

Nottingham City Council

Commissioning and Procurement Executive Committee

Minutes of the meeting held at Loxley House, Station Street, NG2 3NG, on 15 February 2022 from 10.01 am - 10.55 am

Membership

Present

Councillor Sam Webster (Chair)
Councillor Cheryl Barnard (Vice Chair)
Councillor Sally Longford
Councillor Adele Williams

Absent

Councillor Eunice Campbell-Clark

Colleagues, partners and others in attendance:

Katy Ball	- Director of Procurement and Commissioning
Mark Bradbury	- Highways Contracts and Compliance Manager
Anna Coltman	- Commissioning Manager
Ken France	- Acting Head of Facilities and Building Services
Mark Leavesley	- Governance Officer
Sharon Ribeiro	- Lead Contact Performance Manager (Care and Support)
Ceri Walters	- Head of Commercial Finance
Sarah Wilson	- Electoral Services Manager

Call-in

Unless stated otherwise, all decisions are subject to call-in. The last date for call-in is **25/02/2022**. Decisions cannot be implemented until the working day after this date.

46 Apologies for Absence

Councillor Campbell-Clark - personal
Steve Oakley

47 Declarations of Interests

Councillor Williams declared an other registerable interest in item 5 (minute 50), Highways Sustainable Procurement Strategy: Phase 2, as the Chair of the Thomas Bow Board, and left the room prior to discussion of the item.

Councillor Webster declared an other registerable interest in item 6 (minute 51), Building Services and Facilities Management procurement requirements 2022-23, as a Board member of SCAPE, and left the room prior to discussion of the item.

48 Minutes

The Committee agreed the minutes of the meeting held on 11 January 2022 as a correct record and they were signed by the Chair.

49 Statutory Electoral Services: procurement of suppliers - Key decision

Sarah Wilson, Electoral Services Manager, presented the report, informing the Committee that Electoral Services relied on a small number of specialised suppliers to provide a wide variety of products for the efficient and effective delivery of its service to meet the statutory requirements as set out in legislation and to provide a high level of service to citizens.

Ms Wilson stated the following:

- a) the services included:
 - a dedicated Electoral Management System (EMS) to meet all registration and election software requirements, along with additional integrated products which enhanced the delivery of service and customer journey and maximised efficiencies;
 - a highly specialised printing and postal provider to innovate and design products to assist service users and produce and distribute sensitive items of personal mail in a secure and timely manner for both registration and election processes;
 - Royal Mail collecting and delivering specialised items of mail to citizens as a priority under a specific licence, and ensuring their safe return.
- b) The current contracts for software and printing and postal providers were approaching their renewal dates and Electoral Services were seeking approval to enter into new contracts with providers for the next four years (with the option to extend for a further 2 years) subject to procurement requirements, from the beginning of the financial year 2022-23.
- c) Failure to act would result in Electoral Services not having any contracted suppliers, leaving the Electoral Registration Officer and the Returning Officer at risk of not being able to deliver the statutory service. This would not only lead to poor customer service and reputational damage to the authority, but also breach procurement rules and financial regulations.
- d) As part of securing new contracts for the next four (or more) years, Electoral Services would also be able to test the market and, wherever possible, seek best value moving forwards.

Resolved

- (1) to delegate authority to the Director of Legal and Governance to enter into a 4-year (plus a 2-year extension option) contract with suppliers as set out below:**
 - i. following a compliant procurement process through an approved Crown Commercial Services Framework, and following due diligence**

and value for money checks via the e-market place, an EMS software contract to the existing supplier;

- ii. **following a tender process exercise, a printing and postal supplier;**
- (2) to note that exemption from Contract Procedure Rules was granted by the Chief Finance Officer in accordance with paragraph 18.79 of the Constitution in order to use Royal Mail (as the only company able to provide the service) to deliver the last stage of the postal process to the doorstep;**
- (3) that expenditure on providing Electoral Services of up to £1.28million over the next 4 years, and a further £640,000 if the option of a 2-year extension is exercised, is approved.**

Reasons for recommendations

1. To ensure that the Council can adequately continue to deliver its statutory functions in relation to Electoral Services from April 2022 onwards.
2. To comply with Financial Regulations relating to testing the market to demonstrate that best value for money is being obtained.
3. To ensure business continuity for Electoral Services and the ERO & RO with a new supplier contract in place before existing contracts and solutions expire.
4. To provide adequate time and resources to replace or renew existing contracts ahead of the next annual canvass in 2022 and scheduled election in May 2023.
5. To reduce the risk to the ERO and RO of not being able to operate adequate, effective and efficient services as a result of any period of time where no supplier is contracted to deliver these services.
6. To pro-actively plan and build services for a transforming organisation considering changes to regulations and legislation as a result of ongoing reforms and other external factors such as COVID and the changing demographic, as well as internal factors, such as budget pressures and workforce reduction.

