

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

OFFICER REPORT TO

Finance Assets and Performance Scrutiny Committee **08 September 2022**

Report Title: Procurement Review

Submitted by: Business Improvement Manager

Portfolios: Finance, Town Centres and Growth

Ward(s) affected: All wards

Purpose of the Report

To provide the Finance Assets and Performance Scrutiny committee with a review of the procurement work undertaken to date in line with the Procurement Strategy & Action Plan 2022 to 2025 with a continued aim to ensure that it effectively integrates with all current and future work to ensure that the Council is following good management practice.

Recommendation

That members of the Finance Assets and Performance Scrutiny Committee

- 1. Review the officer report and the work undertaken to date;**
- 2. Highlight any observations and/or concerns they have in the content of this report in relation to the impacts on the Borough Council;**

Reasons

To provide the Finance Assets and Performance Scrutiny committee with an ongoing review of the procurement work undertaken:

- to date in line with the Procurement Strategy & Action Plan 2022 to 2025 with a continued aim to ensure that it evidences good management practice;
- to be undertaken to respond to both legislative, organisational and market changes.

To highlight impacts and volatilities created in the market place as a result of world events.

The report also looks to update the Finance Assets and Performance Scrutiny committee on the progress of the Procurement Bill 2022 and its passage through parliament (House of Lords and subsequently the House of Commons) and the likely impacts on Public Sector Procurement.

1. BACKGROUND:

- 1.1 The UK's exit from the European Union has provided the Government with an opportunity to reform the UK's public procurement laws. In December 2020, the Government published a Green Paper with its initial proposals for reform, which then commenced a consultation period that closed in March 2021. In December of 2021, the response to the consultation was published along with modified proposals, which took account of the feedback received during the consultation period.
- 1.2 The modified proposals formed the basis of a Procurement Bill, introduced to Parliament during 2022. This will ultimately lead to a Procurement Act (encompassing primary and secondary legislation), under which subordinate regulations will be made. These new Regulations will replace the existing 4 sets of public procurement regulations. This new regime is then expected to go live during 2023.

- 1.3 Officers continue to commit to the delivery of sustainability, fairness and the development of our local economy aiming to build such into its purchasing decisions. Effective procurement enabling and contributing to the delivery of Council's broader objectives and supporting the priorities of One Council and a commitment to green procurement as part achieving carbon Net Zero as an organisation by 2030.
- 1.4 Officers within the Borough Council continue to explore opportunities to commission services, establishing the services the residents of the borough 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.

1.2. **GOVERNANCE:**

- 1.2.1 There is no change in that the Council's lead corporate officer for commissioning and procurement continues to be the Business Improvement Manager.
- 1.2.2 Procurement remains a devolved structure in that 'Heads of Service' and 'Business Managers' are responsible and act as project leads (client officers) for purchasing in their respective service areas supported by the above officer.
- 1.2.3 The Cabinet Member for Finance, Town Centres & Growth (The Deputy Leader) is the responsible Member for procurement.
- 1.2.4 **Financial Regulations:** there has been no change to financial regulations in that:

PR4	Ordering of work, supplies and services	
4.18.18 (pg48)	(a) Low value procurement: Where alternative prices are available for the level of estimated cost and a minimum of two written quotations is required;	£5,000 <>£30,000
	(b) Intermediate value procurement: Where alternative prices are available for the level of estimated cost and a minimum of three written quotations is required.	£30,000 <> £50,000
	(c) High value procurement: The estimated cost above which Financial Regulations and Contract Procedural Rules shall apply.	> £50,000

Contract procedure rule 5.5 indicates that it is good practice (for all but small value and routine purchases) to obtain a written quotation. All quotations to the value of £5,000 can be provided by way of an informal quotation i.e. the authorised officer obtaining electronic quotations and maintaining (electronic) file copies linked to the relevant procurement. Whilst the Council's supplier contract management website/e-portal (My Tenders) is available for use as part of routine purchases there is no formal requirement to utilise this process for quotations to the value of £5,000.

- 1.2.5 **Contract Procedure 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 best value and the required level of quality and performance in all contracts that are let.
- A review of 'Contract Procedure Rules' has been delayed following the announcement of the new Procurement Bill 2022 as it is anticipated once finalised, that a number of

changes will be required to be made in light of this bill forming future procurement legislation.

