
PROCUREMENT PLAN UPDATE

Responsible Cabinet Member – Councillor Stephen Harker
Efficiency and Resources Portfolio

Responsible Officer – Paul Wildsmith
Director of Neighbourhood Services and Resources

SUMMARY REPORT

Purpose of the Report

1. To present any update to the Annual Procurement Plan to Cabinet for approval. Cabinet are asked to consider and approve the assessment of contracts that are considered to be strategic or non-strategic.
2. To update Cabinet on the outcomes of procurement(s) previously designated as Strategic.
3. To update Cabinet about the decisions taken by the Procurement Board to waive the Contract Procedure Rules.
4. To provide a general update to members on the function and activity of the Corporate Procurement Unit.

Summary

Strategic Contracts

5. Under the Contract Procedure Rules one of the responsibilities of Cabinet is to agree the Procurement Plan. This involves consideration of whether contracts are classified as strategic. For those contracts that are strategic details of the proposed route that contracts will take will be set out and Cabinet will receive further reports on progress.
6. A set of criteria has been developed to assist in determining whether a contract should be deemed strategic or non-strategic. The criteria are based on value and significance with each category being scored between 1 (low significance) and 5 (high significance). Any contract with a value in excess of £5,000,000 is automatically deemed strategic. If the value of the contract falls below £5,000,000 but scores 15 or more on significance then that is also considered strategic. However Members and Officers may decide to recommend other than what the score suggests.

7. This report covers new contracts and the contracts that officers are aware will terminate in the next 12 months. They have been assessed against an agreed set of criteria to determine whether they are strategic or non-strategic (see **Appendix 1 and 2**).

Update on Strategic Procurement

8. An update on procurement exercises previously designated as strategic is set out in the main report.

Waiver Decisions

9. Under the Contract Procedure Rules, if the contracted level of spend over the term of the contract is over £100,000, ordinarily a tender exercise must be used (or a pre tendered framework), however, there will be occasions when there are particular reasons why this is not possible.
10. The Contract Procedure Rules permit the Procurement Board to waive this rule in appropriate cases. This can only be done when the circumstances justify a decision to waive the normal requirements of the Contract Procedure Rules. In addition no waiver can be granted if the level of aggregated planned contracted spend is above the European Union threshold for the particular procurement category.
11. This report deals with the waiver decisions taken by the Procurement Board at **Appendix 3**.

General Update

12. During the tendering phase we now require tenderers to sign up to our contract terms at the point when tenders are submitted. This ensures that our contract terms are accepted before selection and allows the Council to be able to quickly complete the contract following the award stage and to ensure fully signed off contracts will be in place from the commencement of the contract
13. Procurement Activity during the last completed financial year of 2015/16 generated measured contract savings against budget/expected costs of over £1.52m a slight increase from the previous year of £1.43m.

Recommendation

14. It is recommended that :-
 - (a) Members approve the assessment of strategic and non-strategic contracts as presented in Appendix 1 and that:
 - (i) further reports/ updates on the procurement process for those contracts designated as strategic (including decisions made by the Procurement Board) be brought to Cabinet.

- (ii) the contract award decisions for the contracts designated as non-strategic be delegated to the appropriate Director as listed in the plan at Appendix 1.
 - (iii) the contract award decisions for the contracts designated as strategic, as listed in the plan at Appendix 1, be delegated to the Procurement Board to approve and will be reported back to Cabinet.
- (b) that Members note the contents of this report in respect of the update of strategic procurements, Procurement Board waiver decisions and the general update.

Reasons

15. In respect of strategic/non-strategic contracts, the recommendations are supported by the following reasons: -
- (a) The Contract Procedure Rules require Cabinet to approve the designation of contracts as strategic and non-strategic and:
 - (b) Contracts designated strategic are of high value and high significance in respect of the impact on residents, Health & Safety and public safety.
 - (c) The contracts designated non-strategic are of a lower value and lower significance in respect of the impact on residents and public safety.
16. In respect of Procurement Board waiver decisions, the recommendations are supported by the following reasons: -
- (a) In order to comply with the Contract Procedure Rules.
 - (b) To provide Cabinet with information about the decisions made by the Procurement Board.
 - (c) To supplement the reports that are taken to Cabinet about proposed spend over £100,000, that are set out in the Annual Procurement Plan and the in year update to that report.

Paul Wildsmith
Director of Neighbourhood Services and Resources

Background Papers

No background papers were used in the preparation of this report.

Sarah Hutchinson: Extension 5489

S17 Crime and Disorder	This decision will not have an impact on Crime and Disorder
Health and Well Being	This decision will not have an impact on Health and Wellbeing
Carbon Impact	This decision will not have a direct impact on the Council's carbon footprint.
Diversity	This decision will not have an impact on Diversity
Wards Affected	This decision will not affect any wards
Groups Affected	This decision will not have an impact on any groups.
Budget and Policy Framework	This report does not recommend changes to the Budget and Policy Framework
Key Decision	Yes
Urgent Decision	No
One Darlington: Perfectly Placed	This decision will not have an impact on the objectives of the Sustainable Community Strategy
Efficiency	The production of the update to the Procurement Plan is designed to save Member and Officer time for requesting delegated powers to make contract award decisions.