Other options considered

1. Do nothing and allow contracts to cease without new contracts in place. This is not recommended as:
 - i. this would put NCC, the ERO & RO at a high risk as Civica could give notice or increase costs based on the short term commitment and Electoral Services capability to send out correspondence and deliver all elements of the statutory service would be compromised;
 - ii. NCC would still have to pay Civica for the intellectual property right to use the software but we wouldn't have a contract in place with agreed terms and conditions;

- iii. NCC would incur additional expenditure as best value would not be met and costs would increase.
2. Develop and implement an in-house solution. This is not recommended as:
- i. IT services do not have the resources or time to develop and maintain the system;
 - ii. the cost and effort to develop such a solution would out-strip the cost of a product built for market which is already available and in use within the sector;
 - iii. NCC does not have the capacity, resource or technical ability to provide an internal solution to the printing and distribution of large amounts of specialist mail, especially the printing and fulfilment of postal packs and ballot papers.

50 Highways Sustainable Procurement Strategy: Phase 2 - Key decision

Having previously declared an interest, Councillor Williams left the room prior to discussion of this item.

Mark Bradbury, Highways Contracts and Compliance Manager, presented the report, which requested approval of procurement arrangements to support the Council's delivery of Statutory Highway Maintenance Works, Highway Improvement and Public Realm Programmes and Specialist Support Services for Highways and Transport Strategy.

Mr Bradbury stated that:

- (a) new contracts and framework arrangements were required to cover the following essential services:
 - purchasing of aggregates, asphalt, ready mixed concrete, construction materials and signs;
 - plant hire or haulage, including hire of JCB with operator, tools, plant and welfare facilities;
 - services, including purchasing of winter service weather forecasting, maintenance of water features, design and installation of street lighting (currently excluded from PFI arrangements), asset management surveys, document production, data analysis and transport modelling and feasibility studies;
 - works, including painting and removal of pigeon guano from structures and bridges.
- (b) it was proposed that contracts be awarded through conducting processes in accordance with the Council's Contract Procedure Rules and requirements under the Public Contracts Regulations 2015 and, where permitted, appropriate and it demonstrated Best Value, to access existing national frameworks.

- (c) contracts were anticipated to utilise the National Engineering Council (NEC 4) Suite of Construction Contracts or other industry recognised and accepted terms.
- (d) a breakdown of the contract requirements was set out in appendix A, including the proposed duration of contracts, which was generally 4 years.
- (e) in the operation of any awarded framework agreement, it would be necessary to award call-off contracts for individual projects and, in order to ensure oversight to the operation of any framework and subsequent call-off arrangements, it was requested that authority be delegated at an operational level to the Contracts and Compliance Manager for Highways.

During discussion, and in response to questions and comments, Mr Bradbury stated that, where possible, local labour would be employed and that there was currently work underway to bring Frameworks together to avoid duplication.

Resolved

- (1) to approve the procurement and subsequent award of contracts / Framework Agreements as detailed in appendix A;**
- (2) to delegate authority to the Contracts and Compliance Manager for Highways to act as 'Framework Manager' on the awarded call-off from the Framework Agreements detailed in appendix A.**

Reasons for recommendations

Recommendation 1 - Procuring Highway Contacts & Frameworks will allow Highway Services to continue to compliantly deliver works and services in order to fulfil their statutory duty to maintain the highway and support all Transport Services in compliant delivery options. The following advantages have been identified in putting these arrangements in place:

- Enabling the delivery of external grant funded schemes in line with the timescales of the award;
- A value-for-money delivery model with no fixed financial commitment to use the framework;
- Opportunities for local Small to Medium Enterprise (SME) companies to tender for the work;
- The potential for a local workforce either through direct employment or through regional SME sub-contractors;
- Ensuring the Council complies with its duty of Best Value by going through a competitive process to evaluate price and quality;
- The ability to develop relationships with a core set of framework providers to the Council and ensure effective management through such relationships.

