

Audit & Risk Committee Report

PROCUREMENT ANNUAL REPORT 2020/21

Lead director: **Kamal Adatia**

Useful information

- Ward(s) affected: **All**
- Report author: **Neil Bayliss**
- Author contact details: **Tel: 37 4021 Email: neil.bayliss@leicester.gov.uk**
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1. Summary

- 1.1 The Council's Contract Procedure Rules require an annual report after each financial year to the Executive and to the Audit & Risk Committee with certain information on the procurement processes undertaken in that financial year.
- 1.2 The purpose of this report is to inform the Committee of the activity of the procurement function of the council (which comprises three specialist procurement teams: Procurement Services, ICT Procurement and ASC Procurement) over the previous financial year and evidence compliance with the requirements of the Contract Procedure Rules.

2. Recommendations

- 2.1 The Committee is asked to note the contents of the report and make any comments to the City Barrister & Head of Standards.

3. Supporting information

Contract Procedure Rules

- 3.1 The Council approved revised Contract Procedure Rules on 19 March 2020. The updated Rules also reflect new legislation, principally the Concessions Contracts Regulations, and mitigated the risk of needing to make future changes due to Brexit.
- 3.2 The City Barrister has recently used his powers under Rule 6.2 to make a minor change to Rule 16.6 to reflect the change in management structure following the appointment of the Director of Finance to Chief Operating Officer. As the responsibility for IT now sits with the Director of Delivery, Communications and Political Governance, rule 16.6 now reads:

“Where the FEW is in relation to an ICT Contract it must also be signed by the Director of Delivery, Communications and Political Governance”.

3.3 For information, the EU/PCR Thresholds were updated in November 2019 to come into force on 1 January 2020 for the next two years:

- Social & Other Specific Services £663,540
- All Other Goods & Services £189,330
- Works and Concessions £4,733,252

The thresholds are due to be updated at the end of 2021 to take effect on 1 January 2022.

Brexit

3.4 There are no significant changes to procurement rules that will impact on procurement processes/plans in the short term. The Public Contracts Regulations 2015 (PCR) remain in force and are essentially the EU Rules. The thresholds at which the rules apply remains unchanged. The updated Contract Procedure Rules were updated in March 2020 and remain applicable.

3.5 It is no longer required to advertise in the Official Journal of the European Union but it is still necessary to advertise contracts over the relevant thresholds and place notices on a UK-wide replacement site: **Find a Tender Service (FTS)** <https://www.find-tender.service.gov.uk/Search>. Where a procurement process had already been commenced with a notice in the OJEU, subsequent notices need to be placed in the OJEU and should also be placed on FTS (although this is not mandatory). Procurement systems have already been amended to take account of this.

Reserving Contracts below Threshold

3.6 Whilst the law remains unchanged, the government issued a [Procurement Policy Note](#) (ref. PPN11/20) which is promoting the ability to “reserve” contracts **below** the EU/PCR threshold to local suppliers and/or SMEs/voluntary/community organisations which is enabled by the UK no longer having to comply with EU treaty principles. However, following further research, Council officers noted that whilst most contracting authorities are able to take advantage of the guidance in this PPN, there are legislative restrictions which make it unlawful for local authorities to do so, other than in relation to services contracts.

3.7 These restrictions, in the Local Government Act 1988, mean we can only reserve contracts for local suppliers if they are contracts for services (including Schedule 3 services)¹ and below the relevant PCR threshold, and this must be where the purpose of this is to secure social value.

3.8 The Council’s Contract Procedure Rules did not clearly allow for contracts to be reserved pursuant to this guidance and the City Barrister has therefore approved changes to the Contract Procedure Rules using his powers under Rule 6.2 to permit this (inserted text shown in red below).

¹ “Services” could include print and design or building maintenance services, and “schedule 3” services include, for example, social care and children’s services.

