

Finance Resources and Partnerships Scrutiny – 3rd December 2015

Procurement Champion – Procurement structure and processes within the organisation

1. **Introduction:**

- 1.1 Procurement covers every aspect of the purchasing process from determining the need for supplies (goods), services or works, to buying and delivery in order to help achieve the Council's vision of creating a Borough that is prosperous, clean, healthy and safe.
- 1.2 The Borough Council of Newcastle-under-Lyme has experienced year on year reductions in funding, resulting in reductions in spend on supplies and services, with approximately £1.1 million third party capital spend and £10.7 million third party revenue spend during 2014-15.
- 1.3 The deficit reduction programme initiated by the national Government has had a massive impact upon the Council and it is essential, therefore, to rethink how we procure our goods and services; ensuring that they are both cost effective and address the needs of residents and businesses. We need to spend only on what we need and ensure what we do buy delivers real and sustainable value. It is essential to balance cost and quality in the procurement of all supplies and services.
- 1.4 Effective procurement can help us deliver our broader objectives and support the priorities of the Council. A commitment to sustainability, fairness and the development of our local economy will be built into our purchasing decisions.
- 1.5 Officers need to ensure we clearly identify our needs, make the most of our buying power to shape markets to deliver what we need and ensure that we are getting what we pay for.
- 1.6 Whilst this must all be done within the bounds of European Union (EU) Procurement legislation, officers continue to encourage local sourcing and the use of local labour.
- 1.7 Procurement has a far broader meaning than that of simply purchasing, buying or commissioning. It is also about securing assets and services that best meet the needs of users and the whole community spanning the life cycle of an asset or service. This life cycle is generally defined as being from the initial definition of the business need through to the end of the useful life of the asset or service, including any costs of disposal.
- 1.8 Commissioning is the process of establishing the services the citizen wants or needs, and then deciding the best way to deliver those services, be it in-house or via the voluntary, community, social enterprise, private or public sectors or a combination of them ('make, buy or share'). If the decision is made to buy those services in, this then becomes a procurement activity.

2. **Governance:**

The council's Lead Officer ('Officer' Procurement Champion) continues to be the Business Improvement Manager, with support in the delivery of the partnerships commissioning processes by the Business Improvement Officer Procurement and Performance. Procurement remains a devolved structure in that Heads of Service and Business Managers are responsible and act as project leads for purchasing in their respective service areas supported by the above officers.

The Member Procurement Champion is the Deputy Leader Cllr. Terry Turner - Portfolio Holder Finance, IT and Customer Services.

2.1 **Financial Regulations:** in setting out objectives to:

2.1.1 Maintain sound and proper financial records, procedures, and arrangements for the administration of all the Council's financial affairs.

2.1.2 Demonstrate proper safeguards and controls exist.

2.1.3 Assist employees and Members in their delivery of services to the public.

2.1.4 Safeguard Members and employees by giving them procedures to follow which ensure that the Council's expected standards are met in terms of managing public money and assets:

establish at Dr18 the procurement values for ordering works, supplies and services;

(a) **Low value procurement:** (£5,000 >< £30,000) Where alternative prices are available for the level of estimated cost and a minimum of two written quotations is required;

(b) **Intermediate value procurement:** (£30,000 >< £50,000) Where alternative prices are available for the level of estimated cost and a minimum of three written quotations is required.

(c) **High value procurement:** (£50,000)> the estimated cost above which Financial Regulations and Contract Procedural Rules shall apply.

2.2 **Contract Procedural Rules:** provide a corporate framework for the procurement of all supplies, services and works for the Council. The Rules are designed to ensure that all procurement activity is conducted with openness, probity and accountability. Above all, the Rules are designed to ensure that the Council obtains value for money and the required level of quality and performance in all contracts that are let.

2.2.1 Council approved (25.02.2015) the replacement of Part III – Standing Orders in relation to Contracts – with updated and renamed Contract Procedure Rules so as to accord with the format of the current Constitution. Standing Orders Parts I and II being discarded as the information contained within was provided in other council published documents.

