

Procurement Peer Challenge

City of York Council

20th – 22nd June 2017

Feedback Report

1. Executive Summary

Councils throughout England are faced with the challenge of delivering vital public services while facing significant financial pressures. The arrangements that councils make for commissioning, procurement and contract management therefore play an essential role in meeting that challenge.

City of York Council has many solid achievements to its name and continues to deliver good quality services, including achieving a 'good' OFSTED report on children's services. It has also been successful in delivering its savings programme and a balanced budget position.

Following a period of change, there is now stability in the political and managerial leadership of the Council. The leadership of the council recognises the positive, enabling role that commissioning and procurement can play to support delivery of the Council's priorities.

However, procurement is subject to heightened scrutiny in York due to past internal control issues. These issues have been highlighted in audit reports relating, among other things, to use of consultants, building and civil engineering and adult social care. While action is being taken to address these issues there remains a residual negative perception of procurement, including among members of the public.

The peer challenge team was reassured to find that the Council has a good corporate procurement function and that the compliance issues are being addressed. However, as the Council itself recognises, there is more to do in regard to procurement's enabling role within the Council's developing commissioning framework and to address the residual negative perceptions of historical procurement issues.

With this in mind we have made a series of recommendations.

2. Key recommendations

- i. Consider putting in place additional commissioning capacity, supported by a cross-council management group, to drive the new commissioning and procurement strategy and other improvements forward.
- ii. Implement corporate procurement sign-off of individual procurement strategies, including contract management plans, and bid documents for procurements over £100k together with proportionate arrangements for lower value requirements.
- iii. Prioritise Council-wide roll-out of the YORtender e-procurement system for both quotations and tenders and require justification for non-use.
- iv. Increase the Council's presence and engagement with neighbouring councils and regional/national procurement networks to bring in learning from best practice and to profile your achievements.

- v. Implement a policy and associated toolkit on delivery of the Council's corporate policies and priorities through procurement, including compliance with statutory 'social value' obligations.
- vi. Undertake a more detailed appraisal of options for the future location of Adult Social Care procurement at an opportune time in the future.
- vii. Make arrangements to address the negative external perceptions of the Council's procurement processes, as well as wider corporate governance, by supporting the chief executive through strengthened direct and independent advice from the Council's statutory functions.

3. Summary of the Peer Challenge approach

The peer team

Peer challenges are delivered by experienced elected member and officer peers. The make-up of the peer team reflected your requirements and the focus of the peer challenge. Peers were selected on the basis of their relevant experience and expertise and agreed with you. The peers who delivered the peer challenge at City of York Council were:

- **Lead Peer** - Nigel Kletz (Director of Commissioning & Procurement – Birmingham City Council)
- **Specialist Peer** - Lee Digings (LGA procurement consultant – Lee Digings Associates)
- **Peer Challenge Manager** - Satvinder Rana (Programme Manager – LGA)

Scope and focus

The peer team considered the following specific questions which formed the overall scope of the peer challenge, as agreed by the council.

- 1) Does the procurement model (which is not wholly corporate and is partly distributed across the Council) support the Council to achieve its strategic objectives through the procurement and management of all external contracts?
- 2) In procuring and managing contracts, does the procurement function ensure the Council achieves improved and maximum value from these contracts and an appropriate balance of risk?
- 3) Is there an appropriate balance in terms of oversight and capacity between the operational and routine, and more strategic procurement? Is there appropriate strategic accountability and proper management of procurement across the Council as a whole?

- 4) How does the procurement cycle support and align to the Council's Commissioning Framework.
- 5) Does the procurement model allow an appropriate level of support, and appropriate use of expertise, to ensure that the right specification is provided to the market including consideration of the following:
 - Lessons learned and benefits obtained from the existing contract
 - Knowledge of the wider market
 - Appropriate levels of aggregation
 - Investment/return from the contract by suppliers.
- 6) Is the right balance struck between the specification stage and the award of contract process? Are appropriate controls in place?
- 7) What input is provided by the procurement team into establishing adequate contract monitoring procedures and how effective is this effort?
- 8) The roles and responsibilities of other officers who are not procurement specialists. Do they understand and have the capability to fulfil these roles?
- 9) Do councillors receive the required level of training and development to undertake their roles?.
- 10) In terms of transparency is there the appropriate level of challenge, for example through internal and external audit and the role of Audit and Governance Committee? Are there any further improvements required in how the decision making process operates, particularly, but not only, regarding the independence of challenge.
- 11) Preparation and reporting of procurements matters / reports to the A&G and presentation of these matters and overall workings of the Committee.

