

Cabinet

12 March 2024

Procurement Forward Plan Report – over £500k (2024-25)

For Decision

Portfolio Holder: Cllr G Suttle, Finance, Commercial and Capital Strategy

Local Councillor(s): Cllr

Executive Director: A Dunn, Executive Director, Corporate Development

Report Author: Dawn Adams
Job Title: Service Manager Commercial & Procurement
Tel: 01305 221271
Email: dawn.adams@dorsetcouncil.gov.uk

Report Status: Public

Brief Summary:

The Council defines a key decision, in terms of procurement activity, as those with a financial consequence of £500k or more. This report provides notice of the planned / known procurement activities that Cabinet will need to make a key decision on for 2024-25.

Commercial & Procurement have collaborated with colleagues across the Directorates and reviewed the contracts database to establish a procurement programme for 2024-25. Procurement activity, within that programme, that are known / likely to exceed the £500k key decision threshold are set out in Appendix 1 for Cabinet's consideration.

Recommendation:

Cabinet is asked to consider the contents of this report in respect of proposed over £500k procurement activity for 2024-25 that are listed in Appendix 1 and to agree:

1. to begin each of the procurement procedures listed in Appendix 1 to the Report.
2. that in each instance the further step of making any contract award should be delegated to the relevant Cabinet Portfolio Holder, after consultation with the relevant Executive Director.

Reason for Recommendation:

Cabinet is required to approve all key decisions with financial consequences of £500k or more. It is good governance therefore to provide Cabinet with a summary of all proposed procurements, that individually are estimated to be total value of £500k or more, prior to procurement procedures formally commencing.

Planning procurement activity ensures:

- effective stakeholder management
- effective procurement and sourcing
- compliance with Procurement Regulations and the Council's own Contract Procedure Rules
- there is consideration on how contract price is to be managed in contract and what contract price model will be used
- how best value is to be achieved is clearly defined including how contract management will ensure that the council attains best value during the life of the contract

1. Report

- 1.1 This report provides for Cabinet consideration, in Appendix 1, activity within the 2024-25 procurement programme, which are known to likely to exceed the £500k key decision threshold.

As service and transformation plans are developed it may be necessary to bring further requests for approval in respect of procurements over £500k that may be required to commence within 2024-25 timeframe.

- 1.2 Whilst this report is in respect of 2024-25 procurement activity, the approach of Commercial & Procurement is to review potential future activity by forward looking over a 5-year period of contracts that may have break points or due to expire, and any potential known new needs. This is part of commissioning, planning and pre-procurement process between Commercial & Procurement and colleagues across the Directorates as part of a Business Partner Model approach.

1.3 This report also provides to Cabinet associated procurement information and updates, such as changes of procurement legislation that will affect how the Council's procures contracts.

2. **Commissioning and Procurement**

2.1 The Council's [Commercial Strategy - Commissioning & Procurement](#) ② underpins all the Council's procurement activities. It provides the mechanism to ensure that such activity takes place in accordance with the Council's strategic aims, that it is effective and delivered best value to our customers. This Strategy will be subject to review following the implementation of The Procurement Act 2023 (the Act is discussed later in this report).

2.2 Having effective procurement is crucial to the Council in the light of ever challenging budget restrictions and having to work with suppliers amid one of the hardest inflationary environments that supply markets have seen for decades. Consideration will be given as part of pre-procurement, how contract price is to be managed in contract and what contract price model will be used; both selected on what will secure best value to the Council but equally one that is viable to the supplier.

2.3 It is therefore a requirement to set out in any pre-procurement project plans the following:

- the proposed contract pricing model
- support rationale on the approach
- considerations in respect of any inflationary impacts
- whether there will be a contract price adjustment in the contract terms and conditions
- the proposed contract price adjustment clause (if one is to be applied)

in accordance with the Council's [Guiding Principles to Managing Contract Price](#) ①

2.4 In this context, delivery of the Council's ambitions requires resourcefulness, being more commercially minded and more business-like in the approach. Contract award decisions need to take account, as appropriate, of quality, social value and all the costs that will be incurred by the Council throughout the life of a contract term, or asset, not simply the initial price. In accordance with the Council's [Commercial Strategy -](#)

① Internal only link (internal DC resources); ② External link (resources in the public domain)

[Commissioning & Procurement](#) ② where relevant and proportionate, procurement activity shall include social value evaluation award criteria that reflects a minimum of 5% weighting out of 100%.

