

THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA

CABINET AND CORPORATE SERVICES SCRUTINY COMMITTEE

17 NOVEMBER 2014

PROCUREMENT IN THE ROYAL BOROUGH

1. Purpose of the report

- 1.1. This report has been submitted at the request of Councillor Mason, who asked for the following:
 - A. An overview of the Council's Procurement and Commissioning processes.
 - B. Details of the ongoing and planned procurements/ commissioning across Business Groups.
- 1.2. The Committee is reminded that a report was submitted to its meeting held on the 16th September 2013 which included a detailed overview of procurement across the Council. This report will therefore summarise what was stated last year and update the Committee on changes that have occurred in the last twelve months.

A. AN OVERVIEW OF THE COUNCILS PROCUREMENT AND COMMISSIONING PROCESSES

2. Procurement Organisation Structure(s)

- 2.1. Procurement decisions are devolved to service directorates in the Royal Borough, whereby Cabinet Members and their Executive Directors are responsible for ensuring the goods, services and construction works they require to provide services to the public are procured in accordance with the law and Council's procurement framework.
- 2.2. The table at Section 2.28 of the Contract Regulations contains the thresholds for making procurement decisions and the associated best practice procedures (**Appendix 1**).

- 2.3. In most cases procurement is conducted by Council officers as part of their wider duties, the exception being Tri-borough Children's Services, Adult Social Care and Public Health who each benefit from having their own independent procurement and commissioning resource.
- 2.4. The Council's procurement policy and best practice is driven from the centre by a small team of three professionally qualified officers who provide advice and guidance to departments on more complex procurement matters and ensure compliance with the law and procurement framework through best practice guidelines on the Intranet and relevant training courses. The Head of Strategic Procurement is the professional lead for procurement across the Council and is located at the centre in the Town Clerks Directorate.

3. Procurement Expenditure

- 3.1. In 2013/14 the Council's third party expenditure was £279 million, including capital projects. This is compared to Westminster City Council's £518 million and H&Fs £306 million.
- 3.2. The Council's supplier address book comprises of >5,200 suppliers, of which about 1,040 (20%) are responsible for circa £268 million (96%) of total expenditure.

4. Bi/Tri-borough Procurement

- 4.1. Since January 2012 the corporate procurement teams in RBKC and H&F have been working as a Bi-borough team, while maintaining separate procurement structures. The main reason for adopting this approach was to provide a single point of contact for service directorates to obtain procurement advice and support as follows:

- Tri-borough Children's Services - RBKC
- Tri-borough Adult Social Care - H&F
- Town Clerks - RBKC
- Sovereign borough P&BD -RBKC
- Bi-borough ELRS - H&F
- Bi-borough TTS - H&F

nb: WCC provides procurement advice and support to Public Health and Tri-borough Library services.

5. The Procurement Regulations

Procurement Law

- 5.1. The Council's procurement is bound by international, European and domestic law. The prime source of these rules is **EU primary legislation**.
- 5.2. In the last 10 years the primary legislation has changed as set out below:
- **EU Directive 2004/18/EC**
Transposed into UK law as the Public Contract Regulations 2006, covering most public sector contracts?
 - **EU Directive 2007/66/EC (the 'Remedies Directive')**
This caused the Public Contract Regulations 2006 to be amended, with the new Regulations coming into force in the UK on 20th December 2009.
- 5.3. EU legislation has since been further interpreted in the light of judgements of the Court of Justice of the European Union (CJEU).
- 5.4. The on-going development of procurement legislation since 2004 led to criticism that the process had become too complex. As a result the European Commission drafted a new public procurement directive, partly intended to simplify procedures, which the UK will be required to implement by June 2015. When approved by Member States and transposed into national law, it will mean:
- Greater flexibility to negotiate the best possible tender
 - Simplification of some of the rules
 - More e-procurement
 - Faster procurement
 - Clearer guidance on public-public cooperation
 - Clearer guidance on permissible modification of existing contracts
 - Easier access for SMEs to public contracts and
 - National oversight and co-ordination of activities in Member States

The Council's Procurement Framework

- 5.5. The Council's rules for procurement are collectively known as the 'Procurement Framework' and consist of the following controls:
- (a) The Contract Regulations (Part Four - F of the Constitution);
 - (b) The Finance Procedure Rules (Part Four - D of the Constitution);

- (c) The Tri-borough Procurement Code (Tri-borough procurement);
- (d) The Tri-borough Procurement Protocol and Design Principles;
- (e) The Council's Corporate Policies and Procedures;
- (f) The guidelines for procurement on KCnet and TriBnet;
- (g) Advice from legal, financial and other appropriate technical officers

5.6. The Procurement Framework is designed to ensure that Council contracts are let lawfully and achieve Best Value.

6. Legislative developments

6.1. The EU has not been the only source of legislative change that has affected public sector procurement since 2004. Since 2010, there has been a further flurry of new Acts, aiming to promote the principles of equality, localism and social value.

