

Birmingham City Council

Resources Overview and Scrutiny Committee

Date: 17 November 2022



Subject: Quarterly Assurance Update (Period 3 – June 2022 to end of September 2022) – Procurement and Contract Governance Rules

Report of: Rebecca Hellard - Director of Council Management

Report author: Steve Sandercock - Assistant Director (Procurement)

1 Purpose

- 1.1 To present the Quarterly Assurance Update considered at Cabinet on 8th November 2022.

2 Recommendations

- 2.1 To consider and note the report.

3 Appendices

- 3.1 Report to Cabinet 8th November 2022
- 3.2 Quarterly Assurance Update Table

Birmingham City Council

Report to Cabinet

Date: 8th November 2022



Subject: Quarterly Assurance Update
(Period 3 - June 2022 to end of September 2022)
Procurement and Contract Governance Rules

Report of: Rebecca Hellard – Director of Council Management

Relevant Cabinet Member: Councillor Mosquito – Finance and Resources

Relevant O &S Chair(s): Councillor Akhlaq Ahmed – Resources

Report author: Steve Sandercock – Assistant Director (Procurement)

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 type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, add Forward Plan Reference:		
Is the decision eligible for call-in?	<input type="checkbox"/> Yes	<input checked="" 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 a quarterly update of actions in compliance with the Council's Constitution and the related Contract Standing Orders around Procurement and Contract Governance Rules.
- 1.2 Full details around decisions taken through application of the Waiver Procedure, Negotiated Process and Emergency Process and where a breach of the application of the Rules has occurred are listed in Appendix 1.

- 1.3 In summary for this previous quarter there have been the following:
- 1.4 6 waivers to the total value of £1.08m, with the primary grounds for seeking a Waiver Procedure of:
- Efficiency / expediency in relation to process (3)
 - Time constraints beyond the control of the Council (2)
 - Avoidance of reputational damage (1)
- 1.5 Within the table in Appendix 1 it also requests for noting for transparency purposes 7 cases identified where the Rules were not followed as set out and therefore being categorised as a breach total value of £1.628m.
- 1.6 12 negotiated processes approved to the total value of £920k
- 1.7 1 emergency process authorised to support the Private Sector Landlord temporary access solution.
- 1.8 In addition, in line with the Planned Procurement Activity Reports there were 18 projects submitted in the accompanying period to the total estimated value of £45,189,967.34.

2 Recommendations

- 2.1 Cabinet notes the report and accompanying information.

3 Background

- 3.1 In line with the Council's Constitution, the Procurement and Contract Governance Rules (the Rules) set out a requirement for a quarterly assurance report to be presented to Cabinet on related decisions undertaken.
- 3.2 The aim of the report is to promote transparency and accountability in connection with how the Council undertakes its procurement and commercial activity along with providing Members with assurance on both the overall governance and actions being carried out.
- 3.3 Members are reminded that as set out within the Rules there are permitted compliant activities allowed in how the Rules are applied, this includes:
- i. The option to apply a waiver the Rules where it is satisfied that it is justified and legal to do so as set out in the Waiver Procedure to the Rules,
 - ii. The option to undertake an emergency process where the reasons are not attributable to any act or omission by the Council and where a genuine emergency exists and a contract cannot be awarded based on a competitive tender or following the Rules,
 - iii. The option to conduct a negotiated contract without competition in line with set criteria within the Rules.

- 3.4 In addition, the Rules state that compliance is deemed mandatory and is an essential part of the overall Constitution of the Council. However, it is recognised in situations whereby strict compliance with the Rules has not happened these are to be recorded as a breach to the Rules.
- 3.5 Appendix 1 of this report provides high level details on the decisions taken around the following:
- i. Waivers,
 - ii. Emergency Process,
 - iii. Negotiated Procedure,
 - iv. Breaches.
- 3.6 Members are also reminded that in addition to the details set out in this report, a monthly Planned Procurement Activity Report (PPAR) is presented to Cabinet outlining forthcoming procurement activity.
- 3.7 Whilst not a means of mitigation it should further be noted that the quarterly reporting of such matters as set out in this report are new to the Constitutional governance framework of the Council and as a result it will in the cases of breaches include some activities which have occurred prior to the adoption of the new Rules.