MAIN REPORT

Information and Analysis

Strategic Contracts

17. Any contract award decision with a value below £100,000 is delegated to officers. Under the Contract Procedure Rules an annual Procurement Plan is produced listing details of all existing and new contracts that are £100,000 or above and which require a tender process.
18. This then allows Cabinet to be advised of the contracts of £100,000 and over and to decide which of those contracts are strategic. Contracts that are considered strategic will be delegated to the Procurement Board for approval. The decisions made by Procurement Board will subsequently be reported back to Cabinet in the next Annual Procurement paper (which is brought bi-annually). The balance of contracts of £100,000 and above which are not determined to be strategic will be dealt with by officers under delegation.
19. The Contract Procedure Rules state that if a contract has not been included on the Annual Procurement Plan a separate report must be taken to Cabinet to determine if it is deemed strategic or non-strategic.
20. For those contracts designated strategic the final contract award decision will be approved by the Procurement Board will be reported to Cabinet.

Assessment of contracts

21. Details of which contracts are designated strategic and which are designated non-strategic are detailed in Appendix 1. The contracts have been assessed against the criteria agreed by Cabinet, the criteria are provided at Appendix 2 for information. However Members and Officers may decide to recommend other than what the score suggests. Anything else would be considered non-strategic.
22. Based on the criteria there are two contracts that are designated strategic in the update to the Annual Plan;
 - (a) Contractor's Framework – dynamic purchasing framework to be set up in accordance with the Contract Procedure Rules and established as an OJEU compliant framework. It is anticipated that a wide framework will enable SMEs to participate in delivering minor works being assessed and accredited to join the dynamic framework with established contract terms which will allow calls from the framework to be made efficiently based on best value.
 - (b) New Build of Housing at Allington Way- for the construction of 62 housing units for Council use. The works are to be delivered using in house resources with a limited amount of the works to be contracted through competitive tender/ quotes in accordance with the Contract Procedure Rules.

Update on Procurements previously designated as Strategic

23. The contracts below were previously designated strategic and an update is provided:
 - (a) **Highways Resurfacing Framework** – this was a regional contract with a total contract value of £96m. The contract was awarded in late 2015. The procurement was conducted under NEPO and led by Darlington. Work done by other member authorities indicate a saving of circa 8% and the framework has been well received by other North East Councils and has attracted positive media reporting from industry specialists.
 - (b) **Civic Theatre works contract** – the contract has been finalised and works are underway by the contractor Willmott Dixon Public Works Limited.
 - (c) **Appointment of a new developer Feethams site**. This is the tender for a developer at the Feethams site opposite the new cinema and leisure site. The tender period has closed and submission documents are under review.
 - (d) **Home Care and Support 2017** (Domiciliary Care) –this is a four year contract with a total contract value of over £28m. The tender pack and contract documents are under preparation alongside supplier and service user engagement. A further report will be brought to Cabinet in due course.

Procurement Board waiver decisions

24. Under the Contract Procedure Rules, the Procurement Board is the main officer forum for strategic procurement decisions. Procurement Board has the power to waive the Contract Procedure Rules in specific circumstances and is required to report waiver decisions that have been made to Cabinet.
25. The Contract Procedure Rules can only be waived as an exception. The Contract Procedure Rules require the Procurement Board when considering requests for waivers to take into account the following:
 - (a) The contract value and the length of the proposed contract.
 - (b) What steps have been taken to satisfy that the best value duty has been complied with (for instance quotations, market testing).
 - (c) The extent to which there are good reasons why it is not possible to undergo a competitive process (for instance, pressing need or urgency, where further work is required before going to market, where only a short contract extension is needed, or the lack of an available market).
 - (d) Whether the new contract is intended to be a stop gap prior to undergoing a competitive process.
 - (e) The availability of compliant alternatives to direct awards, such as frameworks.
 - (f) Any other reason that is being given by the commissioning area.
26. Under the Contract Procedure Rules where the level of spend over the term of the contract is £100,000 or over, a tender process will ordinarily be followed. There will however, be occasions when there are particular reasons why this is not possible and a direct award needs to be made.
27. This report details the circumstances and the reasons why the contract procedure rules have been waived by Procurement Board at **Appendix 3**, during the period 8 March 2016 – 12 September 2016.

General Update

28. During the tendering phase we require tenderers to sign up to the Councils stated contract terms at the point when tenders are submitted. This ensures that our contract terms are accepted before selection and allows the Council to be able to quickly complete the contract following the award stage and to ensure fully signed off contracts will be in place from the commencement of the contract
29. There are a number of legislative changes on the horizon which are relevant to procurement in particular of social care functions. In particular changes to the National Minimum Wage and changes to data management and training requirements under the Data Protection Directive. To ensure such matters can be

dealt with in a competitive process tendering processes over £100K will all consider the need to include allowance of these expected legal changes as appropriate.

30. The Corporate Procurement Unit keep a simple log of the outcomes of formal procurement activity in tenders over £100K to learn from previous activity and monitor outcomes. Tender processes concluded with the support and oversight of the Procurement Unit/ Legal Services on contracting activity during the last completed financial year of 2015/16 generated economies against budgeted/expected spend of over £1.52m an increase from £1.43m in the previous year. See figure 1.

Outcome of Consultation

31. No consultation was carried out in preparation of this report.

Figure 1 paragraph 30
 Procurement efficiencies register 2015/16 updated 09/09/2016

Financial Year Achieved	Total 2014/2015	Total 2015/2016	Total 2016/2017	Total 2017/2018	Total 2018/2019	Total 2019/2020	Total 2020/2021	Total Saving over all years
2014/2015	£ 286,830.37	£ 381,500.00	£ 550,000.00	£ 123,000.00	£ 123,000.00	£ 9,000.00	£ 9,000.00	£ 1,482,330.37
2015/2016		£ 435,848.43	£ 397,726.86	£ 338,324.61	£ 222,884.00	£ 129,943.00	£ -	£ 1,524,726.90
Total	£ 286,830.37	£ 817,348.43	£ 1,002,411.82	£ 461,324.61	£ 345,884.00	£ 138,943.00	£ 9,000.00	£ 3,061,742.23