1.2.6 Procurement Strategy 2022-25: supports in the provision of a framework to ensure 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, supporting where possible in the delivery both cashable and non-cashable savings and also underpinning opportunities for greater collaboration with neighbouring authorities and partners.

- 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.
- The strategy aims on achieving outcomes both through strategic and routine procurement projects. Whilst not intending to be procurement manual, the principles contained within the strategy will be applied to all procurement activity across the Council.
- The strategy supported by a 'Procurement Action Plan' developed by officers set out the procurement deliverables and actions to be undertaken over the life of the strategy.

1.2.7 Public Contract Regulations: public procurement in the UK 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 current public sector procurement directives became law in the UK on 26 February 2015. It was reported to have brought about the biggest shake-up in public procurement law for almost a quarter of a century. Progress on changes to such legislation include:
 1. 2019 – a review of current legislation and public procurement undertaken, the outcome of which was the production of an 'initial problems statement' from which key objectives moving forward were identified;
 2. 2020 work undertaken on policy development, the outcome of which was the publication of Government's Green Paper on reforms to Public Procurement Law;
 3. 2021 Consultation process launched on Government's Green Paper;
 4. 2022 Procurement Bill introduced into the house of Lords;
 - 1st and 2nd readings completed;
 - Currently at Committee Stage.
- Key benefits within the bill include:
 1. Delivering better value for money;
 2. Taking back control of public money;
 3. Driving Innovation;
 4. Making it easier to do business within the Public Sector;
 5. Levelling Up the UK.
- The Procurement Bill will be presented in both Primary and Secondary legislation, with some key elements (e.g. transparency regime to follow in secondary legislation).
- The Government Office have agreed to continue to engage with all stakeholders on the progression of the bill sharing updates on progress and plans for secondary legislation. It

is envisaged that there may be changes as the bill progresses through parliament (possible opposition amendments).

- Summary of the Bill:

Parts 1 to 4:

1. Key definitions;
2. Principles & Objectives;
3. Award of Public Contracts;
4. Management of Contracts;

Parts 5 to 8:

5. Conflicts of Interest;
6. Below Threshold Contracts;
7. Implementation of International Obligations;
8. Information & Notices;

Parts 9 to 13:

9. Remedies for Breach of Statutory Duties;
10. Procurement oversight;
11. Appropriate Authorities & Cross Border Procurement;
12. Amendments and Repel;
13. General.

- The implementation process following the publication of the bill into legislation will include:
 - Knowledge Drops (these will be open to all (buyers and suppliers));
 - Self-guided online modules (open to contracting authorities only);
 - Instructor lead virtual deep dives (open to contracting authorities only);
 - Communities in practice (the sharing of information across public sector bodies and contracting authorities).
- Implementation Timescales – Government Office estimate that the go live is expected to be some time during 2023.

1.2.8 Officer Support and Guidance: continues to be provided by the Business Improvement Manager, this support and guidance continues to be made available in a number of ways:

- The production and publication of standard templates (Invitation to Tender; Invitation to Quote; Evaluation Matrices; Correspondence letters; Formal (short form) Contracts etc.). A review of these documents is planned following which these will be made available/publications on the Borough Council's new Connexus intranet site.
- '1 to 1' support in the drafting of specifications, document verification, electronic 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/client officer);
- Creation and publication of contract notices and award notices (both 'Find a Tender Service' (formally OJEU) and 'Contracts Finder' via the My Tenders Pro portal);
- Supplier spend analysis;
- Training either on a 1-2-1 basis or group session within a relevant service, this will be increased during 2023 as the Procurement Bill 2022 becomes legislation;

- Additional support and guidance continues to be made available including:
 - The need to offer transparency, proportionality and non-discrimination as part of procurement processes undertaken;
 - Where requested engagement with local partners and or suppliers;
 - A commitment to sustainability, fairness and the development of our local economy;
 - Support in the identification / establishment (where relevant) of 'Social Value' criteria as part of any new procurement project;
 - Support in the collation of information requirements relative to reporting as part of the Local Government Transparency Code (2015);
 - Support in the collation of information requirements relative to responding to FOI requests.

