

**Report of the Chief Officer – Financial Services**

**Report to Scrutiny Board (Strategy and Resources)**

**Date: 12<sup>th</sup> November 2018**

**Subject: Effective Procurement**

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**

This report seeks to provide an update to Scrutiny on the ongoing support from Procurement and Commercial Services (PACS) to the commissioning activity by the Council. The report covers:

- Social Value (Section 3)
- Non and off contract expenditure and compliance (Section 4)
- Faster Payments Service (Section 5)
- Contractor Insolvency and Profit Warnings (Section 6)
- Waivers (Section 7)
- Future Issues (Section 8)

**Recommendations**

Members of Scrutiny Board (Strategy and Resources) are asked to note the contents of this report and to comment on any areas where they would like further information.

## 1. Purpose of this report

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

## 2. Background information

2.1. The Council's Contract Procedure Rules (CPRs) 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.

2.2. At Scrutiny Board in December 2017, Members asked for the process of the use of waivers to be reviewed and this report provides an update to on this matter. This report also provides the latest update on the use of waivers of CPRs in financial year 2017/18 and 2018/19 to date.

2.3. PACS have collaborated with colleagues across the Council including the Business Support Centre, Corporate Finance, and Directorates in order to identify and influence a reduction in off or non-contract spend, reduce the risk of challenge and increase value for money.

2.4. This report aims to provide Scrutiny Board Members with key updates from PACS to give Scrutiny Board Members an assurance as to the work that PACS are doing to ensure Leeds City Council is at the forefront of effective procurement and aligning to social and political issues and responsibilities.

2.5. It should be noted that PACS is in the process of reviewing the Council-wide procurement strategy. Many of the outstanding issues identified in this report will be addressed in the updated procurement strategy. An outline of the strategy will be presented to Executive Board in December prior consultation with a report back to Executive Board for final approval in early 2019/20.

## 3. Social Value Outcomes

3.1. Social Value from procurement is a key element of the Council's wider aspirations for inclusive growth in conjunction with local communities and businesses. Social Value outcomes are monitored by the Council around some key areas of activity as described below.

3.2. Expenditure with local suppliers and SME's is monitored and reported on a quarterly basis. Expenditure with local suppliers in 2017/18 equated to 55.17% of total expenditure and for 2018 to date it stands at 52.61% of total expenditure. Orders placed with SMEs in 2017/18 made up 50.29% of total expenditure.

3.3. From 2014 onwards projects commissioned through the Learning Places Programme have either used the YORbuild framework or existing Leeds Local Education Partnership (LLEP) arrangements. This has created a number of benefits such as the creation of **new and existing apprentice positions** and **new employment positions** for local people in Leeds. These schemes have also

**recycled or reused 99%** of waste generated during the construction process with **only 1%** being diverted to land fill. This is in addition to delivering the required number of school places for Leeds.

3.4. Members also receive an annual report in relation to employment and skills outputs from procurement activity and planning agreements.

3.5. We have worked with the Council's Employment and Skills section to establish a Dynamic Purchasing System (DPS), A DPS is a totally electronic system, which provides simple access to contracts for suppliers. This is divided into categories thereby opening up opportunities to smaller, local organisations as well as new entrants to the market. In addition, the Education and Skills Funding Agency (ESFA) "pound plus" initiative, and the Leeds strategy to add value to ESFA funded activity, will be reflected in the future commissioning of DPS category 3 "Ofsted Regulated Adult Learning".

3.6. In addition, following the introduction of Social Value Act (2012) Leeds has developed its own Social Value Framework and commissioning guidelines. These have been discussed at Third Sector Partnership and at the People's Commissioning Strategic Group. We are currently finalising a short list of social value outcomes that we would like to see reflected in procurement activity in the future. This would enable us to focus our commissioning activity on a discrete list of social value outcomes and develop a city wide picture of what impact this work will make towards achieving city priorities. Further discussion is needed to confirm which outcomes should be chosen and how these should be evaluated through tenders and monitored through contract management.

