

Report of the Cabinet Member for Transformation and Performance

Procurement Pre-Inquiry Working Group – 24 October 2019

Overview of Procurement

Purpose	This report gives a high level overview of procurement processes and activity at Swansea Council
Content	The report gives an overview of procurement in Swansea Council
Councillors are being asked to	Consider the information given as part of the inquiry into procurement
Lead scrutiny Councillor	Councillor Holley
Lead Cabinet Member / Officer for subject	<ul style="list-style-type: none">• Cllr David Hopkins• Chris Williams, Head of Commercial Services
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1. Introduction

- 1.1 Procurement is defined as the activity of acquiring goods and services. The procurement process spans a life cycle - from identification of need, through to the selection of suppliers, and then their contract management.
- 1.2 The Council spends approximately £250 million a year on a diverse range of goods, works and services from our external partner organisations. Examples of spending include on home care, homelessness support projects, energy / utilities, new vehicles, catering products, building works, road repairs and IT software and technology.

2. Procurement Rules and Regulations

- 2.1 Public sector procurement is a highly regulated activity, i.e. governed by directives and legislation particularly the Public Contract Regulations 2015. If the Council were to breach these regulations then suppliers could seek recourse against the Council in the courts (an internet search will yield numerous examples of these happening) which would certainly affect public perception of the manner in which Council business is conducted. In brief, the Council is obliged to conduct open and transparent procurement for our Council needs acting with integrity and seeking to ensure a level playing field for all potential suppliers.

- 2.2 In addition to the Public Contract Regulations the Council is also obliged to publish our own standing orders relating to our control of spending and associated processes and for Swansea, the document is called the Contract Procedure Rules and is contained in the Council's Constitution.
- 2.3 The Public Contract Regulations apply to any contract (or cumulative spend) with a total value of more than the current EU-set thresholds the Council is for example required to advertise contract opportunities in the Official Journal of the European Union (OJEU) and also follow a set procurement process as per the regulations. The current spend thresholds are noted below:

Type of Contract	Threshold
Service & Supply (includes supply, lease, rental or hire purchase of goods, provision of relief staff)	£181,302
Works (building & engineering, including capital works)	£4,551,413
Social and other specific services	£615,278

- 2.4 Even when a procurement process is not subject to the regulations (for example where the estimated value of a contract falls below the relevant threshold) then EU Treaty-based principles of non-discrimination, equal treatment, transparency, mutual recognition and proportionality apply under the Single Market rules.
- 2.5 With Brexit on the agenda of the UK government many wonder if the procurement landscape will change radically in the near future: our soundings taken via the WLGA (the association of Local Authorities in Wales) suggest that even in the event of a no deal Brexit the UK rules are set to stay for a number of years into the future.

Contract Procedure Rules

- 2.6 As referred to in 2.2 above the Council's Contract Procedure Rules (CPR) set out the key responsibilities and actions that Council staff must follow when undertaking procurement activity. CPR support staff to meet legislative requirements, and to meet the council's ambitions for procurement.
- 2.7 Fundamentally, the CPR support staff to deliver effective procurement. The CPR rules are also designed to ensure that the Council's procurement processes are fair, transparent and non-discriminatory. Following the CPR protects the Council, Members and Officers against allegations that procurement has been made incorrectly or fraudulently and compliance with these rules is compulsory.

3. Procurement Functions

- 3.1. In terms of the staffing allocated to this area the Council employs a professional team to assist staff with their spending plans and the responsibilities of the Council's Procurement Team include the following:
- 3.2 Providing professional and strategic advice on all procurement matters, including (but not limited to) product/service specifications, supplier sourcing and procedures.
- 3.3. Ensuring compliance with the Councils Contract Procedure Rules on all procurement activity undertaken, and ensuring the principles of openness, transparency, equal treatment and proportionality are followed.
- 3.4 Ensuring legal requirements of relevant legislation including Public Contract Regulations 2015, Well-Being and Future Generations Act, GDPR are adhered to at all times.
- 3.5 Ensuring that value for money is achieved and purchasing power is optimised between quality and cost.
- 3.6 Assessing the procurement requirement and providing commercial advice on the most cost effective, compliant and appropriate route to market.
- 3.7 Development of a category forward work plan for all planned and forthcoming procurement activity in their area.
- 3.8 Attendance at required meetings, forums and working groups where procurement is required to attend.
- 3.9 Undertaking spend analysis, utilising the spend tool, to ensure maximum buying power is achieved.
- 3.10 Getting 'best value' for money in procurement is not restricted to getting the lowest price. 'Best value' is defined in the National Procurement Strategy as "the optimum combination of whole life costs and benefits to meet the customer's requirement.
- 3.11 Advertising and publishing of the contract requirement within the Official Journal of the European Union (OJEU) or Sell2Wales.
- 3.12 Administration of the tender once published via eTenderWales which includes the management of clarifications received and liaising with the relevant Officer to ensure clarifications are responded too effectively.
- 3.13 Negotiate with tenderers as appropriate, award the contract for the end use and issue the required contract documents in consultation with Legal Services and Business Intelligence.