1.3 **CONTRACT REGISTER:**

- 1.3.1 The Council maintains a contracts register (in the form of an excel spreadsheet) which is published on both 'Connexus' and the Council website. The two registers differ slightly due to confidential information contained in the register relating to service areas. The register published on the Council's website is a combined register incorporating only the data that requires reporting as part of the Local Authority Transparency Code 2015.
- 1.3.2 The Local Authority Transparency Code 2015 requires authorities to publish certain data sets and regularly refresh and publish on the Council's website.
- 1.3.3 Officers will seek to re-consider as part of the 2022-25 procurement action plan the introduction of supportive software in the production of future registers.
- 1.3.4 Amendments have been made introducing new information 'Pre-procurement Status' highlighting the urgency of the re-procurement of a contract (where applicable), 'Contract Type' highlighting if the contract is re-occurring or a one-off and 'Standard Industrial Classification Code'.
- 1.3.5 The collation of data for publication in the contracts register is a manual process and provides the following information:

REFERENCE	TITLE	START DATE	END DATE	EXTENSION PERIOD	RE-PROCUREMENT STATUS	CONTRACT TYPE	RESPONSIBLE OFFICER	CONTRACTING PROCESS	CONTRACTOR/PARTIES	COMPANY REGISTRATION NUMBER	SIC - (Standard Industrial Classification)	SMALL TO MEDIUM ENTERPRISE YES – NO (SE = Social Enterprise)	DESCRIPTION	ANNUAL CONTRACT VALUE/SPEND	STRONG ROOM REFERENCE	ANNUAL CREDIT CHECK REVIEW REQUIREMENTS
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1.4 **CONTRACT MONITORING:**

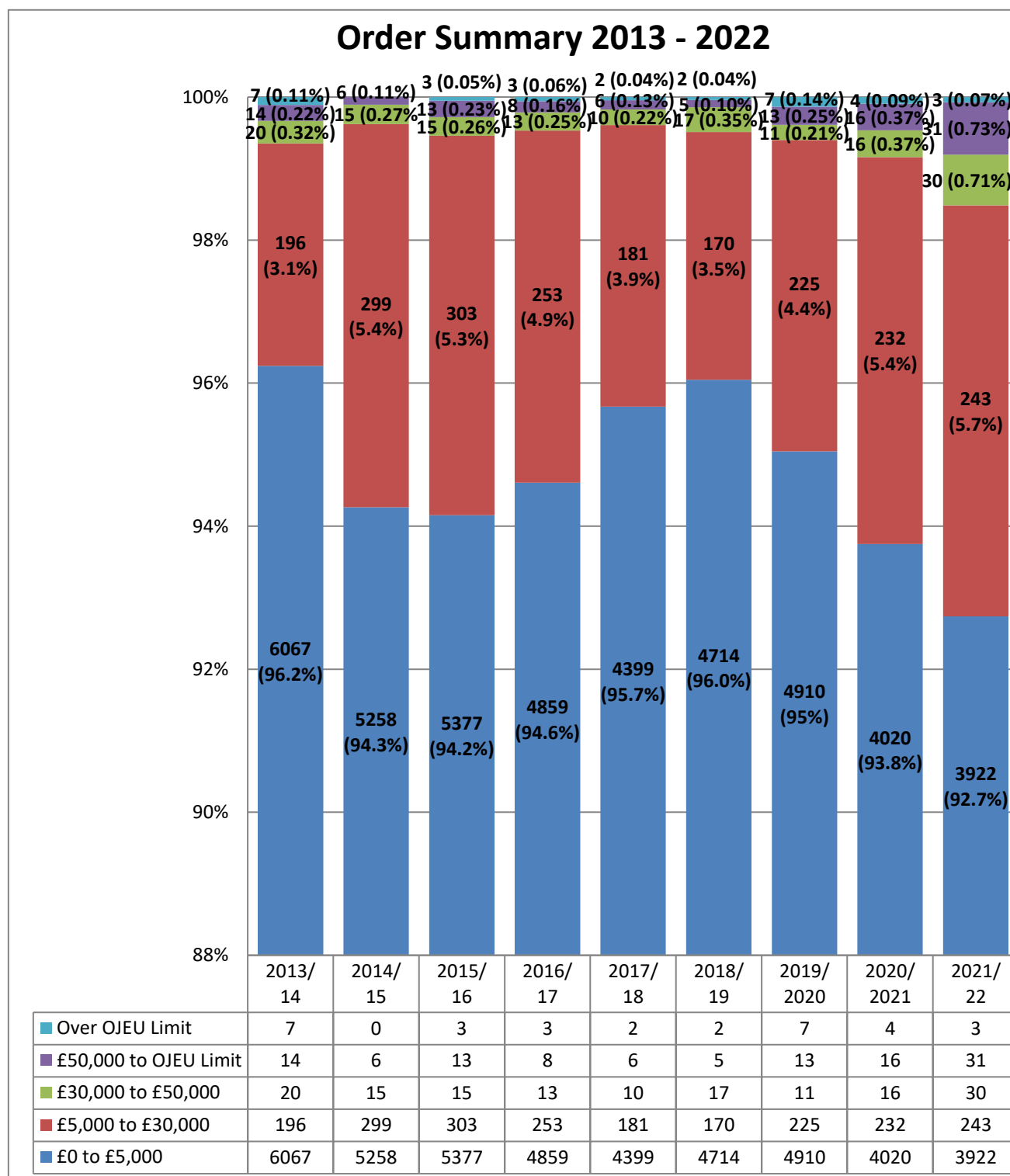
- 1.4.1 The Council's 'Contract Procedure Rules' indicate that "Contracts shall contain details of relevant performance criteria, targets, standards and information on how the contract will be monitored, reviewed and managed by the Council."
- 1.4.2 Contract monitoring continues to be undertaken by the relevant Head of Service and/or Business Manager for the applicable service/contract and examples of good practice include the work undertaken on the Canon – MFD Contract; PSL – Hybrid Mail Contract; Offsite Archive Storage Contract – Oasis Group. The Newcastle Partnerships team also as part of their commissioning processes have formal monitoring in place linked (where applicable) to suppliers receiving ongoing quarterly contract payments.
- 1.4.3 During 2022 your officer has identified an opportunity to join the Contract Management Capability Programme, securing ten places for the Borough Council, five of which have been allocated to date. The programme delivers three levels of training:
- Foundation-level accreditation aimed at officers who manage a relatively small and straightforward contract or where they support others in the management of lower value contracts;
 - Practitioner-level accreditation aimed at officers who lead on manage (or support others in) the management of medium-scale, medium complexity contracts;
 - Expert-level accreditation aimed at those individuals that lead the delivery of large-scale, complex contracts.

