

REPORT TO:	OVERVIEW and SCRUTINY COMMITTEE	AGENDA ITEM: 6
DATE OF MEETING:	2nd SEPTEMBER 2020	CATEGORY: RECOMMENDED
REPORT FROM:	STRATEGIC DIRECTOR (CORPORATE RESOURCES)	OPEN
MEMBERS' CONTACT POINT:	KEVIN STACKHOUSE (01283 595811) kevin.stackhouse@south-derbys.gov.uk	DOC: u/ks/live files/procurement/shared service/O&S report september 2020
SUBJECT:	PROCUREMENT	TERMS OF REFERENCE:
WARD(S) AFFECTED:	ALL	

1.0 Recommendations

- 1.1 That the Committee notes the report and proposes any additional work within the scope of the review.

2.0 Purpose of Report

- 2.1 Following the annual scrutiny of the Council's Budget proposals for 2020/21 and its medium-term spending plans to 2025 in January, the Committee agreed to review the current arrangements for Procurement across the Council.
- 2.2 In particular, to review the business case for current service provision, together with an overview of regulations and procedures governing procurement activity across the Council.

3.0 Detail

Current Service Provision

- 3.1 In November 2017, the Council approved that delivery of its procurement function be transferred into a shared service arrangement hosted by Chesterfield Royal Hospital NHS Foundation Trust (now known as Derbyshire Support and Facilities Services Limited).
- 3.2 The Agreement that governs the services originally came into effect on 1 January 2018. This was subsequently reviewed with a new Agreement being effective from 1 October 2019, following structural changes at the Trust.
- 3.3 The updated Agreement runs initially until October 2020 and then the Council has the option of extending for a further 3 years until October 2023. Either party can terminate the Agreement at any time by giving 6 months' notice.

- 3.4 The current cost to the Council is £30,000 per year and this has not increased since entering the Shared Service Arrangement in January 2018. The proposal and business case considered in November 2017 is attached at **Appendix 1**.
- 3.5 The reasons for entering the Shared Service Arrangement at that time are summarised in the following table.

Resilience and capacity	The Council would not be reliant on 1 professional post but instead would be able to access a specialist pool of resources with a wider knowledge base.
Governance	The Council would have a fully automated Contracts Register which would be regularly monitored, together with greater consistency in the application of procurement policy. A full audit trail would be maintained centrally of each major tendering exercise and contain fully compliant reporting mechanisms.
Budget Savings	The Council would potentially benefit from the buying power of the Shared Service, together with greater commercial opportunities.
Lower Costs and Efficient Processing	It is considered that the costs of joining the Shared Service will be lower than the current internal cost; this is detailed in Section 5 of the report. In addition, the Council would gain access to a wider technology solution for managing the procurement process. This would be cloud-based in accordance with the Council's IT and Digital Strategy. This would help to increase the efficiency of the procurement process.
Added Value	Including the sharing of best practice, benchmarking and comparative data. In addition, there would be greater challenge of existing practices and the offer of a different perspective.
Residents/business of South Derbyshire	Benefits from the Shared Delivery Model will be passed on to residents and business in South Derbyshire through more efficient and consistent procurement activities and a focus on maximising opportunities to reduce the costs of existing services where appropriate.
Mitigate risks	As noted in the report, a key benefit is to manage the current risks of the existing arrangements (see below).
Service Delivery	Whilst the service will be based at the NHS Trust in Chesterfield, resources will be initially based on site to support the transition to the new shared delivery model and to embed working practices. From then, all services in the Council will have access to a central resource, dedicated to their needs and experts in the procurement service.

Risks

- 3.6 Immediately prior to January 2018, Procurement had been delivered in-house following its transfer from an outsourcing arrangement a year earlier in January 2017.
- 3.7 The main weaknesses with the Service were resilience and capacity, due to the small and discrete nature of the Team. At any one time, the Council can have a substantial number of high value, contracted supplies and services to manage and retender.
- 3.8 This had in the past, created some capacity issues for the Service in supporting all procurement activity, whilst at the same time ensuring compliance with regulations.