2.2.2 The provisions contained in the Contract Procedure Rules are subject to the statutory requirements of both the European Union and the United Kingdom Government. The letting and content of contracts conform to all statutory requirements and are subject to any over-riding directives of the European Union relating to contracts and procurement. This Rule cannot be waived since a failure to comply with European legislation may result in a legal challenge with consequent reputational and financial risk;

- 2.2.3 Since approval by Council the Contract procedural Rules have been published on the Council's intranet in a format that supports officers; advice and guidance in regards to compliance to these procedural rules also continues to be offered by the Business Improvement Manager and Business Improvement Officer Procurement and Performance.
- 2.3 **Procurement Strategy 2014-17:** aims to provide the framework to ensuring a co-ordinated approach to sustainable procurement across the Council and beyond. This is an essential element in making sure that innovative methods to improve procurement practices are used, delivering both cashable and non-cashable savings where appropriate and also underpinning the co-operative work the Council is developing.
- 2.3.1 The strategy provides a corporate focus for procurement. It embraces the commitment to strategic procurement within The Borough Council and sets out the Council's aspirations.
- 2.3.2 The strategy focuses upon achieving outcomes both through strategic and routine procurement projects. Whilst not intending to be a procurement manual, the principles contained within this strategy should be applied to all procurement activity across the Council.
- 2.3.3 The strategy is supported by a Procurement Action Plan developed by officers which set out the procurement projects and actions that will be undertaken over the life of the strategy.
- 2.4 **Procurement Working Group:** faced with the current business climate, budget shortfalls and an ongoing need to deliver savings whilst transforming the authority to place it in a strong position to respond to the challenges set by central government, in agreement with EMT the procurement working group's objectives have been updated to challenge and improve where possible procurement processes, policies, procedures and protocols and to continue to examine both existing and new contracts to identify and deliver opportunities to make ongoing savings.
- 2.4.1 The work of the group is also intended to complement the development of the 2014-17 Procurement Strategy and Action Plan and support the work in increasing the profile, the process of challenge and implementation of ongoing change within procurement as part of the implementation of the revised strategy.
- 2.4.2 The role of this officer group and its work will be continually reviewed and their terms of reference revisited to reflect ongoing progress and changes to national and local priorities.
- 2.4.3 The group has a clear set of objectives and a membership that represents each of the 4 directorates within the Council.
- 2.4.4 The chair of the Procurement Working Group is the Chief Executive.
- 2.5 **Public Contract Regulations:** Public procurement in the UK and the rest of the European Union is governed by a number of Directives and Regulations which are then implemented in national legislation. Public procurement law regulates the purchasing by public sector bodies of contracts for supplies, services or works. The

law is designed to open up the EU's public procurement market to competition, to prevent "buy national" policies and to promote the free movement of supplies and services.

The new public sector procurement directives became law in the UK on 26 February 2015. It brings about the biggest shake-up in public procurement law for almost a quarter of a century.

2.5.1 Within the new legislation are changes that will have practical implications for customers - i.e. contracting authorities - as well as suppliers interested in winning public contracts. Some of the changes will mean things need to be done differently, or thought about differently, in order to meet requirements.

2.5.2 Some provisions in the 2015 regulations go further than in the EU directive, implementing specific SME-friendly recommendations from Lord Young, the Enterprise Adviser to the Prime Minister. These provisions introduce rules that must be followed by authorities when awarding 'below threshold' contracts, some examples include:

2.5.2.1 Small procurements (Regulations 109-112) - facilitating access to public procurement for SMEs - this new statutory regime requires authorities which advertise small contracts with a value at or above particular thresholds (£25,000 for local authorities,) to publicise the opportunity, on the Government's "Contracts Finder" website. Following procurement, Contracts Finder must also be used in order to publicise the award

2.5.2.2. Ban on the use of pre-qualification questionnaires (PQQs) (Regulation 111) - Authorities will be prohibited from including a pre-qualification stage in any procurement where the value of the procurement is below the EU threshold for supplies and services (£172,514). This effectively precludes the use of PQQs and prohibits "restricted"- type procurement procedure.

2.5.2.3 Prompt payment requirements (Regulations 113 and 122) - One of the aims of the new rules is to create an easier ride for smaller businesses. With this in mind, there is a requirement for authorities to ensure that all public contracts contain clauses to the effect that valid and undisputed invoices will be paid by the contracting authority within 30 days. The change will also be welcomed as good news for subcontractors, as there will need to be similar flow-down clauses requiring contractors to do the same, right down the supply chain.

2.5.3 Section 5 (para 53) of 'The Public Contracts Regulations 2015' requires contracting authorities to offer by means of the internet unrestricted and full direct access (free of charge) to the procurement documents from the date of the publication in the Official Journal. In responding to this requirement (and 2.5.2.1 above) officers of the Council are now utilising the 'My Tenders' Pro e-tendering portal. This offers a range of services to officers and responds to the requirements set out in the new regulations.

2.5.4 Undertaking a compliant EU procurement under the EU Procurement Contract Regulations requires the project lead to comply with a number rules and time lines in the delivery and award of a procurement solution to the successful provider.