- 3.14 Provide training on specific elements of procurement or for when legislative or policy changes need to be communicated to end users.
- 3.15 Attendance and input to Supplier development and awareness days in conjunction with Business Wales or other partners.
- 3.16 Analysing the market, research options and consult with users to clearly define the requirements. Conducting any necessary market engagement where necessary in conjunction with Business Wales or other partners.
- 3.17 Support local economies by the inclusion of economic, environmental and social and cultural clauses in all contracts (where appropriate) and improving access for SME and the voluntary sector to do business with the public sector.
- 3.18 Maintaining a corporate contracts register so we can assess and review our spend and supplier relationships.
- 3.19 Supporting the Corporate Safeguarding Group and having a lead Officer on the group to advise on contracting and safeguarding. Work has been completed on drafting a Contractors Safeguarding Policy which is included within all procurement documents.
- 3.20 Supporting and leading on the implementation of Welsh Government's Ethical Employment in the Supply Chain Code of Practice.

4.0 Procurement Methods and Processes

- 4.1 There are number of methods that the staff of the Council utilise to purchase goods and services; this section highlights the major routes to market that are used:
- 4.2 **Procurement/purchase card** (also known as a P-card) which utilises either the Visa or MasterCard system. Staff are provided with a Council card for small value purchases. This method reduces bureaucracy and provides a clear audit trail of who has spent what, as only one card number is issued per person.
- 4.3 **Requests for Quotation (£25,001 - £75,000)** - this method of procurement is used for low value procurement activity. The procurement team have developed standard documentation and this is designed to speed up the procurement process, and is typically used for purchases up to £75,000.
- 4.4 **Request for Quotations (below £25,000)** – a new process has been developed for Officers to enable them to self-manage procurement processes for below £25,000, this process allows for Officers to select suppliers that would be able to deliver their requirement and promotes the selection of local suppliers (where possible).

- 4.5 **Tenders** – are used for larger value and more complex purchases over £75,000 there are a number of differing tender methodologies. The Council might for example seek a defined quantity on a defined date (a typical tender) or instead it might use what is known as a framework agreement where there is no guaranteed business but suppliers are assessed on their ability to deliver goods and services over a defined period (e.g. the Council might reach agreement on delivering a certain type of sand, but will only order from the supplier as and when the need arises). Where there is the potential to breakdown contracts into lots to enable SMEs and local suppliers to bid this will be encouraged.
- 4.6 There are further variations on these tender methodologies with the most recently introduced being known as a '**Dynamic Purchasing System**' - recently the used by the Council for some of its transport provisions. The Dynamic Purchasing System enables new entrants into the market and ultimately inclusion onto any DPS arrangement (subject to satisfying qualification criteria) which also can offset instability of losing suppliers and increases competition. Suppliers can apply at any time once the DPS is 'live', plus if they don't match the selection criteria first time around the they can re-apply if unsuccessful (unlike a closed framework arrangement).
- 4.7 **Prior Information Notices (PIN)** – these are notices which are published to market to inform suppliers of a forthcoming tender opportunity and to prepare the market for the Council's requirement. The use of a PIN also allows for any collaborative bids between organisations to be considered.
- 4.8 **Evaluation Criteria** - Tenders/Quotations can be evaluated on either:
- Price/cost; or
 - Quality; or
 - Price/cost and quality (**MEAT**)
- Price and quality are split into two sections to be evaluated separately.
 - Each will be given a maximum percentage score, which is weighted according to the relative importance placed upon it.
 - If quality is likely to be the most important factor a 70/30 Quality/Price ratio may be appropriate,
 - If price is more important 70/30 Price/Quality may be more appropriate.
 - There is no fixed balance between the two, it varies between each procurement exercise.
- 4.9 **Sell2Wales** - it is important to note also that the Welsh Government - the Council's major funder - also has a key influence on the way in which spend with our suppliers is undertaken. Welsh Government policy notes that we must advertise our needs on its pan-Wales system called Sell2Wales (<https://www.sell2wales.gov.wales>) for all opportunities valued at £25,000 and above, so that there is one clear mechanism used by all the public sector with which suppliers can engage.