Internal Audit Review

- 3.9 As part of its Audit Plan for 2020/21, Internal Audit will be reviewing the Procurement Service. They are due to report the outcomes to the Audit Sub-Committee in December 2020. As part of this review, Audit will consider governance arrangements, together with an assessment of whether the Service is delivering against the business case, i.e. a value for money test.

Contract Procedures and Process

- 3.10 The Council's processes are driven by the Public Contract Regulations (2015). These Regulations set out parameters that determine limits on whether the Council is required to tender work or adhere to wider European Regulations by advertising services through the Office Journal of the European Union (commonly known as OJEU**).

*(** **Note:** These Regulations will still apply following the Council's withdrawal from the European Union until such a time as UK legislation is changed).*

- 3.11 Locally, Procurement is governed by the [Contract Procedure Rules](#)
- 3.12 These are set out in Part 28 of the Council's Constitution. Besides embedding the Public Contract Regulations, they also specify how procurement should be undertaken for supplies and services below tendering thresholds.
- 3.13 These Rules and Regulations can be seen to make the process overly bureaucratic. However, as a public body, the Council has to demonstrate value for money in its purchasing, together with ensuring fair and open play in market places.
- 3.14 Thresholds in the Public Contact and OJEU Regulations generally apply to large value of supplies and services for which competition will be greatest.

Frameworks

- 3.15 Many authorities purchase through frameworks. These are effectively consortia arrangements where the Government or groups of authorities combine and undertake a tendering exercise on behalf of other authorities in a region or for a class of authority.
- 3.16 Authorities who then join the Consortium, "call off" the framework to meet their requirements. The main benefits for authorities are that frameworks do not incur the cost of an individual procurement exercise and allow authorities access to competitive prices.

- 3.17 However, frameworks are specialised and do not suit all supplies and authorities who may have more bespoke requirements.
- 3.18 The Council currently uses Framework Agreements to purchase its vehicles, replacement parts and fuel, together with a substantial amount of ICT hardware and equipment. In addition, frameworks are used from time to time to purchase systems or to appoint specialist services such architectural and engineering services, etc.

4.0 Financial Implications

- 4.1 None

5.0 Corporate Implications

Employment Implications

- 5.1 None

Legal Implications

- 5.2 None

Corporate Plan Implications

- 5.3 None directly, although Procurement aims to achieve value for money in purchasing and service provision to help the Council deliver its priorities.

Risk Impact

- 5.4 None directly

6.0 Community Impact

Consultation

- 6.1 None required

Equality and Diversity Impact

- 6.2 None

Social Value Impact

- 6.3 None

Environmental Sustainability

- 6.4 None

7.0 Background Papers

- 7.1 None

APPENDIX 1

NOT FOR PUBLICATION

REPORT TO:	FINANCE & MANAGEMENT COMMITTEE	AGENDA ITEM:
DATE OF MEETING:	30th NOVEMBER 2017	CATEGORY: DELEGATED
REPORT FROM:	DIRECTOR OF FINANCE and CORPORATE SERVICES	EXEMPT (BY VIRTUE OF PARAGRAPHS 2 and 3)
MEMBERS' CONTACT POINT:	KEVIN STACKHOUSE (01283 595811) Kevin.stackhouse@south-derbys.gov.uk	DOC: u/ks/live files/procurement/shared service proposal/business case
SUBJECT:	DELIVERY OF THE PROCUREMENT SERVICE	REF:
WARD(S) AFFECTED:	ALL	TERMS OF REFERENCE: FM 13

1.0 Reason for Exemption

- 1.1 The report contains information which is likely to reveal the identity of an individual (Paragraph 2) together with information relating to the business affairs of the Council (Paragraph 3).

2.0 Recommendations

- 2.1 That the Council joins a Shared Service Arrangement hosted by the Chesterfield Royal Hospital NHS Foundation Trust for the delivery of its Procurement Service.
- 2.2 That subject to the completion of a Service Level Agreement with the Chesterfield Royal Hospital NHS Foundation Trust, the Council's joining date is 2nd January 2018.
- 2.3 That, subject to 2.2, the current post of Head of Procurement (CRP46) is deleted from the Council's establishment with effect from January 1, 2018.
- 2.4 That the post of Procurement Support Officer (CRP55) is deemed as being out of scope of the proposed Shared Service Arrangement as the work is not wholly assigned to services being delivered in the new delivery model and therefore the current post holder is not subject to the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE).
- 2.5 That the post of Procurement Support Officer is relocated into the Finance Unit and reports to the Financial Services Manager with effect from January 1, 2018.