During our time on site we sought to address these questions and pulled together our observations into four key themes:

- a) Where you are now
- b) Improvements underway
- c) Areas for improvement to consider/commence
- d) Wider organisational and governance issues

The peer challenge process

It is important to stress that this was not an inspection. Peer challenges are improvement-focussed and tailored to meet individual councils' needs. They are designed to complement and add value to a council's own performance and improvement focus. The peer team used their experience and knowledge of local

government to reflect on the information presented to them by people they met, things they saw and material that they read.

The peer team prepared for the peer challenge by reviewing a range of documents and information in order to ensure they were familiar with the Council and the challenges it is facing. The team then spent 3 days onsite at York, during which they:

- Spoke to more than 38 people including a range of council staff together with councillors and external stakeholders.
- Gathered information and views from more than 18 meetings, additional research and reading.
- Collectively spent more than 130 hours to determine their findings – the equivalent of one person spending more than 3.5 weeks in City of York Council.

This report provides a summary of the peer team's findings. It builds on the feedback presentation provided by the peer team at the end of their on-site visit (20th – 22nd June 2017). In presenting feedback to you, they have done so as fellow local government officers and not professional consultants or inspectors. By its nature, the peer challenge is a snapshot in time. We appreciate that some of the feedback may be about things you are already addressing and progressing.

4. Feedback

4.1 Where you are now

The peer challenge team was impressed by the Council's corporate procurement function. We can say with a high degree of confidence that the procurement team:

- Is valued by service directorates and executive members and has positive relationships at all levels
- Is knowledgeable, provides good advice, and generally has a sound understanding of business needs
- Is well led with knowledgeable and competent staff
- Applies category management methodologies which is good procurement practice

We found the procurement team to be self-aware and motivated to make further improvements; and there is clarity and understanding about what is required to develop the service for the future. In particular, there is a desire to develop the procurement team as an enabling function and to focus support on high value, high risk 'strategic' procurements. However, this does not mean there is complacency about the compliance issues; for example, the Chief Executive's recently established Corporate Cost Control Board is a positive initiative which gives the Corporate Management Team a focus on spend management and is an effective tool to continue to drive compliance

(i.e. to ensure that procurement expenditure, wherever possible, is on contract). In addition, the Board's wider remit to look at sound business management through a greater focus on organisational productivity and efficiency will continue to help the Council manage its financial challenges.

The procurement team has a credible 'license to challenge'. This is underpinned by procurement training which is being provided to service managers as well as to members on the Executive and the Audit & Governance Committee. We heard that approximately 130 members of staff have received training over the last 6 months. We would suggest that this training is made widely available, especially to all members of the council generally.

Further initiatives are in hand or planned to improve procurement and contract management including action plans in response to internal audit reports (e.g. use of consultants, building and civil engineering, and adult social care) which have been considered by the Audit & Governance Committee.

Nevertheless, there remains a negative external perception of Council procurement, including among members of the public. This is largely a consequence of past internal control and compliance issues which has been the subject of previous external audit reports. This negative perception needs to be addressed if the Council is to secure public confidence in its procurement processes and the wider corporate governance arrangements.

4.2 Improvements underway

The peer team was encouraged to learn about the range of improvements that are already underway. For example, we noted that the corporate procurement strategy will be developed to become a council-wide commissioning and procurement strategy and that a task and finish group has been established to drive this forward. This is a positive development because in the course of our work we found a variety of differing views on the relationship between commissioning and procurement and on the commissioning arrangements best suited to particular services. A strategy which clarifies the corporate vision and approach is therefore to be welcomed.

We also learnt that you are preparing a 'forward procurement plan' intended to facilitate a more strategic approach to the Council's requirements. This plan will:

- Be shared and visible across the Council
- Have a 1 to 5 year planning horizon
- Enable further collaboration with other organisations

This is clearly important in bringing increased visibility to projects, their interdependence, and as a tool for scheduling resources including corporate support. This tool should also facilitate early identification of opportunities for joint projects with other councils/public bodies. These opportunities may be advanced through Yorkshire

and The Humber procurement networks including those associated with the Local Enterprise Partnerships (LEPs).

