

Report of the Chief Officer PPPU and Procurement and Chief Officer Strategy and Commissioning

Report to Scrutiny Board (Resources and Council Services)

Date: 27 April 2015

Subject: Effective Procurement and Contract Procedure Rules

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

Executive Board approved a refreshed procurement policy for the council at its meeting on 24 April 2013. The policy was developed as the Transforming Procurement Programme, and the approved documentation and approach is now called Effective Procurement.

Reports of the Chief Officer PPP and Procurement Unit to the September and November meeting of this Board resulted in a request for further consideration of waivers, extensions and contract management.

Members of the Board also received a report to their January meeting from the Chief Officer Strategy and Commissioning on the subject of plans to develop an Integrated Peoples' Commissioning Service, and requested a report back to this meeting on the effectiveness of contract management activity.

This report seeks to respond to both requests, summarises the processes, tools and guidance available for Directorates, and summarises the contract management in place for Strategy and Commissioning in Public Health.

Recommendations

Members of Scrutiny Board (Resources and Council Services) are asked to note the contents of this report, and advise what further recommendations (if any) they have as a result.

1 Purpose of this report

1.1 To provide a further report to the Board as requested.

2 Background information

2.1 The Council currently spends c. £800 million externally each year, across both revenue and capital. A large proportion of this is spent with external suppliers, and we use a variety of contracts, from simple purchase orders to long-term partnership agreements. Some contracts are with a single provider, others are frameworks with multiple providers. The below table shows the estimated spend and number of contracts in the financial year 2014/15 across Directorates based on the actual contract spend to December, and so as such is background information only. Actual figures for the whole 2014/15 financial year will be available in the near future and can be circulated if Members of the Board wish.

Estimated contract spend 2014/15 based on April-December information

	Total	PFI	Non-PFI	Contracts (over £25k)
Adult Social Care and Public Health	132,261,631	5,698,765	126,562,866	344
Central & Corporate	58,746,536	1,202,190	57,544,346	167
Children's Services	150,209,904	77,793,947	72,415,957	142
City Development	76,547,180	9,254,387	67,292,794	112
Environment & Housing	97,355,795	9,213,940	88,141,855	109
Strategic Landlord	28,887,308	11,317,414	17,569,894	13
	544,008,354	114,480,642	429,527,712	887

2.2 The Council introduced a suite of tools and template documentation in support of its refreshed procurement strategy, and updated Contracts Procedure Rules to reflect the strategy. All are published and available on InSite. Contracts Procedure Rules have recently been further updated to reflect new Regulations which have been implemented under a new EU Procurement Directive.

3 Main issues

3.1 Roles and Responsibilities

3.1.1 The Council's Contracts Procedure Rules confirm that each Directorate is accountable for the procurements that they need in order to deliver the services and secure the outcomes that they are responsible for. The central procurement function is accountable for providing a central source of expertise, advice and support, providing check and challenge as appropriate.

3.1.2 Contracts Procedure Rules require registration of procurements undertaken on YorTender (the Council's electronic tendering system) where the value exceeds £10k. They also require the Chief Officer

(PPPU and Procurement) to be informed and consulted where procurements in excess of £100k are planned.

3.2 Contract extensions

- 3.2.3 In addition to automatic Yortender alerts PPPU/Procurement Unit category teams also use the published contracts register to work together with Directorates to identify and review contracts on a monthly basis and plan procurement activity. In some instances Directorates also have their own calendars for this purpose.
- 3.2.4 Many contracts entered into by the council permit extensions in accordance with the contract terms. Good practice in procurement includes applying such extensions in appropriate circumstances where the relevant Chief Officer is satisfied that it is good value for money and in some cases where an extension will enable better procurement planning (for example where a category plan has identified spend across directorates and a single aligned procurement is needed). In addition there are a number of emergency care placement and similar procurements which cannot be planned in advance (an exemption from Contracts Procedure Rules applies to such urgent cases).
- 3.2.5 However, in some cases unplanned extensions or waivers of Contracts Procedure Rules are required because a new procurement has not been undertaken in time. This may be due to lack of planning or resources or factors within the procurement process which could not have been foreseen.
- 3.2.6 Internal Audit undertook a sample of contract extensions and their findings were reported to the November meeting of this Board. Their report concluded that a medium level of compliance had been provided and their recommendations were as follows:
- PPPU and PU should remind the Contract Manager of the need to populate the contract award memo with a review date, thus providing the information to the Systems and Resourcing team with a date to input in YORtender.
 - Analysis should be undertaken to establish that extending a contract offers the Best Value prior to extension. Evidence of this should be retained.
 - When extensions are processed the length of extension should adhere to the specification detailed in the contract, and only in exceptional circumstances should a contract be extended for a different period and where this is the case a variation to the contract should be processed.
 - It should be ensured that realistic extension periods are invoked to minimise the use of resources.
- 3.2.7 The Chief Officer PPPU and PU has sent a communication to Chief Officers advising of the outcome of the audit and recommendations, and a report was submitted to the Council's Corporate Commissioning Group in

January confirming the audit report findings and requesting compliance by Directorates with the recommendations. PPPU/PU will continue to action the first during procurement activity, and Internal Audit intend to follow up the audit during the current financial year.