- 2.6 That the post of Procurement Support Officer is subject to job evaluation in line with locally agreed procedure.
- 2.7 That the grade for the post of Financial Services Manager remains unchanged as the additional responsibility is not considered material.
- 2.8 That consultation is completed with the Procurement Support Officer and the Trade Unions on the proposals and the new service delivery model.

3.0 Purpose of Report

- 3.1 To review the continued delivery of the Council's Procurement Service and to propose transferring the core activities into a Shared Service Arrangement that will build capacity, expertise and resilience in the service that will directly benefit all services in the Council.

4.0 Detail

Background

- 4.1 The Council's Procurement Service was provided by Northgate Public Services from 1st August 2010 until 30th January 2017, when it was transferred back to the Council following the ending of the Corporate Services Contract as approved by the Committee.
- 4.2 As a result of this decision, two staff transferred over to the Council, namely a Head of Procurement and a Procurement Support Officer. The Head of Procurement has since left the Council and the Support Officer is currently on maternity leave which is due to end in April 2018. The core activities of the procurement service are currently being covered by interim staff.
- 4.3 Since February 2017, Internal Audit has conducted two reviews of the Procurement Service following investigations into contract and procurement activities in Housing and Environmental Services. These reviews recommended several areas where processes and governance associated with the Procurement Services needed to be strengthened.
- 4.4 The Audit recommendations have or are in the process of being implemented and are being monitored by the Audit Sub-Committee.

Current Service Provision

- 4.5 The current establishment of two posts provides a centralised function for the Council. The role of the Head of Procurement is to ensure that the Council adheres to the Public Contracts Regulations and the Council's own Contract Procedural Rules.
- 4.6 The Head of Procurement provides professional support and expertise in the procurement process, from soft market testing to tender evaluation. The role also advises on routes to market to achieve value for money in procuring goods and services.

- 4.7 Consequently, this role requires a relevant professional qualification in procurement, together with considerable experience in purchasing and procuring contracts across a wide range of services and suppliers.
- 4.8 The role of the Support Officer is to provide administrative support. This involves processing purchase orders, monitoring central contracts for consumables and setting up new suppliers on the financial system.
- 4.9 Primarily, the interim staff have been focusing on the core procurement activities, supporting tender exercises and generally re-establishing the service back into the Council. They have also been assessing service provision and validating the Council's position given the matters raised by the Auditors.

Risks and Opportunities

- 4.10 The main weakness with the current service is considered to be resilience due to the small and discrete nature of the team. The Council has a substantial number of high value, contracted supplies and services to manage and retender, etc. especially in Housing and Leisure Services.
- 4.11 This has in the past, created some capacity issues for the Team in supporting all procurement activity, whilst at the same time ensuring compliance with regulations and providing a strategically focused service.
- 4.12 For example, it is considered that opportunities to review procurement activity in a joined-up approach across the Council, together with maximising buying power, are potentially being missed.

Objectives of the Procurement Service

- 4.13 The primary requirement of Procurement is to ensure a cost effective discharge of public services. It supports objectives and service quality through ensuring the right goods and services are provided at the best possible cost. Good procurement activity will also play an important role in supporting local economies.
- 4.14 As important, a procurement service must also ensure proper governance and that the procurement process itself is efficient and compliant whilst being open and transparent, not only across the Council but to the Community, business and stakeholders.

Options for Service Delivery

- 4.15 The vacant post of Head of Procurement (CRP46) and the appointment of an external agency worker to deliver the Procurement Service on an interim basis have provided an opportunity to consider alternative ways of delivering a sustainable service in the longer-term.
- 4.16 Clearly, the Council could appoint its own officer into the vacant post. However, as previously highlighted, resilience and capacity are considered to be limiting factors.
- 4.17 An out-sourcing arrangement is a further option. Public procurement is a niche market and is strongly governed through the Public Contract Regulations.

