

# Procurement update report: Contracts Management, Social Value and Procurement Act 2023

Date: 25<sup>th</sup> March 2024

Report of: Director of Strategy and Resources

Report to: Scrutiny Board (Strategy and Resources)

Will the decision be open for call in?  Yes  No

Does the report contain confidential or exempt information?  Yes  No

## What is this report about?

- The Council's procurement function helps to ensure that the Council is able to deliver the 3 pillars of the Council's Best City Ambition. The goods, works and services we choose to buy and commission, the suppliers we select, the influential relationships we maintain with those suppliers, and the commercial opportunities we offer can help deliver inclusive growth, improve the health and wellbeing of local people, and support the push toward zero carbon.
- As reported previously, as part of the Core Business Transformation (**CBT**) programme and in response to an LGA facilitated peer review, work is ongoing to review the Council's entire "procure to payment" processes in order to:
  - maintain effective procurement support, including sufficient capacity/capability and appropriate training and guidance;
  - develop more efficient systems and processes in order to deliver greater value for money in relation to external spend; and
  - adopt a best practice approach to contract management in order to ensure delivery of desired outputs, avoid value leakage and ensure our contracts continually respond to the Council's changing requirements

(the **P2P Review**).

- This report provides an update on progress in developing the best practice approach to contract management.
- This report also provides the annual update to the Board on progress in relation to further implementing additional social value as part of the Council's procurement and contracting activity.
- Finally, the report provides an update as to the upcoming operation of the Procurement Act 2023 and anticipated implications for the Council.

## Recommendations

Members are recommended to:

1. note the contents of this report; and
2. endorse the work underway to develop a Council-wide best practice approach to contract management.

## Why is the proposal being put forward?

- 1 This report provides an update as to progress made in relation to:
  - a) developing a Council-wide best practice approach to contract management; and
  - b) delivering additional social value in the Council's procurement and contracting activity.
- 2 In addition, this report provides a summary update in relation to the Procurement Act which is anticipated to be operational in October 2024 and the anticipated implications for the Council.

## Contract Management Best Practice

- 3 Contract management and procurement work hand in hand throughout the lifecycle of a contract. Contract management arrangements should be considered during the procurement of a contract to ensure that the Council's requirements are clear and deliverable.
- 4 Good contract management can provide many benefits, including:
  - the identification and realisation of financial savings, continually ensuring that contracts respond to the Council's changing requirements;
  - the delivery of desired outputs including the provision of quality services to the Council and community;
  - the development of service specifications by identifying and encouraging innovation and industry best practice;
  - the avoidance of costs and other issues which might otherwise have arisen;
  - ensuring that actual spend accords with budgets, or any over/underspend is monitored and managed.
- 5 On the other hand, research by the International Association for Contract and Commercial Management shows that poor contract management can cost as much as 8.6% p.a. in value leakage. In short - without appropriate contract management the Council may not get what is being paid for, and opportunities to realise greater efficiencies/outputs are being missed.
- 6 The Contract Procedure Rules (**CPRs**) provide that the relevant Director is responsible for ensuring that the contract is managed appropriately. A recent review indicates that there are over 400 Council employees whose roles involve contract management. However, typically individuals responsible for managing the Council's contracts are subject matter/technical experts and contract management is inconsistent across the Council.
- 7 In order to support implementation of a Council-wide best practice approach to contract management, in 2023 the Director of Strategy and Resources scheme of delegation (with sub-delegation to Head of Procurement and Commercial Services) was amended to include: "Setting, supporting and monitoring the council's policies and procedures for: ... c) procurement, purchasing, contract management and commercialisation;...".
- 8 Subsequently, the following initiatives have been progressed:
- 9 Training - To date, 110 contract managers have completed the Government Commercial College's Contract Management Foundation training course, with a further 125 who are registered or progressing through the training. A further 42 contract managers have been enrolled on the Contract Management Practitioner course, two of whom have been accredited with the others at

various stages of progress. The Practitioner course is for contract managers responsible for high value contracts and takes a minimum of six months to complete. We have also been working with Ernst & Young (EY) on a broader contract assurance project, part of which includes a training offering on the fundamentals of contract management and softer commercial skills (influencing, negotiation, stakeholder management etc) that has also been rolled out to colleagues.