4 Options considered and Recommended Proposal

- 4.1 The report and accompanying information is for noting purposes only.

5 Consultation

- 5.1 None

6 Risk Management

- 6.1 Compliance with the Council's Constitution is vital in respect of providing reputational confidence around how the Council operates as well as regulatory compliance, e.g. Public Contract Regulations 2015.
- 6.2 Reporting details of assurance is one part of recognising activities being carried out both assisting in monitoring effectiveness of trend compliance and aiding lessons learnt.

7 Compliance Issues:

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

- 7.1.1 This report sets out details of actions in compliance with the Council's Constitution and the related Contract Standing Orders around Procurement and Contract Governance Rules.

7.1.2 The procedural aspects of Waivers, Negotiated Procedures and Emergency Process are set out within the Rules and any specific areas where compliance has not occurred in line with the Rules is captured within this report as a breach.

7.2 Legal Implications

7.2.1 None arising from the recommendations in this report

7.3 Financial Implications

7.3.1 None arising from the recommendations in this report

7.4 Procurement Implications (if required)

7.4.1 The primary procurement implications set out with this report is to highlight assurance to the Procurement and Contract Governance Rules.

7.4.2 It is important to note that applications of waivers, emergency process and negotiated procedure are complaint mechanisms to use in line with the Constitution, in respect breaches is the area which the Council should seek to avoid. Regular reporting will be important to both understand trends but also highlight issues and lessons learnt.

7.5 Human Resources Implications (if required)

7.5.1 None related to this report

7.6 Public Sector Equality Duty

7.6.1 None related to this report

8 Appendices

8.1 Appendix 1 – Quarterly Assurance Update Table

9 Background Documents

9.1 Procurement and Contract Governance Rules –

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

APPENDIX A

WAIVER PROCEDURE RECORD (including breaches)

