

8 February 2021

Agenda Item: 6

UPDATE REPORT OF SERVICE DIRECTOR – SERVICE DIRECTOR FOR FINANCE, INFRASTRUCTURE & IMPROVEMENT AND SECTION 151 OFFICER

PROCUREMENT: GREEN PAPER CONSULTATION

Purpose of the Report

1. To provide members with an overview of the newly published Procurement Green Paper.
2. To request that authority be delegated to the Group Manager for Procurement to respond to the consultation on behalf of Nottinghamshire County Council, in consultation with the Chair of the Finance and Major Contracts Management Committee.

Information

3. Public sector procurement is subject to a legal framework and since the 1970s, the EU has adopted legislation to ensure that the EU public procurement market is open and competitive and that suppliers are treated equally and fairly. In the UK we have implemented the Public Contract Regulations 2015 (PCR) for all public sector procurements.
4. With the UK no longer part of the EU, the Government has highlighted the opportunity to transform the regulations for Public Procurement.
5. On 15th December 2020, the Cabinet Office published a Green Paper “Transforming Public Procurement” launching a consultation process on proposals for changes in the legal and operational framework for public procurement.
6. The key aims of the green paper are to:
 - a. Speed up and simplify procurement processes
 - b. Maximise value for money
 - c. Unleash opportunities for small businesses, charities and social enterprises
 - d. Deliver the best commercial outcomes
 - e. Minimise burden on business and public sector
7. The proposal is now subject to a 12-week consultation period ending on 10th March 2021.

8. The proposal includes consolidating what are currently the Public Contracts Regulations 2015, the Utilities Contracts Regulations 2016 and the Concession Contracts Regulations 2016 into a single set of regulations with the aim to simplify and streamline procurement procedures.
9. Going forward instead of the seven different procurement procedures which currently exist, it is proposed that there are three procurement procedures:
 - the open procedure – for simpler, more straight forward procedures
 - a new competitive, flexible procedure – giving contracting authorities the freedom to negotiate and innovate to get the best results
 - the limited tendering procedure – the new name for the negotiated procedure without prior publication (direct awards).
10. The green paper also proposes changes to the conduct of award procedures with further transparency being encouraged. This will be through the introduction of a new centralized platform to gather and publish all information and documents covering all phases of procurement to include planning, award and execution.
11. A new centralized register is also proposed to hold details of suppliers' details, contract performance, procurement pipelines for every authority, complaints and legal challenges. A consideration will be how the proposals impact our local supplier base to be developed and promoted.
12. Further reform is also proposed to the litigation process for procurement with the introduction of a tailored fast track system for challenges to procurement decisions with the aim to be quicker, cheaper and more accessible. It is unclear whether this will lead to an increase in challenges for contracting authorities.
13. The proposals outlined in the Green Paper provides an opportunity for streamlining and consolidation which is helpful and will provide greater flexibility. In addition, the Council has already embraced all aspects of e-tendering as much as possible throughout the tendering process which will enable us to respond to the changes proposed.
14. However, this positive view does come with some reservations. In particular, the proposals for contracting authorities to publish all information and documents will create additional administration and bureaucracy for contracting authorities. The sensitive balance of not sharing suppliers' commercial sensitive data will also need to be considered.
15. Finally, the changes to the procurement processes will have an impact on re-training of all commissioners on the new evaluation processes which will need to be considered during implementation.
16. The above points will be fed into the consultation questions on behalf of Nottinghamshire County Council. It is envisaged the proposals will pass through Parliament with formal proposals to be published later in 2021, and changes to the law to be implemented from 2022.

Statutory and Policy Implications

15. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, safeguarding of children and adults at risk, service users, smarter working, sustainability and the environment and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

RECOMMENDATION/S

- 1) That Members consider whether they require any additional actions arising from the contents of the report.
- 2) That authority be delegated to Group Manager for Procurement to respond to the consultation on behalf of Nottinghamshire County Council, in consultation with Chair of Finance and Major Contracts Management Committee.

Nigel Stevenson

Service Director – Service Director for Finance, Infrastructure & Improvement and Section 151 Officer

For any enquiries about this report please contact:

Kaj Ghattaora, Group Manager - Procurement

Constitutional Comments (CEH 25/01/2021)

16. The recommendations are within the remit of the Finance and Major Contracts Management Committee under its terms of reference.

Financial Comments (SES 26/01/2021)

17. There are no specific financial implications arising directly from this report.

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- Procurement Green Paper: Transforming Public Procurement
<https://www.gov.uk/government/consultations/green-paper-transforming-public-procurement>

Electoral Division(s) and Member(s) Affected

- All