3.7. Anchor institutions make a significant contribution to the local economy through the services they provide, the large amount of money they spend and the number of local people they employ. A collaborative and systematic approach to engaging with anchors on an innovative framework for collective action to support action on employment, low pay, Procurement and supply chain management is in development. The Council and the West Yorkshire Combined Authority, supported by the Joseph Roundtree Foundation under the More Jobs Better Jobs partnership, are developing the metrics to quantify and give profile to the contribution they will make to the city's Inclusive Growth Strategy and the West Yorkshire Combined Authority's Inclusive Growth Programme.

3.8. Monitoring of wider social value outcomes is, an area of increasing focus and importance for the Council and the PACS will play a pivotal role in this process. This will be addressed further in the new procurement strategy, referred to above.

#### **4. Non and Off contract expenditure and compliance.**

4.1. It has been recognised generally within the Council that there is a need to provide FMS users, specifically those raising orders, with more training to improve compliance. The training now being rolled out focuses on contract compliance and how to raise an order. The PACS team are currently receiving a large volume of queries in the form of e-mails and telephone calls. The training is aiming to alleviate both directorate and PACS queries, increase awareness of CPR's and reduce the cost of producing a purchase order. To date PACS have delivered the

training to over 500 officers. The benefits of this training has already been seen with an improvement to compliance and significant reduction in the amount of queries received and a reduced levels of non and off contract expenditure, in addition to greater communication within service areas.

- 4.2. PACS staff have undertaken an exercise to classify suppliers within FMS to easily identify whether they are Local or SME's. The benefit of this is that reporting around these classifications was a manual process and time consuming. The information now held on the system reduces reporting time and adds clarity to the system.
- 4.3. A new contract expenditure analysis is now distributed at directorate and service level so that expenditure by directorates with suppliers who do not hold a valid contract is visible and action can be identified and undertaken. This report gives an overview to Directorates whether expenditure is compliant with CPR's. Collaboration with Directorates using the report has been successful toward eliminating non-compliance and ensuring best value is achieved from council expenditure.
- 4.4. PACS has created an interactive tutorial providing a step-by-step guide to running low impact procurements (under £100k). This breaks the tender process into nine easy to follow steps. This has made it easier for Directorates to raise procurements through YORtender. Telephone support is also currently available through PACS for this process. This has been rolled out to over 150 people within the Council.
- 4.5. PACS staff have been continuing to be actively focused on the orders raised for low value items (under £5k) as a previously reported action. PACS have been challenging expenditure where there is a known contract with a supplier that has not been used and also where CPR's have not been visibly followed, following this up with advice and guidance on the correct process to follow. Following PACS relentless pursuit of these queries and the training that has been rolled out, there has been a dramatic reduction in the number of orders that are raised incorrectly.
- 4.6. In November 2017 it was reported to Scrutiny board that the on contract orders in FMS accounted for **96.3%** of the value of orders placed. The latest figure for 2018 year to date (September 2018) is **97.7%** of orders are on contract or compliant with CPR's. This figure shows an increase for the fourth consecutive year and the volume of orders placed that were non-compliant has also reduced.
- 4.7. On-contract compliance will be addressed in the new procurement strategy as part of the commitment to good governance.

## **5. Faster Payment Service**

- 5.1. PACS have been actively involved in the defining and rolling out of the Councils 'Faster Payment Service' whereby the Council would receive a discount in exchange for paying an invoice earlier than standard terms.