Recommendation 2 – To have a named officer with oversight of the frameworks and approve any call-off arrangements will ensure that there is appropriate and ongoing governance of the spend and operation of the framework and that the necessary

authorities and budgets are in place on a project by project basis before a call-off can be awarded.

This delivery model has a number of additional benefits, including strong links to our corporate value and objectives, a highly flexible and responsive structure to accommodate short term changes to delivery programmes and local knowledge available in the planning and assessment of proposed works.

Other options considered

Not to let contracts - Not having compliant procurement measures in place will adversely affect our ability to engage with suppliers and contractors to deliver both statutory highway maintenance works and essential highway works. Further, no effective means to demonstrate to compliance with financial and procurement regulations (external grant funded) for the broader transport group at NCC.

To not progress new contract and framework arrangements – this will jeopardise funding and Nottingham would lose out on the opportunity to invest the city and in local neighbourhoods. It would also fail to demonstrate commitment to the Government's Levelling Up agenda, putting at risk the ability to secure future capital funding.

To directly award contracts as opposed to framework contract arrangements that have no commitment to value - This would require commitment to spend at point of contract, would not provide the flexibility required for service requirements over the period required and therefore not provide value for money.

51 Building Services and Facilities Management Procurement Requirements 2022-23 - Key decision

Having previously declared an interest, Councillor Webster left the room prior to discussion of this item.

Due to the absence of Councillor Webster, Councillor Barnard (Vice-Chair) took the chair for this item.

Ken France, Acting Head of Facilities and Building Services, presented the report, detailing Building Services and Facilities Management procurement requirements for the financial year 2022/23 for planned and reactive maintenance and minor works.

He stated that the Council had a statutory duty to be compliant with all applicable asset legislation in relation to its asset portfolio and this duty was met by carrying out planned, reactive and minor works on its asset portfolio. Whilst works were performed in-house wherever possible, there were occasions where specialist contractors or additional resource was required.

Therefore, Building Services and Facilities Management needed to award several framework agreements and contracts, in conjunction with the council's procurement team, to the value of £32.52million, as detailed in appendix 1. This total included £1.6million of the planned maintenance budget being spent through internal services and Nottingham City Homes.

In response to a question regarding whether Nottingham City Homes (NCH) undertook the work themselves or outsourced it (which the Council could outsource themselves, rather than paying NCH to do so), Mr France stated that all contractors charge a management uplift, irrespective of whether NCC outsource the work or NCH outsource the work, however, there is currently work underway to assess whether Frameworks can be set up going forwards to meet all our technical disciplines, although it would be dependent on the nature of the work and any 'specialisms'. There would also be a management uplift on any framework set up moving forward.

Resolved

- (1) to approve procurement of contracts over a 4-year period (2022-26) to a maximum value of £32.52million, in line with the annual procurement plan as detailed in appendix 1;**
- (2) to approve the proposed expenditure of at least £1.6million of the £3million planned maintenance budget for 2022/23 on services delivered either through in-house provision or Nottingham City Homes;**
- (3) to delegate authority to the Acting Director for Residents Services to award the contracts and approve all call-off arrangements under the contracts.**

Reasons for recommendations

There are a number of contracts which the Building Services and Facilities Management department use coming to the end of their term in March 2022. The contracts set out in the appendix require re-procurement to enable Building Services to keep the Council's asset portfolio compliant with regulatory, legislative and insurance obligations. Through the proposed procurement routes the Council can continue to improve efficiency and service of supplier delivery across multiple high-risk work streams and improve value for money for Directorates across the Council. Our annual procurement programme has been proven the best approach to securing a competent supply chain with the lowest costs possible.

This report details how orders are placed with Contractors through the Council's robust systems. To ensure a smooth and timely process for placing orders it is recommended that the Director for Neighbourhood Services has delegated authority to approve any contracts and call-offs made under frameworks for their duration. No award will be made without evidence that the budget has been approved for the ordered requirement.

It has been identified that at least £1.6million of the 2022/23 planned maintenance budget can be delivered through a mixture of in-house services and the Council's company, Nottingham City Homes, which is a company meeting the Teckal exemption requirements under procurement legislation. Contracts to such companies are not subject to the procurement requirements as set out in the Contract Procedure Rules but authority is still required to authorise entering into such contracts.

Other options considered

Do nothing and allow contracts to end, which will remove statutory, regulatory and legislative compliancy across the Council's portfolio of assets and increase the risk of prosecution and reputational damage to Nottingham City Council. This option was considered unacceptable and rejected.

