
Report To: Policy & Resources Committee **Date:** 20 May 2014

Report By: Acting Corporate Director **Report No:** FIN/26/14/JB/BH
Environment, Regeneration &
Resources

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Subject: Procurement Update

1.0 PURPOSE

- 1.1 The purpose of the report is to update Committee on the progress being made with Procurement since the last report in February.

2.0 SUMMARY

- 2.1 The Policy and Resources Committee previously approved a Strategic Procurement Framework (SPF) with the target of achieving, "conformance status", against the McClelland report. This was achieved in December 2011. The Policy and Resources Committee agreed a refreshed SPF for 2012 to 2014 and this is contained in Appendix 1 with updates on progress.
- 2.2 Public procurement law is set to change, following new draft directives issued by the European Commission in December. The proposals form part of an overall programme aimed at modernising public procurement in the European Union (EU). Appendix 3 summarises those changes and the status of the Procurement Reform Bill which is currently progressing through the Scottish Parliament.
- 2.3 The Procurement Work stream savings achieved for 2010/13 of £1.027million have been "banked" and a new target of £413,000 for 2013/16 has been agreed. £313,000 has been secured with a further £100,000 to be achieved.
- 2.4 The Policy and Resources Committee approved a proposal contained within the February 2013 Procurement Update report to pay Inverclyde based suppliers within 20 days rather than 30 days. Since approval was given to proceed with this proposal, 90% of payments to Inverclyde based suppliers have been made within 20 days.
- 2.5 A pilot involving the use of weighted tender questions on Community Benefits has completed. Two tenders, Kerb Maintenance and Ardgowan Primary refurbishment, have been returned and evaluated using a 5% weighting as part of the pilot agreed at Policy and Resources Committee in November 2012. As a result of this pilot officers propose to adopt the weighting of 5% in all future tenders where this is deemed to be appropriate. More detail on this proposal is contained within section 5 of this report.

3.0 RECOMMENDATIONS

- 3.1 That the Committee note progress on the Strategic Procurement Framework.
- 3.2 That the Committee note the progress made in savings delivery.

- 3.3 That the Committee note the progress being made on paying Inverclyde suppliers within 20 days
- 3.4 That the Committee note the summary and comments on the progress on the Procurement Reform Bill.
- 3.5 That the Committee approve the use of a 5% weighting for community benefits in all future tenders, in consultation with the Corporate Procurement Manager, above a threshold of £1,000,000.

Jan Buchanan
Head of Finance

4.0 BACKGROUND

- 4.1 There are 4 performance standards identified within the McClelland report on Public Procurement in Scotland; Non Conformance, Conformance, Improved Performance and Superior Performance.
- 4.2 The work completed on the SPF has contributed to a further improvement in the annual Procurement Capability Assessment (PCA) from Scotland Excel with a score of 54% being achieved in the most recent assessment in October 2013. This means that the Council is now in the 'Improved' performance standard.
- 4.3 The 2013 score places Inverclyde Council well when the return on investment in Procurement resources is compared to PCA scores and savings delivered, at all Scottish Local Authorities.
- 4.4 The Scottish Government are using a Procurement Capability Assessment as a means to measure each of the 32 Local Authorities' Procurement performance. There are 8 procurement sections assessed as part of the PCA. The section and standards, as found at the most recent PCA, are listed below and compared to the 2012 assessment in each case.

PCA Section	2012 Score	2013 Score
Procurement Leadership and Governance	Conformance	Improved
Procurement Strategy and Objectives	Improved	Improved
Defining the Supply Need	Conformance	Improved
Project Strategies and Collaborative purchasing	Improved	Improved
Contract and Supplier Management	Conformance	Conformance
Key Purchasing Processes and Systems	Conformance	Conformance
People	Improved	Superior
Performance Measurement	Conformance	Conformance
Overall Value of Results	47%	54%
Overall Status	Conformance	Improved

5.0 COMMUNITY BENEFIT PROPOSALS

- 5.1 A pilot involving the use of weighted tender questions on Community Benefit has been completed. Two tenders, Kerb Maintenance and Ardgowan Primary refurbishment, have been returned and evaluated using a 5% weighting as part of the pilot agreed at Policy and Resources Committee in November 2012.
- 5.2 Both contracts will deliver a minimum of 10% of the person weeks of employment required to carry out the Works under the Building Contract to new entrant trainees, apprentices and other trainees. The kerbs contract is expected to return a minimum of 24 person weeks of employment in total. The Ardgowan contract is expected to return a minimum of 200 person weeks of employment in total.