The Equality Act 2010

6.2. While bringing together a number of different equalities-related laws to simplify the legal framework in this area, the Equality Act imposed a new 'Public Sector Equality Duty', which requires public authorities to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- Advance equality of opportunity between people who share a protected characteristic and those who do not, and
- Foster good relations between people who share a 'protected characteristic' and those who do not.

6.3. The Executive Decision report template therefore requires the equalities implications of a procurement to be recorded, so that it can be demonstrated that 'due regard' has been given to these issues.

The Localism Act 2012

6.4. This had implications for procurement with the introduction of the 'Community Right to Challenge'. This Right gives voluntary and community sector organisations the right to challenge their local Council to transfer the provision of a service to them, subject to certain conditions being met. In the event that an expression of interest in providing a service is accepted – and the only grounds on which an expression of interest may be rejected are prescribed by the Act - a procurement process is then triggered. The Royal Borough has yet to receive any external applications to run Council services but has awarded a contract to an Employee Lead Mutual (ELM) for Youth Services.

The Public Services (Social Value) Act 2012

6.5. This requires authorities to consider how their expenditure on the delivery of services may also generate wider benefits to the community in terms of economic, social and environmental well-being i.e. 'Social Value'. The Act requires commissioners and procurers to consider:

- How what is to be procured may improve social, environmental and economic well-being of the relevant area¹;
- How they might secure any such improvement; and
- Whether to undertake a consultation on these matters.

6.6. Prior to the adoption of the Act, the Council already required its Commissioners to consider the environmental, social and economic impacts of procurements in accordance with its Best Value duty.

Government and Council policy developments affecting procurement

6.7. Shortly after the coalition government was elected in 2010, the government published the 'Programme for Government'² announcing measures to support its policies of 'Big Society' and 'Localism'. This included cuts to local government inspection and the abolition of the Comprehensive Performance Assessment (CAA) regime. The 'Programme for Government' also stated the government's intention to introduce new powers to give communities the right to bid to take over local authority-run services and to require Councils to publish all items of expenditure over £500 and tender documents in full!

6.8. The right to bid became the 'Community Right to Challenge' enshrined in the Localism Act (see 6.4 above). A tri-borough approach to managing the Right to Challenge process has been agreed, with a window for accepting potential challenges limited to January to March each year, aiming to support the spirit of the Localism Act in line with the commitment to the 'Big Society' concept expressed in the '*Tri-Borough Proposals Report*' whilst ensuring that the flow of Expressions of Interest (EoIs) are regulated and the necessary resources allocated to deal with them.

Transparency

6.9. This agenda has evolved since 2010 with further discussion and clarification about the exact requirements for the publication of data. The RBKC website contains a 'Transparency' page, where

¹ 'Relevant Area' means where the services are to be performed

²

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/78977/coalition_programme_for_government.pdf

expenditure above £500, a list of council property assets and details of salaries, expenses and allowances are published. The publication of full tender documents is however discretionary as a result of the administrative burden that this would entail and therefore these are not currently available on the website. The regulations that will make part of the code mandatory came into force on 31 October 2014 under section 2 of the Local Government, Planning and Land Act 1980.

'Sustainability'

- 6.10. The environment, socio-economic and sustainable procurement are not new concepts but came to particular prominence in 2005 when the government set a target for the UK to become a sustainable procurement leader amongst EU states by 2009. The resulting Sustainable Procurement task force produced the National Sustainable Procurement Action Plan, proposing a number of initiatives to achieve this target.
- 6.11. Whilst the Council has not produced an overarching sustainability strategy, the three pillars of sustainability – the environment, economy and society – are reflected in the Environment Strategy, the Community Strategy and the Climate Change Strategy. In response to the growing focus on sustainability the Council produced a Sustainable Procurement Guide in 2008/9, providing practical resources to help officers incorporate sustainability issues into procurement exercises, such as standard contract terms and pre-qualification questions, and signposting sources of further information.