Furthermore, work is planned to commence on the development of a standard for contract management and we understand this will be disseminated in a variety of ways including through training. Again, this is to be commended as it will strengthen contract management across the Council.

While continuing to develop the corporate procurement function's enabling role, including its role within the commissioning framework, the Council is sustaining its focus on compliance. It is a challenge in every organisation to get the balance between these two roles right and the procurement team in York is conscious of the need to strike the correct balance.

On the compliance side, the overall aim is to achieve a target of at least 90% of spend on contract. We raised the idea of giving each directorate its own target to further enhance the sense of ownership and this was well received. Importantly, the Council's approach to non-compliance has been given 'teeth':

- at CMT level, by making it a corporate director responsibility; and
- at operational level in directorates, by making it a management responsibility.

The corporate procurement team uses the YORtender regional e-procurement system and we were told the plan is to roll this out to all the directorates. We would urge the Council to prioritise this and to accelerate the roll-out. Using this system for lower value procurements (quotations) in addition to tenders is a further important means of addressing compliance as well as assisting with record keeping (i.e. including an electronic audit trail). Once the roll-out is complete, we felt that non-use of YORtender for quotations and tenders should be exceptional and justified in each case (that is to say, the reason for not using it should be recorded and reported).

4.3 Areas for improvement to consider / commence

The new Council-wide commissioning and procurement strategy is a positive development but effective arrangements to communicate and implement it will be key (i.e. to establish a common definition and understanding beyond adult and children's social care and housing).

Based on experience elsewhere, we recommend a cross-council commissioning and procurement network/board (consisting of stakeholders from each directorate) to 'own' and oversee implementation of the new strategy. The wider management 'Leading Together' group could be the forum to take this forward.

Furthermore, in order to lead the new corporate approach to commissioning, further improve the function's internal and external profile, and make an impact on procurement and contract management across the Council the peer challenge team felt that the function should be led by a dedicated head of commissioning and procurement role. We

think these additional improvements will be difficult to achieve within the current capacity constraints.

We also looked more widely at the Council's current procurement model. Outside of corporate procurement, the only area in the Council to maintain a significant procurement capability of its own is Adult Social Care. This is located within the team responsible for commissioning. As might be expected, the peer challenge team heard a range of views on whether this model should be changed. We were informed about a major programme of work to integrate adult social care and health commissioning in the city which already faces a number of challenges. Our overall conclusion therefore was that further disruption should be avoided by retaining strategic commissioning in Adult Social Care. However, we were not clear that this precluded consolidation of care contracting (i.e. the procurement process in the narrow sense) into corporate procurement thereby enabling better use of resources across an expanded corporate procurement team. We would therefore recommend that you carry out a more detailed examination of the options at an opportune time.

More generally, in the context of the Council's developing commissioning framework, we could envisage an arrangement in which all directorates maintain a strategic commissioning capability linked to corporate and service planning (i.e. from population needs assessment and outcomes definition through option appraisal and service design etc. to subsequent contract management) while activities relating to management of the procurement phase are undertaken through a single, corporate procurement 'hub' which also has responsibility for system governance.

Relatedly, there is merit in putting greater effort and resources into pre-tender activities (i.e. identifying needs, market research, supplier engagement) and into post-tender activities (i.e. contract management, continuous improvement, negotiation), instead of focusing large amounts of attention on the actual process of "the tender" itself to maximise opportunities and scope for improvements. Appendix 1 outlines what is referred to as the 'New DNA Diagram' for commercial activities and demonstrates where effort should be placed along the commissioning, procurement and contract management cycle.

That said, we are clear that procurement governance (i.e. the system of guidance, standards, rules and internal controls) should extend to commissioning, procurement and contract management across the Council. At the present time some of these activities appear not to be aligned in the sense that directorates, in some respects, 'do their own thing'. The role of corporate procurement should be boosted so that it both leads on the strategic approach to commissioning and maintains a corporate 'handle' on all procurement and contract management.

