
**Customer and Corporate Services Scrutiny
Management Committee**

12th April 2021

Report of the Chief Finance Officer

Update on Procurement

Summary

1. This report provides a brief overview of how procurement works in the Council and how the service has operated during the pandemic. It also informs the Committee of the proposed changes in procurement legislation following the UK's departure from the EU and how this may impact on the Council's Procurement Strategy. Finally, it outlines some proposed updates to the Social Value Policy.
2. The Procurement Strategy (Annex 1) explains how the Council works with partners and suppliers to develop and deliver:
 - imaginative commissioning and procurement solutions
 - quality, value-for-money goods, works and services
 - broader economic, social and environmental outcomes
3. The Social Value Policy (Annex 2) sets out the Council's commitment to embedding social value into its procurement and commissioning processes, creating a supply chain that helps the Council work towards its strategic priorities.

Recommendations

Members are asked to

- a. note the information in this report
- b. consider what further information, if any, members require on procurement
- c. comment on the proposed changes to the Social Value Policy

- d. comment on the areas they wish to see included in a future Procurement Strategy

Reason: To keep members informed of procurement processes within the Council.

Background

4. At the October 2019 meeting of this Committee the Chair presented a draft work programme for the 2019/20 municipal year and the Committee agreed to request several overview reports to define what work members could focus on. It was later agreed that a report on a sustainable Procurement Strategy and Social Value Policy would be considered at the Committee's January 2020 meeting. However, due to the absence of the Chief Finance Officer during January, the item was not considered at this meeting.

Overview of procurement team and process

5. Procurement is the process of acquiring goods, works and services from third parties to deliver agreed outcomes. The process compares different services quality and prices to enable the council to select the best offer that meets its needs. The result is a contract, with a clear specification, price and a set of terms and conditions to achieve the best outcomes for residents and delivery of the Council Plan.
6. The council spends approximately £170m on goods and services during an average financial year, with around 1500 individual purchase orders raised each month. We use an average of 2,270 suppliers during the year and there are over 320 entries on the contract register at any one time. There are 417 officers across the council with delegated authority to make purchases on behalf of the council.
7. To set this in context, there are 9 members of procurement team and this includes 1 compliance officer. At the time of writing (mid March) the team were supporting 105 separate procurement exercises ranging in value from £20k (Local Plan Sustainable Transport Study) to £60m (Housing Delivery Programme).
8. York, along with most other councils in the Yorkshire & Humber area, operates a category management approach to procurement. This essentially means that the team is structured to reflect the categories of goods, works and services we buy, rather than the directorates who buy

them, ensuring a joined up approach to supplier management and expenditure across the council.

9. All councils in the region use a common system to advertise tender opportunities, called Yortender. This system allows any supplier to register on the system and receive alerts to let them know when tenders are advertised, at no cost to the supplier. It also allows us to meet the requirements of the Local Government Transparency Code as it is available for anyone to view the current contract register and tender opportunities. Training on how to use the system is available for any supplier, but priority is given to local suppliers.
10. The team provide regular training sessions, which are available to all staff and take place on a regular basis. We also offer bespoke training as and when required. A procurement toolkit, which provides advice, guidance and template documents, is available to all staff through the intranet. The team works closely with colleagues from both legal and finance to provide joined up support for front line service managers.

Procurement during the pandemic

11. At the outset of the pandemic in March 2020 a decision was made to suspend all tendering and procurement activity for a short period unless it was urgent or essential to deal with the impacts of the pandemic. This was to ensure staff resources were available to deal with urgent issues at the time and also to ensure that suppliers who were unable to tender due to the restrictions in place at the time were not disadvantaged.
12. Once the situation became more manageable, procurement activity was restarted and procurements were prioritised to ensure the backlog was cleared as quickly as possible. Procurement is now working normally with all activity resumed.
13. The procurement team worked closely with Public Health and councils across the region to source suitable personal protection equipment such as hand sanitiser, face masks, gloves, etc.

Procurement Strategy and Sustainable Procurement

14. The purpose of the procurement strategy is to ensure that the Council uses procurement effectively to deliver key priorities. The strategy guides the procurement policy and helps to ensure that it achieves value for money whilst delivering the best outcomes for residents.

15. The Council is committed to engaging with suppliers to procure and commission work, services and supplies and to develop effective procurement solutions that deliver:
 - Quality, value-for-money goods and services;
 - Positive economic, social and environmental outcomes.