The Economy

- 6.12. The impact of the recession is still being felt by the Council and by suppliers and the financial outlook continues to be difficult, with further cuts announced in the 2013/14 Spending Rounds. The increasing pressure to 'do more with less' makes it more critical than ever that procurement processes achieve the greatest possible value for money.
- 6.13. At the same time it is equally critical that procurement processes are compliant with the relevant legislation. There has been a significant increase in unsuccessful bidders being willing to challenge procurement award decisions because:
- The more suppliers struggled in the recession and the greater the competition in the market, the more anxious they are now to be awarded contracts;

- Public sector organisations are more attractive clients because the risk of their non-payment of suppliers due to financial failure is of lower or no risk at all;
- Suppliers also have to contend with the increasing use of collaborative framework agreements and large collaborative contracts, which diminish the number of tender opportunities.

6.14. Furthermore, the penalties that may be enforced for mistakes in the procurement process are severe, particularly since the adoption of the Remedies Directive in 2009 (see 5.2 above). The courts have nevertheless shown no great enthusiasm to actually impose them.

Technology

6.15. Along with WCC and H&F the Council has developed and implemented a new e-sourcing portal ('*capitalEsourcing*') which is accessible to buyers and suppliers and through which all departments must procure goods, works and services valued above £5000. The following benefits apply:

- Visibility over sovereign-borough, bi-borough and tri-borough third party expenditure to help identify opportunities for collaboration and efficiency savings;
- Greater visibility and control over high and low-value procurement exercises via standard forms and templates, thus reducing the risk of mistakes in the process and the potential for legal challenges;
- A reduction in the administrative burden of running a tender process, from recording all expressions of interest and supplier details, to auto-evaluating sections of the pre-qualification questionnaire;
- The automatic maintenance of an audit trail throughout tender processes;
- Improved supplier performance and contract management and the ability to identify off-contract expenditure;
- A reduction in the volume of paper generated and electricity used during tender processes, thus contributing to the Council's Carbon Management and Environmental Strategies and facilitating greater paperless working within the new SPACE working environment.

7. Collaboration and Partnering

7.1. Joint working has been at the heart of procurement in the Royal Borough for a number of years but in particular since the emergence of Regional Centres of Excellence (RCEs) for Procurement and later on Regional Improvement and Efficiency

Programmes (RIEPs). London Council's RCE/RIEP was Capital Ambition.

7.2. Increased collaboration in procurement has since been further developed by the Council in a number of ways including:

- Sub-regional collaboration through the West London Alliance (WLA);
- Using the Regional Contract Register Service (CRS);³
- Using the Regional Online Expenditure Analysis (OEA) tool⁴.

- Use of regional contracts/frameworks including:
 - Construction;
 - ICT hardware;
 - Temporary Agency Staff;
 - Energy;
 - Stationery, paper and office supplies and equipment.

- Involvement in regional work streams including:
 - Adult Social Care;
 - Children's Services;
 - ICT.

- Creation of tri-borough Contracts including:
 - Total Facilities Management (TFM);
 - Managed Services (MSP):

- Tri-borough Corporate Services Programme
 - Since January 2013, the Heads of Procurement in the three councils have been developing the business case for a centre led category management approach to procurement through a single tri-borough procurement organisation. This has currently been put on hold pending a decision on H&Fs Critical Friends Board Report.

B. DETAILS OF ONGOING AND PLANNED PROCUREMENTS/COMMISSIONING ACROSS BUSINESS GROUPS

8. Contracts Register

8.1. One of the capitalSourcing modules is a Contract Management tool which among other features enables the creation and maintenance of a comprehensive Tri-borough Contracts Register. **Appendix 2** contains an extract of the register, and identifies, in order of expiry

³ Now fulfilled through capitalSourcing

⁴ Now fulfilled through capitalSourcing

date, that 399 contracts currently exist across the Council's departments, of which 164 will have needed to be reviewed and re-tendered (where applicable) in the preceding 24 months to the 31st December 2015. The combined value (full term) of all existing contracts is £631.7 million. The value (full term) of the 164 contracts scheduled to be let in the next 12 months is estimated to be about £172 million.

- 8.2. **Appendix 3** (confidential for Members only) contains a list of procurement projects in some business groups that are scheduled to be exposed to competition in the next 12 months (Forward Plan), some of which will be new procurements. The list is not claimed to be exhaustive and comprises of responses received from directorates prior to submission and despatch of this report. From the information received thus far, 82 contracts are scheduled to be let in the next 12 months.
- 8.3. It should be noted that both the contracts register and forward plans of procurement are still being developed within captalesourcing and are therefore subject to verification and change.