2.5.5 The cost of not complying with public procurement rules can be high. The stakes have become even higher since last December with the introduction of two powerful rights for disappointed bidders: a right to sue if a contract is entered into before the compulsory (10 day) standstill period has ended and an automatic right to cancellation or variation of any contract awarded to another bidder in breach of the rules. Every public contracting authority in the EU have a statutory duty to comply with relevant EU public procurement legislation, as implemented through Member State legislation, as well as general EU principles of transparency, proportionality and non-discrimination.

3. **Council & Public Procurement Thresholds:** as indicated in para 2.1.4 the Council's current (sub-OJEU) procurement thresholds are:

£5,000 >< £30,000) - a minimum of two written quotations;

£30,000 >< £50,000 - a minimum of three written quotations;

£50,000>) Contract Procedural Rules shall apply and officers will be required to undertake a compliant tender process, seeking to attract a minimum of 4 tender responses.

3.1. Should the contract value (i.e. the aggregated value over the life of the contract) exceed: £172,514 for supplies and services; £4,322,012 works; the contract opportunity must be advertised in the Official Journal of the European Union, unless a compliant procurement framework is used; (a procurement framework is an agreement put in place with a provider or range of providers that enables buyers to place orders or run a mini-competition for supplies or services without running lengthy full tendering exercises).

3.2 It should be noted that EU Procurement thresholds are reviewed every two years, the next review is expected in January 2016.

4. **Procurement Processes:** The Public Contracts Regulations establish a range of procurement processes that officers are required to use, these include:

4.1 'Open' Procedure;

4.2 'Restricted' Procedure;

4.3 'Negotiated' Procedure;

4.4 'Competitive Dialogue' Procedure;

The new Public Procurement Regulations introducing a further two processes:

4.5 'Competitive Procedure with Negotiation'

4.6 'Innovation Partnership' Procedure

4.7 Procedures such as open; restricted; have in the recent past been used by NULBC officers in sub-OJEU Procurement threshold procurements, however the recent legislative changes will result in the open procedure becoming the main procurement process used by officers. This said the use of the negotiated procedure may be a future procurement option where officers are looking to identify possible budget savings as part of a procurement, however this will be dependent on the aggregated contract value of the supplies or services being procured.

5. **Spend Analysis:** As indicated in the introduction, the Borough Council's spend on supplies and services during the financial year 2014/15 was approximately £1.1 million third party capital spend and £10.7 million third party revenue spend. Orders placed during this period equate to:

£0 to £5,000	-	5,258 orders
£5,000 to £30,000	-	299 orders
£30,000 to £50,000	-	15 orders
£50,000 to £172,514	-	6 orders
Over £172,514 (OJEU)	-	<u>0</u>
Total:		5,578

- 5.1 It is noticeable that the majority of the Council's spend profile is low value where no formal procurement process is required other than the need for officers to have due regard to market value, informally engaging with suppliers in the relevant market place to evidence such.
- 5.2 Officer analysis of spend data continues to support the identification of possible savings and has served to deliver savings across a number of varying categories of procurement e.g. ICT (software consolidation); Telecoms (contract consolidation); Postal Services (district collaboration resulting in improved economies of scale and leverage); Tyre Repair & Replacement (local collaboration resulting in improved economies of scale and leverage); MFD Solution (product range rationalisation).
6. **Officer Support and Guidance:** continues to be provided by the Business Improvement Manager and/or the Business Improvement Officer Procurement and Performance, this support and guidance is made available in a number of ways:
- the production and publication of standard templates (Tender; Invitation to Quote; Evaluation Matrices; Reference Questionnaires; Correspondence letters; Contracts etc.);
 - '1 to 1' support in drafting specifications, document verification, tender opening, tender evaluation and moderation, contract drafting; and on award of contract ongoing contract management, albeit this is normally undertaken by the relevant service.
 - creation and publication of contract and contract award notices (both OJEU and sub OJEU via My Tenders Pro portal);
 - Supplier spend analysis;
 - Training.
- 6.1 Additional support and guidance is offered and delivered in areas which include:
- 6.1.1 The need to offer transparency, proportionality and non-discrimination as part of procurement processes undertaken;
- 6.1.2 Engagement with local partners and or suppliers;
- 6.1.3 A commitment to sustainability, fairness and the development of our local economy;

- 6.1.4 Identifying and establishing (where relevant) Social Value criteria as part of any new procurement;
 - 6.1.5 The requirements linked to the delivery of the Living Wage where the criteria established by the 'Living Wage Foundation' applies;
 - 6.1.6 The requirements of information relative to reporting requirements as part of the Local Government Transparency Code (2014);
7. Reference have been made throughout this report to a range of documents and strategies, these can be made available to members of Finance Resources and Partnerships Scrutiny on request.