- 4.10 **Local Suppliers / SMEs** – the Council is committed to developing the local economy and supporting local suppliers. Wherever possible, local suppliers are invited to quote for low value contracts and are encouraged to bid for tenders. All Suppliers are encouraged to register on Sell2Wales and eTenderWales to ensure that they receive notifications of upcoming procurements. The Council cannot discriminate in favour of local suppliers; contracts are awarded based on the evaluation criteria set out in the invitation to quote/tender. However, we do encourage local organisations to bid for contracts and work with the Welsh Government’s Business Wales to assist with this, an example of this joint working is organising supplier days about future requirements.
- 4.11 The Welsh Government’s Business Wales service supports new and established businesses in Wales by providing Tendering Support services and free practical assistance to small and medium-sized businesses in Wales to help understand the procurement process, and provide support in preparing pre-qualifying questionnaires and tenders.
- 4.12 **Procurement Notification Forms** – as a form of Procurement governance any new procurement activity valued at over £5,000 will require a procurement notification form to be completed detailing the value and description of the contract. Approval of this form is required from the Head of Commercial Services and Corporate Management Team before the commencement of the procurement activity.
- 4.13 **Contract Award Reports** – these reports form part of the evaluation phase of the procurement cycle. In order for oversight and governance the completion of these reports are required detailing the outcome of the process and the procedure followed. These reports will also include financial, legal and procurement implications of awarding the contract. Depending on the value of the contract the report will be signed off by the following: Responsible Officer, Head of Commercial Services, Deputy Chief Legal Officer and Chief Finance Officer.

5. **Efficiencies and Savings**

- 5.1 There has been a number of efficiencies saved throughout various contracts that have been through a complete procurement procedure.
- Contracts for **Local Bus Services** – Service 24 (PT 19-24) - Saving £**k per annum;
 - **Fuel** - Savings will be achieved through a slightly lower price per litre margin for diesel **ppl to **ppl and load consolidation through Collaborative working with Fleet Manager in NPT to reduce small load premiums. Actual Savings to be reported after 12 months trading;
 - **Taxi Services** Dynamic Purchasing System (DPS) – Increased competition with 41 suppliers on framework bidding for work. A larger number of suppliers in turn should lead to more competitive

prices being submitted when individual routes are tendered. The benefits of Business Wales support and an innovative approach allowing new business's to be appointed onto the DPS ;

- Tender for the Provision of **Local Bus Services** CCS/19/040 (PT 19-24) net savings are £** per annum / £** over their maximum five year term;
- Contract for the provision of **Park and Ride Bus Services** - CCS/18/105 - Saving in year 1 will be £** – 5 year contract – total savings – £**;
- **Bus Shelter Advertising** – £**K Revenue per annum with additional benefit of them running Beach Cleaning Project as a Community Benefit.
- **Grand Theatre** - Increased Rebate from 17% to 25%, Estimated savings £** to £**k per annum
- **SIP and Fixed Line Telephony.** Open market approach cheaper Line rentals ,Estimated savings £**k per annum
- **Service Desk Software** - Open market approach alternative software – Estimated savings £**k over 5 year contract
- **Laptops** x750- Non Brand specific specification Estimated £**k - £**k per original spec laptop
- **Civic Centre CCTV-** Estimated £**k saving per annum on current maintenance contract

** Values – Removed as Commercially Sensitive Information

6. Beyond Bricks & Mortar

- 6.1 Beyond Bricks & Mortar initiative was developed in 2009 with a view to securing added benefits to regeneration projects let by the Council in the form of community benefits derived from the Council's contracts. The Council's Community Benefit policy was updated in 2016 and the Beyond Bricks and Mortar team is responsible for its implementation.
- 6.2 The scope of this policy is to include community benefit clauses in the procurement of all suitable works, goods and services including construction, education, catering and social care activities where applicable; all developments where the Council has leverage with the developers including end user opportunities with businesses who occupy the development. The BB&M team work closely with procurement and procuring departments across the authority in particular corporate building services, education, housing and social services.