The initial aim is to obtain foundation accreditation, with a select number of officers considering practitioner level.

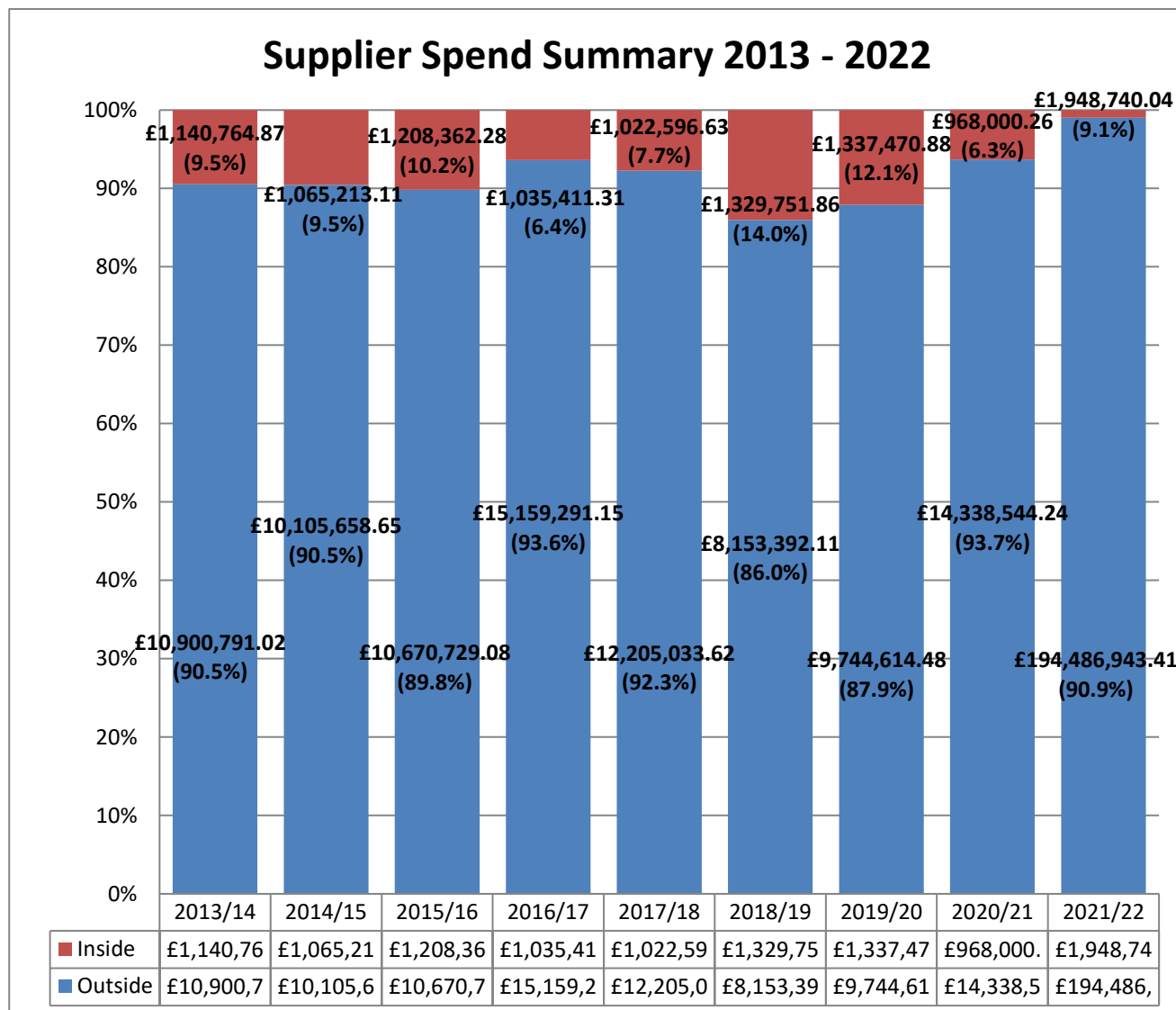
1.5 **SPEND ANALYSIS:**

- 1.5.1 The Business Improvement Manager continues to undertake spend analysis from data contained within the Council's Civica financial system, continuing to provide the following support:
- requests from services, as part of any supplier and/or service delivery review;
 - corporate analysis as part of best value reviews and/or category spend evaluation;
 - reporting as part of possible wider procurement collaboration.
- 1.5.2 Annex 1 – The graph provides a breakdown of the number of orders placed by each of the 5 procurement threshold values.
