

**CABINET
10 NOVEMBER 2020**

ANNUAL PROCUREMENT PLAN - UPDATE

**Responsible Cabinet Member – Councillor Charles Johnson
Resources Portfolio**

Responsible Director – Paul Wildsmith, Managing Director

SUMMARY REPORT

Purpose of the Report

1. The Annual Procurement Plan was considered by Cabinet in July this year. Since then additional contracting intentions have developed and these are included in this update. Cabinet are asked to consider and approve the assessment of contracts that are considered to be strategic.
2. To update Cabinet about the decisions taken by the Procurement Board to waive the Contract Procedure Rules.

Summary

Strategic Contracts

3. 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.
4. Criteria is used 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. See **Appendix 2**. However Members and Officers may decide to recommend other than what the score suggests.
5. This report covers new contracts and the contracts that officers are aware will terminate in the next 12 months and need to be tendered through open competition. They have been assessed against an agreed set of criteria to determine whether they are strategic or non-strategic.

Waivers

6. 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.
7. The Contract Procedure Rules permit the Procurement Board to waive the rules 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.
8. This report deals with the decisions taken by the Procurement Board for period July to October 2020 at **Appendix 3**.

Recommendation

9. 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 Procurement Board waiver decisions.

Reasons

10. 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.

11. 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
Managing Director

Background Papers

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

Patrick Saunders: 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 and Climate Change	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.
Impact on Looked After Children and Care Leavers	This report has no direct impact on Looked After Children or Care Leavers

MAIN REPORT

Information and Analysis

Strategic Contracts

12. 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.
13. This then allows Cabinet to be advised of the contracts of £100,000 and over and to decide which of those contracts are strategic.
14. For those contracts designated strategic the final contract award decision will be approved by the Procurement Board and will be reported to Cabinet.

Assessment of contracts

15. 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.
16. Based on the criteria there are three contracts that are designated strategic in the update to the Annual Plan;
 - (a) **Darlington Station Improvements: Station Gateway Project. Design and Build of a multi-storey car park, incorporating the shell of an additional station building, transport interchange and public realm improvements immediately to the east of Darlington Banktop Station** – the contract is now incorporating the additional station building and transport interchange. The project will be procured via the SCAPE Framework. Further approvals will be brought to Cabinet.
 - (b) **The Tees Valley Energy Recovery Facility Procurement** – the contract is a collaborative Competitive Dialogue procurement process, led by HBC on behalf of the TV Authorities, DCC and NCC.
 - (c) **Flexible Free Entitlement (FFE) and early education** - contracts awarded to all providers on tariff rate for 15/30 hours early years entitlement.

Procurement Board waiver decisions

17. Under the Contract Procedure Rules, the Procurement Board may waive the Contract Procedure Rules in specific circumstances and is required to report waiver decisions that have been made to Cabinet.
18. 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.
19. 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 to July to October 2020.

Outcome of Consultation

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