- 5.3 Despite the argument that community benefits will add to tenderers' costs, there is well documented evidence that, 'Cost neutral' tenders can be progressed. This means that any costs associated with the project are absorbed into the general overheads of the contractor/firm. The contractor, if there is a cost neutral or 'nil cost' requirement, cannot charge the client for any community benefit. It might be argued that a contractor could just increase the cost of the tender to fund the community benefit, however there is a risk that they could price themselves out of winning the contract.
- 5.4 Forward-thinking contractors already accept that community benefits are now an integral part of procurement in the public sector and recognise the benefit to their company in being able to demonstrate their capability in delivering community benefit and their commitment to doing so. However, these circumstances are less likely to apply in lower value construction contracts where there is less need to recruit large numbers of staff over a longer period. The pilot and examples from other public procurements would indicate that there is a threshold below which community benefits would not be logical.
- 5.5 A weighting of 5% being used for community benefits seems most appropriate at this time. A proposal to increase to 10% had been included within the Committee report in November 2012 but there is not enough evidence at this time to support such a change. A contract value threshold of £1,000,000 constitutes a reasonable threshold above which community benefits should be considered as it is more likely that the labour costs would lead to employment opportunities during the lifetime of the contract as opposed to short term sporadic work which is hard to monitor and does not deliver the same return on contract spend.
- 5.6 As a result of this pilot officers propose to adopt the weighting of 5% in all future construction tenders with a value above £1,000,000, in consultation with the Corporate Procurement Manager. Reports on the use of this weighting will be included in future Procurement update reports. If the ongoing use of the 5% weighting is deemed to be successful an increase in weighting may be put forward for further approval.

6.0 RECENT PROGRESS

- 6.1 The Strategic Procurement Framework, with updates against each work item, is contained in Appendix 1
- 6.2 As shown in Appendix 1 the bulk of the workload on the current SPF has been completed. The remainder of the work is focused towards improving Purchase to Pay and Management Information as well as further work on supplier management.
- 6.3 Officers from Finance have considered and agreed a number of developments to the Finance Management System (FMS) and associated processes which will improve both the efficiency of the current processes and the quality of management information. Any direct costs associated with these changes are minimal and will be contained within the Procurement earmarked reserve.
- 6.4 Contract and Supplier Management continues to be a major focus. This is an area of Procurement that has traditionally been neglected across all Local Authorities in Scotland. Officers previously undertook this activity but it was not monitored or standardised. Supplier Management ensures that the Council manages its priority suppliers and addresses performance issues as they arise rather than dealing with larger problems at a later date.
- 6.5 These supplier meetings are conducted using a scorecard to rate supplier performance. Reviews are scheduled quarterly and suppliers are rated on quality, service, delivery and cost.

The suppliers currently part of this process are as follows:

William Tracey and Greenlight, Waste Management
BSS, Printing
Tarmac, Roadstone
Brakes, Catering
Northgate, ICT Software
Pride of the Clyde, Schools Transport
GT Roofing, General Builders Works

- 6.6 There have been a number of benefits resulting from this work. Relations with all suppliers continue to improve via a schedule of regular meetings. All suppliers have found the two way feedback process to be valuable and this has led to improvements in processes that have benefited both parties.
- 6.7 As the work on the current SPF comes to a conclusion towards the end of 2014, it is proposed that a new procurement strategy will be submitted to the Committee before the end of this year. This will allow time for the Procurement Reform Bill to go through due process and give time to form a new resource and strategy plan for procurement. Appendix 3 gives details on the current status of the Procurement Reform Bill as well as a summary of the key elements with comments on the impact to the Council.