- 2.5 A proactive and consistent approach to supplier relationship and contract management shall ensure that any identified efficiencies, savings, and service quality improvements are achieved. As such contract management must be robust and effective, in accordance with the Council's [Contract Management Procedure Guide](#) ① and [Guide to Managing Contract Criticality](#) ①, to ensure what has been attained at point of procurement is delivered in contract and represents value for money.

The importance of this will heighten when The Procurement Act 2023 comes into force as it will legislate public sector contract management for the first time and with this, transparency requirements in respect of contract performance (the Act is discussed later in this report).

- 2.6 Over half of the Council's annual budget is spent on buying external goods, services and works. It is therefore important that we continue to review and assess our: supply markets; pre-procurement planning; procurement processes; and contract management, to ensure we understand our supply chains to ensure we attain best value.
- 2.7 It is equally important that we look further into our supply chains to take into consideration the different risk associated with our supply chains, including modern slavery and human trafficking.

Knowing the risk of modern slavery guides the approach how to work with the supplier to identify and mitigate risk. This is in accordance with the Council's 2022/23 [Modern Slavery Transparency Statement 2022 to 2023 - Dorset Council](#) ② - as agreed by [Cabinet 5th September 2023](#) ②.

3. Urgent Decisions

- 3.1 There may be occasions where the Council must take urgent action in response to a situation where there is not sufficient time to seek formal approval at a Cabinet meeting (which must be called on at notice) of a key decision, prior to spending over £500k.
- 3.2 Such occasions are usually rare, but as seen in the pandemic and other cases of urgency, such as responding to the impact of the fire at Crookhill Waste Depot, the Council at times needs to respond at scale and pace to critical situations, national priorities, and funding initiatives.

3.3 Where there is an urgency, the Scheme of Delegation within the Council's Constitution allows for such decisions to be made which can be executive or non-executive in nature, depending on the delegation given.

3.4 Part 3 of the Scheme of Delegation specifies the Chief Officers responsibilities. Paragraph 32 explains the circumstances in which the delegation can be used:

"In any cases which s/he considers to be urgent, to discharge any function and deliver any service within the Chief Officers responsibility, other than those functions which can only be discharged by the Council or a specific Committee. This delegation is subject to the following conditions:

- *prior consultation with the Monitoring Officer and the Section 151 Officer;*
- *consultation with the appropriate Executive Member or the Chairman of the appropriate Committee; and,*
- *to the extent it will incur expenditure from working balance and/or reserves, the prior approval of the s151 Officer".*

3.5 Where urgency means that it is not possible to convene a Cabinet meeting on notice then to ensure transparency a decision notice is prepared giving details of the decision made and the reasons for it and the notice is published on the council's website. Call-in does apply to an urgency decision but the relevant Chief Officer can be called to account for their decision at a meeting of the relevant scrutiny committee.

NEW PUBLIC PROCUREMENT LEGISLATION

4. The Health Care Services (Provider Selection Regime) Regulations 2023 (PSR23)

4.1 The Health Care Services (Provider Selection Regime) Regulations 2023 (PSR23) is new set of mandatory procurement rules that came into force 1 January 2024, for the procurement of health care services in England by organisations termed as "Relevant Authorities" (RA) which include:

- NHS England
- Integrated Care Boards (ICBs)
- NHS Trusts and NHS Foundation Trusts
- Local Authorities and Combined Authorities

4.2 Whilst the new regulations do not affect the whole Council, as mainly it affects our requirement to procure public health services, there are small pockets of health services procured elsewhere in the Council therefore it is important legislation that must not be overlooked.

4.3 Commercial & Procurement has promoted, and will continue to do so, awareness of the Regulations to colleagues across the Council.

