

Report of the Cabinet Member for Delivery and Operations

Procurement Inquiry – 24 June 2021

Overview of Procurement

Purpose	This report gives a high level overview of procurement processes and activity at Swansea Council to help inform the Panel Inquiry
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 often 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 and utilities, 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 legislation, particularly the UK Public Contract Regulations (PCR) 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 this in the public sector) which would then affect public perception of the manner in which Council business is conducted as well as – in the event of a successful challenge – the need to pay financial penalties. In brief, the Council is obliged to conduct open and transparent and proportionate procurement process for our Council needs acting with integrity and seeking to ensure a level playing field for all potential suppliers.

2.2 On the 1st January 2021, the United Kingdom exited the ambit of the European Union’s rules, but it is important to note that UK procurement regulations (which derived from our membership of the EU) still exist in UK law today - and will continue to do so until amended. There is currently a UK-level review of the laws relating public procurement, but this time it is not clear what changes will occur and the implementation date of any new law is unlikely to happen until 2024. The Welsh Government is considering this matter also as it has the legal; power to act on a Wales only basis, and it is noted as one of the key priorities of the new Welsh Government administration. Whilst the UK has left the EU it has now joined the WTO as a member in its own right, and that membership also brings with it the requirement to openly publish our tender opportunities, so it is likely that the general ethos of public procurement principles as we know them today will remain.

2.3 In addition to adhering to the statutory UK Public Contract Regulations the Council is also obliged to publish its own standing orders relating to our control of spending and the document is known as the Contract Procedure Rules which is a core part of the Council’s Constitution. This document was revised in 2020 having been reviewed and agreed by the Council’s Constitutional Working Group and then full Council, and for full information please see:

<https://democracy.swansea.gov.uk/ieListDocuments.aspx?CId=546&MIId=7394&Ver=4&Info=1&LLL=0>

2.3 The Public Contract Regulations apply to any contract with a value of more than the current set threshold – see the table below - and the Council is for example required to advertise contract opportunities in the Find a Tender Service (formally OJEU) and also follow a set procurement process:

Type of Contract	Threshold
Service & Supply (includes supply, lease, rental or hire purchase of goods, provision of relief staff)	£189,330
Works (building & engineering, including capital works)	£4,733,352
Social and other specific services	£663,540

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) the principles of non-discrimination of bidders /equal treatment, transparency, and proportionality apply.

Contract Procedure Rules

- 2.6 As referred to in 2.3 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 its procurement activity.
- 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. As noted the Council's current version of its contract procedure rules was agreed by Full Council in early 2020.

3. Procurement Functions

- 3.1. In terms of the staffing allocated to this area the Council employs a professional team of four Category Managers and four supporting Procurement Officers who assist the Head of Commercial Services in delivering the Council's procurement support to all Council staff, to facilitate their spending plans. The responsibilities of the Council's Corporate Commercial Procurement team include:
 - 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 Council's Contract Procedure Rules on all procurement activity undertaken, and ensuring the principles of openness, transparency, equal treatment and proportionality are followed.
 - 3.4 Ensuring the legal requirements of relevant legislation including the UK Public Contract Regulations 2015, and the Well-Being of Future Generations Act (Wales), and GDPR matters 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 Welsh 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 Find a Tender Service (FTS) and or Sell2Wales.
- 3.12 Administration of the tender once published via eTenderWales which includes the management of supplier clarifications received and liaising with the relevant Officers 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.
- 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 in 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 the Council's corporate contracts register so we can assess and review spend and supplier relationships, which also acts as a base document to ensure compliance and for audit purposes.
- 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.

- 3.21 Supporting a wide variety of Corporate Working Groups including Climate Change, City Centre Regeneration, More Homes and the Council's People Commissioning Group, plus many more.

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 (see also Table 1 at the end of this document):
- 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 - £140,000)** - 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 £140,000.
- 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 £140,000 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 part of its home-to-school transport provisions. The Dynamic Purchasing System enables new entrants (subject to satisfying qualification criteria) which also can offset any instability of losing suppliers and thus increases competition. Suppliers can apply at any time once the DPS is 'live', plus if they don't match the selection criteria at first they can re-apply if unsuccessful.

- 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.
 - The Council can also add social benefit clauses and or sustainability outcomes in its tenders. There are two ways that this might be achieved including at the specification stage (for example for an electric vehicle) or at a scoring stage, so by adding quality marks which reward employment opportunities offered to apprentices for example. Please see Section 6 below which expands on this approach when applied to Community Benefits.
- 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. We 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 £10,000 will require a procurement notification form / formal approval to proceed, with the form detailing the value and description of the contract and the approach to be taken. Approval of this form is required from the Head of Commercial Services before the commencement of the procurement activity.
- 4.13 **Contract Award Reports** – these reports form part of the evaluation phase of the procurement cycle, once the procurement process has been completed. 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: the Service lead (known as the Responsible Officer), the Head of Commercial Services, and also the Deputy Chief Legal Officer and Chief Finance Officer, and for contracts valued at £1m+ or contracts for consultancy valued at £100K+ the relevant Cabinet member's approval is required.