6.3 Aims of the project specifically:

6.3.1 Identify training opportunities / apprenticeships within the project and work with Contractors or Suppliers and relevant agencies to increase numbers of unemployed, economically inactive and NEET's able to access these training & work placements;

6.3.2 Request participation in supply chain initiatives including using sell2wales to source suppliers and participate in Meet the Buyer events to encourage the development of more local supply chains;

6.3.3 Encourage wider community benefits such as engagement with schools, colleges and universities, participation in community events and activities such as sponsorship or fetes, and offering in kind labour and materials to help with specific projects for the community;

6.3.4 The policy delivers an impact on deprivation and added benefits for the community by requiring suppliers, contractors and developers working with the Council to actively participate in the economic and social regeneration of the locality and it is a requirement that suppliers, contractors and developers will deliver, where appropriate taking into account the particular project or development, some or all of the following community benefits as requested by the Council:

- Targeted recruitment and training outcomes - person week targets are set to be achieved through the employment of "new entrants" sourced from NEETs, the unemployed and disadvantaged and the economically inactive. This could be achieved through apprenticeships, trainees, work experience and jobs.
- Supply chain initiatives and development such as use of sell2wales and meet the buyer events.
- Other community benefits such as educational contributions and community projects.

6.4 As well as drafting clauses and specifying targets for training and employment, the BB&M team helps contractors and suppliers source candidates from local worklessness agencies and programmes working with the target groups, such as:

- Workways+
- Communities for Work
- JCP
- The Wallich
- Shaw Trust
- Remploy

- Gower College
- Neath Port Talbot College

6.5 In 2018-19 1,937 number of weeks of jobs and training were achieved, 19 new projects commenced and 35 job opportunities were advertised.

6.6 In addition, contractors have refurbished 10 kitchens and 6 toilets within community centres and sheltered accommodation free of charge through the Council's Kitchen & Bathroom Contracts (2017-19).

7. Future Challenges & Opportunities

7.1 The Council operates a robust process to ensure best value, with regularly checks of external spend. The next stage of the cost saving agenda is not how we buy but what we buy – the commissioning cycle – new specification is increasingly important, with our energy into this type of analysis and contract management.

7.2 Foundational economy and local supplier development are two key strands of work that the Procurement Team and currently this is being reviewed as part of the work of the WLGA Procurement Workstream.

7.3 In September 2018, it was announced by the Finance Secretary that the national collaborative body for Wales named the National Procurement Service (NPS) would cease to exist in its current form. The NPS would deliver far less collaborative contracts than it currently does and focus on a smaller number, examples contracts that would no longer be delivered by the NPS include food, consultancy services and Welsh translation services. The result of this is local authorities will have to plug the gap within its existing structures. Work is currently underway with the WLGA working group to review this and develop a future workplan of regional procurement activity.

7.4 The Procurement Team of 8 FTEs has an increased workload with many new areas of work now coming through to the team including the City Centre Regeneration, City Deal and Social Care. All are new areas of work and produce added pressures to the team.

7.5 In the stages of organising a Swansea Council 'Meet the Buyer' event, this is envisaged that the Council would facilitate large-scale event that would encourage discussions with suppliers to listen and learn. Officers are currently developing a supplier guide for potential suppliers to assist with understanding the Council's procurement processes.

8. Risks

8.1 If procuring of contracts are not carried out in compliance with the relevant rules and regulation. This could lead to a challenge from a disgruntled tenderer and could end up costing the Council millions in compensation.

8.2 Here are a list of some recent case law where procurements have been challenged:

- Energy Solutions EU Limited v Nuclear Decommissioning Authority [2016] EWHC 1988 (TCC)
- MLS (Overseas) Limited v The Secretary of State for Defence [2017] EWHC 3389 (TCC)
- <https://www.belfasttelegraph.co.uk/news/northern-ireland/court-of-appeal-york-street-interchange-contract-award-was-unlawful-38473535.html>