

## London Borough of Enfield

### Finance & Performance Scrutiny Panel – 19<sup>th</sup> October 2022

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**Subject:** Procurement update (including update on legislative changes)

**Cabinet Member:** Councillor Tim Leaver (Finance & Procurement)

**Executive Director:** Fay Hammond (Resources Department)

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#### **1. Purpose of Report**

- 1.1 To provide an update to the Finance and Performance Scrutiny Panel on implementation of the new Procurement Service.
- 1.2 The report also includes a summary of the key features of new public sector procurement legislation – The Procurement Bill which is currently making its way through the legislative process. This paper summarises procurement and legal officer's interpretation of the forthcoming new legislation in its current form and an initial assessment of implications for the Council.

#### **2. Relevance to the Council Plan**

- 2.1 Procurement Services is based within the Resources Department and reports to the Finance Director - Capital & Commercial. Procurement Services brings together a range of specialist skills and resources to support all Enfield Council service areas throughout the commissioning, procurement, and contract management processes, taking a business partner approach.
- 2.2 Procurement Services is an enabling service and supports Council services through procurement to support the delivery of homes in well-connected neighbourhoods, safe, healthy, and confident communities, and an economy that works for everyone. Through procurement activity it ensures that the Council's suppliers support delivery of the Council's Business Plan priorities, the Fairer Enfield Policy, Climate Action and deliver strong social value.
- 2.3 Procurement Services lead the tendering process for larger and more complex projects, providing strategic procurement & contract management advice early in consideration of any new initiatives, and to support those managing existing contracts. Additionally, Procurement Services providing a wide range of policy and analytical support as it relates to suppliers and external markets and to provide guidance through the legal and internal processes that govern how public money is spent.

#### **3. Background**

Procurement Services Update

- 3.1 Procurement Services has recently been restructured and a new operating model was implemented on 1<sup>st</sup> March 2022. The restructure recognised the need to take a more strategic approach and lead to procuring goods, services and works. A 'Category Management' model, which provides 4 category managers to work closely with the service areas (Resources/Corporate, People, Place and Digital) through a Business Partnering model. The objective of category management is to approach procurement, in a way that is strategic, categorised, and more easily manageable. Emphasis can be placed on organising the resources and priorities of the Council to make informed decisions on where spend should be allocated, supported by data and by doing this, managers can focus time and conduct in-depth market analysis to fully understand their procurement decisions.
- 3.2 The restructure also recognised that Contract Management needs to be strengthened across the Council with two positions created to deliver this aspiration, supporting services to ensure the delivery of Value for Money, contract outcomes and supplier resilience during the lifetime of the contract. A contract management framework which consolidates best practice is being developed, along with guides and training courses to support officers across the Council.
- 3.3 A new Head of Procurement Services came into post during February 2022 with new Category Leads, Policy and Performance officers appointed and coming into post during the Spring. This commenced a review of all Procurement activity. Meetings with all major stakeholders have taken place to promote the new service, identify needs and gap analysis, feedback on what is working well and where there are improvements to ensure Procurement Services meets the needs of the Council and promote early procurement involvement in all projects and programmes.
- 3.4 A 2022/23 Procurement Service Centre Plan has been developed and is driven by key service objectives for the year. These objectives include:
- Implementation of the new structure and delivery of business as usual
  - Aligning services, corporate priorities and procurement activity
  - Effective oversight and development of procurement practice across the Council
  - Consistent and high professional standards and access to the specialisms required
  - Effective oversight and development of contract management practice and supply chain resilience across the Council
- 3.4 Currently there are three procurement boards, one for each area (People, Place and Resources & CEX). Working with the departmental Chairs these are being reviewed to support more proactive procurement forward planning and involvement and support each area with its procurement and contracting activity. The boards meet monthly, and each board has a slightly different approach that reflects their business needs. Procurement Services are working to harmonise these approaches, implement regular discussion of strategic business cases for commissioning and procurement, review their contract register, forward plan, and track their

procurement pipeline. New procurement policy and strategy is also discussed at these boards.