FOR INFORMATION

Nicholas Holgate

Town Clerk and Executive Director of Finance

Contact Officer: Andrew Lee – Head of Strategic Procurement

Tel: 020 73612674

e-mail: andrew.lee@rbkc.gov.uk

APPENDIX 1 – SCHEDULE 2.28 OF THE COUNCIL’S CONTRACT REGULATIONS – FINANCIAL THRESHOLDS AND BEST PRACTICE

Financial Thresholds and Best Practice					
Total Value	Award Procedure	Advertising	Short listing	Documentation/Audit Requirement	Member Involvement
Up to £5,000	A minimum of one quotation	No advertisement	n/a	Retain evidence of quote. Use any Council or industry approved list to select or from Council’s past experience.	Award decision delegated to relevant director. Directors should compile and maintain a scheme of delegation specific to their area of responsibility identifying staff who may approve orders or contracts up to specific values
£5,000 to £172,514 ⁵	A minimum of three quotations received against notice published.	Notice to be published on capitalEsourcing opportunities notice board.	n/a	Invitations to quote and quotations received. Keep a written record: <ul style="list-style-type: none"> • of any exemptions and reasons for it • of the reason if the lowest price is not accepted • of award criteria other than price • of communications with the successful contractor. Follow Council policy on retention and destruction of documents.	Award decision delegated to relevant director. Executive Directors should compile and maintain a scheme of delegation specific to their area of responsibility identifying staff who may approve orders or contracts up to specific values

⁵ Or equivalent EU Services thresholds from 1 January 2014 and thereafter on 1 January every second year

Total Value	Award Procedure	Advertising	Short listing accountability	Documentation/Audit Requirement	Member Involvement
£172,514 – £499,999	EU procedures must be followed.	Advertisement in OJEU where required or notice to be published on capitalEsourcing opportunities notice board.	Executive Director in consultation with Cabinet Member	<p>For all single/Bi-borough contracts follow the pre-purchase/advertising checklists available on KCnet.</p> <p>Follow the Tri-borough Procurement Code for all Tri-borough contracts: (http://tribnet/Support/procurement/Pages/Default.aspx).</p> <p>Keep written record including:</p> <ul style="list-style-type: none"> • the method for obtaining bids • any contract award decision and the reasons for it; • any exemption together with the reasons for it; • the award criteria (including those other than price) and the evaluation of tenders against these criteria; • tender documents sent to and received from candidates; • pre-tender market research; • clarification and post-tender negotiation (to include minutes of meetings); • the contract documents; • post-contract evaluation and monitoring; • communications with candidates and with the successful contractor throughout the period of the contract. <p>Follow Council policy on retention and destruction of documents.</p>	Contract award is a Key Decision.
Above £500,000	EU procedures must be followed.	Advertisement in OJEU where required or notice to be published on capitalEsourcing opportunities notice board.	Major contracts may require Cabinet Member involvement in short listing process.	As per contracts of £172,514 and above.	Contract Award is a Key Decision. Major and sensitive contracts may require substantial Member involvement from the earliest stages and a Cabinet decision.

Main Contractor - Parkwood Hall School - Replacement Fire Doorsets	Gunite Ltd	17/05/2013	143,280	Corporate Property - Facilities Management
Main Contractor - Holland Park School - Sewer Upgrade Works	F.M. Conway Ltd	29/05/2013	157,760	Corporate Property - Capital Projects
Main Contractor - Holland Park Surgery Cat B Fit out	ITC Ltd	10/10/2013	547,717	Corporate Property - Capital Projects
Main Contractor - Chelsea Creek Depot - Phase 2 - Main Contract	ARJ Construction Ltd	23/01/2014	946,350	Corporate Property - Capital Projects
Main Contractor - Ellesmere House Care Home	CBS Maintenance Services	17/02/2014	214,401	Corporate Property - Capital Projects
Kitchen Supplier/Installer - Kensington Academy	Hallmark Kitchens Ltd	03/02/2014	184,250	Corporate Property - Capital Projects
Design Team - Edenhall Way	Howarth Tomkins Ltd	23/04/2014	755,345	Housing
Main Contractor - Westway Information Centre strip out	ARJ Construction Ltd	20/10/2014	121,841	Corporate Property - Capital Projects