Title of contract	Description of Contract	Directorate	Contract Value	Duration	Primary Justification for a Waiver	Further Justification for a Waiver	Which part or parts of the Procurement and Contract Rules are being sought to be waived	What longer terms plans are in place to ensure compliant contractual arrangements	Reason for breach (if applicable)
Post Office Voucher Scheme: Pension Age Households	The contract is required to enable the city to maximise available funds from DWP directly targeting low income pension age households in the city, offsetting lower take up amongst pension age households of discretionary hardship grants. The Council require a provider that is suitably skilled and experienced and available to deliver the below services: •Administration of mailout to qualifying CTS Pension age households supplied to the Post Office. •Processing of cash payments from redeemable vouchers at a wide range of local outlets and sending a reminder to households •Reporting of mandatory management information (number of awards) required by DWP.	Adult Social Care	£60,000	2 months	Avoidance of reputational damage		Clause 4.59 of the Procurement and Contract Governance Rules.	Planning is underway to review procurement options for Round 3 the DWP's Household Support Fund. The review of these options will include an assessment of timescales for an open procurement process and the accommodation of associated governance processes, alongside looking at the overall impact of previous rounds of funding in terms of their scale, impact and delivery methods.	
Ukraine Response Programme	Development and implementation of a digital solution to Refugee Resettlement tool	Strategy Equalities and Partnership	£330,000	3 months	Efficiency / expediency in relation to process		The key element in the Rules be waived is a Cabinet Decision in relation extending the existing contract, to formally compete the requirement.	No further extension will be required. A transition and exit strategy for the contractor is part of the service spec that has been developed for the work, so that our internal teams can continue the work and use and maintain the tool effectively.	
Vision Screening Services for 4-5 year old children - P0898	The services with 3 ophthalmic specialist providers identifies reception children aged 4 to 5 years with impaired sight to enable timely intervention. Screening for reduced vision in children aged 4 to 5 years is primarily undertaken to detect children with amblyopia, a form of abnormal vision system development. The most common predisposing conditions are strabismus (squint) and refractive error (focusing problems requiring glasses). Early detection of amblyopia is necessary to avoid permanent visual impairment by allowing treatment to be undertaken within the sensitive period of neuroplasticity (growth and change) in the visual system. The UK National Screening Committee recommends that screening of children's vision should be offered to all children aged 4 to 5 years. The commissioning of vision screening for school aged children (4 to 5 years) became the responsibility of local authorities in April 2013, as part of the Healthy Child Programme. In Birmingham the commissioning of vision screening remained with Birmingham and Solihull Clinical Commissioning Group as part of their wider contracts with the current providers and transferred to the Council in autumn 2021.	Public Health	£474,000	18 months	Efficiency / expediency in relation to process	Increased cost / loss of income	Table 2 of the Rules (Authorisations and Approvals) Reference to the contract extension clause was missing from the original Cabinet report despite this facility being included in all 3 executed contracts.	This service fall into the 0-19 Healthy Child Programme recommissioning project already underway. A co-terminus option to recommissioning these linked services together in one lot is a key option to explore further as part of the wider project. New arrangements will be in place from September 2024 onwards.	
Psychometric Provision for Senior Officer Recruitment	Psychometric Provision for Senior Officer Recruitment	Council Management	£9,500	1 year	Efficiency / expediency in relation to process		Table 1 of the Rules - Low Value Quotation £5k to <£25k process	A review of the approach to recruitment and selection for JNC Officers is currently underway. On conclusion of this review, and following recommendations and approval via CLT, a tendering activity will commence to procure the chosen approach to future JNC assessments. A 12 month waiver proposed here will allow for the conclusion of this.	
Home Connection Lettings – Choice Based Lettings Database	A database for the housing team used for lettings. Hosting and Support agreement. The HCL database will store up to 100'000 client properties and 50'000 registered users	Digital and Customer Services	£44,000	1 year	Request for noting for transparency as a formal Breach of the Rules	Avoidance of reputational damage	Request for noting for transparency as a formal Breach of the Rules	Contract expiry review is being undertaken on a regular basis to ensure effective procurement planning.	Breach reported due to retrospective procurement.
Technology Forge CAFM licence subscriptions	Technology Forge CAFM licence subscriptions	Digital and Customer Services	£49,648	1 year	Request for noting for transparency as a formal Breach of the Rules	Avoidance of reputational damage	Request for noting for transparency as a formal Breach of the Rules	Contract termination notice provided therefore this contract will not auto-renew next year.	Termination deadline for the contract was missed meaning an enforceable 12-month rollover clause was indited.
Technology Forge Housing licence subscriptions	Technology Forge Housing licence subscriptions	Digital and Customer Services	£11,542	1 year	Request for noting for transparency as a formal Breach of the Rules	Avoidance of reputational damage	Request for noting for transparency as a formal Breach of the Rules	Contract termination notice provided therefore this contract will not auto-renew next year.	Termination deadline for the contract was missed meaning an enforceable 12-month rollover clause was indited.

