

WELWYN HATFIELD BOROUGH COUNCIL
CABINET – 1 MARCH 2022
REPORT OF THE HEAD OF LAW AND ADMINISTRATION.

REVIEW OF PROCUREMENT BOARDS

1 Executive Summary

- 1.1 The modernisation programme has provided the opportunity to look at more efficient ways of delivering services and arising from this, numerous changes have been made to the Constitution in recent years to enable this.
- 1.2 The review of the Constitution is an ongoing exercise, to reflect changes in the council's governance as required.
- 1.3 This report now provides recommendations on how the procurement process can be streamlined to meet this agenda.

2 Recommendation(s)

- 2.1 In view of the fact that Executive Members are able to now exercise delegated decisions through Executive Member Decision Notices, Cabinet agrees that the General Procurement Board can be disbanded for the reasons set out in the report and following Council approval of necessary changes to the Constitution, the approval process for procurements is undertaken in accordance with the table in section 3.12.
- 2.2 That Cabinet recommends to Council that the Constitution is amended to reflect any approved consequential changes in this report, including Executive Member and Officer delegations.
- 2.3 That Cabinet also recommends to Council that the Contract Procedures Rules are amended to reflect the approved changes, as outlined in this report.

3 Explanation

- 3.1 Cabinet on 4 September 2018 agreed that a General Procurement Board (GPB) should be set up.
- 3.2 It was intended that the GPB would oversee all future member procurement boards and have sight of all major procurements of the council.
- 3.3 This was to ensure that members had an overall scrutiny of major procurements and ensure that there is no delay to the procurement process. It was also intended that the process would be made more efficient by reducing the number of standalone member procurement boards and reduce any delays with the procurements.
- 3.4 Currently, the GPB oversees all procurements over £100,000 and decisions are taken by GPB about (1) whether to directly oversee the procurement (2) request that a separate member procurement board be established or (3) agree that there should be no member involvement due to the routine nature of the procurement.

- 3.5 As there were a lot of low value / non-public facing reports being considered by the GPB it was agreed by Council on 23 November 2020 that the threshold for non-public facing contracts be raised to £1 million.
- 3.6 Since the start of the new GPB arrangements, the effect of establishing this new board, in addition to establishing individual member procurement boards, has actually increased the timescales for procurements to be delivered by around three months. Therefore, the original objective of streamlining the process and making it more efficient, has not been achieved.
- 3.7 In addition to this, some research was conducted to establish the arrangements for procurement in other neighbouring authorities. Because public procurement processes are strictly prescribed in legislation, this limits the discretion that can actually be applied to the decision-making processes and the role of members actually playing a part in the procurement process. Further details of arrangements in other councils in Hertfordshire can be found in Appendix 1 which illustrates that member involvement in procurement is rare in other Hertfordshire authorities.
- 3.8 Finally, the way the council procures was also reviewed as part of the Supplier and Commercial review, one of the first reviews undertaken by the council under the modernisation programme. That review focussed on cost effective ways of managing spend and was subsequently expanded to include a review of the procurement function.
- 3.9 The changes agreed as part of that review have also necessitated amendments to the Contract Procedure Rules, as set out at paragraph 3.14 below.
- 3.10 The proposed new process has been considered by the Constitution Review Group (CRG) and CRG are supportive of the proposed changes.

Proposed New Process

- 3.11 To increase the scope and use of Executive Member Decision Notices (EMDN) and Officer Delegated Powers to enable procurement projects to be delivered quicker and more efficiently. The scope of increasing the use of EMDNs could also be widened to include overseeing significant projects outside of the procurement process as required by members.
- 3.12 The revised suggested thresholds, as set out in the following table, are considered for agreement to allow procurements to be more streamlined.