- 3.9 Rule 32 (Reserved Contracts) now reads:
- a. The Procuring Officer may Reserve a Contract with the written approval of the relevant Specialist Procurement Team Manager and, for PCR Contracts, the Head of Law.
 - b. The Procuring Officer must set out in all appropriate documentation, including the Advertisement, that the contract is Reserved; and comply with Regulations 20 or 77 of the PCR, LGA 1988 and/or PPN 11/20, if applicable.
- The following definitions have been added/amended:
- “LGA 1988”** means Local Government Act 1988.
- “PPN 11/20”** means Procurement Policy Note – Reserving Below threshold Procurements, Action Note PPN 11/20, issued by the Cabinet office December 2020.
- “Reserve”** means the reservation of a Contract for sheltered workshops, mutuals or social enterprises (or similar), VCSEs, SMEs or local suppliers. Reserved shall be construed accordingly.
- 3.10 The Council will only reserve contracts by location, SME or VCSE after consideration of the specific contract in question by the commissioning service area and procurement services of the supply market and potential impact of doing so, to consider:
- the social value (local economic benefit) that could be gained;
 - the supply market and how much competition (and therefore evidence of value for money) could be restricted – reserving a contract must not lead to a direct award to a supplier without any competition;
 - the impact of excluding any particular supplier, e.g. the incumbent;
 - process efficiency of the procurement involving less suppliers; and
 - any risk of fraud/corruption.
- 3.11 The above list will be added in the form of a checklist to the Procurement Planning Form used by Procurement Services and a similar process adopted by the ASC and ICT procurement teams. The Procurement Panel is starting to ensure this option is proactively considered. Services which may lend themselves to reserving include graphic design, some training/consultancy contracts and some repairs and maintenance services.
- 3.12 It should be noted that when reserving contracts under this guidance, the Council must apply the definitions of SME, VCSE in the guidance and/or define local by reference to the County of Leicestershire (including the City).
- 3.13 Contracts will still be advertised where this is a requirement of the Council’s Contract Procedure Rules, but the advert will state clearly who can respond and any quotation/tender from a non-qualifying organisation must be rejected.
- 3.14 This change also contributes to the Council’s commitment to “explore supply chain opportunities that can grow businesses and promote local buying and procurement” in the [Economic Recovery – First Steps Strategy](#)

Procurement Processes Completed

- 3.15 During 2020/2021 the Council completed 176 procurements with a total value over the contract lifetimes of approximately £250 million. The table below shows these

split by the procurement teams and by the value banding as per the Contract Procedure Rules. The table includes contracts procured using any procurement process, including waivers/exemptions. Many additional Small contracts will have been procured by departments and not recorded centrally.

	Small	Medium	Large	PCR	Total
ASC		3	1	4	8
ICT	5	12	3	6	26
Procurement Services (Works)	1	11	19	6	37
Procurement Services (Goods/Services)	12	52	26	24	114
Total	18	78	49	40	185

3.16 Contracts awarded include:

- Demolition of St. Margaret’s Bus Station;
- Repairs/maintenance contracts for council houses, including fire protection and digital TV;
- Roofing, fire-stopping and window works to schools;
- Library self-service solution and travel management system;
- Supported living services and a dementia support service;
- 24 welfare vehicles, and a range of other fleet items, including, tippers, gully emptiers, a gritter, road sweepers and several electric cars and vans.

Procurement Plan for 2021/2022

3.17 As per the Council’s Contract Procedure Rules, approved in 2020, the Procurement Plan is published on the Council’s [Open Data website](#) for all to view and updated regularly rather than being published only annually. It is also wider in scope, including contracts from £20,000 upwards and looking two years ahead where possible.

Ongoing Impact of Covid-19

3.18 During 2020/21, the Council’s procurement function played an important role in the response to the Covid-19 pandemic. The most significant part of this being in relation to procuring PPE to support in-house provision and act as a provider of last resort for the Council’s social care providers and other care providers and similar organisations in the city. Given the urgency of requirements and instability of the supply market, the Council had to use Exemptions to procure on a spot-purchase basis outside of normal contracts. However, we have always been alert to ensure the quality and compliance of items being purchased to ensure they are suitable for use. Procurement Services has also supported the purchase of a range of items, including further PPE, cleaning supplies, and equipment to enable social distancing in offices and other Council buildings. A lot of this has also required exemptions under the provisions of the Contract Procedure Rules.

- 3.19 The Covid-19 outbreak also had impact on many ongoing procurement processes and some that were due to be commenced. Tender return deadlines were extended, and commissioning staff diverted away from procurement to other urgent activities. We have tried to tailor our approach to each contract taking into consideration the impact on service delivery and the market's ability to respond and implement a new contract. In many cases we have carried out some form of pre-market engagement to establish this. This meant that some contracts needed to be extended to ensure continuity of service provision until new contracts can be finalised and mobilised. Other contracts needed appropriate review and contract management to allow variations and relief to suppliers.

New Capital Funding

- 3.20 The national and local response to economic recovery has nevertheless presented a range of opportunities for the Council with new funding streams to support a wide range of capital projects, which often have to be got underway very quickly. The Council's procurement function is working with the City Development and Neighbourhoods department finding quick and efficient procurement options to enable delivery of these projects within very tight timescales with minimal time available for planning. This has required some use of waivers/exemptions and framework agreements, in place of full procurement processes which, in some situations, would have required unacceptably long timeframes and therefore jeopardised the delivery in line with funding requirements. Two examples of such schemes are the Salix funding for carbon reduction works to council buildings and the Green Homes Grant for energy efficiency measures to support the decarbonisation of our council houses, both which will have a significant impact on the Council's response to the climate emergency.

