

REPORT TO:	CABINET November 16th 2022
SUBJECT:	Improving Procurement Decision Making and Governance
LEAD OFFICER:	SCOTT FUNNELL HEAD OF STRATEGIC PROCUREMENT AND GOVERNANCE
CABINET MEMBER:	COUNCILLOR CUMMINGS CABINET MEMBER FOR FINANCE
WARDS:	ALL

SUMMARY OF REPORT:

To set out the recommendations and actions to be taken to simplify, accelerate and improve procurement decision making for contract spend. An Annual Procurement Plan (APP) will enable earlier engagement with the Executive Mayor and Cabinet Members, improving the influence for the strategic approach to commissioning and procurement and streamlining the decision-making process.

The aim of the APP is to provide a forward-looking view of the Council's planned procurement activity to support better financial planning and uphold compliance in the most efficient way which will make the Council easier to do business with and be more attractive to suppliers and SME's.

FINANCIAL IMPACT:

There is no direct financial impact. However, good governance and advanced planning of a procurement pipeline of expiring contracts mitigates the risks associated with being out of contract and supports better resource allocation.

KEY DECISION REFERENCE NO.: Not a key decision

Approval of these recommendations would not constitute a key decision.

The Executive Mayor in Cabinet is recommended to make the decisions set out below:

RECOMMENDATIONS:

1. To approve the introduction of an Annual Procurement Plan (APP) to the Executive Mayor in Cabinet that includes proposed procurement and contract extension and the delegated decision makers for the forthcoming year. The updates and progress on the APP to be reported to the Mayor in Cabinet on a quarterly basis.

2. To approve the first Annual Procurement Plan for the remainder of the financial year and for the period November 2022 to March 2023 as set out in Appendix 1.
3. To approve the delegated decisions in the APP to those Lead Members or Officers as stated in Appendix 1 that includes the contract/procurement strategy and award decisions, the duration of the contract and contract value.
4. The delegated decisions shall only be exercised following recommendations from the Contracts & Commissioning Board, which require approval from both the Lead Cabinet Member and the Cabinet Member for Finance.
5. To allow for minor changes to proceed whilst retaining the agreed delegated so long as none of the following thresholds for changes are exceeded:
 - i. Contract value exceeds that proposed in the APP/Quarterly Update Report, by the lesser of £500K or 25%, or the new aggregate value exceeds £1m and it becomes a key decision
 - ii. Substantial / material changes to procurement from that defined in the APP/Quarterly Update Report e.g. material risks are identified

(Should either of those thresholds be exceeded, the delegation cannot be exercised, and the decision shall be recommended to the Executive Mayor, unless a further delegation is approved. Where a delegated decision is a Key Decision to Officers, it must be made in consultation with the Lead Cabinet Member.)
6. To approve a re-drafting of the Tender and Contract Regulations to reflect the proposed changes (and clarifications), to be reported to the Constitution Working Group with a view to seeking recommendations from the General Purposes Committee and/ or the Executive Mayor in Cabinet for onward recommendations to Full Council.

DETAIL OF YOUR REPORT

1. BACKGROUND

- 1.1 The Council has a large pipeline of procurement activity, and to date has been reactive in managing this. This has resulted in some procurement processes starting later than desired, and without strategic planning of a pipeline of activity. By comparison with other Councils, Croydon is yet to publish annual procurement plans and undertake forward longer-term planning of procurements.
- 1.2 Managing the Council's contracts better was a Mayoral manifesto commitment and the changes set out in this report will help to deliver that pledge.

- 1.3 As noted by the Improvement and Assurance Panel in their report of the 30th April 2021, Council processes are complex, administratively burdensome and subject to poor oversight and governance:

“The Improvement and Assurance Panel noted that the Council’s arrangements for ensuring that contracts deliver value is poor. There has been a lack of a strategic approach to securing contracts, confusion in commissioning intent and a lack of a systematic approach to monitoring performance.

The Council has recognised this and has produced a Contracts Improvement Plan which is currently going through the process of adoption. While that happens, an interim plan is ensuring that its principles are applied. This plan will put in place sound governance arrangements, an annual set of commissioning intentions that will align with budgets and effective performance management.”