Development of Birmingham City Observatory	System Development support with Datopian for the hosting of the Birmingham Data Factory	Strategy Equality & Partnerships	£59,000	4 years	Request for noting for transparency as a formal Breach of the Rules		Request for noting for transparency as a formal Breach of the Rules	The contract will run co-terminus with the Council plan i.e. to 2026. During this time the continued requirement for the City Observatory and this platform will be reviewed in line with the Council priorities.	The purchase of proprietary or patented Supplies or materials or Services which, are obtainable only from one supplier, and where no reasonably satisfactory alternative is available. Whereby a change cannot be reasonably made in the case of a business- critical system and/or strategic ICT solution (with proprietary licensing therein) for technical reasons such as, interchangeability and / or interoperability with existing back-office solutions and infrastructures
Highway Maintenance and Management PFI Restructuring Support	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.	City Operations	£875,000	4 months	Request for noting for transparency as a formal Breach of the Rules		Waiver of Table 1 in the Rules	A new contract will be advertised in Find a Tender, Contracts Finder and www.finditinbirmingham.com and a tender process will be commenced using the open procurement route.	
Home to School Transport Guides	The provision of trained adult guides to escort or accompany children with additional support needs aged 0 – 25 to an agreed education establishment	Education and Skills	£499,000	3 months	Request for noting for transparency as a formal Breach of the Rules		Request for noting for transparency as a formal Breach of the Rules	A strategy report will be taken to Cabinet that will set out the future operating model for pupil guide services	Immediate Negotiation required to secure a solution.
Pre Employment Check Service	Pre employment check services carried out by a third party on behalf of the council to ensure that they are legally compliant with new legislation in undertaking identification checks, carrying out reference checks and other pre employment checks as required depending on the role.	Council Management	£65,000	6 months	Time constraints beyond the control of the Council	Avoidance of reputational damage	The areas highlighted above are required in relation to speed and efficiency, new legislation comes in to force on the 1 October in relation to how organisations must process pre employment ID checks and therefore the requirement is to have a system in place to be able to undertake this activity to ensure legislative compliance.	A procurement exercise will be completed in line with procurement rules prior to the end of the waiver	
Welcome Home Service - Home from Hospital	The Home from Hospital Support Service is a "Welcome Home Service" providing support to Birmingham citizens being discharged from hospital, as well as enabling their discharge. It is delivered by volunteers and Aftercare Coordinator staff (depending on the complexity of cases), supporting citizens to prevent a future readmission to hospital, as well as to ensure that citizens can be released from hospital and returned home at the earliest opportunity.	Adult Social Care	£145,000	6 months	Time constraints beyond the control of the Council		Clause 4.59 of the Procurement and Contract Governance rules in order to be able to then follow the negotiated procedure.	During the period that this waiver is requested for a commissioning strategy will be completed as well as a full tender process for a service that incorporates this one but also expands the offer to cover the areas identified by the ICB such as hospital avoidance and support to remain in the community post discharge.	
Interim HR Project Manager (Pay and Reward)	This role is to replace a Project Manager who left the Council on 5 August. This role is vital to the delivery of the Job Evaluation Programme within Total Reward.	Council Management	£90,400	6 months	Request for noting for transparency as a formal Breach of the Rules		Request for noting for transparency as a formal Breach of the Rules	Compliant recruitment will be performed for any further recruitment that is required for this post. CPS are to be engaged on this as required.	Appropriate approval not sought to utilise framework.

EMERGENCY PROCEDURE

Title	Description	Directorate	Procurement Category	Whole Contract Value	Reason for Emergency	Contact Name	Approver	Date Approved	Recommendation
Procurement Implication for short term contracts to support private sector landlords temporary accommodation solutions	To set out the procurement process followed to date, options considered for the interim contracting approach and recommendations along with draft briefing note for the Cabinet Members.	City Housing	Place		Progress the award of new short-term block and framework contracts with existing providers for up to a period of 12 months (with a 28-day termination clause for both parties) in line with the emergency process in the PCGR and under PCR15 Regulation 32 (2) "The negotiated procedure without prior publication may be used for public works contracts, public supply contracts and public service contracts in any of the following cases (b) where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons (ii) competition is absent for	Gary Messenger / Dean Billingham / Haydn Brown	Cllr Sharon Thompson, CM Housing & Homelessness and Cllr Yvonne Mosquito, CM Finance and Resources	12/08/2022	The timing of the Cabinet report means that it will be retrospective, allowing proactive action to be taken to manage the situation and report these to Cabinet when appropriate in Oct / Nov 2022.