3.3 **Waivers**

- 3.3.8 Contracts Procedure Rules allow certain rules to be waived in circumstances where Chief Officers consider that course of action to be justified, and provide that decisions to waive Contracts procedure Rules is always at least a Significant Operational Decision for the purposes of the Constitution (therefore requiring publication). The Chief Procurement Officer should be informed when waivers are approved by Chief Officers.
- 3.3.9 Since the November meeting of this Board PPPU/PU has developed new toolkit guidance to support Council officers in recording waivers. Whilst category teams and the legal team in PPPU/PU are made aware of waivers by many commissioning teams (as they are often asked to provide advice on report contents), evidence suggests that waivers are in some cases not approved in accordance with the Rules, and/or approved but not recorded and/or not notified to PPPU/PU in accordance with the Rules. The new process and toolkit is designed to support and monitor compliance with this requirement.

3.4 **Contract management**

- 3.4.1 The refreshed procurement strategy and Contracts Procedure Rules require consideration of good contract management. The Effective Procurement documentation contains tools to support this. In particular the Rules require a Contract Management Plan to be developed for each procurement, scalable to the nature of the procurement (and one plan can cover a number of contracts). A template is provided which is appended at **Appendix 1**.
- 3.4.2 PPPU/PU provides support to develop plans before contracts are awarded. Generally contract management is undertaken by the Service in question. The Unit has provided support to the contract management function for some of the PFI contracts in place, particularly during the works phase, and also from April to support best practice to seek to achieve savings across the PFI portfolio over coming years. The Unit has also hosted a periodic contract management forum which focussed on infrastructure contract management, but also sought sharing of best practice with other attendees.
- 3.4.3 **Appendix 2** sets out the approach taken with contract management by the Strategy and Commissioning team in Public Health, which commissions on behalf of four directorates. This describes how the team uses contract management as a framework for managing service quality, ensuring positive outcomes for service users and productive working relationships with our commissioned providers.

4 Corporate Considerations

Consultation and Engagement

- 4.1 The previous reports to this Scrutiny Board detailed the extensive consultation and engagement undertaken under the Transforming Procurement Programme.

Equality and Diversity / Cohesion and Integration

- 4.2 The Transforming Procurement Programme included equality issues as one of its workstreams and has undertaken a formal screening, which was published alongside the 24 April 2013 Executive Board report. The screening highlighted the importance of screening categories and procurements for their equality impacts and responding accordingly in line with the council's equality and diversity policies. There have been no major changes at a policy level. Contracts Procedure Rules require consideration of equality matters when undertaking a procurement and the key template documents that Contracts Procedure Rules refer to provide specific prompts in this respect.

Council policies and City Priorities

- 4.3 Contracts Procedure Rules and the Effective Procurement documentation support the council value of 'spending money wisely', and seek to ensure that the council's other values are embedded in all of the council's procurement activities.

Resources and value for money

- 4.4 This report considers good contract management practice

Legal Implications, Access to Information and Call In

- 4.5 None

Risk Management

- 4.6 Monthly on/off contract spend is shared with category teams, directorates and internal audit. Tools are in place which are intended to support the activities covered in this report.

5 Conclusions

- 5.1 Directorates are accountable for their own procurement activity with support provided by PPPU/PU.
- 5.2 This report sets out the processes in place to support contract activity, and also a summary of contract management arrangements in the Strategy and Commissioning service in Public Health.
- 5.3 While there is recognition that there is a diversity of services and no single approach will work in all cases, there is a need to offer a consistent level of quality of contract management. Plans to develop an Integrated People's Commissioning

Service will consider the role of contract management and seek opportunities to insure greater levels of consistency.

6 Recommendations

- 6.1 Members of Scrutiny Board (Resources and Council Services) are asked to note the contents of this report and advise what further recommendations (if any) they have as a result.

7 Background documents¹

- 7.1 Previous reports to this Board in July 2013 September 2014 November 2014 and January 2015

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.