| Total Value of Contract | Authority to procure and to agree the tender evaluation criteria | Authority to award the contract |
|------------------------------------|---|--|
| Up to £100,000.00 | Officers (no change) | Officers (no change) |
| Above £100,000 up to £1,000,000.00 | Officer (Head of Service, in consultation with Executive Member) | Executive Member (by use of an Executive Member Decision Notice) |
| Over £1,000,000.00 | Executive Member (by use of an Executive Member Decision Notice) | Cabinet |

Contract Procedure Rules

- 3.13 To reflect the proposals in this report the Contract Procedure Rules have been amended and proposed new version is included in Appendix 3.
- 3.14 The Contract Procedure Rules have also been completely refreshed to reflect best practice, statutory changes and amendments arising from the proposals in this report. As the rules have been reordered and reformatted, it is not possible to present the old rules with tracked changes.
- 3.15 The summary of proposed changes to the Rules are included in Appendix 2.

Implications

4 Legal Implication(s)

- 4.1 The necessary changes to the Constitution will need to be made to reflect the agreed changes.
- 4.2 The proposed new arrangements are in compliance with the requirements of the Public Contracts Regulations 2015.

5 Financial Implication(s)

- 5.1 It is essential that the council have robust governance arrangements in place to ensure that value for money is obtained. There is a risk that delays to procurements may see price increases, particularly at times of high inflation. The proposed changes will not have a direct financial implication on resources but will help to ensure procurements are undertaken in a timely manner.
- 5.2 Section 6.7 of the Financial Regulations will be updated in accordance with the changes to limits set out in this report.

6 Risk Management Implications

- 6.1 There is always a risk of procurement challenge from any regulated procurement irrespective of the arrangements in place.
- 6.2 It is not considered that these proposed changes would increase the risk of such challenge.

7 Security and Terrorism Implication(s)

- 7.1 None directly from the report.

8 Procurement Implication(s)

- 8.1 The recommendations will allow the procurement process to be undertaken more efficiently and effectively.

9 Climate Change Implication(s)

- 9.1 The recommendations would mean less meetings and reports being generated which would have a positive environmental impact. The meetings that were retained would be virtual meetings therefore benefitting the climate change agenda.

10 Human Resources Implication(s)

- 10.1 None directly from this report.

11 Health and Wellbeing Implication(s)

11.1 None directly from this report.

12 Communication and Engagement Implication(s)

12.1 None directly from this report.

13 Link to Corporate Priorities

13.1 The subject of this report is linked to the Council's Corporate Priority of delivering Value for Money.

14 Equality and Diversity

14.1 An Equality Impact Assessment (EqIA) was not completed because this report does not propose changes to existing service-related policies or the development of new service-related policies.

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|----------------|---------------------|
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| Date | 10 November 2021 |

Background papers to be listed:

Appendix 1 – Other Council's approach to Members involvement in Procurement

Appendix 2 – Summary of proposed changes to the Contract Procedure Rules

Appendix 3 - Revised Contract Procedure Rules (separate document).

Appendix 1

Other Hertfordshire Councils:

Hertfordshire County Council

- 1) We do have a Procurement Board (it has been suspended since COVID, as the reps are on so many other decision making bodies related to the response at the moment). It does not have member representation, commonly Asst. Director or Head of Service level officers from each dept. I'd have to dig out the ToR but they will say something simple like a Board to review significant procurement activity within the council, ensuring best practice is disseminated and the council is compliant with new or changing legislation. One of the Cabinet members will have responsibility for procurement as part of their portfolio.
- 2) With regard to procurement processes, the member involvement varies according to what is being procured. For example, a large, strategically important contract such as highways maintenance will have a member panel that the contracting officer will brief regularly. Smaller contracts may just involve informal briefings for the executive member / opposition, most contracts will not have a member involvement. I should stress that members are briefed but do not commonly play a role in the procurement process. There is however a separate democratic process whereby procurements of above a certain value or affecting more than one member's area have to appear on our HCC forward plan, and there is an opportunity at the end of the process for any member to 'call-in' the award decision for review, although the options then are to award or not award, not to change to a different bidder. In practice, this doesn't happen as the most significant procurements have the regular briefings mentioned above and any potential disquiet is dealt with before the award stage.

