

Society, Environment and Council Development

Executive Advisory Board Report

Subject: Guildford Borough Council Procurement

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Purpose of note

The purpose of this report is to advise the Executive Advisory Board (EAB) of the procurement methods available to the Council and the current route to market trends used by officers. The report will also inform the Board of the proposals for improvements to the procurement function at the Council and the future opportunities arising from the changes.

Summary

In February 2017 the Director of Corporate Services, Legal Services Manager, Procurement Officer and Procurement Consultant gave a presentation to the Society EAB summarising the recommendations contained in their report, developments in the legislation, training issues and the long-term goals of the corporate procurement advisory board. The Society EAB requested an update on the cost savings to be made by procurement in 6-9 months' time. The officers who presented in February 2017 have since ceased to be employed by the Council. There is currently no Procurement Officer in post and as such the Principal Solicitor overseeing the procurement function has prepared this report as an interim measure whilst recruitment to a newly created Procurement Manager post is carried out.

This report will explore the tender procedures available under the Regulations and look at the Council's current approach to procurement and areas of opportunity.

A further report will be brought to the EAB to deal with cost savings from procurement in due course.

Introduction

The Council is legally obliged to ensure that it achieves best value and continuous improvement when exercising its functions including when it is purchasing goods, services and works. It carries a fiduciary duty to local tax payers to spend money lawfully and efficiently and is obliged by law to adopt standing orders which regulate its approach to contracting. Further, the Council is obliged by the 2015 Regulations to access the market in legally compliant ways; to meet various transparency obligations in relation to expenditure; and has a range of obligations to meet under the Data Protection legislation in respect of data controlling and processing.

The Council's duties are threefold:

- a. Compliance with the 2015 Regulations when procuring contracts valued above a threshold set by Official Journal of the European Union (OJEU);
- b. Producing Procurement Procedure Rules (PPRs) which comply with the 2015 Regulations and other legal requirements; and
- c. Ensuring that the PPRs are followed by procuring officers.

The latest rules that the Council need to comply with, the Public Contract Regulations 2015 ('2015 Regulations'), came into force in February 2015. The Regulations modified the previous Regulations and codified the case law in this area particularly in relation to contract variations and exemptions. The Regulations create a

framework by which public bodies must procure their goods, works and service contracts.

Procurement procedures (route to market)

The following paragraphs set out the routes to market that can be used for new tenders for goods, works and services.

For contracts valued above the OJEU threshold one of the following tendering procedures must be followed:

Open procedure – a one stage process, the Council will proceed directly to Invitation to Tender through open advertisement.

Restricted procedure – a two stage process, which includes selection stage where suppliers are shortlisted against specific relevant criteria followed by an invitation to tender being sent to the shortlisted suppliers (minimum of 5).

Competitive Procedure with Negotiation – where the Council requires design or innovative solutions which cannot be readily identified through market engagement, or dialogue is required to determine the final legal and financial make up, but that minimum requirements and objectives can be identified prior to procurement. The process normally involves shortlisting of bidders (minimum of 3) who bid on the minimum requirements and then final negotiations are held on certain elements.

Competitive Dialogue – this procedure is used where the requirement is very complex and where specifications or outcomes of a solution have not yet been clearly defined. This will usually involve an initial shortlisting (minimum of 3) followed by an Invitation to Participate in Dialogue whereby initial proposals are made proceeding to various stages of dialogue to determine the final solution.

Innovation Partnership – This procedure is very specific in nature as it targets problem-solving projects and where the tools for achieving goals or outcomes may not yet exist. The procedure involves a competitive exercise to identify a partner who can develop the solution and include the ability to award a contract to supply that solution without further need for competition.

Negotiated Procedure without Prior Publication – in specific cases laid down by Regulation 32 of the 2015 Regulations the Council may award public contracts by a negotiated procedure without a prior publication (direct award).

Light Touch Regime - this covers Health, Education, Social Care, catering and Legal contracts. As with all procurements, the process undertaken to award the contract must be fair, open and provide for equal treatment, the threshold for an OJEU publication is higher and the Council may design its own tender process.

For contracts below OJEU threshold a less formal tender or quote procedure can be followed. This can either be an Invitation to Tender (ITT) or a Request for Quote (RFQ) process following the procedures detailed in the PPRs.

Framework agreements can also be used in certain circumstances (examples are ESPO, CCS, G-Cloud, Scape). A framework agreement is a contract between the party who has set up the framework and a supplier or group of suppliers. The framework will have been through an OJEU process and provided the Council is named in the OJEU advertisement and the call off process detailed in the framework agreement is followed, then the Council is able to call off a contract from the framework agreement without the need to undertake an OJEU tender. A mini-competition exercise may be required or the Council may be able to directly award to a supplier on the framework. The Council is usually required to pay a % fee to access

the framework and to enter into an access agreement with the party who set up the framework.

In all cases a detailed specification of the goods, services or works being procured will be required prior to the tender going out to the market. An OJEU compliant tender will usually require 6-9 months to complete including mobilisation. However, for particular complicated or high value tenders the service should allow 18 months and include time for soft market testing, the publication of a Prior Information Notice (PIN) and market engagement as well as engagement with service-users regarding the design of the specification. For contracts where the Council is purchasing specialist materials a longer mobilisation period will be required. Ideally a procurement timeline will be drawn up at the outset of the project where issues such as this can be flagged.

Current Procurement trends at Guildford Borough Council and future opportunities

There is currently a devolved model of procurement at the Council. Procuring managers in individual services undertake all of the procurement activity. The Procurement Officer's role, acting with the Procurement Assistant has been one of advice and assistance which procuring officers utilise at will.

The procurement function currently sits within Legal Services. It is a relatively new resource, with the first procurement officer joining the Council in 2015. In 2017/18 both the Procurement Officer and Procurement Assistant left the Council's employment. In order to strengthen this function a Procurement Manager is being recruited. This person will lead on improvements to the service and will provide commercial input and route to market advice. This role will be supported by Legal Services colleagues who will ensure compliance with the PCRs and PPRs as well as provide contract and commercial legal advice.

In future, procuring managers will seek guidance from the internal procurement team prior to seeking external advice and instructions to external consultants in relation to procurement advice and instructions will be issued via the procurement team.

The Procurement Manager will be tasked early on to provide comprehensive training across the services on procurement issues and to work closely with procuring managers to improve procurement outcomes, ensure effective contract management and demonstrate how procurement can assist with service planning and delivering cost savings.

Legal Services are responsible for updating the PPRs. These will be re-written to ensure they are fully up to date with the law and the current requirements of the Council. A first draft has been produced by the Principal Solicitor.

The Council has also established a Corporate Procurement Advisory Panel (CPAP) to provide strategic advice on procurement activity across the Council. The CPAP's role will be enhanced to provide a gateway function, approving the route to market and contract award for contracts over a certain level. CPAP could also approve exceptions/waivers as well as oversee contract management issues.

The CPAP will be chaired by the Director of Finance and include senior representatives from Procurement, Legal and Finance. Procuring managers would seek approval by the Panel following which the next stage of authority would be sought.

Conclusion

The Council undertakes significant procurement activity for goods and services. The changes put in place will improve our performance in this area by strengthening the procurement function, ensuring procuring managers have the necessary knowledge and skills and ensuring appropriate strategic control via the CPAP.