- 10 LCC Contract Management Community - Work has been ongoing to build a community of contract managers across the Council, with regular communications, training offerings and feedback sought to inform contract management transformation. A quarterly newsletter is issued to share key messages, highlight training opportunities and provide resources and tools to support contract managers. Work is ongoing to develop a wider communications strategy to tie in with the Core Business Transformation change proposals (below), including the use of a new SharePoint platform and potentially Viva Engage.
- 11 Contract Management Framework - As an element of developing best practice in contract management, a Contract Management Framework is being established that will embed a strategic approach to contract management. Contracts will be segmented in to 'high', 'medium' and 'low' tiers based on risk, value and other key factors. Each tier will have a defined and proportionate contract management governance regime and contract manager training programme, along with materials and guidance to support contract managers. This approach will be supported by a balanced scorecard which is currently being piloted by a select group of contract managers. The scorecard will provide intelligence on the performance of the Council's contracts, highlight risk areas and give a strategic overview with consistent data.

These elements will feed into a quarterly Contract Management Assurance Board (officers from BCT Financial Challenge), commencing in July 2024. The board will have corporate oversight and assurance of contracts and contract management. The scorecard will provide consistent metrics and this will be supplemented by further intelligence on performance and risk in relation to the best and worst performing contracts in each directorate. One of the board's roles will be reviewing identified contracts with the relevant service leads or contract managers.

- 12 Source to Contract Business Case - Procurement and Commercial Services (PACS) and the CBT team will be presenting a business case for Source to Contract technology and additional staffing resource to the CBT Programme Board in April 2024. New technology is required as the current electronic tendering platform is not fit for purpose, as it does not have the contract management capability the Council requires and will not fully support the requirements of the Procurement Act 2023 when it comes into operation (see below). More advanced technology is available that is increasingly being adopted in the public sector - by other local authorities, the NHS and central government. Such technology provides far more robust data and intelligence, supports the contract management lifecycle and automates a substantial range of work that is currently undertaken manually.

Recent work into contract assurance (supported by EY) has demonstrated that the Council is suffering value leakage through poor contract management. New technology and increased support (alongside the aforementioned changes to introduce best practice) will help the Council to save money and meet the Financial Challenge. World Commerce and Contracting estimate that poor contract management costs organisations as much as 8.6% of annual turnover. If the figure for the Council were only 1%, this would still equate to more than £11 million. Other public sector organisations have been able to demonstrate clear benefits from the adoption of new technology and greater focus on contract management.

PACS require increased staffing capacity to support the changes coming into force under the Procurement Act. These include onerous transparency requirements, such as the publication of a much larger range of public notices, publication of contract Key Performance Indicators and supplier performance metrics and several new procedures. Resource capacity is required to support these changes, train staff and support services to ensure they are compliant with the new legislation. Corporate support for contract managers is required to prevent value leakage, ensure the Council is getting what it is paying for, ensuring compliance with legislation and maintain good supplier relationships.

## **Social Value**

- 13 The Social Value Act (2012) requires the Council to have regard to Economic, Social and Environmental well-being (**Social Value**) in connection with our contracts. Social Value involves looking beyond the price of each individual contract and looking at what the collective benefit to a community can be when a public body chooses to award a contract. It refers to wider financial and non-financial impacts of projects and programmes including the wellbeing of individuals and communities, social capital, and the environment.
- 14 The Council has been delivering additional Social Value through its contracting activity for many years and in 2016 signed up to the 'Leeds Social Value Charter'. Since 2020 we have:
  - a) Adopted the National social value themes, outcomes and measures ("**TOMs**") framework, and amended it to fit specifically for Leeds (the "**Leeds TOMs**"); and
  - b) Included a constitutional requirement in the Council's Contract Procedure Rules to require incorporation of Social Value commitments in all contracts and detail the Social Value process.
- 15 Social Value Team - In order to support services further, PACS established a Social Value team in June 2023. Leeds is one of the only local authorities in the UK to have a designated Social Value team. As well as providing general advice and direction on how additional Social Value can be delivered in procurement and contracting activity, the team:
  - supports the evaluation and monitoring of Social Value commitments (having previously been outsourced to a consultant);
  - has produced process documents and workflow charts to ensure consistency across directorates;
  - undertakes monthly pipeline meetings to discuss contracts that are due to go out to tender, to ensure that Social Values are considered;
  - has adopted a new social value platform for recording and monitoring social value commitments – Social Value Engine (the **Engine**). The team holds regular review strategy meetings with the Engine;
  - has trained over 200 officers and is currently planning training for commissioners that will be delivered over the next few months;
  - has worked with colleagues in Employment & Skills to use their skills and knowledge; and
  - is a regional point of contact and support for other authorities in the Yorkshire & Humber (see below).
- 16 Social Value Board - To facilitate and embed consideration of Social Value opportunities in procurement activity a Social Value Board of officers from services across the Council was established in 2019. The board has not met for some time, but will start to meet again from April 2024 with the mission to promote the inclusion of Social Value in procurement and contracting activity, and report on the outcomes achieved.