- 1.4 The Contracts Improvement Plan was overseen by a working group which included the Lead Member for Finance and Resources, the Assistant Chief Executive, an LGA Procurement specialist and was supported by the Improvement and Assurance Panel.
- 1.5 Following a re-structure to the Council’s Commissioning and Procurement Directorate, a central Strategic Procurement and Governance Service was formed, and the Contracts Improvement Plan was expanded into a Procurement Improvement Plan.
- 1.6 The delivery of the Procurement Improvement Plan is now overseen by the Finance, Risk and Assurance Internal Control Board.
- 1.7 Through the development of the Procurement Improvement Plan, procurement governance processes specifically were recognised as cumbersome, with multiple and duplicate approvals at various stages. Elected members were often engaged late in the process with little scope to influence the strategy or intended outcomes, the process and approach to be taken or social value opportunities.
- 1.8 An Annual Procurement Plan will improve transparency with much earlier engagement of Councillors to be able to influence at the strategy stage of procurements.
- 1.9 Thorough involvement from members at the procurement strategy stage will assure them that a compliant tender process that produces a winning bidder will meet the strategic needs of the Council.
- 1.10 With this first step in place, further political approval at the procurement award stage wouldn’t be required. The evaluation of a tender follows strict regulatory processes, which once a result is produced, there are no other options other than to award or to not award the contract to the identified winning bidder. It is therefore proposed that in the majority of cases, the contract award can be delegated to the Corporate Director for the service.

- 1.11 Following the new Mayoral model, there are currently no procurement delegations in place for contract awards with a value over £500k. This creates a bottleneck of approval sign offs which can lead to extended periods of time between evaluating tender bids and informing bidders of the outcome and slows down the process considerably.
- 1.12 There are new requirements for Councils to publish a Commercial Procurement Pipeline (Procurement Policy Notice (PPN) 05/21), which will improve the market's ability to prepare for forthcoming procurements. The proposed Annual Procurement Plan will form the basis of the Council's published Commercial Procurement Pipeline.
- 1.13 The Commercial Procurement Pipeline will indicate to the market the list of potential tendering opportunities, with an estimated contract value per project. This is a maximum estimated contract value and not a budget commitment, and the Council will seek to make best use of the competitive processes, available frameworks and collaborative working with other boroughs or organisations to achieve optimum value.
- 1.14 Although an Annual Procurement Plan would usually cover the period of a financial year to align with the budgetary processes, the first one would cover the period from November 2022 to March 2023 and then a full Annual Procurement Plan would commence in April 2023 until March 2024.
- 1.15 The Council's Tenders and Contracts Regulations (TCR's) 23rd March 2022 (Part 4.1 of the Council Constitution) was updated in March with some minor amends. A new re-refresh of the regulations would be required to reflect the wider changes proposed within this report.

2. CONSULTATION

- 2.1 The plan for a new process was presented to CMT on 26th July 2022 where it gained full support. There is no requirement for external consultation as this is an internal process.
- 2.2 The governance process will be further reviewed once the new Transforming Public Procurement Bill is enacted into law 2023-2024.

3. REASONS FOR RECOMMENDATIONS/PROPOSED DECISION

- 3.1 The Report in the Public Interest identified a lack of systemic clear governance processes in place at the Council.
- 3.2 The Procurement Improvement Plan, along with the further council wide work to improve governance, identified the need to improve the efficiency of the decision-making processes for awarding contracts.
- 3.3 This new proposed process will ensure that engagement with the Executive Mayor and Cabinet Members is more strategic, meaningful, and earlier in the process, and provide visibility of the procurement pipeline.

- 3.4 The new proposed process will provide efficiency in decision making. At present the Executive Mayor makes all required decisions for contract awards over £500k. This new process provides an opportunity to agree in advance which decisions will be taken by the Executive Mayor, and those which can be delegated to Cabinet Members or officers (including, where relevant, key decisions).
- 3.5 It is envisaged that aside from the most high-profile contracts, Procurement Strategy decisions will usually be delegated to the Cabinet Member, and Procurement Award decisions will usually be delegated to the relevant Corporate Director. However, the full list of delegations will be proposed and agreed within each Annual Procurement Plan report to Cabinet.
- 3.6 Any delegations requiring a Key Decision would be limited to the Executive Mayor, Lead Member or Chief Officers as defined in and in accordance with the Constitution. Where a delegated decision is a Key Decision to Officers, it must be made in consultation with the Lead Cabinet Member
- 3.7 Delegations will be proposed on a basis of risk, sensitivity, and contract value, and will include permitted extensions and variations. This will enable Members to engage and influence at the strategy stage of a procurement rather than the contract award stage, except for contracts of substantial public or political sensitivity. By engaging with Members at the strategy stage, the process of the awarding of a contract is stand alone and can be proven to be based purely on evaluation of returns to tender documentation.
- 3.8 Approvals would be simplified and accelerated, ensuring a more strategic deployment of resources for the procurement service and the wider organisation whilst ensuring that any changes maintain rigour with clear accountabilities for decision making and improved transparency.
- 3.9 Procurement Policy Notice (PPN) 05/21 requires the publication of a Commercial Procurement Pipeline, and this new process will enable the Council to be compliant with this requirement.
- 3.10 An additional benefit to this process is that the Council will be easier to do business with and more attractive to suppliers and SME's who will be able to understand the pipeline of future procurements and prepare accordingly.
- 3.11 Decisions delegated to officers shall be exercisable only once recommendations are made from Procurement Board / the Contracts & Commissioning Board in the usual way and shall be referred back to the Executive Mayor for a decision or for an updated delegation if any of the following thresholds for changes have been exceeded:
 - i. Contract value exceeds that proposed in the APP/Quarterly Update Report, by the lesser of £500K or 25%, or the new aggregate value exceeds £1m and it becomes a key decision
 - ii. Substantial / material changes to procurement from that defined in the APP/Quarterly Update Report e.g. material risks are identified