7.0 PROCUREMENT SAVINGS

- 7.1 Appendix 2 shows the position in respect of savings planned during 2014/15. From this it can be seen that £30,000 full year savings have been achieved. These savings are as a result of a recent tender exercise for Multi Function Devices (large printers). The target for 2014/15 is £70,000 with a further £60,000 for 15/16.
- 7.2 In addition Scotland Excel are continuing to investigate and put in place contracts for Social Care and for Construction. Procurement Scotland continue to look at further contracts for ICT and improving energy contracts which should yield further long term benefits. Efficiencies on local contracts become harder to achieve in the current climate, however any savings will assist in addressing future financial pressures.

8.0 SUPPLIER PAYMENT

- 8.1 The Policy and Resources Committee approved a proposal contained within the February 2013 Procurement Update report to pay Inverclyde based suppliers within 20 days rather than 30 days. Since approval was given to proceed with this proposal, 90% of payments to Inverclyde based suppliers have been made within 20 days. This is a slight reduction in performance since last reported and Finance Service is working with the Services to improve this performance.

9.0 IMPLICATIONS

9.1 Finance

One off Costs

Cost Centre	Budget Heading	Budget Years	Proposed Spend this Report £000	Virement From	Other Comments
N/A					

Annually Recurring Costs/(Savings)

Cost Centre	Budget Heading	With Effect from	Annual Net Impact £000	Virement From (If Applicable)	Other Comments
Savings Work streams	Procurement	2013/16	£413,000	-	£100k remains to be achieved.

9.2 Legal

Legal Services have been consulted on the content of this report.

9.3 Human Resources

None

9.4 Equalities

None

9.5 Repopulation

Procurement has a key role to play in the Council's drive to stabilise and grow the Inverclyde population. Engagement with Economic Development and making Council contracts more accessible to local businesses are viewed as key requirements and as such are an integral part of the Strategic Procurement Framework.

10.0 LIST OF BACKGROUND PAPERS

10.1 Appendix 3 – Summary of the Procurement Reform Bill.

Appendix 1

Strategic Procurement Framework 2012/14

1. Resources, skills and capacity

What we want to achieve	How will we achieve it?	Responsible	Update	Timescale
Employees engaged in the procurement process shall possess the necessary knowledge, skills and capacity to support strategic and operational needs in line with agreed policies and practises.	Complete a skills gap analysis for all Corporate Procurement Officers, Designated Procurement Officers and Procurement Practitioners in Services	Corporate Procurement Manager	Complete with ongoing training to be delivered via Corporate Procurement	Complete
	Plan, design and deliver a Learning & Development Plan for Procurement Officers and Designated Procurement Officers.	Corporate Procurement Manager	Ongoing and on target.	Ongoing

2. Management Information and Systems

What we want to achieve	How will we achieve it?	Responsible	Update	Timescale
The adoption and corporate use of one integrated & electronic approach for tendering, Purchase to Pay transactions and contracts planning.	Undertake good practice review of P2P in other public/private sector organisations and Scottish Government recommendations. Use best practice from Clyde Valley and interface with Councils who show an interest.	Procurement Project Officer.	Complete	Complete
	Assess detailed current state of P2P in the Council create business case detailing change required	Procurement Project Officer.	Complete	Complete
	Implement changes to P2P	Procurement Project Officer.	Project officer working with services and suppliers to implement changes to purchase to pay processes and systems.	December 2014

3. Procedure, Processes and Performance

What we want to achieve	How will we achieve it?	Responsible	Update	Timescale
Rationalise and standardise procurement processes consistently across the Council.	Trial of e-tendering element of Public Contracts Scotland.	Corporate Procurement Manager/ Head of Legal and Democratic Services	Complete	Complete
	Implement increased use of e-tendering if approved.	Procurement Project Officer.	Trial evaluated. Use to be incorporated in new Standing Orders from November 2014 if trial is successful.	From November 2014
Deliver council business priorities through commodity/category strategy	Engage with Directors and Heads of Service - determine business requirements to facilitate creation of enhanced tender workplan	Corporate Procurement Manager/ Procurement Board	Now embedded	Ongoing & embedded
	Undertake detailed spend analysis to identify further savings opportunities, Develop strategies, including a risk register and devise reporting process.	Corporate Procurement Manager	Contract Strategy now being used and includes a risk register	Complete
Commit to Corporate Social Responsibility	Review internal objectives in plans/strategies taking into consideration Scottish Government and national reform agenda for Corporate Social Responsibility ambitions.	Procurement Team Leader and Designated Procurement Officer network	Corporate Social Responsibility Group established and reported to Procurement Board.	Complete
	Establish a working group on the Corporate Social Responsibility agenda for procurement and develop a resourced and scheduled work plan. Agree measures and reporting schedule with the procurement board	Procurement Team Leader and Designated Procurement Officer network	Complete	Complete

