

Review: Procurement within Hillingdon - First Witness Session

Committee name	Finance and Corporate Services Select Committee
Officer reporting	Matthew Kelly, Procurement
Papers with report	Nil
Ward	All

HEADLINES

At its meeting on Tuesday 6th September 2022, the Select Committee agreed to undertake a review of Procurement within Hillingdon. It was suggested that the review be structured around three themed information gathering sessions, the first of which relates to the legal and regulatory context which provides the structure and rules against which the Hillingdon Procurement team operate.

This report and witness session will provide further context and understanding of the external framework and how it impacts on Hillingdon procurement processes and decision making. Whilst much of it is based on solid commercial thinking and is designed to ensure the highest stands of probity in public spending, it offers a level of restriction that is not experienced in the private sector.

The session will also be attended by Rebecca Rees, Partner, Head of Public Procurement and leading national expert in public procurement at law firm, Trowers. Hillingdon engage with Trowers on multiple projects for specialist advice and support when capacity and / or expertise of Hillingdon Legal Team does not allow that to be provided internally.

RECOMMENDATIONS

That the Committee:

- 1. Note and comment on information presented.**

SUPPORTING INFORMATION

At the previous meeting, the Select Committee suggested that the review's Terms of Reference be amended to include reference to how Procurement was supporting local businesses and providing social value. Amended Terms are therefore set out below:

Terms of Reference

1. To understand and review the legal and regulatory context that Hillingdon operates within including:
 - a. Legal context including The Procurement Bill (as introduced in May 2022 and progressing through Parliament)
 - b. The Council's own Standing Orders
 - c. National Procurement Policy Statement
2. To understand and review how the Council delivers Value for Money through the Procurement process including:
 - a. Understanding the need and writing specifications (including Net Carbon Zero and other Council priorities)
 - b. Procurement strategies
 - c. Understanding the market and engagement with providers (including Local Business)
 - d. Drafting tender document
 - e. Evaluation and awarding contracts
 - f. Social Value in the Procurement process
3. To understand and review how Officers manage contracts post award including:
 - a. Contract Management processes within the Council
 - b. How the council monitor and manage contracts to ensure ongoing value for money (including sub-contracting)
 - c. Managing contracts in a high inflation environment
 - d. Relationships with our suppliers
 - e. Decisions on extending or retendering contracts

This witness session relates specifically to Theme 1, and will be reviewed against the following three elements:

Legal Context

The post-Brexit landscape presented an opportunity to move away the EU public procurement regime. In the Queen's Speech in May 2022, it was announced that the UK public procurement regime would be reformed following the UK's exit from the European Union. The Bill will give effect to some, but not all, of the policies that were set out in the Government's Green Paper – Transforming Public Procurement.

The stated intention of the bill is to *“reform the UK's public procurement regime, making it quicker, simpler, more transparent and better able to meet the UK's needs while remaining compliant with our international obligations. It will introduce a new regime that is based on value for money,*

competition and objective criteria in decision-making. It will create a simpler and more flexible, commercial system that better meets our country's needs. And it will more effectively open up public procurement to new entrants such as small businesses and social enterprises so that they can compete for and win more public contracts. It will strengthen the approach to excluding suppliers where there is clear evidence of their involvement in Modern Slavery practices, and running throughout each part of the Bill is the theme of transparency.”

The bill continues to transition through Parliament, although there is no final date as to when it will become law.

National Procurement Policy Statement

In June 2021, Government published its National Procurement Policy Statement. The NPPS asks that all contracting authorities have due regard to a set of national strategic priorities when exercising their functions relating to procurement. In short, the Government wants to ensure that it uses the leverage of public spending to develop and deliver wider benefits from the public purse. The procurement bill provides for the publication of the NPPS so whilst the current NPPS remains relevant for the time being it is unclear what status it will retain when the Bill goes live. The current NPPS priorities relate to:

Social Value - The NPPS is clear that achieving value for money (VFM) entails securing the best mix of quality and effectiveness to deliver requirements for the least outlay. That being said, the message is clear that price isn't everything, and contracting authorities are reminded that they are not required to select the lowest priced tender, but that they should take a broader view of VFM (including the incorporation of social value outcomes). The NPPS requires Hillingdon to consider the following in the course of its procurements:

- Creating new businesses, new jobs and new skills in the UK
- Tackling climate change and reducing waste
- Improving supplier diversity, innovation and resilience

Commercial & Procurement Delivery - Contracting authorities are required to consider whether they have the right policies and processes in place to manage the key stages of commercial delivery so as to secure VFM and to ensure that they embed continuous improvement into their procurement practice. Some of the key stages highlighted in the NPPS include:

- Market health and capability assessments.
- Delivery model assessments.
- Pilots (particularly where a service is to be outsourced for the first time)

Skills and Capability for Procurement -

The NPPS also states that “all contracting authorities should consider their organisational

capability and capacity, with regard to the procurement skills and resources required to deliver value for money”. They should be “confident they have sufficient capacity and capability to ensure tax payers’ money is spent effectively and efficiently.” Where gaps are identified then authorities should “plan now how to fill these”, whether that be via internal appointments or external collaboration/purchasing. In addition, authorities should consider benchmarking themselves annually against relevant commercial and procurement operating standards and other comparable organisations.

Councils Standing Orders

Procurement and Contract Standing Orders (Chapter 18 of the Constitution: Rules on Procurement) sets out the governance arrangement for procurement within the Council. Amongst other things they set out the obligations with regards to:

- Ethics & Probity – Maintaining the highest standards of honesty, integrity, impartiality and objectivity in our Procurement processes
- Member Authority and Planning Ahead – The requirement to provide visibility and oversight of future decisions to relevant Cabinet Members
- Tender Thresholds – The levels at which tender processes need to undertaken and number of bids that should be invited
- Tender receipt and opening – The process for receiving bids to ensure the highest standards of probity including management of late bids
- Tender approval – The process and thresholds for seeking approval of bids
- Execution of Contracts – Thresholds and delegations of who can sign contracts on behalf of the Council
- Extensions and Variations – The process and thresholds for extending and varying existing contracts

It is worth noting that whilst Standing Orders include a duty for ‘every Officer of the Council’ to demonstrate value for money there is no specific reference to what that might mean in the context of Social Value and / or Environmental Commitments. The committee may be further minded to explore this as a line of enquiry.

PERFORMANCE DATA

N/A

RESIDENT BENEFIT

The legal and regulatory structure that surrounds the procurement process should provide assurance to Residents that Public Money is being spent with due regard for Value for Money and the goods, works and services being procured are fit for the intended purpose.

It provides a good level of transparency and oversight in decision making ensuring that there is

an appropriate level of accountability through Officers and Members.

FINANCIAL IMPLICATIONS

The adherence to our obligations ensures that Procurement supports the Council in delivering against its financial objectives set out in the Medium-Term Financial Forecast.

LEGAL IMPLICATIONS

There are no legal implications arising from this report.

BACKGROUND PAPERS

[Trowers & Hamlins; The Procurement Bill – Essential Guide](#)

APPENDICES

Nil.