

Name of meeting: Overview and Scrutiny Management Committee
Date: 9 January 2024
Title of report: Procurement Update

Purpose of report: This paper seeks to update Scrutiny on the work being undertaken to deliver the refreshed procurement strategy with a particular focus on the following areas;

- Supplier engagement
- Contract management and strengthening governance procedures
- Forthcoming procurement legislation
- Procurement planning
- Procurement best practice

Scrutiny members are asked to consider the contents of the report and highlight any areas for further consideration.

Key Decision - Is it in the <u>Council's Forward Plan (key decisions and private reports)?</u>	No
The Decision - Is it eligible for call in by Scrutiny?	No
Date signed off by <u>Strategic Director</u> & name	Rachel Spencer-Henshall 19.12.2023
Cabinet member portfolio	Cllr Paul Davis

Electoral wards affected: All

Ward councillors consulted: No

Public or private: Public Report

Has GDPR been considered? There are no GDPR considerations.

1. Summary

This paper seeks to update Scrutiny on the work being undertaken to deliver the refreshed procurement strategy with a particular focus on;

- Supplier engagement
- Contract management and strengthening governance procedures
- Forthcoming procurement legislation
- Procurement planning
- Procurement best practice

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2. Information required to take a decision

Background

Kirklees Council Procurement Strategy was approved at cabinet in November 2022. The strategy outlines the ambition and direction of travel for procurement activities. The Contract Procedure Rules are the regulatory framework for all staff to follow in respect of purchasing goods, services and works regardless of value.

The procurement vision is to offer an outstanding procurement experience for stakeholders and suppliers that is transparent, provides opportunities for local businesses, delivers fantastic goods and services, delivers the best value for our residents, and supports achievement of Kirklees' Shared Outcomes.

The strategy is framed around the key themes of:

- Delivering Social Value: securing the best economic, social and environmental benefits for our people and places.
- Promoting Inclusive Procurement: promoting a vibrant and mixed local economy, recognising the importance, innovation and value offered by our SMEs and VCSEs.
- Continuing to develop our category-led approach: sourcing more strategically, more innovatively, stimulating and encouraging competition.
- Striving for innovation and improvement in all that we do: delivering an effective commercial function that works in proactive, flexible and innovative ways.
- Good governance: using proportionate controls, systems and standards, and management of procurement risk.

Since the approval of the strategy the team have focussed attention on delivery of the action plan (as well as business as normal activities). Every member of the team is involved in activities that contribute to delivering the strategy and continue to make improvements to procurement activity. There are some challenges around reporting and measuring impact. Further work is required on performance measures to ensure the production of reliable and robust procurement and contract data.

Supplier Engagement

The procurement team work proactively with services to undertake supplier engagement where possible. The need for engagement will differ depending on factors such the type of procurement, market conditions, complexity of the procurement, risk profile and timescales.

Market engagement is permitted under Regulation 40 of the Procurement Contract Regulations 2015. It allows contracting authorities to conduct market consultations with

suppliers prior to the start of a new procedure. The consultations are conducted with a view to preparing the procurement and informing potential suppliers of the procurement plans and requirements.

Some of the main reasons we undertake market engagement is to;

- ensure potential suppliers are made aware at the earliest opportunity to tender for a contract with the council
- connect with our local Small Medium Enterprises and Voluntary Community Social Enterprise organisations
- stimulate interest with the aim of ensuring a competitive market exists
- understand more about a particular market and potential suppliers
- test risk appetite
- develop relationships and connections with potential suppliers
- share and receive feedback about draft specifications
- explain the procurement process in more detail and associated timescales
- explore and test any potential barriers, opportunities and areas for innovation

We undertake a number of different methods and approaches to supplier engagement, the main areas are highlighted below;

General meet the buyer sessions; content for sessions will vary, but broadly speaking we tend to share information about upcoming procurement opportunities, introduce our teams, share information about using the procurement portal, procurement process and key procurement topics such as social value and new procurement legislation.