16. Through the responsible procurement of goods, works and services in a socially, economically and environmentally responsible way the Council has an important role to play in:
 - Reducing environmental impacts;
 - Supporting the local economy;
 - Providing employment and training opportunities;
 - Achieving sustainability through the works, supplies and services that are procured.

17. As part of this process the Council asks its suppliers to demonstrate that they are:
 - Following good environmental practices;
 - Offering opportunities for employment and training;
 - Supporting the local economy;
 - Considering social value.

18. The Procurement Strategy includes a commitment that sustainability, fairness and the development of the local economy will be built into purchasing decisions. Economic considerations must be balanced with the need for environmental and social outcomes and must all be done within the bounds of procurement legislation.

19. Work on revising and updating the current Procurement Strategy was about to begin in early 2020 but work in this area was put on hold during the pandemic. The Government has now issued a Procurement Green Paper following the departure of the UK from the EU and therefore whilst work can restart in terms of researching current best practice and consulting with stakeholders, the strategy will not be finalised until the outcome of this green paper is known.

20. Consultation will be undertaken with current and prospective suppliers, and the local business community. A draft strategy will then be written

by officers and there will be the opportunity for members and residents to comment on this strategy before it is formally approved and adopted.

21. Climate Change Policy & Scrutiny Committee have also considered sustainable procurement at their meeting on the 10th March.

Transforming Public Procurement Green Paper

22. Government launched the Green Paper in December 2020 for consultation. The Paper forms part of a package of new procurement arrangements that are needed following the UK departure from the European Union. A new Find a Tender service has replaced the Official Journal of the European Union (OJEU) and this is where all contracts over £118k have been published since 1st January 2021.
23. The Government believes the main problems with the previous system are that the rules are complex and confusing, making it difficult for smaller companies to win business and improve public services, and that it is difficult for public bodies to exclude providers on the grounds of past poor performance.
24. The Green Paper outlines how leaving the EU provides an opportunity to design a system that works better for communities and businesses. The Government also wants public procurement to support economic recovery following the pandemic.
25. The Government proposes that the new legislation will include the following six principles, which are consistent with the UK's membership of the World Trade Organisation's (WTO) government procurement agreement (GPA):
 - a. Public good – procurement should support the delivery of strategic national priorities including economic, social, ethical, environmental and public safety
 - b. Value for money – procurement should achieve the best mix of economy, efficiency and effectiveness and achieve the intended outcome; it is not just about the lowest price
 - c. Transparency – openness that underpins accountability for public money, anticorruption, and the effectiveness of procurement
 - d. Integrity – good management, prevention of misconduct, and control in order to prevent fraud and corruption
 - e. Fair treatment of suppliers – decision-making by contracting authorities should be impartial and without conflict of interest

- f. Non-discrimination – decision-making by contracting authorities should not be discriminatory
26. Procurement teams should have regard to the Government's national priorities when conducting public procurement. These will be set out in a National Procurement Policy Statement, including:
 - a. Delivering social value including economic, social and environmental outcomes
 - b. Commercial delivery including publishing pipelines of future procurement
 - c. Commercial capability including benchmarking performance
27. The proposals outlined in the paper would replace the current 7 procurement procedures, some of which overlap and are rarely used, with 3 procedures
 - a. A new flexible procedure that gives buyers freedom to negotiate and innovate to get the best from the private, charity and social enterprise sectors
 - b. An open procedure that buyers can use for simpler, 'off the shelf' competitions
 - c. A limited tendering procedure that buyers can use in certain circumstances, such as in crisis or extreme urgency
28. The Light Touch regimes introduced in 2015 as a flexible route for health and social care procurement will be abolished.
29. The Government sees the right contract going to the right supplier as a fundamental test of an effective procurement regime. It proposes some technical changes to ensure that procurement processes achieve the best mix of quality and effectiveness for the least costs, taking account of the whole life of the contract and wider aspects.
30. The proposed changes are:
 - Clarity that buyers do not have to select the cheapest bid and that they can design evaluation criteria to include wider economic, social or environmental benefits. The green paper proposes to replace the current requirement to evaluate bids on the most 'most economically advantageous tender' (MEAT) with 'most advantageous tender' (MAT).