- 5.2. Initial work focussed on communicating the benefits of the service to Leeds City Council suppliers and identifying those who would participate.
- 5.3. The tender documentation has been updated to highlight the Faster Payment Service to potential contractors and include the service in future contracts. This method is now starting to assist in the addition of suppliers to the scheme.
- 5.4. It was also identified that it would be beneficial to add details of the Faster Payment Service on to the standard Leeds City Council order form within FMS. The intention is to capture suppliers who may not necessarily have a contract with Leeds City Council but suppliers who may be used on a more ad-hoc/low value basis. These are suppliers, such as local SME's, who would benefit most from the service offered. This change to the order form has stimulated a positive response and has had suppliers sending in their invoices to be paid earlier by the service.
- 5.5. PACS have been working in conjunction with DIS and holding workshops for commissioners within service areas, explaining the service and advising them to engage with their suppliers to promote the Faster Payment Service. This is intended to achieve greater awareness of the scheme around the Council and also because the commissioners are in a better position to contact suppliers as they already have the relationship with them.
- 5.6. There has been a significant amount of work from PACS to address barriers that prevent invoices being paid within 10 calendar days. This has involved working with directorates and challenging current processes to enable a faster turnaround on the invoice processing. This work is on-going especially within Children's and Families and Adults and Health.
- 5.7. PACS have volunteered to run a pilot process for the payment of invoices for the Faster Payment Service. This has involved creating a process for the early payment of invoices to suppliers and ensuring all the invoices are paid on time and the discount is taken.
- 5.8. Currently there are 30 suppliers who are taking advantage of the scheme and with the extra work that is being put in to the Faster Payment Service, it is envisaged that the scheme will continue to grow and generate savings for the Council.
- 5.9. PACS have been supporting the Business Support Centre in the implementation of the 'No Purchase Order, No Payment' policy. Where by invoices will not be paid unless they quote a valid order number. PACS have updated the terms and conditions within the tender documents to reflect this.

## **6. Contractor Insolvency and Profit Warnings**

- 6.1. The recent collapse of a number of high profile companies in the UK has served to re-inforce the importance of good contracts and contract management practices but also the need for robust procurement on behalf of the Council as good procurement will ultimately lead to good contracts.

- 6.2. The main problem facing the Council is whether to enter into a contract with an organisation that has issued a profit warning when the danger of not awarding under such circumstances is that it could be the death knell for any organisation that is already facing financial difficulty.
- 6.3. This is particularly relevant in the Construction Industry where we have seen a number of failing companies recently but the Council is still required to undertake regular procurement activity to maintain its statutory duties.
- 6.4. To address this issue the teams within PACS have produced a guidance and policy document for commissioners and contract managers within the Council relating to company financial health checks and profit warnings. The document highlights actions that can be undertaken prior to entering into a contract as well as during the contract period in order to provide reasonable mitigations against the risk of contractor insolvency.
- 6.5. The document is currently in draft form but is due to be finalised and rolled out to all Directorates within the Council in the near future. (Attached as appendix 3)
- 6.6. In addition to producing the guidance document, the Commercial Team within PACS are also looking to undertake company financial health checks on a more pro-active basis. The Council currently has listed 194 contracts with a value of more than £1m and total value of c£53.6bn. A programme of additional ongoing checks could be introduced on these contracts (current resource levels permitted) to provide a useful risk management tool to combat this issue and provide earlier warning that a contractor is in financial distress.

## **7. Waivers**

- 7.1. Following Scrutiny Board Members concerns raised (during the December 2017 Scrutiny Board) on the use of waivers within Directorates and the process for raising and monitoring waivers, officers from PACS, internal audit and corporate governance met and agreed a number of actions to address those concerns.
- 7.2. Internal Audit carried out a review of waivers and the draft results of this have been circulated. Key recommendations from this include, changing the process for issuing waivers to allow final check and challenge from PACS to ensure integrity and the correct use. A more robust template (tick-list) for raising waivers is to be produced and made available. Full training is to be provided to decision makers and those responsible for signing waivers. These changes will strengthen the current procedure and allow a greater level of check, challenge and give the opportunity for Category managers from PACS to give advice and have visibility of the waiver. From the change in process there will also be a greater detail in the reporting information gathered and the reason for the waiver being raised should be easier to identify.
- 7.3. PACS have reviewed their processes and installed several changes to improve the administration of waivers. A more robust method of capturing waivers from the

decision register is now in place; previously this has been a manual task that was open to human error and was resource intensive. This is now an automated process and allows officers to concentrate on the detail of the waivers rather than logging the information, this has also ensured that decisions from the register are not missed and every decision is now reported on. Waiver information on Insight has been reviewed and amended to make the process of waivers easier to follow and clearer to understand. A flow chart of the process has also been published to Insight.

7.4. In terms of waivers PACS maintain a log of waivers of CPRs and a summary of this log is shown in the appendix to this report.

- Appendix 1 - analysis by directorate 2017/18.
- Appendix 1a - detail waiver of waivers 2017/18.
- Appendix 2 - analysis by directorate 2018/19 to date.
- Appendix 2b – detail of waivers 2018/19 to date.