Social Value and the Living Wage

- 3.21 The Council adopted its Social Value Charter in late 2018 following work by the Economic Development, Tourism, and Transport (EDTT) Scrutiny Commission and implementation by the Assistant Mayor (Policy Development) and the Head of Procurement. An update on the Council's approach to Social Value is planned for Overview Select Committee in Spring 2022.
- 3.22 Examples of Social Value generated through procurement in 2020/21 include the bee-friendly living roofs on bus stops; purchase of a wide range of vehicles with much improved environmental standards; employment and skills plans for construction projects. Social Value through procurement is becoming higher profile and will be the subject of work to embed further over the coming six months with increased focus, including a Social Value Gateway to review proposed procurements.
- 3.23 The Council signed up to the Living Wage Foundation's Licence Agreement to become a Living Wage Employer. This means that the Council is implementing the Living Wage into all new procurement contracts which meet the criteria agreed with the LWF. This commitment is a key element of the Social Value Charter.
- 3.24 A report was recently made to Overview Select Committee on our implementation of the real Living Wage in procurement activity which can be found [here](#).

Waivers

3.25 The Contract Procedure Rules require the Head of Procurement to report a summary of waivers of the Rules to the Executive and Audit & Risk Committee. The tables below show an analysis of the waivers approved during the current and last financial years. This is shown by both department and a broad categorisation of the reason for the waiver.

3.26 The changes in the Contract Procedure Rules in March 2020 removed the need for waivers below £20,000 which helps to explain the significant reduction in the number of waivers which was anticipated and one of the anticipated benefits of the changes. The difference in value can be explained by high value waiver for a works repairs contract relating to the Green Homes Grant (see above) worth over £4 million.

Reason for Waiver	2019/20		2020/21	
	Qty	Value	Qty	Value
Continuity of Provision	38	£1,222,975	11	£2,014,899
Limited Supply Market	17	£949,086	9	£1,137,790
Urgency	28	£5,783,264	24	£9,611,305
Other	13	£1,017,349	1	£50,000
	96	£8,972,674	45	£12,813,994

Department	2019/20		2020/21	
	Qty	Value	Qty	Value
City Development & Neighbourhoods	65	£7,376,711	36	£11,763,678
Social Care & Education	8	£546,319	4	£708,900
Public Health	5	£423,778	0	£0
Corporate Resources & Support	18	£625,866	5	£341,416
	96	£8,972,674	45	£12,813,994

4. Financial, legal and other implications

Financial implications

4.1 There are no significant financial implications arising from this report. Robust procurement procedures should however help to secure value for money and minimise fraud.

Colin Sharpe
Deputy Director of Finance
Ext 37 4081

Legal implications

4.2 There are no legal implications arising directly from the report as it is just for noting.

Emma Jackman
Head of Law (Commercial, Property & Planning)
Ext 37 1426

Climate Change and Carbon Reduction implications

- 4.3 Whilst figures are not available, it is highly likely that procurement is one of the council's largest sources of carbon emissions, due to the embodied and outsourced emissions of the goods and services procured. Following the council's declaration of a climate emergency in 2019, action should be taken to reduce these emissions wherever possible.
- 4.4 The Council's Social Value Charter and sustainable procurement guidelines provide guidance on limiting environmental impacts and securing benefits from procurement activity. This guidance should continue to be applied to procurement activities to ensure that procurement decisions support the achievement of the council's climate change related targets.

Aidan Davis
Sustainability Officer
Ext 37 2284

Equalities Implications

- 4.5 The Equality Act 2010 (Act) sets out anti-discrimination law and the requirements of the public sector equality duty (PSED). The PSED requires public authorities to have due regard to the need to: eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act; advance equality of opportunity between people who share a protected characteristic and those who do not, and foster good relations between people who share a protected characteristic and those who do not.
- 4.6 To have 'due regard' means that when making decisions (and in its other day-to-day activities) the Council must consciously consider the need to: eliminate discrimination, advance equality of opportunity, and foster good relations. This includes when it plans and makes decisions about its procurement.
- 4.7 Compliance with the PSED should help public authorities ensure that the goods and services they procure are fit for purpose thus ensuring they meet the needs of their users. As such it should also be seen as an effective tool for improving economy, efficiency and effectiveness and therefore value for money.
- 4.8 The purpose of the procedure rules is to ensure that any procurement process for services, works or goods achieves best value and is transparent, open and fair making it possible for all decisions to be audited satisfactorily.

- 4.9 Social Value is defined through the Public Services (Social Value) Act 2012 which came into force in January 2013 and requires all public sector organisations (and their suppliers) to look beyond the financial cost of a contract and consider how the services they commission and procure might improve the economic, social and environmental well-being of an area.
- 4.10 Benefits can include increases in opportunities for disadvantaged people which can promote social mobility and help build stronger more resilient communities.
- 4.11 The Living Wage has an obvious benefit for workers in that they are in receipt of enhanced wages and potentially therefore have greater spending power and a better quality of life, with subsequent knock-on effects for their families.

Surinder Singh
Equalities Officer
Ext. 37 41418

5. Background information and other papers:

5.1 None.

6. Summary of appendices:

7 Is this a private report (If so, please indicated the reasons and state why it is not in the public interest to be dealt with publicly)?

7.1 No.

8. Is this a “key decision”?

8.1 No