4.4 Key implications of these Regulations:

- Removes the procurement of health services from the scope of the Public Contract Regulations 2015 (PCR15) – *the current procurement regulations*
- Sets out three different procurement processes, known as provider selection, to award contracts: Direct Award (3 x options); award to Most Suitable Provider; and Competitive Tender
- Quite complex processes due to the consideration and evidence to support selection, and its transparency requirements
- A requirement to annually report, in public domain, contracting activity in respect of health services including non-compliance to PSR23
- Existing contracts for health services will have to adhere to PSR23, for example, in the case of contract modifications
- Has no value threshold which means it “trumps” the Council’s Contract Procedure Rules (CPRs) in that this law has to be applied irrespective of value

5. The Procurement Act 2023

5.1 Cabinet will recall that that in previous procurement pipeline reports, updates on the progress of the Procurement Bill have been provided as the Bill went through its Parliamentary journey following being introduced to Parliament on 10th May 2023 under the Government’s [Transforming Public Procurement Programme](#) ②.

- 5.2 This report updates Cabinet that following 18 months of Parliamentary scrutiny, the Bill received Royal Assent on 26th October 2023 and became “The Procurement Act 2023”.

This marked a key milestone in the implementation of what the UK Government has hailed as:

“One of the largest shake ups to procurement rules in this country’s history.”

- 5.3 It is anticipated that the Act will come into force on 1 October 2024. The confirmation of this date, alongside what are two sets of secondary legislation in relation to the Act (listed below) will be subject to Parliament decision - scheduled currently for March 2024.

Secondary legislation to the Act:

- The Procurement Act 2023 (Miscellaneous Provisions) Regulations 2024
 - Procurement (Transparency) Regulations 2024
- 5.4 The aim of this new Act is to radically change the public sector’s outdated procurement system and improve the way procurement is done, so that every pound does further for public services. Important bearing in mind that one in every three pounds of public money across the public sector, around £300 billion, is spent on public procurement.
- 5.5 This [message from Gareth Rhys Williams, Government Chief Commercial Officer](#) ② to contracting authorities, summaries the Procurement Act, alongside this video animation [The Procurement Act 2023: A summary guide for contracting authorities.](#) ②
- 5.6 Key implications of the Act:
- Defines what is “Procurement” – the Act provides two definitions:
 - “procurement” meaning an activity that has a value *less than* the value thresholds of the Act
 - “covered procurement” meaning an activity that has a value *not less than* the value thresholds of the Act

- Procurement is just not the process - unlike current regulations, the Act makes it clear that that “procurement” and “covered procurement” is to be understood in its widest sense and means not only the process itself, but also:
 - pre-market steps in the route to award
 - the operation and management of a public contract once the procurement process itself is completed
 - and the exit of the contract whether by termination or expiry
- One set of rules – will replace the current four sets of regulations covering procurement:
 - Public Contract Regulations 2015 (PCR15)
 - Utilities Contract Regulations 2016 (UCR16)
 - Concession Contracts Regulations
 - Defence and Security Public Contracts Regulations 2011 (RDSPCR11)
- Creates a concept of “special regime contracts” – with the Act these are:
 - concession contracts
 - light touch contracts
 - defence contracts
 - utilities contracts
- Transparency – a real expansion in the number of notices that will need to be published about the procurement and during the lifetime of the contract including publishing an annual 18-month procurement pipeline in the public domain for procurements planned that have an estimated total value of over £3m.
- Removal of existing tender procedures – removes the 5 out of the current 6 x tender procedures (keeps Open):
 - Restricted