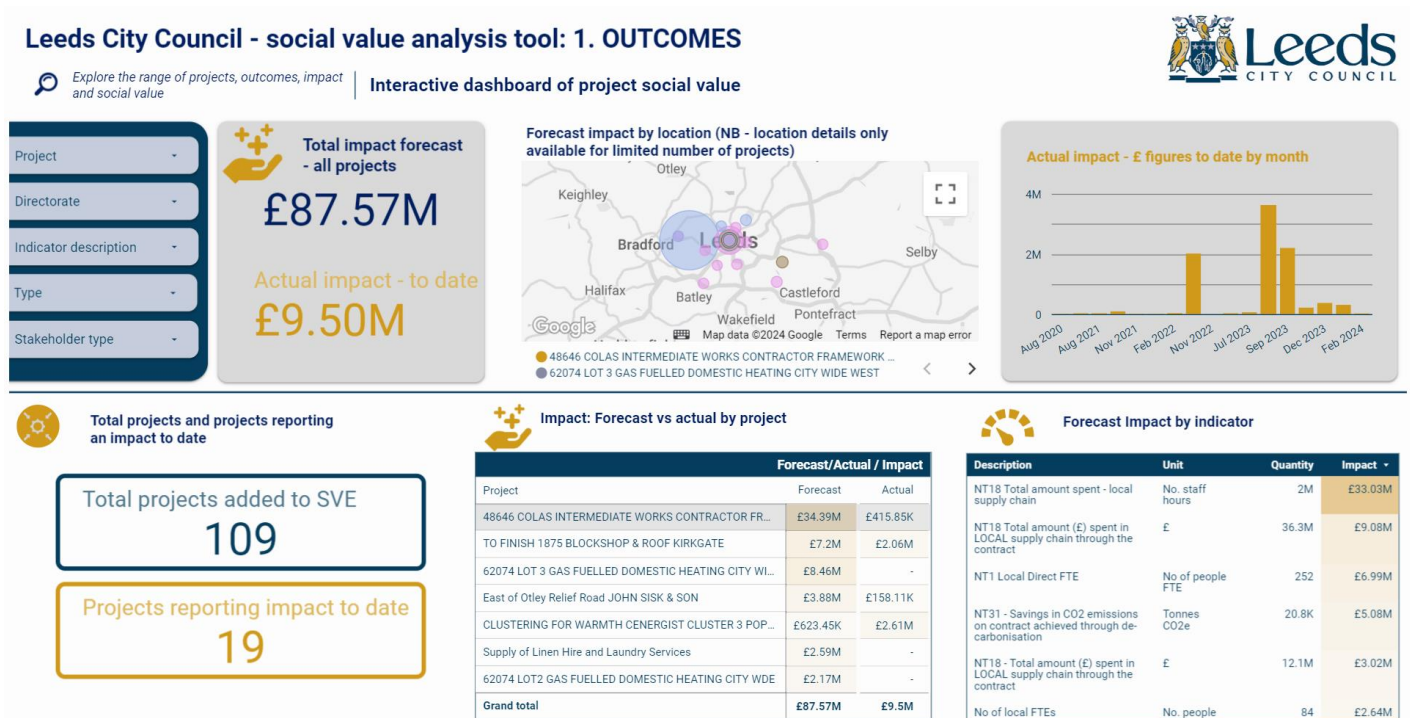
The board will meet on a quarterly basis to:

- Review and report Social Value outcomes;
- Review any lessons learned to action changes to the Social Value strategy;
- Discuss each directorate's successes and any issues;
- Seek to identify specific areas of focus for Social Value commitments (bringing parties together).
- Forward planning.

