
To: Finance and Corporate Services Scrutiny Board (1) Date: 12 February 2025

Subject: Procurement Process

1. Purpose of the Note

1.1. To set out:

- The processes for undertaking procurement activity conducted by the Council;
- The corporate controls in place to secure value for money in procurement activities; and
- Provide information on the forthcoming Procurement Act 2023 and changes being implemented in order to ensure continued compliance with the new legislation.

2. Recommendations

2.1. Finance and Corporate Services Scrutiny Board (1) are recommended to:

1. Note the procurement processes that the Council is subject to in line with public sector procurement legislation and internal Contract Procedure Rules as outlined in Paragraph 3.
2. Note the corporate approach utilised by the Council to deliver value for money and quality assurance through commissioning and procurement.
3. Note the forthcoming changes with the introduction of the Procurement Act 2023 as outlined in Paragraph 4 and appended presentation.
4. Identify any further recommendations for the Cabinet Member (Strategic Finance and Resources)

3. Procurement Process

- 3.1. Scrutiny Board 1 ("SB1") has requested further understanding on the procurement processes that the Council is subject to and updates regarding the Procurement Act 2023 including changes to the Contract Procedure Rules ("CPRs"). This briefing note sets out the regulatory frameworks governing public sector procurement and the due diligence processes involved.
- 3.2. The CPRs forms part of the Council's Constitution and are, in effect, the framework that governs the Council for making and entering into contracts on behalf of the Council. The CPRs sets clear rules for the procurement of goods, services and works and to ensure a system of openness, fairness, transparency and accountability.

3.3. The Council is also subject to multiple Regulations in relation to procurement activity, namely:

- i. The Public Contracts Regulations 2015
- ii. The Concession Contracts Regulations 2016
- iii. The Utilities Contracts Regulations 2016,
- iv. The Health Care Services (Provider Selection Regime) Regulations 2023
- v. The Procurement Act 2023 (due to come in to force 24 February 2025)

3.4. Procurement Procedures

The Regulations set out the various procedures to be followed when undertaking procurement activity that is deemed ‘above threshold’¹. The CPRs outline the minimum requirements for procurement activity ‘below threshold’, but can be summarised as follows:

Value	Approval to Procure	Min. Process	Min. Time Period*
<£10,000	Budget Holder	Use of corporate contract or demonstrable VfM	N/A
£10,000 - 24,999	Director approval or delegated authority to budget holder	Seek minimum 5 verbal quotes (must be confirmed in writing. E-procurement platform optional.	Minimum 5 working days
£25,000 - 99,000	Director approval or delegated authority to budget holder	Competitive quotes, seeking minimum of 5x (inc 3x local where possible). Must use e-procurement platform	Minimum 10 working days
£100,000 - threshold	Procurement Panel £100,000-£1m Procurement Board £1m+	Competitive tenders, seeking minimum of 5x (inc 3x local where possible). Must use e-procurement platform	Minimum 15 working days
Above threshold	Procurement Panel £100,000-£1m Procurement Board £1m+	Competitive tenders in compliance with Regulations	In compliance with time periods set out in Regulations

* The various Regulations set out the minimum time periods to be followed for ‘above threshold’ activity. Following Procurement Services inaugural Equality, Diversity and Inclusion survey issued to suppliers within Coventry, Procurement Services acted on

¹ £179k + VAT for supplies and services, £552k + VAT for services deemed Light Touch, £4.47m + VAT for works. Note, the Provider Selection Regime does not have thresholds, so all activity must follow those Regulations.

feedback provided and sought inclusive procurement changes to set out minimum timescales for 'below threshold' opportunities.

3.5. Corporate Procurement & Commissioning Processes

3.5.1 The main objective of the Council when undertaking procurement activity is to achieve Value for Money which is defined as "a utility derived from every purchase, or every sum of money spent. It is based not only on the minimum price (economy) but also the maximum efficiency and effectiveness of the purchase". In essence, the concept for Value for Money is understood as not paying more for a good or service than its quality or availability justify.

3.5.2 It should be noted that Value for Money does offer challenges particularly in the public sector due to the fact that defining and measuring Value for Money is fraught with various challenges such as:

- The public good – not always being easy to value a public good, because money (cost) is not the only measure.
- Multiple stakeholders with different expectations could complicate the measurement of Value for Money.

3.5.3 Despite the challenges stated above, the concept adopted by the Council when seeking to achieve Value for Money in competitive procurement activities centres on awarding the contract to the supplier whose submissions represent "Most Economically Advantageous Tender" when evaluated against the criteria set when the opportunity is made available by the Council.

3.5.4 When service areas are selecting the most appropriate procurement route to secure value for money, they are encouraged, in consultation with the Head of Legal and Procurement Services, to adhere to the principle of ensuring that all practical options for contract packages and methods of procurement should be analysed and evaluated, with the object of selecting the option that most effectively ensures value for money is achieved. The preferred option must provide full, fair, transparent and open competition and be identified as the most advantageous tender. To this end, the PROC paper submitted to either Procurement Panel and/or Board currently contain questions that demonstrate:

- whether the procurement is required in order to facilitate the discharge of an essential or discretionary function (together with justifications); and
- what options have been considered to facilitate how the service might be provided at lower cost.