7.5. Following on from the improvements to the recording of waivers, PACS have been able to focus on waivers that have not been raised in line with CPR's and have not been registered on the Councils YORtender system. PACS have been assisting the directorates in setting up these records and this is reflected in the statistics. Previously 5% of waivers had a YORtender record now that figure is 91%. This area of work provides a lot of information that has previously been missing, supplier names, waiver periods and amounts. This also ensures that the Council is in line with its own policies and also the Public Contract Regulations 2015 for the publication of public contract awards.

7.6. It should be noted that of the 88 waivers raised in the current financial year only 21 (24%) were recorded as being timing and resource issues. This indicates that the majority of waivers in the current year have been raised in line with CPR requirements.

7.7. Again use of waivers will be addressed further in the procurement strategy as part of the commitment to good governance.

## **8. Future Issues**

### **8.1. Procurement Strategy 2019-2023**

As noted above the Procurement Manager is currently reviewing and updating the procurement strategy.

The following five priorities have been identified –:

- Value for money and efficiency. We will seek to ensure the council gets maximum value from every pound that is spent through best value and innovative procurement practice; a consistent corporate approach to

commissioning; a clearly identified savings strategy and the implementation of a category management approach to procurement.

- **Governance.** Ensuring compliance with the Contract Procedure Rules, the Constitution and the Public Contracts Regulations 2015 in order to manage procurement risk and to comply with legal requirements. This includes matters relating to 'on-contract' expenditure and the use of waivers.
- **Social Value.** We will seek to improve economic, social and environmental wellbeing from our contracts over and above the delivery of the services directly required at no extra cost.
- **Seeking new ways to develop and create commercial opportunities through procurement and commissioning activities,** not just by promoting revenue generation, but by looking at how we engage with, and influence, the marketplace and potential suppliers in order to drive innovation and develop new ideas around service delivery.
- **Effectively manage our strategic supplier relationships through continuous engagement with them through effective management of all contracts from beginning to end in order to control costs, obtain the quality outcomes and performance levels set out in the contract and minimise the level of risk.**

These are all areas where we believe procurement can make a major contribution. However, we recognise this will only be achieved through strong leadership and best use of resources by working closely with commissioners, budget holders, suppliers and through working in collaboration with our partners in the wider public sector and other stakeholders.

## **8.2. Review of Tender Documentation/Toolkits**

The Procurement Manager is currently reviewing and updating the standard tender documentation to ensure they are user friendly for commissioners, encourage bidder participation and focused on innovation and opportunities.

Feedback from officers during consultation when reviewing the contract procedure rules indicated that the procurement toolkits on Insite, and in particular Category, Management and Exit Plans all needed updating to make them fit for purpose. As currently drafted, officers are either not using them effectively or not using them at all. It is anticipated these will be reviewed and updated over the next 6 months.

## **8.3. Amendments to Contract Procedure Rules**

The Council's contract procedure rules (CPRs) were updated on the 2<sup>nd</sup> July 2018 following consultation with all Council directorates. The major amendments made to CPRs are –

- References to the Chief Procurement Officer have been changed to the Chief Officer - Financial Services. The definition of Chief Officer - Financial Services has been expanded to include "any Officer within Procurement and



Commercial Services who carries out the functions of the Chief Officer - Financial Services under these CPRs”.