- 3.5 To support Services and officers the Procurement intranet pages have been extensively updated. More contract and spend information is available to support visibility. Additionally, support guides and checklists have been updated. A training strategy has been developed to support officers across the Council to conduct procurement more effectively and support the Council Plan.
- 3.6 Key priority work areas for Procurement Services currently includes:
- Full implementation and active promotion of the new service across the Council
  - Delivery of 2022/23 Service Centre Plan and objectives
  - Supporting the delivery of key Council projects including Meridian Water, Joyce & Snells development, Digital Services, Care and Support at Reardon Court.
  - Reviewing and updating for accuracy the Council's contracts register
  - Working with the business areas to prepare procurement forward plans and pipelines
  - Supporting business areas with the identification of savings and efficiency opportunities
  - Review of procurement governance is to give decision makers the assurance and confidence of high-quality procurement standards and value for money at all stages of the procurement cycle from sourcing strategy through to any requests for contract extensions, variations, and modifications.
  - Implementation of the Council's Sustainable & Ethical Procurement Policy 2022 – 2026
  - Promotion of the Social Value Portal to drive and track social value commitments from suppliers
  - Engaging with local businesses to raise awareness of opportunities and support with capacity building
  - Advice and guidance to contract managers across the Council to support the delivery of contract outcomes and value for money

#### The Procurement Bill

- 3.7 On 11 May 2022, the Government introduced the Procurement Bill (the Bill) into the House of Lords where it received its first reading. The Bill follows an extensive consultation process on procurement reform following the UK's withdrawal from the EU.
- 3.8 The reforms in the Bill are significant and wide-ranging and follow on from the December 2020 Green Paper on Transforming Public Procurement (the Green Paper) and the Government's response to the consultation on the Green Paper, published in December 2021. The Bill represents the Government's post-Brexit approach to the proposed procurement regime and represents the aspiration to condense numerous sets of procurement regulations into a single, consolidated set of rules. There are significant linguistic and stylistic differences in the drafting, compared to what we are

used to under the current PCR's (2015) (which represent a copy-out approach of the European Directive into domestic law). The Bill will extend to contracting authorities in England, Wales, and Northern Ireland, but Scotland has decided to remain outside the framework of the Bill.

- 3.9 The Bill proposes replacing the current regime for public procurement by:
- Creating a simpler and more flexible, commercial system that better meets needs while remaining compliant with international obligations.
  - Opening public procurement to new entrants such as small businesses and social enterprises so that they can compete for and win more public contracts.
  - Embedding transparency throughout the commercial lifecycle so that the spending of taxpayers' money can be properly scrutinised.
- 3.10 The Bill sets out the key procurement objectives that contracting authorities must have regard to when conducting procurements, including:
- (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.
- 3.11 Additionally, there is a general requirement for suppliers to be treated the same (unless there are differences which justify different treatment). Proportionality does not appear as a principle and is instead woven into the Bill where the context requires.
- 3.12 Key Features of the Bill include:
- The definition of a 'contracting authority' introduces the concept of 'contracting authority oversight' which could be construed to be narrower than is currently understood but does use familiar language regarding control and funding.
  - New approaches and categories of contract modification are proposed setting out what modifications to contracts are permitted without triggering a new procurement exercise
  - Provisions for Teckals (in-house companies established to provide services to the Contracting Authority), and co-operation have been amended but clarification and addressing of material omissions against the current *PCRs (2015)* is required
  - 'Light Touch Contracts' are introduced, thereby replacing the light touch regime, but retaining the distinction for a range of services which are, yet, undefined.
  - Valuation of contracts – if one cannot estimate the value of a contract, it is to be assumed that it exceeds the relevant threshold.
  - Removes the prescribed procurement procedures we are all familiar with and simply allows for:
    - An open procedure (simple single-stage procedure)

- A competitive tendering procedure of the authority's making (within its discretion) or
  - Direct awards in specific circumstances – this uses largely familiar language, but also introduces the ability to make a direct award 'to protect life,' which would go well beyond current practice (bearing in mind this could include protecting human, animal or plant life or health or to protect public order or safety).
- Moves away from the recognised award criteria of 'most economically advantageous tender,' to the new 'most advantageous tender.'
  - Introduces the concept of 'excluded supplier' and 'excludable supplier' with the aim of trying to make decisions around exclusions simpler, but instead introduces similar obstacles/protections as currently exist but using different language.
  - Permits any relevant minister to undertake an investigation as to whether a supplier is an 'excluded' or 'excludable' supplier and, on the back of such investigation, to maintain what is referred to as a 'debarment list' which authorities can then rely upon in making decisions whether to exclude a supplier during a procurement.
  - Provides for the possibility for an appropriate authority to investigate compliance by contracting authorities with the new procurement rules. The Bill introduces general information gathering powers for the appropriate authority and places an obligation on contracting authorities to comply and provide requested information
  - Replaces dynamic purchasing systems (DPS) with the concept of 'Dynamic Markets' – essentially the same as DPS with unlimited access qualification criteria.
  - Reframes how framework agreements would be permitted to operate moving forward allowing for four-year terms unless authorities believe they should be longer but also introducing longer 'open frameworks' of up to eight years.
  - Transparency notices will be required throughout the procurement cycle to keep the market aware of an authority's intentions including publishing the following:
    - A pipeline notice if they intend to spend >£100 million in any year
    - A contract award notice must be published before contract signature (effectively a notice of intent)
    - A contract details notice would then need to be published within a prescribed period after the contract is entered into
    - A contract termination notice is required to be published after termination
  - An 'assessment summary' replaces the current requirement for a standstill letter. This must be served on participating suppliers before a contract award notice is published
  - Standstill periods will change to eight working days from the date the contract award notice has been published
  - If a contract is valued in excess of £2 million the authority must set and publish at least three KPIs (unless the authority believes the supplier's performance under a contract could not be appropriately assessed).