Pre market engagement for specific contract opportunities; a variety of methods are utilised ranging from virtual or in person sessions, we will also issue questionnaires or utilise other methods to test market interest and appetite for upcoming procurement opportunities. Each market engagement is bespoke to the particular procurement. Following premarket engagement activities the service will consider the feedback in detail and use this to help to shape the procurement going forward.

Post market supplier feedback; Following a procurement exercise and before a contract is awarded the procurement team issue a short questionnaire that allows suppliers the opportunity to feedback on the process and make recommendations for improvement. The timescales for this are important as the feedback is about the process (e.g. how easy is to tender for Kirklees contracts) and not about who was successful in winning the particular contract (as feedback is provided on this element to successful and unsuccessful suppliers).

Contact Management and strengthening governance procedures

Contract management is devolved across the council. For larger and complex contracts there are specific contract manager roles, but for other council contracts, contract management duties are performed as part of an officers broader role.

Since the procurement team moved from a devolved to a centralised category led model, resources have been focussed on improving procurement compliance, practice and process and whilst there is still much to do we recognise that equal importance must be placed on contract management and ensuring our suppliers meet and where possible exceed contractual commitments and sustain good performance levels. Good contract management can result in further efficiencies and added value throughout the lifecycle of the contract if managed well.

A Contract Assurance and Resilience Board was established in November 2022 chaired by the Finance Service Director. Primarily the board was established as a forum for escalating issues and also to increase transparency and consistency in relation to commercial decision making. We are encouraging managers to proactively use the board and have a dialogue about contracts where more advice and discussion and/or problem solving would be beneficial.

Some of the areas that have been explored in more detail over the last year to improve assurance levels have focussed on; market intelligence and anticipated inflationary pressures, key council contracts, exemption requests, non-essential spend and contract management. A number of activities in relation to contract management have been considered and progressed, for example;

- Recommendations to contract managers and/or service managers to complete the Foundation Contract Management training provided by Government Commercial Function which is aimed to develop and accredit the contract management professionals who manage or oversee public service contracts.
- Procurement processes have been improved to ensure there is a clear handover and clarity about roles and responsibilities from procurement staff to contract managers once the contract has been awarded.
- Participation in the Commercial Continuous Improvement Assessment Framework which is a tool designed to promote continuous improvement in commercial practices within the public sector by helping organisations to benchmark their commercial operations against accepted standards of good practice.
- Contract management health checks; alongside the commercial assessment highlighted above the intention is to work with directorates to develop high level reports to improve transparency around contract management and to ensure senior managers have adequate oversight and assurance of contract and commercial performance in their areas of responsibility.

Strengthening Governance Procedures

Representatives from governance, legal, procurement, finance and audit have been working together to ensure that we have a consistent understanding and approach in relation to decision making for procurement activity. The aim of the group was to come together as corporate services, review and discuss approaches so we can be consistent in our advice and best serve the council and the service areas we support. The group meets approximately every six weeks and discusses upcoming procurement activity and associated decision making, as well as opportunities to share and learn together. Some of the activities that have been undertaken are;

- new draft guidance document to assist with decision making in relation to procurement activity, Frequently Asked Questions (FAQs) and a guidance flowchart
- sharing and testing the guidance document with a number of teams
- identifying opportunities for further learning and training with service areas
- discussing individual procurement activities and providing services with advice
- governance colleagues have continued to provide on-going training and support in relation to decision making

Procurement Regulations

There are two significant changes on the horizon in relation to procurement legislation. They are the Provider Selection Regime and the Procurement Act 2023.

The Department of Health and Social Care recently published the draft Provider Selection Regime (PSR), set out in the Health Care Services (Provider Selection Regime) Regulations 2023, which is intended to come into force on the 1st January 2024.

The PSR intends to remove the procurement of health care services, when procured by relevant authorities under the PSR, from the scope of the Public Contracts Regulations 2015. In doing so, the PSR seeks to give the relevant authorities more flexibility in selecting providers for health care services, with an aim to promote greater collaboration, reduce the bureaucracy associated with the current rules, and enable the development of stable partnerships. It is hoped the PSR will ensure all decisions are made with a view to securing the needs of patients, improving the quality of the services, and improving the efficiency in the provision of the services.