17 Partnerships and Collaboration – The partnerships and collaborations that have been created over the last few years have been integral to the success we have seen in Leeds. Below is a summary of the joint working that has happened throughout our Social Value journey:

- The Council chairs the Social Value Regional subgroup to SPG. The meeting is attended by other local authorities in Yorkshire & Humber to discuss best practice and work collaboratively.
- We have built strong relationships with partners across the City such as the 3<sup>rd</sup> sector, community hubs, charities, and suppliers.
- The Social Value lead has attended workshops and webinars to present how Leeds City Council have implemented Social Values.
- Leeds have collaborated with partners to discuss how we can enable them to deliver Social Values successfully, for example within the insurance and IT sectors.
- Leeds was part of an Action Learning Set where we played a vital role of suggesting ways to make the Social Value Engine easier to use and more functionally appropriate for procurement professionals.
- Attended meet the buyer events to ensure that we are supporting suppliers and the supply chain.
- The Social Value Lead attends Community Committee Chair Forums alongside Councillors to consider where Social Value commitments are most needed.

18 Social Value Commitments and Reporting – There are currently 109 live contracts in the Engine with a total contract value of £377.57M and a cumulative additional Social Value commitments of £87.57M.



19 Further Examples of Delivered Social Values - Prior to establishment of the Social Value team, our consultant supporting delivery and monitoring of Social Value reported delivered Social Value of £4,181,047.00. However, it was difficult to understand who was benefitting and where it was being delivered.

The work of the team and the information from the Engine allows us to clearly to identify where Social Values have been delivered, including in relation to:

- Local spend;
- Local direct employment hired on the contract;
- Hours of staff volunteering time to participate in local community projects;
- Total amount (£) spent through contract with local micro and small enterprises;
- Donations to community led initiatives.

Due to networking and building strong relationship across the city the team have been able to identify opportunities and deliver additional Social Values beyond existing contractual commitments. Please see some examples below:

- Leeds School Uniform Exchange – working with Zero Waste Leeds, the Social Value team contacted several suppliers in September 2023 to seek to support families across Leeds that may be forced into poverty due to buying school uniforms. One supplier kindly donated £5,000 to Zero Waste Leeds, and as a result Zero Waste Leeds have been able to form two new uniform exchanges and to buy the equipment they needed to successfully run their uniform exchanges. This means that more families across Leeds will not face uniform poverty.
- Armed Forces Event 21<sup>st</sup> July 2024 – the team was made aware that Armed Forces event needed donations and has obtained a £600 donation from a supplier to cover the buffet on the day.
- Armed Forces Children’s Activity Away Day – a £1,600.00 supplier donation has been made to support the day, along with the free use of a road sweeper.

20 EDI Reporting - Social Value encourages our suppliers to think about specific areas such as staff wellbeing, the impact their business is having on society and the environment. Many companies proactively conduct “EDI” activities which can range from Employment & Skills, Education, Environment, Promoting Social Innovation, Supporting Growth of Responsible Regional Business and Financial donations. Public sector procurement can harness this EDI activity as part of the additional Social Value it seeks to generate - promoting fairness, economic empowerment, and innovation. By integrating EDI into the procurement process, public sector organisations can build a diverse and inclusive supplier base, improve community relations, and enhance their reputation.

There are a variety of measures that ensure public money is not spent on practices which lead to unfair discrimination, and the following are areas we report on:

- Percentage of women (FTE) hired on the contract
- Percentage of employees (FTE) BAME hired on the contract
- Percentage of LGBTQ+ employees (FTE) hired on the contract
- Percentage of disabled employees hired on the contract because of a recruitment programme

We also seek to improve the overall value for money for the Council in terms of the goods, works and services procured through its supplier base by using our contracts to:

- increase the percentage of staff working on our contracts that are paid at least the relevant Real Living wage as specified by Living Wage foundation

- encourage contractors to adopt good employment practices
- seek to ensure modern slavery/human trafficking is not taking place within our supply chains
- deliver savings through procurement and the supply chain

The above measures are considered in the council's tender evaluations and contract managed in terms of its employment practices and service delivery.

- 21 Social Value in all Contracts – At present, while Social Value must be considered in respect of all the Council's contracting activity, in practice it is primarily focused on high value contracts (i.e. £100k plus) as it is not currently not practical to measure and monitor Social Value delivered through lower value contracts. Furthermore, a survey undertaken of all Council suppliers (i.e. not just larger contracts) in relation to Social Value, received only 13 responses out of over 2,000 survey recipients, suggesting disconnect between the majority of the Council's supply chain and a commitment to deliver social and economic value in Leeds.