- Competitive with Negotiation
 - Competitive Dialogue
 - Innovation Partnership
 - Negotiated without Notice
- Creates one concept of a “competitive tendering procedure” – may be either: a single-stage open procedure (as current); or any other competitive procedure that is appropriate, i.e. introducing the freedom to design a procedure that suits the requirement
 - Contract performance – a new requirement to set and publicly report, within a Government digital platform, on Key Performance Indicators (KPIs) for larger contracts valued at over £5 million (reporting on supplier and contract performance)
 - Supplier debarment – where mandatory or discretionary exclusion criteria are triggered, the Government will have means to block such suppliers being awarded public sector contracts
 - New language – the Act uses new language describe familiar concepts, e.g. “selection criteria” will be known as “conditions of participation”
 - Conflicts of interest – clearer instructions on how and when to undertake these obligations
 - Below threshold contracts – will be subject to number of obligations under the Act including publishing notices (these are contracts that have a total value less than the value thresholds set by the Act).
 - Rules in regard to existing contracts (*excluding contracts for health services*) - will continue to apply Public Contract Regulations 2015 (PCR15), e.g. modification to contract.
 - Disapplies S17 of the Local Government Act 1988 – free up the ability to reserve below-threshold contracts for suppliers that are UK-based or located in a specific county or borough and/or are SMEs or VCSEs.

In simple terms this means we can set a procurement activity in such a way that only local suppliers, SMEs or VCSEs, to be able to tender. This is a particular welcomed inclusion, and as part of our procurement

forward planning, we must consider how we can apply this to benefit the local economy.

5.7 To support contracting authorities with the implementation of the Act, Cabinet Office's learning and development offer is as follows:

- Super-users – each contracting authority to have a person who is a super-user to interact with the Cabinet Office and co-ordinate / promote the following learning and development offer.
 - *Author of this report is the Council's super-user*
- Knowledge Drops – to support the introduction of the Procurement Act the Cabinet Office has launched the [Transforming Public Procurement Knowledge Drops](#) ① which comprise a series of on-demand videos designed to provide a high-level overview of the changes to the procurement regulations. Promotes greater awareness and understanding of the benefits that the Act will offer and how it extends beyond procurement and commercial teams.
 - *The Knowledge Drops are being promoted widely across the Council by Commercial & Procurement via the Corporate Leadership Team; the Commercial Board; the [Commercial Network](#) ②; and Directorate meetings. Also promoting to suppliers via: [Transforming public procurement - Dorset Council](#) ①; contract managers; Dorset Chamber of Commerce; and Federation of Small Businesses.*
- Skilled Practitioner Certificate – this is formal on-line training via the Government's Commercial College which will comprise of 10 x modules and concludes with a certification. To be available in March 2024, but subject to the secondary legislation being cleared by Parliament in March 2024.
- Deep Dives – each contracting authority have been provided 3 x places on what is a 3 x day virtual course. Planned for May 2024.
 - *Representative from Commercial & Procurement, and Legal Services make up the 3 x places.*
- Communities of Practice – to be launched in May 2024 to provide a system of collective critical inquiry and reflection of the Act.

① Internal only link (internal DC resources); ② External link (resources in the public domain)

6. **Financial Implications**

6.1 Service budgets do incorporate funding required for the procurements set out in this report. However, the following to be considered by the relevant project team as part of the business case / procurement project initiation and sourcing report and rationale for each procurement:

- how best value from the procurement / contract will be achieved
- how the contract and supplier(s) will be effectively managed to deliver saving targets that are incorporated into the MTP
- whether full funding is available in the budget provision, after savings have been accounted for
- the intended best approach to assess the contract performance and supplier relationship to manage expectations in respect of annual price increase amid a higher level of inflation that has not been experienced for many years

7. **Natural Environment, Climate & Ecology Implications**

7.1 To be considered by the relevant project team as part of the business case / procurement project initiation and sourcing report and rationale for each procurement

8. **Well-being and Health Implications**

8.1 To be considered by the relevant project team as part of the business case / procurement project initiation and sourcing report and rationale for each procurement.

9. **Other Implications**

9.1 None

10. **Risk Assessment**

10.1 **HAVING CONSIDERED:** the risks associated with this decision; the level of risk has been identified as:

Current Risk:	LOW
Residual Risk:	LOW

- 10.2 Level of risk to be considered by relevant project team as part of the business case / procurement project initiation and sourcing report and rationale for each procurement.
- 10.3 Notwithstanding the low risk of the decision, inflation remains a risk to the Council's budgets. All decisions and recommendations must therefore be mindful of the actual and potential impact of inflation, especially when committing future funding.
- 11. **Equalities Impact Assessment**
 - 11.1 To be considered by relevant project team as part of the business case / procurement project initiation and sourcing report and rationale for each procurement.
- 12. **Appendices**
 - 12.1 **Appendix 1: 2024-25 Procurement Forward Plan** where the contract value is expected to exceed £500k.
- 13. **Background Papers**
 - 13.1 None
- 14. **Report Sign Off**
 - 14.1 This report has been through the internal report clearance process and has been signed off by the Director for Legal and Democratic (Monitoring Officer), the Executive Director for Corporate Development (Section 151 Officer) and the appropriate Portfolio Holder(s).