In-source all the activity covered by the contract areas under consideration for renewal. Due to the complexity and high risks involved with this task, including a lack of competency-based skills and training, equipment and specialised resource, it was considered unacceptable and rejected.

Allow Nottingham City Council's directorates to purchase their own asset compliancy services. This is a very high-risk approach to asset safety and compliance across the portfolio and the Council would find it very hard to track actual compliance through our current systems. Such an approach would lead to additional expense and the general safety of the asset compromised. This option was considered unacceptable and rejected.

52 Workforce recruitment and retention grant for Adult Social Care - Key decision

Prior to commencement of this item, Councillor Webster assumed the Chair for the remainder of the meeting.

Anna Coltman, Commissioning Manager, presented the report, informing the Committee that on 14 September 2021 the government made a commitment in the 'COVID-19 Response: Autumn and Winter Plan 2021' to support local authorities and social care providers to maintain safe staffing levels over the winter period and to continue working closely with the care sector to build sufficient workforce capacity across services.

The adult social care winter plan published on 3 November 2021 set out the support the government would be providing to the adult social care sector to meet the challenges it faced during the winter and included a commitment to providing workforce recruitment and retention funding to support local authorities and providers to recruit and retain sufficient staff over the winter and support growth and sustain existing workforce capacity.

Further to minute 43, dated 11 January 2022, regarding round 1 funding, this report detailed the round 2 funding (announced too late to be included in the January report to Committee), which had to be spent by 31 March 2022.

In response to a question regarding the Council's claw-back liability if a provider went into administration having received funding from the Council that was unspent, Ms Coltman stated that she would check with Legal Services and inform members outside of the meeting.

Resolved

- (1) to approve Nottingham City Council's acceptance and spend of Round 2 of the Workforce Recruitment and Retention Grant funding from the**

Department of Health and Social Care (as per the terms and conditions of the grant);

- (2) to delegate authority to the Director for Adult Health and Social Care, in consultation with the Portfolio Holder for Adults and Health and the Director for Commissioning and Procurement, to accept and allocate any further awards of these funds received by the Council during 2022-23, up to a maximum value of £3,000,000, in accordance with any conditions of the grant funding, to enable the timescales of the Department of Health and Social Care to be met.**

Reasons for recommendations

- a) Nottingham City Council has been allocated a total of £2,987,033 from the Government's Workforce Recruitment and retention fund (WR&R fund). The funding has been provided across two rounds. Round 1 provided £1,049,498 from 21 October 2021 and Round 2 provided £1,937,535 from 10 December 2021.
- b) Approval to accept and allocate Round 1 of the WR&R grant was provided at the Commissioning and Procurement Executive Committee on 11 January 2022.
- c) Round 2 of the WR&R funding is to be spent by 31 March 2022. The primary purpose of the WR&R fund is to deliver additional staffing capacity in adult social care through recruitment and retention activity. Round 2 funding must be fully spent during the 10 December 2021 to 31 March 2022 period.
- d) The Grant is ring-fenced and will be paid in instalments to Nottingham City Council:
- the first instalment (70%) will be paid in January 2022;
 - the second instalment worth (30%) will be paid in February 2022 and will be conditional on local authorities having completed a return to the DHSC by 21 January 2022.
- e) The expectation is that the grant will be fully spent on addressing local workforce capacity pressures through recruitment and retention activity by 31 March 2022. The grant conditions are clear that 'spent' means that expenditure has been incurred between 10 December 2021 and 31 March 2022 (Round 2 funding). This means the activity leading to the expense must have happened by 31 March 2022, so that the local authority is accruing the expense and it appears in the local authority's 2021 to 2022 accounts.
- f) The delegation to the Director for Adult Health and Social Care, in consultation with the Portfolio Holder for Adults and Health and the Director for Commissioning and Procurement, to receive and allocate any further allocations of this fund received during 2022-23 up to a maximum of £3,000,000 will enable the funds to be passported to providers promptly in order to meet the timescales for use of the funds as set by DHSC.

- g) This delegation will be specifically related to accepting and allocating funding for recruitment and retention activity to support staffing capacity within adult social care within the Nottingham City Council local authority area. This applies to any further grant funding received during 2022/23, as part of the WR&R grant or a replacement grant with grant conditions allowing for the same activities as the WR&R grant.