This new regime will apply to NHS England, Integrated Care Boards, NHS Trusts, NHS Foundation Trusts, local authorities and combined authorities when they are procuring healthcare services.

Further information about the Provider Selection Regime can be found here; [NHS England » The Provider Selection Regime: draft statutory guidance](#) and [NHS England » Provider Selection Regime toolkit products](#)

In terms of preparedness, council colleagues are accessing the webinars, training, toolkits and working closely with regional colleagues and partners to share information. This will predominantly affect public health contracts. Some further development of procurement templates and process steps in the procurement portal will be required to ensure alignment with the new regulations in 2024.

The Procurement Act 2023

The Procurement Act is a new piece of legislation aimed at reforming public procurement procedures in the UK. The Act is intended to make public procurement more efficient, transparent, deliver better value for money, and address national priorities.

Once implemented, the Procurement Act 2023 will replace the Public Contract Regulations 2015 (PCRs), Utilities Contracts Regulations 2016, Concession Contracts Regulations 2016 and Defence and Security Public Contracts Regulations 2011 to become the law that regulates procurement in England, Wales and Northern Ireland.

The latest updates indicate the new regime is expected to come into effect later in 2024, with a six-month preparation period before changes are implemented.

Some of the key changes the Procurement Act 2023 introduces;

- Terminology; a move away from familiar EU Directive language and terms.
- Procurement Objectives; authorities must have regard to the importance of (a) delivering value for money; (b) maximising public benefit; (c) sharing information for the purpose of allowing suppliers and others to understand the authority's procurement policies and decisions; and (d) acting, and being seen to act, with integrity.
- Transparency notices; several new notices to be published throughout the procurement lifecycle
- Procedures; less prescriptive procedures and a reduction to three procedures (i) Open, (ii) Competitive Flexible Procedure, and (iii) Limited Tendering (i.e. direct award).

- Framework Agreements; introduction of the concept of an “open framework”. Open frameworks can be for a period of eight years.
- Shortened ‘standstill period’; reducing the period between when a contract award decision is made and a contract concludes from 10 to 8 working days.
- Award criteria; moving from Most Economically Advantageous Tender to Most Advantageous Tender.
- New Key Performance Indicators; introduces a new requirement for contracting authorities to publish contract key performance indicators (KPIs) to evaluate supplier performance for contracts with an estimated value above £5 million.
- Supplier Registry; introduce a new supplier registration system to centralise information on suppliers.
- Excluding suppliers; contains provisions on excluded and excludable suppliers and how they should be dealt with by contracting authorities. The Act also introduces a central debarment list.

Whilst dates are not yet confirmed for the new legislation, given the scale of the changes there are a number of readiness activities underway. Delivery of some of the actions in the procurement strategy have also been accelerated to assist with preparedness. An internal council group has been established to lead on readiness and implementation. Alongside this we have a regional procurement policy group to support effective implementation across the region. The Cabinet Office will be rolling out a comprehensive programme of learning and development for procurement and commercial teams and other staff whose work touches on procurement that need to be aware of the changes.

Short guides on the key benefits of the Procurement Act, covering timelines and suggested considerations and next steps for Contracting Authorities and Suppliers can be found here; [Procurement Act 2023: short guides - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guides/procurement-act-2023-short-guides)

Procurement Planning

A lot of council resources go into procurement activities and the different stages of the procurement lifecycle that need to be considered as part of the planning process. The team aim to strike the right balance of proportionality in terms of suitable process and approach in considering the value, complexity and risk associated with individual procurements in order to demonstrate value for money and improved outcomes for Kirklees residents. Guidance is available on the council’s intranet to give indicative timescales for procurement activities, these are not prescriptive and rely heavily on the lead service area(s) being able to prioritise resources to ensure they are able to complete key tasks that need to be undertaken as part of the procurement activity (e.g. producing technical specifications).