- All contracting authorities must have due regard to the National Procurement Policy Statement which sets out the Government's strategic priorities for public sector procurement:
  - **Social Value**  
Creating new businesses, tackling climate change, supplier diversity (SMEs, VCS, etc), local social value priorities.
  - **Commercial and procurement delivery**  
Improving value for money through procurement best practice and contract management, publishing procurement pipelines, collaborative procurement.
  - **Skills and capability for procurement**  
Internal skills for effective procurement, benchmarking of procurement practice against comparable organisations, increased use of suitable operating standards.

#### 4. Main Considerations for the Panel

- 4.1 The Bill received its second reading in the House of Lords on 25<sup>th</sup> May 2022 and there has been subsequent debate across internal and external procurement and legal networks in understanding and assessing implications. The Bill places us in a new environment, without legal precedent and we only have a partial view now. Secondary legislation is being drafted and is likely to cover a wide range of detail, content and form around thresholds, transparency requirements, when to publish notices, content of notices, etc. Officers are not clear on whether the Secondary Legislation will be shared for consultation or not and, as the Bill progresses through the House of Lords and Commons there may be further amendments.
- 4.2 The current position from the Cabinet Office:
- Development work on systems development & integration
  - Secondary legislation & guidance being drafted
  - Developing transition guidance to support contracting authorities from old to new – includes highlighting how policies & operating procedures might need to change
  - The Bill will require a third reading in the House of Lords before passing to the Commons for the same process. Royal Assent is anticipated during Spring 2023
  - Once Royal Assent is received, the Cabinet Office has committed to a 6-month implementation period and deliver a funded learning & development programme for contracting authorities – from knowledge drops (webinars) to instructor led deep dive workshops for procurement officers. The programme is still in development.
- 4.3 An initial assessment on local Implications includes:

- The Council's systems, processes, procedures, guidance, documentation, and governance will need to be reviewed and amended.
- Upskilling and training will be required for all procurement and legal professionals, together with officers based in the service areas conducting procurement tasks.
- The Council will need assurance that external organisations contracted to provide procurement or legal support to the Council have been fully trained on the new Bill and the Council's new policies and procedures
- Given the scale of change and transformation, managing business as usual and new requests for support will be challenging whilst attempting to conduct the necessary reviews, amendments, and local implementation.
- Services will need to ensure there is adequate resource for appropriate contract management to comply with transparency requirements.
- Contracting authorities need to spend significant time navigating the Bill as well as keeping an eye out for secondary legislation and statutory guidance.
- Risk areas in relation to evaluation, award and transparency requirements under the new regime need to be assessed and mitigated

## 5. Conclusions

5.1 Under the new Bill, officers are faced with having to consider not only the Act, but secondary legislation, a national procurement strategy and statutory guidance rather than currently considering only the PCR's (2015). Contracting authorities will need to quickly come to grips with a consolidated view.

5.2 The main implications for the Council at this stage are:

- Administrative – new data and transparency requirements
- A requirement for the Council to ensure all contracts are managed with a minimum of 3 key performance indicators in place and that contract performance is published on the Council's website at least annually for any contracts valued at £2million plus
- Training & upskilling for all procurement and legal officers and any officers conducting procurements directly
- Ensure adequate resources are in place to maintain business as usual whilst implementing the new requirements.

5.3 Officers will continue to monitor developments on the Bill's progress and Cabinet Office updates and engage with regional procurement and legal networks to share information and developments.

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### **Appendices**

None

### **Background Papers**

None