Appendix 1: 2024-25 procurement forward plan where the contract value is expected to exceed £500,000

Contract Description	Directorate / Portfolio Lead	Executive Director	Contract Term (max)	Estimated DC Total Spend over Contract Term	Sourcing Strategy	Risk
Self-drive Vehicle Hire	Place / Cllr Ray Bryan	Jan Britton	4 years	£1.6m	Call off from framework	Low
Dorset Waste Commercial ICT System	Place / Cllr Laura Beddow	Jan Britton	7 years	£900k	Call off from framework	Low
Site Investigation & Materials Testing Services	Place / Cllr Ray Bryan	Jan Britton	4 years	£2m	Tender	Low
Plastic Wheeled Bins, Recycling Containers and Plastic Sacks	Place / Cllr Laura Beddow	Jan Britton	4 years	£3m	Call off from framework	Low
Dorset Highways Contractor Resource (Labour Top – Up) Framework	Place / Cllr Ray Bryan	Jan Britton	8 years	£20m	Tender	Low
Country Park Food and Drink Provision <i>(*This will be a concession / lease contract therefore no DC spend but £10m potential opportunity to the market)</i>	Place / Cllr Laura Beddow	Jan Britton	10 years	<i>Refer to *</i>	Tender	Low

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Vehicle and Heating Fuel & Oil	Place / Cllr Ray Bryan	Jan Britton	4 years	£10m	Call off from framework	Low
Passenger Transport - Dorset Travel	Place / Cllr Ray Bryan	Jan Britton	8 years	£60m	Dynamic Purchasing System or Market	High
Interpretation & Translation Services	Childrens / Cllr Byron Quayle	Theresa Levy	8 years	£1m	Tender	Low
Bike Share Scheme (Dorchester, Weymouth & Portland)	Place / Cllr Ray Bryan	Jan Britton	4 years	£500k	Call off from framework	Low
CCTV Network and Managed Service Contract	Place / Cllr Laura Beddow	Jan Britton	5 years	£500k	Call off from framework	Low
Mailouts (working title)	Corporate / Cllr Jill Haynes	Aidan Dunn	4 years	£1m	Call off from framework	Low
Intensive Supported Accommodation for Young People	Childrens / Cllr Byron Quayle	Theresa Levy	3 years	£7M	Tender	Low
West Bay Harbour: Wall B Works	Place / Cllr Ray Bryan	Jan Britton	1 year	£1.37m	Tender	Extreme
West Bay Harbour: Wall A Works	Place / Cllr Ray Bryan	Jan Britton	1 year	£752k	Tender	High
Newton's Cove: Wall Works	Place / Cllr Ray Bryan	Jan Britton	1 year	£510k	Tender	High

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Weymouth Harbour: Wall F and G - Urgent Works	Place / Cllr Ray Bryan	Jan Britton	2.5 years	£12m	Tender	Extreme
Chesil Cove: Curved Sea Wall - Urgent Works and Slope Stabilisation Phase 1	Place / Cllr Ray Bryan	Jan Britton	2 years	£1.32m	Tender	Extreme
Swanage: Coastal Defence - Beach Management, Beach Recharge and Defence Works	Place / Cllr Ray Bryan	Jan Britton	2 years	£8.3m	Tender	High
Lyme Regis Environmental Improvement (LREI) Scheme - Phase 5 Construction	Place / Cllr Ray Bryan	Jan Britton	1.25 year	£5m	Tender	Medium
Wraparound Childcare	Childrens / Cllr Byron Quayle	Theresa Levy	2 years	£500k	Tender	Low