Other options considered

Given the short-time scales, we are unable to fully outline the anticipated expenditure in this report, as March 2022 meeting does not allow enough time to spend and allocate the grant funding as per the terms and conditions of the grant.

53 Fee Rates for Adult Social Care Services 2022-23 - Key decision

Sharon Ribeiro, Lead Contact Performance Manager (Care and Support), presented the report, which detailed proposals for fee rates in 2022/23 across Adult Social Care contracted provision, which Nottingham City Council is contractually bound to consider on an annual basis where it has a statutory duty to provide a service.

It was stated that the Council will consult with providers on the proposals and consider responses prior to implementation from April 2022.

In response to a question regarding minimising costs, Ms Ribeiro stated that the Council was constantly reviewing cost vs provision, and there was currently work being undertaken to review all fees etc in time for 2023/24.

Resolved

(1) to approve:

- (a) the proposals for fee rates for Adult Social Care Services in 2022/23 as outlined in exempt appendix 1, which will be consulted upon with service providers;**
- (b) the total spend of £6.299million, including approval to spend against high cost placement provision through the Council's scheme of delegation for Adults Care Packages;**

(2) to delegate authority to the Director of Commissioning and Procurement, in consultation with the Director for Adult Health and Social Care, and in line with the Council budget, to agree fee rates in accordance with the proposals detailed in exempt appendix 1, subject to the outcome of consultation with providers;

(3) to note that:

- (a) subject to recommendation 3(b) below, the agreed rates will be implemented from April 2022;**

(b) if upon completion of the consultation the financial impact of any revised proposals exceed the budget available, further approval would be sought from this Committee.

Reasons for recommendations

- i. Nottingham City Council is contractually bound to consider fee rates in respect of services that it has a duty to provide. This is balanced against budget commitments and pressures for the Council.
- ii. In accordance with the Council's legal obligation, it is proposed to consult with adult social care providers with regard to these proposals during February – March 2022. The Director of Commissioning and Procurement in consultation with the Director for Adult Health and Social Care will take account of consultation responses and issue variations to existing contracts reflective of the proposals in this report should no significant issue arise. Should the outcome of these consultations require consideration of significant change to the shape and financial consequence of these proposals (with due regard given to the available budget) a further report will be presented through the appropriate governance process.
- iii. These proposals and the associated financial modelling are based on information currently available about service utilisation and demand changes as a result of Covid 19.
- iv. The recommendations presented take account of the implications of the National Living Wage for the market and aim to represent a fair allocation of funding and to support the market across all service areas. It is considered that a balanced, reasoned and informed approach has been taken and that the proposals seek to support a sustainable, efficient and effective market within the available resources.
- v. It is proposed to undertake a full review of costs of ASC pricing during 2022-2023 to determine sustainable rates for the longer term, particularly in the context of forthcoming changes by the Department of Health and Social Care (DHSC) to the arrangements for self-funders. DHSC has announced a new fund, the Market Sustainability and Fair Cost of Care Fund, which will be available in 2022-23 to support local authorities in paying a fair rate for care and preparing local markets for reform. The allocation to Nottingham City Council in 2022-23 is expected to be approximately £1m and this will be used to source a full review of local costs and a sustainable level funding.

Other options considered

- i. Do nothing – the Council is contractually bound to review contract fee rates on an annual basis. Doing nothing would present a risk of legal challenge and for this reason, this option was rejected.
- ii. Offer different fee rate proposals. This option is not recommended as the proposals have resulted from significant work and modelling between finance and contracting, taking into account knowledge of the market and feedback from

providers, and the overall budget pressures for Adult Social Care. The final proposals have taken account of the potential impact on service delivery and risk of market failure. Offering different fee rate proposals would place further pressure on the Adult Social Care budget and this is not a feasible option.

- iii. To undertake analysis of individual provider costs and offer fee rates based on factors such as wage rates paid, pension contributions, profit and void levels etc. This option would not be feasible at this time as it would be administratively burdensome due to variations in rates of pay and other costs across the sector.

54 Exclusion of the public

The Committee agreed to exclude the public from the meeting during consideration of the remaining item in accordance with Section 100A(4) of the Local Government Act 1972 on the basis that having regard to all the circumstances, the public interest in maintaining the exemption outweighed the public interest in disclosing the information, as defined in Paragraphs 3 and 5 of Part 1 of Schedule 12A to the Act.

55 Exempt appendices - Fee Rates for Adult Social Care Services 2022-23

Resolved to note the exempt appendices to item 8, minute 53.