3.5.5 It is recognised that competition is an underlying principle of public procurement, as well as being widely acknowledged to be a key enabler of value for money. It helps the Council to secure the goods and services it requires at the right price and quality and is seen as the best way of demonstrating probity in the award of public contracts. Increasing competition for public contracts can improve value for money

by allowing suppliers to demonstrate how they can improve quality, reduce costs and increase the scope for innovation.

3.6. Due Diligence

- 3.7. When undertaking any open market procurement exercise, the Council seeks to ensure that the bidders/tenderers are of sufficient technical and financial competency to undertake the requirement of the contract. This includes, but is not limited to:

Technical Capacity

In addition to qualitative evaluation criteria seeking to understand how suppliers will perform elements of the contract being tendered for, the Council as standard seeks examples of prior experience of delivering contracts of a similar size and nature to the one being tendered for. Said examples are to include contact references for validation of the information provided.

Financial Capacity

The Council will initially access a commercial risk report from CreditSafe and review this alongside the Tenderer's annual turnover. Following this assessment, the Council will determine whether it needs to undertake any further form of financial assessment.

If the Council deem a further form of assessment is required, the Council will consider the commercial aspects of the contract, e.g., length and value of the contract, payment profile/terms, ongoing commitments, maintenance/warranty requirements. The Council may also review additional financial data such as audited accounts, P&L accounts, turnover statements. Where appropriate, these documents are reviewed by colleagues in Finance. The Council may ask for additional security provisions to be provided by the Tenderer to the Council such as Parent Company Guarantees, Performance Bonds or retention sums etc. (in the form required by the Council following engagement with Legal Services), before making a judgement on the commercial risk.

The Council (whose decision is final) will then determine if the Tenderer has passed or failed the financial assessment, based on our judgement of the information

4. Procurement Act 2023 ("PA2023")

4.1. Background

- 4.1.1. The PA2023 is a new set of rules which govern the procurement of goods, services and/or works in the public sector. Announced as forthcoming legislation following the UK's exit from the European Union, the new act was laid before Parliament in May 2022 and obtained Royal Assent in October 2023. The new Act and supplementary Procurement Regulations 2024 was due to come in to force on 28 October 2024, however has been delayed until 24 February 2025.
- 4.1.2. The PA2023 replaces the existing procurement rules (Public Contracts Regulations 2015 as amended), though transitional arrangements confirm that any contracts entered in to, or tenders commenced prior to, the go live date of 28

October 2024 will be subject to the requirements of the current legislation until their expiry, meaning relevant authorities will be managing contracts under two sets of legislation for a number of years.

- 4.1.3. The PA2023 amalgamates the different tender procedures, reducing the number of procedures from 6 to 3 (Direct Award, Open Procedure and Competitive Flexible Procedure). The Competitive Flexible Procedure is described in the Act as a competitive tendering procedure “which is such procedure as the contracting authority considers appropriate for the purpose of awarding the public contract”.
- 4.1.4. The PA2023 seeks to provide greater transparency through the procurement and contract management lifecycle. As such, the legislation is greatly increasing the number of notices (5 under PCR2015 to 14 under PA2023) that relevant authorities will need to publish throughout the procurement process and term of the contract. Procurement Services have been working with our e-tendering platform provider to ensure readiness of the new notices ahead of 28 October 2024. With the increased level of transparency, it has been proposed in the changes outlined at 3.7 to provide clarity in the CPRs as to the requirements of the notice regime.
- 4.1.5. In response to the new Regulations, Procurement Services proposed amendments to the CPRs that were approved by Council in October, with delegated authority to Director or Law & Governance to bring in to force the changes as and when the PA2023 “goes live” (still anticipated to be 24 February 2025).
- 4.1.6. The changes to the CPRs can be summarised as follows:
 - **Updated terminology with respect to the legislation and notice portals** (reflected throughout part 3G)
 - **Reference of the requirement to consider the priorities of the National Procurement Policy Statement (NPPS)** (reflected in additions/amendments to clauses 4, 7, 13 in addition to existing clauses regarding social value and value for money).
 - **Expansion on clause 15 in relation to Specifications** to align to the requirements of the Procurement Act 2023.
 - **Amendment to Contract Procedures (clause 16)** to reflect the new procedure types under the Procurement Act 2023.
 - **Inclusion of the requirement to publish all contracts in excess of £5,000** in accordance with the Local Government Transparency Code (expanding on the legislative requirement of £25,000). (reflected in clause 3, 12.2 and 16.4).
 - **Inclusion of notice publication requirements** reflected throughout the document to ensure officers are aware of the requirements, as well as the inclusion of Appendix 4 providing information and exclusions with regards to the new notice regime.
 - **Change to process where authorising officers do not believe it possible to invite the minimum number of tenders/quotes as stipulated by the CPRs** enforcing that the tender/quote be published to the open market to satisfy the requirements of the CPRs.

- **Expansion of the contract management provisions** at clause 27 in relation to the requirements under the Procurement Act 2023.
- **Updated job titles** in relation to the Director for Finance and Resources reflected throughout the document.

4.1.7. In addition to the above, Procurement Services are currently drafting refreshes of the Council's Procurement Strategy and Contract Management Framework, ensuring alignment with the PA2023 requirements.

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