- The importance of following CPRs has been made clear and that a failure to comply with CPRs may result in disciplinary action.
- The CPR relating to “Exclusive Supplier” has been deleted as it was considered to be confusing being that there is a requirement to use “existing contractual arrangements” where in place.
- CPRs 7.1 and 8.2 have been amended such that officers need to consider whether the procurement would be of interest to local suppliers and/or third sector organisations and, if it would, at least 2 of the organisations invited to tender must be local suppliers and/or third sector organisations.
- The discretion to raise the threshold of £10K to £25K on a case by case basis has been re-introduced at CPR 7.2. At consultation with Officers, this was probably the most sought after amendment.
- It has been made clear at CPR 8.6 and 9.7 that all open opportunities under these rules must be published on both Yortender and Contracts Finder. Further, at CPR 7.4, 8.7 and 9.8 it has been made clear that all completed procurements must be registered on YORtender and Contracts Finder
- CPR 7.3, 8.4 and 9.5 have been introduced so that where the Chief Officer considers there is genuinely no competition such that only a particular organisation or provider can meet the Council’s specific requirements (e.g. when commissioning a piece of art) a waiver of CPRs need not be obtained. However, the lack of competition must be formally evidenced and approved by the relevant Chief Officer before the contract is entered into.
- CPR 10.2 has been extended to indicate that a waiver need not be sought where the Council is entering into a co-operation agreement with another public sector body in accordance with Regulation 12 of the Public Contracts Regulations 2015.
- The EU Thresholds for procuring goods, works and services have been amended to reflect the current levels which came into force on the 1<sup>st</sup> January 2018.
- CPR 14.1.8 has been expanded to make it clear that tenders under £100K must be opened and receipted in such a way that the transparency and probity of the process cannot be called into question.
- CPR 18.3 and a new Appendix 1 has been introduced to ensure compliance with the IR35 legislation.
- CPR 27.1 has been amended to make it clear that a waiver report is only permitted in exceptional circumstances only.

## **8.4. Brexit**

PACS will continue to monitor the impact that the decision to leave the EU will have on procurement practice and legislation. As at the date of this report, the general consensus of opinion within procurement circles is that even if the UK does not reach a trade agreement with the EU, or any agreement does not require the UK to align itself with EU procurement rules, the UK government has indicated an intention to join the Agreement on Government Procurement (GPA). The GPA is a plurilateral agreement within the framework of the World Trade Organisation, so any procurement legislation would need to remain compliant with the GPA. The EU procurement rules themselves are based upon the GPA so it is anticipated that any amendments to the procurements rules would not be significant in any event.

## **9. Corporate Considerations**

### **9.1. Consultation and Engagement**

Previous reports to this Scrutiny Board have detailed the extensive consultation and engagement undertaken under the Effective Procurement Programme. As noted above it is intended that Executive Board and the wider Council will be consulted on the proposal on the new procurement strategy.

### **9.2. Equality and Diversity/Cohesion and Integration**

The Effective Procurement Programme includes equality issues as one of its work streams 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 procurements and the key template documents that Contracts Procedure Rules refer to provide specific prompts in this respect.

### **9.3. Council policies and City Priorities**

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. Value for money and efficiency remains one of the key areas identified in the procurement strategy currently being drafted.

### **9.4. Resources and value for money**

This report highlights the ongoing work carried out within PACS to ensure the Council is spending money wisely. Due to effective work and better process design, expenditure can now be matched to contracts without as much manual intervention. PACS staff have been committed to improving compliance and ensuring the order raising process is more efficient. This will improve the councils cost per purchase order raised. By giving FMS training and by challenging non-compliant orders

PACS are ensuring that the Council is getting value for money. The Faster Payment Service is now up and running and it is envisaged that this will gain momentum as focus on the scheme increases.

#### **9.5. Legal Implications, Access to Information and Call In**

None.

#### **9.6. Risk Management**

Monthly on/off contract spend is shared with category teams, Directorates and Internal Audit. Tools are in place to support the activities covered in this report.

#### **9.7. Future activity**

The future promotion of social value within procurement and commissioning will include the following:

- Consolidation and embedding of the new social value framework.
- Better measuring and reporting of social value outcomes – requirement to record and capture in procurement strategy and award reports.
- Greater consideration of supply chain engagement and retention. This is particularly important where large-scale frameworks are procured to promote lower volume pricing
- more consideration of ‘easy-wins’ in procurement, such as using contractors to raise awareness in the workplace of initiatives around tackling domestic violence, child-friendly Leeds and being a dementia-friendly organisation etc.

### **10. Conclusions**

**10.1** Directorates are accountable for their own procurement activity with support provided by PACS.

**10.2** Members of Scrutiny Board (Strategy and Resources) are asked to note the contents of this report, to comment on any areas where they would wish the PACS to focus on, and to support the ongoing improvements to procurement processes and strategies being proposed and implemented PACS.

### **11. Background documents<sup>1</sup>**

**11.1** Previous report to Strategy and Resources Scrutiny Board, December 2017.

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<sup>1</sup> 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.