NEGOTIATED PROCEDURE REPORTS

Title	Reason for Applying Negotiated Procedure	Directorate	Contract Duration	Whole Contract Value	Company Awarded to
NP - Energy Rebate Post Office Voucher Scheme	Sole supplier that could issue the estimated number of vouchers within the deadline stated. The Council has until 30 September to make all eligible payments and the Post Office can process up to 22,000 a week. The use of the voucher scheme is also stipulated in guidance issued by the DLUC	Digital and Customer Services	3 months	£175,000	Post Office Ltd
NP - Go1 health literacy e-learning	Hays are the only contractor (as identified in our market investigation) who can meet the Council's requirement as they are the only provider who can offer this service within the time-frame to the necessary level of bespoke detail required. Additionally, as they have a pre-existing relationship with the council, we already facilitate the rollout of their platform through our HR activities. Therefore, no further or new tools or platforms will need to be tested for capability/usability. Additionally, Hays/Go1 host and own bespoke existing content on their platform which can be adapted for this project. No other provider has access to this content and as such is able to offer this option.	Public Health	1 year	£20,000	Go1
NP - Stewarding Advisory Services for the Commonwealth Games 2022	Given these activities are of a specialised nature, there is only one contractor with the necessary capacity and availability that can meet the Council's requirements with the ability to commence the services to meet the fixed deadline for delivery.	Commonwealth Games		£80,508	Massive (UK) Ltd
NP - Administration and Resources for Department of Works and Pensions Initiatives	There is an unprecedented amount of demand on the Benefit Service due to the impact of the cost of living fuel prices, continued impact from covid and DWP initiatives. This is not of the Council's making, to provide this service as failure to take action and to not have a continued experienced resource service for support could result in the Council not being able to discharge its statutory duties and leave the service unable to deal with the increased demand for benefits. There is currently a backlog of applicants who are not receiving their housing benefit/council tax support or local welfare. With Nottingham Revenues and Benefits Ltd the Council have staff provided that would not require a period of training and delay the processing of the applications. And the Council need to ensure this resource is in place whilst a compliant tender process is jointly undertaken	Digital and Customer Services	4 months	£100,000	Nottingham Revenue and Benefits Ltd

Title	Reason for Applying Negotiated Procedure	Directorate	Contract Duration	Whole Contract Value	Company Awarded to
NP - Energy Rebate Post Office Voucher Scheme	Sole supplier that could issue the estimated number of vouchers within the deadline stated. The Council has until 30 September to make all eligible payments and the Post Office can process up to 22,000 a week. The use of the voucher scheme is also stipulated in guidance issued by the DLUC	Digital and Customer Services	3 months	£25,000	Post Office Ltd
NP - City Readiness Advisory Support for the Commonwealth Games 2022	These activities are of a specialised nature, there is only one contractor with the necessary capacity, experience and availability that can meet the Council's requirements with the ability to commence the services to meet the fixed deadline for delivery.	Commonwealth Games	1.5 months	£15,000	McLean Projects and Events Ltd
NP - Development of Birmingham City Observatory	Dataopian as a supplier already provide the CKAN product to BCC. We are negotiating additional capacity as a one off to support the launch of the new platform	Strategy Equality & Partnerships	4 years	£59,000	Dataopian
NP - Supply, Installation and Maintenance of Electrochlorination Units at Various Leisure Centres	As a result of market investigation undertaken, this proposed contract is for the purchase of proprietary or patented supplies and services which is obtainable only from one supplier, and no reasonably satisfactory alternative is available.	City Operations	2 years	£90,000	Crystal Water Technology Ltd
NP - Community Engagement Review	We have identified a provider that has relevant experience and skills with the capacity to deliver within our requirements and timescales. Bringing in outside expertise allows us to challenge and be challenged as part of this understanding. It will allow us to showcase what is working well, understand what is not and clearly identify what's missing. It will also provide vital feedback on how to ensure we utilise reduced resources to maximum effect by streamlining our approach and illuminating duplication.	Strategy Equality & Partnerships	6 months	£50,000	Collaborate CIC
NP - Upgrade print software to Planet Press Connect	The purchase of a named product required to be compatible with an existing installation of Planet Press.	Council Management	5 years	£104,004	Pitney Bowes Ltd
NP - Quality Standards for non-commissioned Supported Exempt Accommodation contract - P0927	They are the only organisation with the knowledge and expertise to deliver the Quality Standards for Supported Exempt Accommodation Birmingham, and they have developed a unique product for this purpose.	City Housing	7.5 months	£158,098	Birmingham Voluntary Service Council
NP - Birmingham 2022 Countdown Clock De-rig and Relocation	The activities are of a specialised nature which can only be effectively carried out by only one supplier	Commonwealth Games		£43,574	XX Projects Ltd