finditinBirmingham, use of an existing Framework <u>or</u> single \ multiple contractor negotiations process where only 1 contractor exists or where there is a unforeseen priority	Chief Officer or;  City Solicitor (or Assistant Director, Legal) and the Chief Finance Officer (or the Assistant Director Development and Commercial Finance) for SCN \ MCN.
Procurements between £10k and European Threshold (currently £189.3k)	High cost quotations process, requirement advertised on Finditinbirmingham (and Contracts Finder where a contract exceeds £25k), use of an existing Framework <u>or</u> single \ multiple contractor negotiations process where only 1 contractor exists or where there is an unforeseen priority	Chief officer with clearance from Legal, Procurement and Finance.  City Solicitor (or Assistant Director, Legal) and the Chief Finance Officer (or the Assistant Director Development and Commercial Finance) for SCN \ MCN.
Between European Threshold and £10m	Full Procurement Process using either the Open, Restricted, Competitive Dialogue Routes, Competitive Procedure with Negotiation or Innovation Partnership Direct award or mini-competition exercise using an existing Framework <u>or</u> ;  single \ multiple contractor negotiations process where only 1 contractor exists there is an unforeseen priority.	Procurement included within a Planned Procurement Activities Report to Cabinet as part of the Sounding Out Process;  Chief Officer with clearance from Legal, Procurement and Finance. Director, Legal) and the Chief Finance Officer (or the Assistant Director Development and Commercial Finance) for SCN \ MCN.
Over £10m	As above	Cabinet

### 3 Challenges

Whilst the above dynamics in themselves can potentially lead to delays, there are a number of other considerations that can affect timely decision making and the potential need for single\multiple contractor negotiations. For example;

The procurement processes and governance arrangements are not always widely understood particularly for officers that do not deal regularly with procurement and contracting issues. There is also no mandated requirement to engage Corporate Procurement. This often means that for new requirements Corporate Procurement expertise is often engaged late in the process resulting in a pressured procurement timeline. This presents a challenge given Corporate Procurement typically start a programme 12–14 months from expiry date \ commencement date.

A number of service areas within the Council play a role in procurement projects and there can be a lack of understanding/appreciation of how long pre–procurement activities can & do take, despite online toolkits and guidance being available. The procurement process itself can be time–lined and will be as long or as short as it needs to be depending on the nature of the contract. Where pre–procurement activities have been delayed this often results in the procurement process being delayed or truncated. It is then the procurement process then becomes the focus and the implied cause of the delay or the reason for failure.

Corporate Procurement Services often experience stakeholder capacity issues whereby officers are unable to allocate enough time and effort to supporting procurements due to business as usual priorities.

Historically advance procurement planning has not been as efficient as it could have been although significant progress has been made over recent months to improve advance planning.

There can be urgent and unforeseen procurements arising as a result of new funding, policy initiatives or business changes the majority of which are one off and need to be implemented to constricted timescales. This can also result in the de–prioritisation of other more routine procurements.

Organisational restructures, business, staffing and funding changes, meaning that procurements cannot commence until such changes are complete.

Further details are included within the indicative procurement timeline and responsibilities set out in Appendix 1 for routine re–procurements.

### 4 Specific concerns raised by Overview & Scrutiny

The specific concerns raised by the Committee are addressed where possible in the commentary below.

1. **Taking account of policy change:** at the last meeting an item of urgent business was raised in relation to the publication of an OJEU notice for the procurement of waste treatment services. The concern was that the delegated authority to commence

procurement activity had been given in a February 2018 Cabinet report, more than a year before the council had declared a climate emergency which the OJEU makes no reference to, and this raised questions about what the procedure is for reviewing processes to ensure account is taken of any changes in council policy.

The Council's standard contractual documentation does include a requirement to comply with relevant Council policies and any subsequent changes made over time with any significant policy changes being dealt with through contractual variations. This ensures that suppliers are cognisant of the most up to date requirements.

2. **Clarity on the requirements of the procurement arrangements and whether these are being followed:** the call-in meeting on 10<sup>th</sup> February discussed the decision to enter into Single Contractor Negotiations for the provision of a Clean Air Zone mitigations application and case management system. This raised questions about whether the arrangements for procurement set out in Part D3 had been followed, and some confusion about what requirements applied.

Following the O&S session it was agreed that the Constitution would be made clear on how these SCNs are approved and ensure that appropriate approval routes are adhered to regarding signing off report.

3. **Timeliness of procurement decisions:** this has arisen multiple times, including the re-procurement of the waste management contract (subject of a call-in by this committee in January 2019); the emergency decision taken in December 2019 in relation to the National Express bus depot relocation; and was in issue in the Clean Air Zone mitigations application referred above. In each of these cases, the need for a quick decision overrode other good governance or transparency requirements. It is unclear why this is a recurring issue and is perhaps related more to contract management rather than procurement processes but does raise questions regarding how service areas and Corporate Procurement Services work together to ensure compliance.

Corporate Procurement Services and service areas typically work extremely well together on procurement and contract management activity. As referred to above and included within the responsibilities set out in Appendix 1, a lead from the service area is essential when drafting specifications, performance indicators, tender questions and evaluating tenders. If service areas are experiencing availability or capacity issues due to business as usual activity, then this is typically where delays in the procurement process can occur despite best endeavours from both Corporate Procurement and the Service to mitigate these.

This report cannot respond on the concerns raised relating to the Emergency Cabinet Report in December regarding the acquisition of the National Express site as this decision related to a property acquisition and not a procurement matter.

## 5 Rectification action taken

The issue of delayed procurements, urgent and late reports can never be fully eradicated, but Corporate Procurement recognise that there are always opportunities to improve. The recent

Procurement Maturity Assessment review undertaken by PriceWaterhouseCoopers (PwC) has made a series of recommendations that can be taken forward following business case approval. The key themes from this review and other additional actions to improve are summarised below.

The need for a clear Council wide understanding on the split of activities between Corporate Procurement and its customers and an improved understanding of the process and timescales from identifying a need for goods/services through to contract commencement. Raising awareness of this will help to avoid delays, late starts, SCNs and urgent reports.

Concluding the Annual Review of the Constitution from a Procurement perspective with a view to tightening the wording \ requirements to provide absolute clarity on the governance arrangements.

Delivering improvements to Procurement Planning through ongoing bi-weekly reviews of all live contracts by expiry to ensure timely commencement of re-procurement activity such as identification of outcomes and future needs analysis, options appraisals, confirmation of budget \ budget adjustments.

Implementing the recommendations from the PwC Review which may include delivery of a new target operating model and structure for the service. This includes providing training and awareness sessions for service leads and budget holder where appropriate and delivering a more streamlined improved process. A more consolidated rationalised supplier base will be achieved through the implementation of the 1B ERP programme.

## Appendix 1 - Boilerplate Procurement Timescales, responsibilities and potential obstacles