Good progress has been made in reviewing and improving the procurement processes to ensure there is more structure and oversight of the different stages. As a result of this a number of template documents have been introduced in the team over the last few months. It’s important as we embed these new processes that we get feedback from the team and stakeholders to ensure that the new templates and controls are adding value and providing the appropriate levels of transparency and assurance.

The templates that have been either introduced or refreshed more recently are;

- Procurement Referral; for new procurement requests
- Route to market assessment; for goods and services above £25k but below the goods and services threshold (approx. £178K)
- Procurement Strategy and Plan; for goods and services above procurement threshold limits
- Tender evaluation report; for contracts above £25k

Alongside this, work is underway to implement a new procurement tracker that will show the different stages of current procurement activity. The procurement tracker is being designed to assist with procurement project management whilst also providing reminders for key activities and procurement measures recording.

Procurement Best Practice

It can be a challenge to monitor and review best practice in relation to commercial activity. Whilst particular procurement elements may have been regarded as best practice, ultimately you only know how much impact and the benefits realised at the end of a contract. It is hoped that by participating in the Commercial Continuous Improvement Assessment Framework areas of best practice will be highlighted amongst the peer group and there will be opportunities for further learning to support our continuous improvement.

A lot of learning is undertaken when things don't go to plan and procurement case law is published. This allows us the opportunity to review and improve processes to ensure practice is improving and appropriate consideration of commercial risks are considered.

In terms of how the procurement team keep informed and up to date with best practice we continue to;

- share best practice at a Yorkshire and Humber level and nationally through the National Advisory Group for procurement
- talk to private and public sector partners, suppliers, and experts to get insight on current best practice
- keep up to date through market intelligence and attending a number of different forums both regionally and nationally

We are also proud of our own procurement journey and progression noting the teams successes in recent years at the National Procurement GoAwards:

- 2019 Winner - Procurement Team of the Year
- 2019 Highly commended - Procurement Innovation of the Year
- 2020 Winner - Project of the Year
- 2021 Winner - Best Procurement Delivery (Local Government)
- 2022 Finalists - Individual Achievement & Social Value Award
- 2023 Winner - Social Value Award Local Government

3. Implications for the Council

3.1 Working with People N/A

3.2 Working with Partners N/A

3.3 Place Based Working N/A

3.4 Climate Change and Air Quality N/A

3.5 Improving outcomes for children N/A

3.6 Financial Implications for the people living or working in Kirklees

3.7 Other (eg Integrated Impact Assessment/Legal/Financial or Human Resources)

Although each of the sub categorisations above suggest no direct implications, procurement covers all aspects of the councils operations. The procurement strategy and contract procedure rules set reflect good procurement practice which in turn supports the Council Plan by using procurement activity to help achieve the Council's wider objectives and outcomes.

4. **Consultation**
Not applicable.
5. **Engagement**
Not applicable.
6. **Next steps and timelines**
Delivery of the procurement strategy will continue. The procurement team will continue to proactively seek opportunities to improve practice and strengthen assurance levels. Particular focus and priority will be given to preparedness and implementation activities required for the new procurement legislation.
7. **Officer recommendations and reasons**
Scrutiny members are asked to consider the contents of the report and highlight any areas for further consideration.
8. **Cabinet Portfolio Holder's recommendations**
Not applicable.
9. **Contact officer**
Jane Lockwood, Head of Procurement (01484 221000, e-mail; JaneA.Lockwood@kirklees.gov.uk)
10. **Background Papers and History of Decisions**
Procurement Strategy discussed at Corporate Scrutiny panel 3 October 2022
<https://democracy.kirklees.gov.uk/documents/s48359/Procurement%20Strategy%20-%20Scrutiny%20Report%20-%2020220809.pdf>

Procurement Strategy approved at Cabinet 16 November 2022
<https://democracy.kirklees.gov.uk/documents/s49026/Procurement%20Strategy%20-%20Cabinet%20Report%20-%20Final.pdf>
11. **Service Director responsible**
Julie Muscroft, Service Director- Legal, Governance and Commissioning

Rachel Spencer-Henshall, Strategic Director of Corporate Strategy, Commissioning and Public Health