The profile of the Borough Councils spend can be seen to be high transitional low value as indicated in the order summary graph appended below. This shows that in the financial year 2021/22 98.4% of the Borough Council spend was between values of £1 and £30,000 (accounting for 4,165 transactions in total).
- 1.5.3 Annexes 2 & 3 – highlight that local spend remains comparatively low but shows an increase when compared to the previous year (but still significantly lower than 2018/19 and 2019/20). Increasing the level of local spend will remain a priority and is included as an objective as part of the 2022-25 Procurement Strategy.

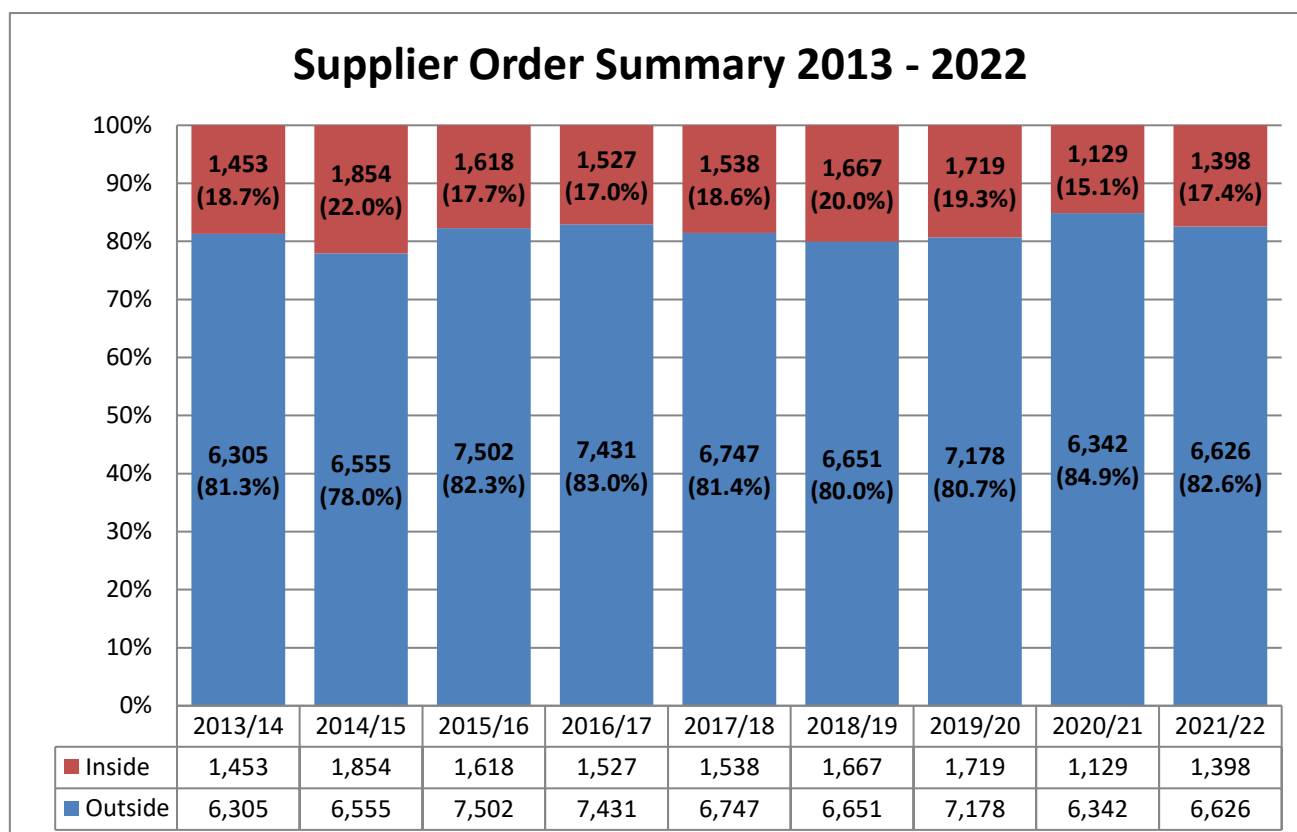
Annex 1 - Order Summary by spend threshold (& number of orders):