- Retention of the basic requirement for award criteria to be linked to the subject matter of the contract, but with provision for specific exceptions to be made by the government, which could be used to drive up standards from suppliers, for instance on prompt payment of subcontractors or environmental performance.
- Provisions for the exclusion of suppliers who have been convicted of fraud and other offences such as tax evasion, and the introduction of a centralised debarment list of organisations that have relevant convictions.
- Broadening the range of circumstances in which past poor performance can be taken into account. Currently a supplier can only be excluded if their poor performance has resulted in contract termination, damages or similar sanctions. Under the new proposals, a supplier could be excluded due to significant or persistent poor performance in a previous public contract, subject to a three-year time limit. Decisions to exclude would have to be based on evidence.

31. Over the last 20 years, the UK has been moving towards more open and electronic procurement systems, but the government believes existing systems are still too fragmented, with a lack of transparency and interoperability, meaning the UK misses out on the potential benefits of sharing data that could help provide a fuller picture of public spend; manage suppliers; prevent fraud and corruption; and make supply chains more visible. The green paper proposes:

- Legislation to require all contracting authorities to implement the Open Contracting Data Standard (OCDS). This is a free, non-proprietary, open data standard for public contracting implemented by over 30 governments globally. This would allow data to be shared across the public sector and analysed by contract and category
- Establishing a single digital platform for supplier registration so that businesses only have to submit their data once to qualify for any public sector procurement. All contracting authorities would use this data in their procurement exercises.

32. Good contract management is key to successfully delivering a contract following the completion of a procurement. To improve contract management, the government proposes reforms including:

- Tackling late payment in the public sector through giving small businesses, charities and social enterprise further down the supply chain better access to contracting authorities to raise late payment problems
- More flexibility over amendments to contracts, especially in times of crisis, and a new requirement to publish contract amendment notices, increasing transparency

Social Value Policy

33. The Public Services (Social Value) Act 2013 requires people who commission public services to think about how they can also secure wider social, economic and environmental benefits.
34. The Act is a tool to help commissioners get more value for money out of procurement. It also encourages commissioners to talk to their local provider market or community to design better services, often finding new and innovative solutions to difficult problems.
35. The Council's Social Value Policy is a way of thinking about how resources are allocated and looks behind the cost of a contract to the collective benefits the contract will deliver to the wider community.
36. The Social Value Policy sets out the Council's commitment to embedding social value into procurement and commissioning processes, creating a supply chain that helps to work towards strategic priorities.
37. The term "social value" is generally recognised as being the achievement of extra social or community benefits through procurement activity and the award of contracts. It involves thinking beyond the price of each individual contract and looking at the collective benefit to a community when a public body chooses who to award a contract to.
38. The current policy was approved by Executive in December 2018 and some recent examples of type of social value questions asked within the tender documents include:
 - *What do you offer to reduce social isolation for residents who experience difficulties in undertaking a journey? Please consider how this supports the wider health and well-being of local residents?*

- *How does your organisation provide economic benefits for the local and emerging workforce in York?*

- *Please describe how you will support the following throughout the delivery of this contract:*
 - *Opening up the supply, works, services requirements for this contract to a wide supply chain including SMEs, Third Sector*
 - *Provide fair working practices for workers (including sub-contractors) directly employed in the delivery of this care services contract (and how you will monitor and report on the fair working practices you will provide throughout the life of this contract)*
 - *Consideration of maximising access to employment opportunities and apprenticeships through advertising, recruitment and training and liaising with employment agencies, job centres and educational partnerships (i.e. schools, colleges, universities).*

39. As the policy has now been in operation for just over 2 years officers have reviewed the policy to further enhance areas such as culture and young people. Members are therefore asked to comment on the proposed changes which are shown in tracked changes on annex 2 attached to this report.

Consultation

40. There has been no consultation in the preparation of this initial overview report.

Options

41. This report is essentially for background information only.

Council Plan 2019-2023

42. This report is report is linked to the Well-paid Jobs in an Inclusive Economy, Creating Homes and a World-class Infrastructure and An Open and Effective Council priorities in the Council Plan 2019-2023.

Implications

43. There are no Financial, Human Resources, Equalities, Legal, Crime and Disorder, Information Technology, Property or other implications associated with the recommendation in this report.

Risk Management

44. There are no risks associated with the recommendation in this report.

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Wards Affected: *List wards or tick box to indicate all*

All

**For further information please contact the author of the report
Annexes**

Annex 1: CYC Procurement Strategy 2017-2019

Annex 2: Updated Social Value Policy

List of abbreviations

EU European Union

OJEU Official Journal of the European Union

UK United Kingdom

WTO World Trade Organisation

GPA government procurement agreement

MEAT most economically advantageous tender

MAT most advantageous tender

OCDS Open Contracting Data Standard

SME Small / Medium Enterprise