5. Developments

- 5.1 There have been numerous developments within the procurement team the past twenty four months from updating our documentation in line with new legislation, streamlining and modernising our processes to improve accessibility and flexibility, and this has enabled us to also meet the very large demands caused by the covid pandemic. This sections highlights -
- 5.2 **New CPRs** - Contract Procedure Rules have been fully reviewed, updated and published following consultation with various departments to improve clarity to ensure consistent application in line with legislation and enable efficient procurement processes
- 5.3 **Update to Supplier T&Cs** – All our Terms and Conditions have been reviewed and updated in conjunction with the legal team to ensure compliance with new Welsh/UK legislation and provide suitable contractual protection.
- 5.4 **Introduction of Docusign software** – We have improved our contract issuing procedures to enable compliant electronic contracts to be issued and signed by suppliers. This has delivered significant savings (estimated at 24,000 less pages printed in just the Commercial Service alone!) and importantly enabled continuity of service during the covid-19 pandemic
- 5.5 **New low value Self-Service Process** – A new self-service procurement process, pack and guide has been developed to enable procurements in Band B, >£10k to <£25k to be run by departments themselves.

- 5.6. **New External Website** – The page has been updated to enable improved supplier engagement and access and as part of this work a new Supplier Guide has been developed which will for example assist local suppliers understand how to do business with the Council, for further information please see:

<https://www.swansea.gov.uk/dobusinesswithcouncil>

- 5.7. **PPE Covid response** – The procurement team were heavily involved in the PPE response to Covid-19 pandemic from the end March 2020 onwards. This has involved sourcing PPE, verification of suppliers and PPE, receipt/delivery logistics and liaising with Welsh Government, but also support for Social Services and Housing when delivering new care home support and homelessness support.
- 5.8. **Covid Relief** – The procurement team has assisted departments in accessing grant relief as a result of the pandemic
- 5.9. **Contract Variations** – As a result of the pandemic a very large number of events have been cancelled/delayed and/or has caused significant disruption to service delivery. This has resulted in numerous urgent and significant variation to contracts which the procurement team have facilitated in conjunction with Council contract managers and Legal.

6. **Beyond Bricks & Mortar / Social Value**

- 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 suppliers and which are formally articulated in our contracts. The Council's Community Benefit policy was updated in 2016 and the Council's Beyond Bricks and Mortar team is responsible for its implementation in collaboration with procurement.
- 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 2019-20 2,603 number of weeks of jobs and training were achieved, 27 new projects commenced and 63 job opportunities were advertised.

- 6.6 The Procurement Service supports multiple cross Council groups to deliver social benefits; the Service it is also part for example of the new Climate Change Working Group with a strategic focus of reducing Swansea's carbon emissions.

7. Future Challenges & Opportunities

- 7.1 The Council operates a robust process to ensure best value, with regular checks of external spend. As well as looking at how we buy the next stage of the cost saving agenda is also about what we buy – often the referred to as the commissioning cycle – so seeking new innovative specifications are thus increasingly important, with energy to be de this type of analysis and to related contract management support and supplier management.
- 7.2 In September 2018, it was announced by the Welsh Finance Secretary that the national collaborative body for Wales named the National Procurement Service (NPS) would cease to exist. The NPS withdraw from the provision of collaborative contracts (to focus on a smaller number), and examples of 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 now work to undertake such work within their existing structures. Swansea is chair of the Mid and Central procurement delivery group (of the WLGA) and recently for example became lead authority for the collaborative Asbestos remediation arrangement.
- 7.3 The Commercial Procurement team of 8.5 FTEs has an increased workload with many new areas of work now coming through to the team including the City Centre Regeneration, More Homes programme and requirements from Social Care.
- 7.4 We also hope to support organising a Swansea 'Meet the Buyer' event with the participation of major employers in the area, when circumstances allow. It is envisaged that the Council would facilitate large-scale event that would encourage discussions with suppliers to listen and learn and to help them understand how the Council does business. As mentioned above the Council has developed a new supplier guide for potential suppliers to assist with understanding the Council's procurement processes.

8 Case study information

To provide further information on the procurement activity of the Council please also see two case studies showing the procurement process applied to

- 1) Domiciliary care tender (Appendix 1), and
- 2) the Highways maintenance tender (Appendix 2)

TABLE 1

	Under £10,000	Goods & Services			Works			Above EU Threshold
	< £10,000	£10,001 - £25,000	£25,000 - £140,000	£140,001 - EU Threshold	£10,000 - £140,000	£140,001 - £500,000	£500,001 - EU Threshold	
Quotation or Tender	Quotations	Quotations	Quotations	Tender	Quotations	Tender	Tender	Tender
Process	Best value considerations	Invite a minimum of 4 quotations	Invite a minimum of 4 quotations	Tendering procedures apply	Invite a minimum of 4 quotations	Tendering procedures apply	Tendering procedures apply	UK Public Contract Regulations apply
Advertising	Not normally advertised, Buyer discretion as to whether the opportunity is advertised	Buyer discretion as to where the opportunity is advertised	Openly advertised on Sell2Wales, with exceptions allowed by agreement of Procurement	Openly advertised on Sell2Wales	Four quotations shall be sought from appropriate suppliers using Sell2wales or suppliers registered on Constructionline	Openly advertised on Sell2Wales or alternatively six quotations shall be sought from Suppliers registered on Constructionline	Openly advertised on Sell2Wales	Adverts must be published in FTS