- 3.12 For example, if a procurement with a proposed £5m contract value returns a winning bid of £5.4m, this would not be referred back as it does not exceed either the £500k or 25% threshold, and it would already be a key decision. However, a proposed £800k contract value that returns a winning bid of £1.1m would be referred back as it represents a 37.5% increase and is also now a key decision.
- 3.13 A substantial change would include where a material risk has been identified, such as a financial or legal risk. For example, if the decision would now potentially have a greater impact on allocated budget than first envisaged; or where a material risk of procurement challenge is identified.
- 3.14 The Contracts & Commissioning Board will be responsible for tracking the threshold tolerances and ensuring that any that exceed the agreed thresholds follow the referral route as described above. The Board will also be responsible for tracking the delivery of the APP plan and escalating to the Council's Corporate Management Team where the proposed dates are at risk of not being met.
- 3.15 Where approval for a strategy, award, extension or variation with an aggregated value of £500k or over has not been included in the forward planning of procurements these will either be approved through the full Mayoral decision process that is currently in place or added to the APP at the next quarterly update.
- 3.16 The existing delegations to the Chair of the Contracts & Commissioning Board for contract strategy, award, extension or variation decisions with an aggregated value of between the Low Value Threshold (£177,898) and £500k in the Tenders and Contracts Regulation shall remain the same to the extent they do not otherwise conflict with this report. Existing delegations to officers also remain the same to the extent they do not otherwise conflict with this report.

4. OPTIONS CONSIDERED AND REJECTED

- 4.1 Do nothing – This would result in a non-compliance with the requirement for the Council to publish their commercial procurement pipeline in accordance with Procurement Policy Notice (PPN) 05/21. There would also be no forward planning and therefore no reduction in timescales for signing off procurements, re-procurements, variations and extensions. **NOT RECOMMENDED**
- 4.2 Only do what is required under PPN 05/21 requirement i.e. publish commercial procurement pipeline but not implement the further governance improvements for allowing Members to engage and influence at strategy stage. This would not allow for more efficient procurement decisions with earlier engagement with Members. **NOT RECOMMENDED**
- 4.3 Adopt an annual cycle of presenting an annual procurement forward plan and agreeing delegations in advance. **RECOMMENDED**

5. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

5.1 Financial

5.11 There are no direct financial considerations with the proposals which relate to improving processes other than those already set out in the report. Improving procurement governance is to be welcomed given the significant levels of contractual spend that the Council incurs and the need to ensure the Council achieves value for money from its contracts.

5.2 Risks

5.21 There are no direct risks that have been identified as a result of implementing this proposed process, other than those already set out in the report and the mitigation in place with regard to tolerances.

5.22 There are wider risks with regard to publishing a forward programme of procurement, for example projects could emerge throughout the year which weren't included within the overall programme. This could lead to less efficient process and a missed opportunity for potential suppliers to prepare, or for shared procurement with other partners such as the NHS or other Councils.

5.23 Additionally, publishing a planned procurement that doesn't go ahead or is significantly delayed could raise expectations within the market and damage the Council's reputation.

Approved by: Alan Layton on behalf of Jane West Corporate Director of Resources (Section 151 Officer)

6. LEGAL CONSIDERATIONS

6.1 The Head of Commercial & Property Law comments on behalf of the Director of Legal Services & the Monitoring Officer that:

6.2 The Executive Mayor has the power to exercise executive functions pursuant to s9E of the Local Government Act 2000 and has the power to delegate those functions. This report seeks relevant delegations to exercise executive functions.

6.3 In relation to any contract award/ variation decisions that are key decisions, any delegations shall be limited to "Chief Officers" as defined in the Council's Constitution, meaning: a) *the Head of Paid Service*; b) *the Chief Finance Officer*; c) *the Monitoring Officer*; d) *a Statutory Chief Officer*; e) *a Non-Statutory Chief Officer*. Corporate Directors fall within the definition of "Non-statutory Chief Officer", which has the same meaning as in section 2(7) the Local Government and Housing Act 1989 and includes officers who directly report to the Head of Paid Service/ Chief Executive.