Annex 2 - Local Spend Analysis (by value):



Annex 3 - Local Spend Analysis (by transactions):



1.6. LOCAL PROCUREMENT COLLABORATION:

1.6.1 Collaboration with neighbouring authorities and partners continues to take place mainly on an ad-hoc basis and it is widely accepted that this could be better co-ordinated to offer greater efficiencies and economies of scale within the Staffordshire region, examples of recent collaboration include:

- Purchase of Tyres and Tubes – (Newcastle-under-Lyme BC & Stoke-on-Trent CC);
- Purchase of vehicle oils and lubricants – (Newcastle-under-Lyme BC & Stoke-on-Trent CC);
- EV charging points as part of a Staffordshire wide project;

1.6.2 Contract and Frameworks¹ continue to be made available by neighbouring authorities which are open to the Borough Council to use, the previous examples provided remain available:

- Framework for Professional Services to support Construction and Facilities Management – Stoke-on-Trent CC;
- Framework for Planned Works – Stoke-on-Trent CC;

¹ A procurement framework (or public sector framework), more commonly known as a Framework Agreement, is an arrangement where the buyer selects suppliers and sets terms and prices for a period in advance (often as much as 4 years in the future), and then calls on the suppliers to deliver the specification when required.

- Framework for Water Testing – Staffordshire CC;

1.7. NATIONAL PROCUREMENT FRAMEWORKS & ALTERNATE SOLUTIONS:

1.7.1 Officers have available and continue to use a wide range of national procurement frameworks developed by a number of organisations and purchasing consortia.

1.7.2 The benefits in using procurement frameworks include:

- Fast, efficient, easy to use Public Contract Regulations 2015 (PCR2015) compliant procurement frameworks, removing the need to undertake costly and time-consuming full procurement processes;
- Significant reduction in procurement timescales;
- Reduced procurement costs;
- Robust agreements resulting from thorough professional due diligence;
- Established pre-agreed terms and conditions;
- Detailed and easy to use guides, support and templates;
- Frameworks generally deliver economies of scale from large volume buying;
- Reduced transaction costs;
- The development of long-term relationships;
- Better social value and greater community wealth building.

1.7.3 Officers continue to explore new frameworks with a number of additional solutions being made available for client officer use.

1.8. FUTURE PROCUREMENT:

1.8.1 Effective procurement will continue to help the Council deliver its broader objectives and support its priorities. It supports in the delivery and commitment to sustainability, fairness and the development of our local economy. Corporate procurement supports officers throughout the organisation to deliver compliant purchasing decisions.