Stevenage Borough Council

- 1) No procurement board, procurement is on the portfolio of a member of the cabinet (resources) and our work does bring us into contact with other portfolio holders on the large capital projects such as Regeneration or Housing development ad hoc.
- 2) Executive has to approve awards over £2m (unless a long term under £500k pa) and the relevant portfolio holder is consulted for the £1m- £2m awards therefore, in practice officers consult with portfolio holders to ensure smooth passage and often go to exec early for delegated approval to award to help with timing or because the nature of the project means Exec have approved the capital proposal or change in service.

East Herts District Council

- 1) No procurement board, no direct involvement between members and the procurement managers.
- 2) Larger projects will have a board often with members of the relevant town council as well for over sight of the project as a whole. I don't believe "larger" is defined. Chief exec has delegated authority to approve all procurement, but as a rule will ensure project boards where they exist are in agreement.

Hertsmere Borough Council

- 1) No Procurement board but the procurement managers attends operations and review committee quarterly to update on current projects, developments in best practice, action plan from strategy etc.
- 2) Currently members should be given the opportunity to be involved with projects over £150k and exec approval to award for projects over £100k. In practice members are involved in larger £1m + or interesting projects but not so much on insurance renewals. We are proposing to change this to involvement over £250k and exec approval to award change to SBC levels as the involvement level has not gone up with inflation and the approval level so low is not conducive to timely procurement processes.

Dacorum Borough Council

- 1) Do you have any type of Procurement Boards? If so are Members involved and what are the terms of reference for the Board?
We used to have a procurement board however this was disbanded a few years ago. This had no Member involvement but included our top 3 tiers of senior management. We used it to raise issues of non-compliance.
- 2) What involvement do Members have in the Procurement process?
Members have very little involvement in the procurement process however we do obtain approval from Members for all contract awards over £500k. This will require procurement to draft a report which includes reasons for the contract award and then the tender process followed.