6.4 At present the delegations in the Council's Tenders and Contracts Regulations have been superseded by the Executive Mayor's Scheme of Delegation following the introduction of the Mayoral Model. As such, both the Mayor's

Scheme of Delegation and the Tenders and Contracts Regulations will require updating in order to reflect the recommendations in this report, if approved.

- 6.5 The Council's Tenders and Contracts Regulations are contained within the Council's Constitution. As such, any amendments to these Regulations will need to be approved by Full Council in accordance with Article 15 of the Constitution: *"changes to this Constitution shall only be approved by the Full Council after consideration of written proposals made by the Mayor, Cabinet, General Purposes Committee or Monitoring Officer and the submission of a recommendation to a meeting of the Council. Changes approved by the Council shall take effect from the conclusion of the meeting at which those changes are agreed unless the recommendation specifies otherwise"*.
- 6.6 The General Purposes Committee recently approved the setting up of a Constitution Working Group (meeting of 29th September 2022, item number 4) and the scope of their review includes the following specific changes: *Part 4.1 – Tenders and Contracts Regulations 2022 - General review and update in light of recent governance reviews and reports and the Mayor's Scheme of Delegation*. As such, any amendments to the Tenders and Contracts Regulations should be considered by the Constitution Working Group in the first instance, for onward recommendations to Full Council.
- 6.7 The Procurement Policy Notice (PPN) 05/21 sets out information and guidance for contracting authorities on the National Procurement Policy Statement (NPPS) which will require contracting authorities to have regard to national strategic priorities for public procurement. The PPN applies to all contracting authorities, including local authorities.
- 6.8 The PPN states that:
- The Government intends to bring forward legislation when Parliamentary time allows to ensure that:*
- *all contracting authorities are required to have regard to the National Procurement Policy Statement when undertaking procurements;*
 - *contracting authorities with an annual spend of £200m or more are required from April 2022 to publish procurement pipelines and to benchmark their procurement capability;*
 - *contracting authorities with an annual spend of £100m or more are required from April 2023 to publish procurement pipelines and to benchmark their procurement capability*
- 6.9 The legislation referred to above is the Procurement Bill, which will likely be enacted in 2023. The government has committed to provide at least six months' notice of the regime coming into force from when the legislation is concluded. The Procurement Bill will introduce a new public procurement regime. It is to be noted that further changes to the Council's Tenders and Contracts Regulations will be required as a result.

7. HUMAN RESOURCES IMPACT

- 7.1 There are no immediate Human Resource impacts arising from the content of this report for the Council employees or staff.

Approved by: Gillian Bevan, *Head of HR Resources and Assistant Chief Executives* on behalf of the Chief People Officer

8. EQUALITIES IMPACT

- 8.1 The Council has an obligation under the Public Sector Equality Duty, which is to eliminate unlawful discrimination, to advance equality of opportunity and to build better relationships between groups with protected characteristics.

- 8.2 The Council is also obligated to comply with the Equalities Act and UK Law to meet the Council's Contract procedure rules and best practice. In accordance with legislation the Council will need to consider and take proactive steps at every strategic stage, to ensure diversity of third-party suppliers and to assess the presence of the equality of opportunity for, staff, residents and for contracted business. The council are also responsible for ensuring that external contractors are meeting the Public Sector Duty and are not unlawfully discriminating. The compliance with the Equality Act 2010 should be demonstrated in relevant equalities considerations throughout the procurement process to ensure that each function meets the requirements of the Equalities Act.

Approved by: Gavin Handford Director of Policy, Programmes and Performance.

9. ENVIRONMENTAL IMPACT

- 9.1 Through improved planning environmental impact of procurements could be more thoroughly addressed

10. CRIME AND DISORDER REDUCTION IMPACT

There are no crime and disorder impacts expected from this decision

11 DATA PROTECTION IMPLICATIONS

- 11.1 **WILL THE SUBJECT OF THE REPORT INVOLVE THE PROCESSING OF 'PERSONAL DATA'?**

NO

(If yes, please provide brief details as to what 'personal data' will be processed and complete the next question).

(If no, please complete the sign off)

11.2 HAS A DATA PROTECTION IMPACT ASSESSMENT (DPIA) BEEN COMPLETED?

NO

(If yes, please attach a copy).

(If no, please provide the reason why a DPIA was not completed. Please also attach any relevant advice)

There are no data protection implications expected from this decision.

CONTACT OFFICER: Scott Funnell, Head of Strategic Procurement & Governance

APPENDICES TO THIS REPORT:

Appendix 1 – Annual Procurement Plan

BACKGROUND DOCUMENTS – LOCAL GOVERNMENT ACT 1972

[For executive decision making it is a requirement that all Part A (open) reports & Part B reports (closed) must list and provide an electronic and a printed copy of all background reference.]

Improvement and Assurance Panel Report 30th April 2021