The Social Value Fund has been developed and will be launched in 2024/25 in order to facilitate delivery of Social Value across all the Council's contracts. Any organisation (other than those that risk bringing the Council's reputation into disrepute) are able to contribute a modest annual fee to the Social Value Fund in exchange for a listing for their business on the Council's Social Value Fund Contributors webpage (providing contributors with access to a "backlink" of significant digital value).

All current suppliers of the Council will be invited to contribute but this will be optional. For future procurements, bidders will be entitled to a Social Value evaluation benefit if they have made a Social Value Fund contribution and the Council's standard T&Cs will require all contractors to make an annual Social Value Fund contribution. Social Value Fund contributions will then be utilised in proportion toward local and community initiatives supporting the Council's Best City Ambition and relating to the subject matter of contracts to which contributors are counterparties.

- 22 Support to Leeds Suppliers – We are currently developing proposals to provide direct, free, support to local SME's/VCSE's. In particular, this will include:
- a) engaging with potential local suppliers via a new comms and marketing plan;
  - b) providing potential suppliers with training, support and guidance regarding bidding for public contracts;
  - c) understanding barriers to bidding for Council contracts.

### **Procurement Act 2023**

- 23 The Procurement Act 2023 received Royal Assent on 26<sup>th</sup> October 2023 and is expected to come into force from October 2024, having application to new procurement activity from the "go live" date. Further detail is anticipated throughout the year in the form of secondary legislation, statutory guidance, and "knowledge drops" and other training.
- 24 The Council has established a Procurement Act working group to consider implications of the new legislation for the Council and any necessary changes in working practices/policies, as well as ensuring that relevant staff have access to appropriate training. As noted above, the Source to Contract business case will seek approval for technical and resource proposals which will help respond to the Council's statutory obligations under the new legislation.

### **25 Key Changes:**

- a) Procurement Processes – The current regulations detail 7 procurement processes that may be followed in particular circumstances, with varying degrees of complexity. These procedures are being reduced to 3 procedures, 2 of which (open and direct award) essentially reflect existing procedures. The third is a new "competitive flexible" process which allows authorities

to design their own proportionate procedure(s) to suit the particular circumstances. Clearly this flexibility has the potential to allow innovation in procurement, but the current lack of a legislative framework around this process means that the Council will need to be very clear in its documentation precisely how any competitive flexible procedure operates. In order to ensure governance/control and efficiency in procurement processes, it is intended that we will develop a set of “approved” processes and relevant pro-formas, though with the potential to develop bespoke approaches on an exceptions basis with support from PACS.

- b) Notices – Currently notice obligations are focused on the commencement and conclusion of procurement activity. The new legislation seeks to achieve greater transparency in procurement and contracting, and requires various notices to be published throughout the whole contract lifecycle (including in relation to contract variations, termination and supplier performance). Active contract management will be essential to collect and report the necessary data, and suppliers will have an interest in what data is published and how it is presented.
- c) Contract Management – The current regulations include very little in relation to the operational phase of a contract. The new legislation includes obligations to publish a wide variety of notices and performance related data, and for contracts valued above £5m contracts must include at least 3 KPIs that are reported on annually and the contracts themselves must also be published. This presents an increased risk of challenge throughout the operation of the Council’s contracts, and requires the application of adequate resource and oversight.
- d) Debarment – Current regulations already include mandatory and discretionary grounds for excluding suppliers. In addition, the new legislation provides for a central debarment list of all suppliers who have been excluded or are excludable. Discretionary grounds for exclusion include in relation to labour market misconduct, environmental misconduct and breach of contract/poor performance. Given the broader implications of debarment for the supplier, any decision to exclude a supplier will have to be well founded and may be contentious.
- e) Contract award/challenge – The opportunity for unsuccessful bidders to challenge under the new legislation is similar to the current position. However, the information that must be provided to bidders has been changed, and includes providing unsuccessful bidders with copies of the feedback provided to the successful bidder. While we already seek to ensure that any feedback is accurate and appropriate, this additional obligation underscores the need for diligence in this part of the process.

### What impact will this proposal have?

**Wards affected:**

Have ward members been consulted?

Yes

No

26 Each of the matters detailed in this report seek to further improve the efficiency and effectiveness of the Council’s procurement and contract management function, in order to deliver the key areas of the Council’s Procurement Strategy:

- a) Value for money, and efficiency
- b) Governance – legal compliance and managing risk
- c) Social Value and the Real Living Wage
- d) Commercial opportunities
- e) Supplier engagement and contract management.