4. Contracts & Collaboration

What we want to achieve	How will we achieve it?	Responsible	Update	Timescale
<p>Maximise buying opportunities through collaboration (internal & external) while minimising the need to undertake single client contracts.</p> <p>Collaboration for category C commodities with other local authorities.</p>	<p>Identify potential partners for collaboration - councils and other public sector</p>	<p>Corporate Procurement Manager</p>	<p>Ongoing activity with West of Scotland Councils discussed at Quarterly reviews with Scotland Excel.</p>	<p>Ongoing but embedded.</p>
	<p>Agree scope, remit and approach of each collaboration group</p>	<p>Procurement Team Leader</p>	<p>Ongoing</p>	<p>Ongoing</p>
	<p>Review council's tender workplan to identify potential areas for future collaborative opportunities Formal workplan for the group is agreed with a clear approach and responsibilities</p>	<p>Procurement Board./Corporate Procurement Manager/ Designated Procurement Officers</p>	<p>2012/13 Plan Reviewed at March Procurement Board</p>	<p>Complete</p>

5. Supplier Strategy and Relationship Management

What we want to achieve	How will we achieve it?	Responsible	Update	Timescale
Promote Economic Development in contracts where appropriate	Analyse current economic development activity, carry out stakeholder engagement, review tender workplan and establish opportunities.	Head of Regeneration & Planning / Corporate Procurement Manager	Ongoing Committee agreed reduction in supplier terms to 20 days for Inverclyde suppliers.	Ongoing
	Develop framework of activities for delivery of Procurement Improvement Plan and implement.	Head of Regeneration & Planning/ Corporate Procurement Manager	Ongoing work with Economic Development and Legal Services	Ongoing
Improved understanding of contract management process and appropriate levels of contract management.	Review current contract and supplier management processes and related information on service by service basis	Procurement Project Officer.	Phase 1 completed June 2012. Procurement Board have now agreed plans to expand	Complete
	Develop and agree an appropriate level of supplier management with Procurement Board	Corporate Procurement Manager	To be reviewed at the next Procurement Board meeting	Ongoing review
	Develop governance, process, roles and responsibilities, training and communication for implementation	Procurement Project Officer	Dependant on outcome of above	Ongoing review
	Implement plan for supplier and contract management	Procurement Project Officer	Dependant on outcome of above	Ongoing review

Appendix 2

Commodity	New Supplier	Start Date	Annual Spend/ (Income)	Achieved or Planned	New Projected 2014/15 Savings	Full Year Savings
Multi Function Devices	Konica	01/06/14	£400,000	A	£25,000	£30,000

Total Achieved and Planned
Total Workstream Target

£25,000
£70,000

<u>Savings Summary (2014/16)</u>	£
Savings Achieved	30,000
Savings Target	<u>130,000</u>
Savings to be Achieved	100,000

The Procurement Reform Bill and the EU Directives

- 1) The Procurement Reform (Scotland) Bill was introduced in the Parliament on 3rd October 2013. Public procurement in Scotland is governed by a detailed and complex framework of European law and the Bill is necessarily framed within this existing EU legislation.
- 2) The European Union has reformed the EU Directives in early 2014. The Directives guidance has now been issued by the European Commission. Given the complexity and breadth of the Directives, this guidance will be critical in interpreting and understanding the Directives and their impact on Scotland. It is important to note that the Bill does not transpose the Directives. The Directives will be transposed into Scots law via new Regulations, within two years of final agreement.
- 3) In addition to ensuring that it complements existing EU legislation, the Scottish Government also places the Bill within the wider reform of public procurement in Scotland that has been ongoing since the 2006 publication of the McClelland Report.
- 4) The Policy Memorandum states that the Bill will not be a replacement for existing EU legislation, but rather, in the main, applies to two separate levels of procurement. The Bill in part will create a legal framework for contracts below the EU thresholds. However, certain elements of the Bill will apply to all public procurement at any level above the thresholds set in the Bill (therefore including contracts above the EU Thresholds).