We believe that procurement governance, including controls, can be further improved in a number of ways. For example:

- Ensuring procurement strategies, including contract management plans, and bid documents for procurements above the £100k threshold are signed off by the corporate procurement team before going to market. The Council should consider building this control into the Contract Procedure Rules in the

forthcoming review. This will enhance the focus on market knowledge/early market engagement, better specification and appropriate risk allocation within the contract as well as on the successful realisation of benefits during the contract management phase. This is in line with current national public sector best practice.

We recognise that this is not appropriate for lower value procurements but we feel that a proportionate approach could be developed there too. For example, in the case of quotations between £25k and £100k there should be a requirement to briefly document the approach to be taken to the market and the arrangements for managing the contract before taking any action. Justification for the non-use of YORtender, once rolled out, should also be recorded.

- Establishing a corporate approach to learning lessons from completed procurement projects and capturing learning from the rest of the local government and wider public sector. This will help to fine tune the Council's overall approach and ensure continuous improvements.
- Providing guidance to executive members on their role in the commissioning/procurement cycle, for example when to be involved and what information and reports to expect.
- Developing commissioning/procurement guidance and training for all members and including it in the council's member development programme.
- Improving reporting to executive members to include, among other things, the positive story of procurement's achievements. This could take the form of annual or 6 monthly portfolio reports or 'total contribution' reports.

Regarding contract management, we further advocate:

- Adopting or developing a contract management toolkit to compliment the procurement guidance.
- Including contract management plans (including ownership, resourcing and arrangements for KPI and budget monitoring and contract review) within individual procurement strategies.
- Defining the role of the corporate procurement function to support services with commercial and contractual aspects of contract management.
- Identifying and addressing contract management skill gaps across the Council.

We further believe that the Council could benefit substantially by increasing its presence and engagement with neighbouring councils as well as regional and national procurement networks to bring in and share learning from best practice. This would also provide the Council with opportunities to profile itself externally and identify opportunities for more collaboration on projects and improvement. Our assumption is

that the current relatively low level of external engagement of the corporate procurement team is a reflection of the capacity constraints referred to elsewhere in this report.

Members in particular were enthusiastic about expanding the use of procurement as a tool to deliver council priorities, policies and strategies. Relatedly, in the course of our work we heard about examples of procurement being used to achieve broader socio-economic objectives, for example employment and skills plans for construction projects. However there does not appear to be a Council policy/toolkit relating to 'social value', including how to comply with the statutory obligations in this area such as the Social Value Act. This is something the Council should consider addressing.

4.4 Wider organisational issues

The Council has some impressive achievements to its name and is on a continuous journey of improvement. It is delivering good quality services whilst making the necessary savings and retaining a balanced budget position. The current leadership is focused on moving the Council forward along this journey and has put in place a number of initiatives to strengthen both corporate leadership and governance.

However, it was apparent to the peer challenge team that residual negative external perceptions of historical procurement issues are problematic for the Council and that good news stories are being drowned out. In particular, there is heightened public scrutiny of procurement due to past internal control issues which have been the subject of a previous independent audit report and this continues to impact on the image of the Council. The Council is constantly being asked to look over issues that have been addressed and this is using up valuable resources and diverting capacity.

Nevertheless, we believe that it is essential for the Council to address these residual negative external perceptions (e.g. perceived lack of transparency in decision-making) to enhance trust and free up political and managerial capacity by clarifying reporting lines and governance arrangements further. This is actively being taken forward by the existing Chief Executive and Corporate Directors in conjunction with the political leadership.

Among other things, the arrangements that are made for corporate governance should give the chief executive a clearer 'line of sight' through strengthened direct and independent advice from the Council's statutory functions.

5. Next steps

We appreciate you will want to reflect on these findings and suggestions with your senior managerial and political leadership in order to determine how the Council wishes to take things forward.

As part of the peer challenge process, there is an offer of further activity to support this. The LGA is well placed to provide additional support, advice and guidance on a number of the areas for development and improvement and we would be happy to discuss this.

Mark Edgell, Principal Adviser is the main contact between your authority and the Local Government Association (LGA). His contact details are: Tel: 07747 636 910 and Email: mark.edgell@local.gov.uk

In the meantime we are keen to continue the relationship we have formed with you and colleagues through the peer challenge. We will endeavour to provide additional information and signposting about the issues we have raised in this report to help inform your ongoing consideration.

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(on behalf of the peer challenge team)

The new DNA for commercial activities