### What consultation and engagement has taken place?



- 27 Together with senior officers from across the Council, both the Leader and the Chair of Scrutiny Board participated in the LGA Peer Review which provided the recommendations that the matters detailed in this report respond to.
- 28 The P2P Review is the subject of Council-wide consultation as part of the Core Business Transformation Programme.
- 29 Seeking opportunities for procurement savings and improving contract management is subject of oversight by BCT: Financial Challenge, and feeds into the overall Council budget-setting process.
- 30 Regular consultation and engagement with the Executive Member takes place, and an annual procurement assurance report is provided to Corporate Governance and Audit Committee.

### **What are the resource implications?**

- 31 As noted above, the procurement system currently in place is no longer considered fit for purpose, as it does not have the contract management capability the Council requires and will not fully support the requirements of the Procurement Act 2023 when it comes into operation. A business case will be presented to CBT Programme Board in April 2024 including proposals for a new system and additional resource to deliver improvements in contract management, greater efficiencies and value in Council spend, and compliance with the Council's new statutory obligations.

### **What are the legal implications?**

- 32 While the P2P Review seeks to deliver improved efficiency and greater strategic value from procurement activity the current Procurement Strategy, CPRs and procurement tools and documentation meet all legal requirements.
- 33 The review and refresh of the Council's procurement systems and processes will ensure that they continue to be fit for purpose with a view to facilitating compliance by the Council with requirements of the new procurement legislation, as well as improving as efficiency. Similarly, improving contract management arrangements across the Council will also deliver benefits from a governance and compliance perspective.
- 34 This report is not eligible for call-in.

### **What are the key risks and how are they being managed?**

- 35 The systems and processes that form part of the Council's procurement framework are currently functioning well, however they include significant levels of manual processing and are inefficient, do not facilitate the improvements in contract management that the Council is seeking to embed and will not facilitate compliance with the new legislation. One of the aims of the P2P Review is to improve this.
- 36 One of the Strategy and Resources directorate risks relates to risk of procurement challenge, and it is anticipated that improving processes and systems will further reduce the risk of challenge. One of the actions identified as part of the wider P2P Review was development of a procurement risk register, which is now in place. Risks in relation to the procurement and operation of specific contracts are reported monthly to the City Solicitor, and are also subject to escalation within relevant directorates. There have been no formal challenges to procurement activity in the year to date, and work is continually undertaken to ensure the tender evaluation guidance is embedded through training and monitoring. Development of additional governance and oversight in relation to contract management will help to further manage risk during operational contract periods.

37 The Council will need to stay alert to impact of the Procurement Act 2023 as further secondary legislation, guidance and training becomes available. The Council will need to manage related risks by ensuring it has adequate resources to fulfil the new transparency requirements, and training and upskilling officers responsible for procurement and contract management.

### **Does this proposal support the council's three Key Pillars?**

Inclusive Growth       Health and Wellbeing       Climate Emergency

38 The Council's procurement function ensures that the Council is able to deliver the council's three Key Pillars.

39 Effective procurement activity supports the Council's ambitions of a strong economy and a compassionate city, and the Procurement Strategy is specifically drafted in response to the Best Council Plan. Individual procurements support most/all of the Council's priorities and breakthrough projects.

### **Options, timescales and measuring success**

#### **What other options were considered?**

40 A "do nothing" option was considered and discounted. Options for the proposed new Source to Contract systems will be the subject of the upcoming business case, and a competitive procurement process. Developing contract management best practice has been the subject of significant research and consultation.

#### **How will success be measured?**

41 Success will be measured against "best practice", the number of procurement challenges and contract disputes received, and the Procurement Strategy KPIs.

42 The Social Value Engine dashboard provides contemporaneous reporting and data.

#### **What is the timetable for implementation?**

43 The Source to Contract business case will be submitted in April 2024, with a view to a new system being operational by 2025/26.

44 The Social Value board will be re-commissioned in April 2024.

45 The Contract Management Assurance Board will be established in July 2024, with relevant supporting processes to progress in the lead up to establishment.

46 Preparation for "go-live" in relation to the Procurement Act 2023 by October 2024 is ongoing.

### **Appendices**

47 None

### **Background papers**

48 None