Progress of the Procurement Reform Bill

- 5) The Reform Bill passed Stage 2 of the Parliamentary process in March. That is the “Committee phase”, where each section of the bill is examined by the lead Parliamentary Committee (the Infrastructure and Capital Investment Committee), and amendments are tabled and discussed. There were over 80 amendments in total, so it meant some marathon but the Bill has now been approved to pass on to Stage 3, the final leg of the process, which is expected to be in May. From there it goes on for Royal Assent and then it moves from being a Bill to being an Act of Parliament.
- 6) Much of the Bill is about enabling powers, and it will be a significant effort to develop the statutory guidance and regulations that will follow –The Scottish Government have committed to wide consultation on these, and to dovetailing them with plans for the transposition of the European Directives.

Procurement Reform Bill Summary

- 7) Set out below is a summary of the key provisions and some thoughts on the implications for public authorities in Scotland and for companies seeking to do business with them.
- 8) This is a new legislative framework to govern the award of contracts for works, supplies and services the estimated value of which are below the EU (OJEU) thresholds but equal to or greater than £50,000 in the case of supplies or services contracts, or £2 million in the case of works contracts. These include the following
 - i. A specific duty on authorities when carrying out below OJEU threshold procurements to (a) treat economic operators established in any EU/EEA country equally and without discrimination; and (b) act in a transparent and proportionate manner.
 - ii. A provision under which Scottish Ministers may introduce regulations prescribing mandatory exclusion grounds and minimum standard requirements in relation to financial standing, technical ability or any other characteristic.
 - iii. A provision under which Scottish Ministers may introduce regulations on the use of technical specifications, including defining requirements as to the way in which goods, services or works are to be produced, provided or constructed, and any process relating to a stage in the life-cycle of the goods, services or works.

- iv. A specific set of debriefing rules for below OJEU threshold procurements. This includes a requirement to notify unsuccessful PQQ applicants as soon as reasonably practicable after deciding to exclude them and a similar requirement to notify unsuccessful tenderers once the authority has made its contract award decision. Unlike OJEU procurements though, there is no requirement for a standstill period between the notification of the award decision and entering into the contract. Instead there is simply a right for unsuccessful PQQ applicants and tenderers (including the successful tenderer) to request 'further information'. That request must be made within 30 days of the receipt of the notification. The information the authority is required to provide is a 'summary of the reasons' for the decision and, in the case of an unsuccessful tenderer 'the relevant characteristics and advantages of the successful tender'.
 - v. A specific set of remedies for below OJEU threshold procurements. This includes a right of action against authorities for failure to:
 - treat bidders equally and without discrimination;
 - act in a transparent and proportionate manner;
 - comply with the sustainable procurement duty (see below);
 - publish contract notices (and award notices) on PCS;
 - comply with any mandatory exclusions grounds laid down by Scottish Ministers;
 - comply with minimum standards on PQQ selection laid down by Scottish Ministers;
 - have regard to' any statutory guidance issued by Scottish Ministers on PQQ selection;
 - comply with any requirements laid down by Scottish Ministers as to the use of technical specifications;
 - comply with the prohibition on charging a fee for participation in a regulated procurement; or
 - comply with the requirements to debrief unsuccessful PQQ applicants or tenderers.
- 9) In addition to alleging a breach of one of 'actionable duties' the party issuing proceedings will have to be able to show that they:
- are established in the EU/EEA and either were a bidder in the process, or would otherwise have wished to be awarded the contract; and
 - as a consequence of the authority's failure to comply one or more of the actionable duties they have suffered, or risk suffering, loss or damage.
- 10) Proceedings under the new regime may be brought before the Sheriff Court or the Court of Session. Before bringing proceedings, the authority must be notified of the alleged breach and of the intention to bring proceedings in respect of that alleged breach.
- 11) Proceedings must be brought within 30 days of the bidder first knowing, or having sufficient information to be deemed to have known, that grounds for beginning proceedings have arisen. That 30 day limitation period may be extended up to 3 months as the court 'considers appropriate' or for a longer period if the court considers there is 'good reason for doing so'.
- 12) In terms of remedies, the court may grant an interim order suspending the tender process. There is no automatic suspension. If a breach is established, the court may order the setting aside of any offending decision or action or require any tender document to be amended.