Appendix 2 – Summary of changes to the Contract Procedure Rules

| Section | Changes | | | | | | | | | | | | | | | |
|---|--|--------------------------|----------------------------|-----------|---------------|-----------------|-----------------|----------------|----------|-----------------|----------------------|--------------------------|----------------------------|-----------------|--------------------------|------------------|
| 1 – Definitions | Schedule updated to reflect new defined terms | | | | | | | | | | | | | | | |
| 2 – Introduction | New section to provide overview and background to the new Contract Procedure Rules. | | | | | | | | | | | | | | | |
| 3 – Basic Principles | Slightly updated section to reflect current changes in best practise. | | | | | | | | | | | | | | | |
| 4 – Scope of the Contract Procedure Rules | Covered in the previous version, but more succinct. | | | | | | | | | | | | | | | |
| 5 – Conflict of Interests | New section setting out requirements of anyone involved in the procurement process, especially the requirement for any officer involved in a contract with a value of £1 million or greater to sign a specific conflict of interest form. | | | | | | | | | | | | | | | |
| 6 – Pre Commencement Requirements | <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 25%;">Value</th> <th style="width: 25%;">Old CPR's</th> <th style="width: 25%;">New CPR's</th> </tr> </thead> <tbody> <tr> <td>Up to £50,000</td> <td>Head of Service</td> <td>Head of Service</td> </tr> <tr> <td>Up to £100,000</td> <td>Director</td> <td>Head of Service</td> </tr> <tr> <td>£100,000 to £999,999</td> <td>Member Procurement Board</td> <td>Director / Chief Executive</td> </tr> <tr> <td>Over £1,000,000</td> <td>Member Procurement Board</td> <td>Executive Member</td> </tr> </tbody> </table> | Value | Old CPR's | New CPR's | Up to £50,000 | Head of Service | Head of Service | Up to £100,000 | Director | Head of Service | £100,000 to £999,999 | Member Procurement Board | Director / Chief Executive | Over £1,000,000 | Member Procurement Board | Executive Member |
| | Value | Old CPR's | New CPR's | | | | | | | | | | | | | |
| | Up to £50,000 | Head of Service | Head of Service | | | | | | | | | | | | | |
| | Up to £100,000 | Director | Head of Service | | | | | | | | | | | | | |
| | £100,000 to £999,999 | Member Procurement Board | Director / Chief Executive | | | | | | | | | | | | | |
| Over £1,000,000 | Member Procurement Board | Executive Member | | | | | | | | | | | | | | |
| The pre commencement requirements is the authority to commence the contract and also agree the tender evaluation criteria | | | | | | | | | | | | | | | | |
| 7 – Pre Tender Market Research and Engagement | New section that covers the process for engaging with the market place before formal commencement of the procurement. | | | | | | | | | | | | | | | |
| 8 – Pre-Procurement | Covered in various parts in the old CPR's. Now all in one section | | | | | | | | | | | | | | | |
| 9 – Choice of Procedure | New section setting out how to select a procedure and the process for using a framework. | | | | | | | | | | | | | | | |
| 10 – Collaborative Procurement | New section formalising arrangements for collaborating with other public sector bodies. Before this was included as a dispensation, but it is considered to be a normal way of working. | | | | | | | | | | | | | | | |
| 11 – Specifications | This section has been expanded to include more guidance on compiling specifications | | | | | | | | | | | | | | | |
| 12 – Electronic Procurement and Advertising | This section has been expanded to include more guidance on electronic tendering | | | | | | | | | | | | | | | |
| 13 – Management of the Procurement Process | New section to confirm the new position where procurement manages all competitive procurements. | | | | | | | | | | | | | | | |
| 14 – Estimating the value of the procurement | Some minor changing to the wording, but no substantive change. | | | | | | | | | | | | | | | |
| 15 – Process to be followed | No changes to the detail, but new specific section | | | | | | | | | | | | | | | |
| 16 – Evaluation Criteria | New section to reflect recently agreed policies, including: <ul style="list-style-type: none"> • A maximum of 95% price on any evaluation • All larger contracts to have at least 10% of the evaluation criteria dedicated to Social Values • At least 5% of the evaluation criteria dedicated to climate change initiatives | | | | | | | | | | | | | | | |
| 17 – Off Payroll Working and Intermediaries legislation | New section detailing the process for ascertaining if tax and NI should be deducted at source | | | | | | | | | | | | | | | |
| 18 – Form of Contract and Security | No new information, but separate section. | | | | | | | | | | | | | | | |
| 19 – Submission of tender | Details the process tenderers need to follow in returning tenders | | | | | | | | | | | | | | | |
| 20 – Tender clarification | New section explaining how to clarify tenders and what information can be accepted. | | | | | | | | | | | | | | | |

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| 21 – Evaluation of Tenders | New section including the requirement that training is mandatory for evaluators and the process for declaring conflicts of interest. |
| 22 – Authority to Award | New section in accordance with the proposals being considered regarding the future of procurement boards. |
| 23 – Letting of Contracts | No changes |
| 24 – Notification to tenderers | Small change to reflect the end of the EU procurement directives |
| 25 – Variation to contracts | Updated to reflect changes being considered regarding the future of procurement boards. |
| 26 – Extension of Contracts | Updated to reflect changes being considered regarding the future of procurement boards. |
| 27 – Assignment and Novation of Contracts | No changes |
| 28 – Nominated Sub Contractors and Suppliers | No changes |
| 29 – Outside Consultants | No changes |
| 30 – Bribery and Fraud | Updated by the S151 officer to reflect other current policies |
| 31 – Alternative Procedures in Prescribed Circumstances | Some procedures removed as covered elsewhere in the Rules (e.g. the use of framework contracts is no longer an alternative procedure, but a means of procurement. Also an addition which gives the Chief Executive the authority to enter into contracts up to the value of £50,000.00 without prior competition |