1.8.2 In recognising the need to support the local economy corporate procurement aims to assist in identifying ways to improve local spend, this currently being only 9.1% by value of the Council's annual spend during 2021-22.

1.8.3 The Procurement Strategy & Action Plan for 2022-25 provides a number of priorities being identified by the Business Improvement Manager which include:

- A continued need to research alternate approaches (and the possible introduction of supportive software) to make available a more proactive solution to contract management and timely reporting where client officers' receive automated timely updates/warning of up and coming contract end dates;
- A proactive approach (especially faced with the implementation of new legislation – Procurement Bill 2022) to the review, re-drafting and replacement of procurement documentation;
- Localised (by service and/or 1-2-1) procurement training/familiarisation;

- Further embedding of contract monitoring, building on the aforementioned contract management training linked to the Council's high value, high risk critical corporate contractors and contracts;
- A review and update of the Borough Council's sustainable procurement policy;
- The drafting of a Social Value policy responding to the increasing need to deliver social and environmental outcomes. Climate change continues to be one of the greatest challenges of our age, and while it may sometimes feel overwhelming in its scale, the fact is that every individual and every organisation can play a part in preventing it. As the Council increases its level of environmental reporting and continues to work towards reducing our environmental impact, in drafting its Social value policy officers will endeavour not to treat environmental considerations separate from the social value impact of our work, as we may be missing out on valuable opportunities to do more good – and benefit the authority as well. We will look to ensure that the term 'social value', includes environmental activities and benefits in this definition too;
- Continue to increase opportunities to deliver sustainable environmental opportunities and outcomes as part of the Council's procurement projects, examples include: a greater use of a local suppliers of goods and/or services; clear sustainable outcomes as part of all construction works; the use of local trades/professional service providers as part of any sub-contracting processes on major projects; where possible evidence of measurable carbon reduction/elimination from providers who are awarded Council contracts;
- The Council continues to deliver outcomes linked to its carbon reduction/net zero objectives, examples include:
 - The use of local consultants to explore and highlight opportunities in carbon reduction across the Borough;
 - The identification of a resource that will work alongside officers to deliver a 'Road Map' to net zero;
 - CO2 emissions considerations as part of any vehicle purchases;
 - The use of alternate fuels for the Council's fleet of waste vehicles;
 - The procurement of electric vehicles (Pest Control & Dog Warden vehicles);
- Personal training linked to national public procurement changes proposed in the Procurement Bill 2022 and subsequent rollout to client officers throughout the Borough Council;
- Continue to support opportunities for Staffordshire wide collaboration in procurement aiming to:
 - deliver standardisation;
 - service delivery improvements;
 - possible benefits that can be achieved/gained from aggregating LA spend;
 - the achievement of economies of scale;
 - Staffordshire wide savings;
 - Deliver contributions to Staffordshire wide carbon reduction.

1.8.4 The Business Improvement Manager holds the accreditation MCIPS (Member of the Chartered Institute Purchasing & Supply), and as such will aim to maintain a level of knowledge that supports compliant procurement processes throughout the Council.

- 1.8.5 The Business Improvement Manager continues to report bi-monthly to statutory officers identifying any procurement compliance concerns and offering possible corrective action solutions.

2. **Issues**

- 2.1 Services throughout the Borough Council are being impacted by supply chain and pricing volatilities as a result of a wide range world events (ongoing impacts of Covid, electronic chip shortages, raw material supply shortages & delays in availability, increasing energy and fuel costs impacting on high inflation) impacting on reduced cost and budget certainty, price instability, recent examples of such include:
- Electronic chip shortages – currently impacting on the availability of multi-functional devices (MFD). The Council's fleet of MFDs needing to be replaced in 2023;
 - Increased costs and material shortages (steel and concrete) in the building industry, which may impact on construction projects linked to both Town Deal and Future High Street projects;
 - Increases in fuel prices impacting on budget pressures for the Council both internally (for its fleet of vehicles/trucks) and externally linked to collection/delivery services (cash collection service, where having agreed a fixed price service for the duration of the contract the provider is now seeking inflationary increase);
 - Increases in consumable material costs, request beginning to be received from some service providers who have been impacted by such increases and erosion of profit margins (a recent example is a 7% increase in the Council's hybrid mail service, where the provider is no longer able to absorb material costs increases e.g. paper and ink costs).
- 2.2 The successful funding linked to Town Deal and Future High Street Funding has generated a number of procurement exercises and your officer continues to support the delivery of such projects. Further funding streams continue to be identified, albeit some present the Council (on award of funding) with challenging and very tight timescales for project delivery, calling for a proactive and timely approach to compliant procurement solutions in line with funding parameters, monitoring and governance.
- 2.3 The expected changes that will become law following ratification of the Procurement Bill 2022 will need to be embedded throughout the Council and appropriate procurement procedures (contract procedure rules) updated and communicated to all client officers responsible for the day to day procurement of goods and services for their relevant services.
- 2.4 Linked to the above the identification of new officers joining the Council who will be directly involved in future procurement processes and will require and be offered guidance and support as part of this work. Your officer remains supportive as and when these officers are both identified and subsequently required to undertake a formal procurement process within their relative service.
- 2.5 A pre-procurement checklist to aid client officer support when commencing a new procurement has been developed and is being trialled on specific projects/supportive funding streams. This is aimed at providing a particular focus on the key questions and considerations prior to commencing a procurement process. The aims is too jointly (client officer and corporate procurement) complete the checklist to aid focus and understanding of the various stages within a procurement process.
- 2.6 There is a need to develop a Social Value Policy including environmental considerations for the Borough Council, this is a key objective for your officer.