- 13) The court may also award damages. Where the contract has already been entered into, the court can only award damages. There is no provision for ineffectiveness or any other remedy invalidating the contract.

General duties for all regulated procurement

- 14) A 'sustainable procurement duty'. - This will require an authority to consider for each contract it awards how its procurement process can improve the economic, social and environmental wellbeing of its area, facilitate involvement of SME, third sector and supported business and promote innovation;
- 15) A requirement on all authorities to publish an annual procurement strategy (subject to a project spend of more than £5 million) and an annual procurement report on its regulated procurement activities;
- 16) Scottish Ministers 'must' issue guidance to authorities on the preparation and publication of procurement strategies and annual reports, which authorities 'must have regard to'.

Specific duties for all regulated procurement

- 17) A requirement on all authorities to publish contract notices and award notices on the Public Contracts website;
- 18) A requirement to consider contractual community benefit requirements (CBR) ahead of procuring any contracts having an estimated value greater than £4 million. CBR are defined as contractual requirements relating to training and recruitment, or the availability of sub-contracting opportunities, or which are otherwise intended to improve the economic, social or environmental wellbeing of the authority's area in a way additional to the main purpose of the contract being awarded;
- 19) Where CBR are included in a contract the authority will be required to include in the award notice a statement of the benefits it considers will be derived from those requirements;
- 20) Authorities will have to 'have regard to' any statutory guidance issued by Scottish Ministers on the use of CBRs;
- 21) Authorities will also have to 'have regard to' any statutory guidance issued by Scottish Ministers on the selection of tenderers, including in relation to the use of PQQs and the appointment of external advisers;
- 22) A prohibition on authorities charging a fee for participation in a regulated procurement (including fees for access to tender documents);
- 23) A requirement on all authorities to keep and maintain a contracts register of all the contracts awarded pursuant to a regulated procurement. For each contract the register must include the date of award, the name of the contractor, the subject matter, the estimated value, the start and end dates and duration of any extension periods. The register must be made publicly available.

Comment

- 24) Most EU countries have a common set of rules that apply to all public sector procurement. These apply a common set of rules to both above and below OJEU threshold contracts. The UK appears to be the exception in not having below OJEU threshold regulations and in relying on guidance and informal mechanisms for handling complaints. While this new regime for below OJEU threshold contracts in Scotland now provides specific set of rules, it risks doing so in a way that fails to provide a single set of common rules for all public sector procurement. That risks uncertainty and confusion both for public sector bodies and for companies looking to do business with them.
- 25) While there is a great focus in the new below threshold regime on PQQ and the selection stage - presumably intended to facilitate SME and third sector access - there are no provisions on award criteria similar to those in the 2012 Regulations.
- 26) The debriefing and remedies provisions for below threshold contracts are similar to those under the 2012 Regulations but also include important differences, for example in relation to standstill and limitation periods.

- 27) In developing what is being referred to as the 'Scottish Model of Procurement' the regime being proposed may not be striking the right balance between 'softer' (encouraging) and 'harder' (enforcing) approaches. It also risks creating an artificial distinction between procurement that is covered by the EU Directives and procurement that is not subject to the EU Directives, but which is nevertheless still subject to general principles of EU law.
- 28) The proposals also place a greater emphasis on Procurement resource with additional activity being required. Officers already consider, for each contract it awards, how its procurement process can improve the economic, social and environmental wellbeing of its area, facilitate involvement of SME, third sector and supported business and promote innovation etc. However, these are not recorded in any standard format. The main focus of procurement has been on best value and remaining compliant with Legal obligations. Given the current Procurement Capability Assessment focuses on every aspect of procurement activity it is expected that evidence of carrying out these duties and recording the results will become a focus of future PCAs. This will require a larger emphasis on the relationship between Procurement and Economic Development and as such will have resource implications.
- 29) The requirement on all authorities to publish an annual procurement strategy (subject to a project spend of more than £5 million) and an annual procurement report on its regulated procurement activity will not have a further resource impact as these matters are already dealt with by existing resources.