- 2.7 Contracting drafting/resourcing for specified (NEC & JCT) contracts has been identified, officers are reviewing the options of training a number of relevant internal officers in this work.

3. **Proposal**

- 3.1 This officer report highlights a number of projects and deliverables which look to deliver both a 'business as usual' approach and the development of a number of key pieces of work which form part of the procurement action plan, aimed at supporting the delivery of the Council's Procurement Strategy 2022-25.

4. **Reasons for Proposed Solution**

- 4.1 The solutions proposed throughout the report will offer and deliver:
- 4.1.1. Ongoing review and updating of a range of governance procedures in line with statutory requirements;
 - 4.1.2. Public procurement solutions and reporting in line with the Procurement Bill 2022;
 - 4.1.3. Structured processes that aim to support greater compliance when delivering procurement outcomes for the Borough Council;
 - 4.1.4. Flexibility and timely procurement solutions in response to exacting and time driven funding needs.

5. **Options Considered**

- 5.1 As this is an information report to the 'Finance Assets and Performance Scrutiny Committee' no options have been established.

6. **Legal and Statutory Implications**

- 6.1 There remains the continued need for compliance in line with:
- 6.1.1. Public Contract Regulations 2015 (PCR2015);
 - 6.1.2. The Public Procurement (Amendment etc.) (EU Exit) Regulations 2019
 - 6.1.3. Local Authority Transparency Code 2015
 - 6.1.4. Outcomes linked to the Procurement Bill 2022 following its passage through parliament.

7. **Equality Impact Assessment**

- 7.1 Equality impacts are considered and addressed by officers in the drafting and updating of appropriate procedures and by client officers as part of the individual procurement process.

8. **Financial and Resource Implications**

- 8.1 There is an ongoing budget in place for the delivery of corporate procurement support and each of the Council's services where applicable will have revenue and capital budgets established and approved for the procurement of goods, services and works.

9. **Major Risks**

- 9.1 Without the appropriate resources, governance policies, procedures and support major risks may arise with non-compliance to statutory requirements resulting in heightened risks of procurement challenges and remedies claims, alongside reputational damage for the Council.

10. **UN Sustainable Development Goals and Climate Change Implications**

- 10.1 The proposed approach adopted and delivered as part of the majority of the Borough Council procurements supports UNSG and Climate Change objectives in a number of ways. Principally, through prior consideration and the development of relevant specifications for the procurement of goods, services and works, taking into consideration sustainable development and climate change impacts. The following UNSGs are supported.



11. **Key Decision Information**

- 11.1 There are no key decision linked to the production and publication of this report, the report is intended to provide an update to members of 'Finance Assets and Performance Scrutiny' on the ongoing delivery of procurement throughout the authority in line with the Council Procurement Strategy and Action Plan 2022/25 and changing legislation, providing good management practice.

12. **Earlier Cabinet/Committee Resolutions**

- 12.1 Cabinet approval of the Procurement Strategy and Action Plan 2022/25 (Decision A9 on 1st December 2021).

13. **List of Appendices**

- 13.1 There are no appendices linked to this report.

14. **Background Papers**

- 14.1 The 2018-21 Procurement Strategy and action plan can be made available on request, albeit work has commenced on draft a new strategy and action plan that will commence from 2022-25.