4.18 Traditional out-sourcing organisations tend to prefer larger authorities where through economies of scale and strong collective purchasing power, they can negotiate a share of savings to cover their costs.

4.19 In these service models, authorities are still responsible for proper governance in accordance with the Regulations. Previously with Northgate Public Services, procurement was delivered as part of a package of services to the Council.

Shared Services

4.20 There are number of arrangements in local government which involve authorities sharing a procurement function. There is an established arrangement in Derbyshire that currently consists of the following authorities:

- Chesterfield Borough Council
- North East Derbyshire District Council
- Bolsover District Council
- Derbyshire Dales District Council
- Chesterfield College
- Chesterfield Royal Hospital NHS Trust Foundation

4.21 This shared service commenced in April 2014. The Chesterfield NHS Trust acts as the Accountable Body and provides a fully inclusive Procurement Service to the other authorities. Following research, preliminary discussions with the Trust regarding the Council becoming part of this arrangement have been undertaken and this has proved positive to both parties.

4.22 Shared procurement activity between Local Government and the NHS is currently limited. Most public sector shared procurement services have been developed on the basis of sharing between the same public sector body types.

4.23 However, an analysis of procurement activity ahead of the implementation of this shared service being established identified strong synergies that support a shared procurement service between the NHS, local authorities and in this case, an educational establishment.

4.24 To-date, savings of approximately £800,000 have reportedly been made across the authorities, together with efficiencies in process. The College and the local authorities have benefitted from the buying power of the NHS Trust, whilst reducing risks regarding governance and compliance.

Service Structure

4.25 The Procurement Unit at the NHS Trust consists of approximately 20 staff. Several of these staff have a local authority background and have previously transferred or have been recruited from other local authorities. Senior staff are qualified and members of the Chartered Institute of Procurement and Supply.

4.26 Although predominantly they are involved in “buying” on behalf of the NHS Trust, there is a dedicated team that services the local authorities. Their service includes:

- Management of the procurement function from start to finish including the preparation of documents, advertising, assisting in writing and sourcing draft specifications, evaluation and contract award, etc.
- Training and briefing sessions for staff involved in procurement at all levels.
- Access to the NHS Trust's framework agreements for contracts.
- Collaboration on contracts that is mutually beneficial.
- Maintenance of a Contracts Register and associated reporting to meet the Local Government Transparency Code.
- Provision of an advice line.
- Development of a Procurement Strategy and supporting policies.
- Access to legal advice through EM Lawshare.
- A credit checking service.
- Provision of an E-Tendering portal and reporting tool.

Business Case

4.27 It is considered that this arrangement would prove extremely beneficial to the Council. The potential benefits are summarised in the following table.

Resilience and capacity	The Council would not be reliant on 1 professional post but instead would be able to access a specialist pool of resources with a wider knowledge base.
Governance	The Council would have a fully automated Contracts Register which would be regularly monitored, together with greater consistency in the application of procurement policy. A full audit trail would be maintained centrally of each major tendering exercise and contain fully compliant reporting mechanisms.
Budget Savings	The Council would potentially benefit from the buying power of the Shared Service, together with greater commercial opportunities.
Lower Costs and Efficient Processing	It is considered that the costs of joining the Shared Service will be lower than the current internal cost; this is detailed in Section 5 of the report. In addition, the Council would gain access to a wider technology solution for managing the procurement process. This would be cloud-based in accordance with the Council's IT and Digital Strategy. This would help to increase the efficiency of the procurement process.
Added Value	Including the sharing of best practice, benchmarking and comparative data. In addition, there would be greater challenge of existing practices and the offer of a different perspective.

Residents/business of South Derbyshire	Benefits from the Shared Delivery Model will be passed on to residents and business in South Derbyshire through more efficient and consistent procurement activities and a focus on maximising opportunities to reduce the costs of existing services where appropriate.
Mitigate risks	As noted in the report, a key benefit is to manage the current risks of the existing arrangements.
Service Delivery	Whilst the service will be based at the NHS Trust in Chesterfield, resources will be initially based on site to support the transition to the new shared delivery model and to embed working practices. From then, all services in the Council will have access to a central resource, dedicated to their needs and experts in the procurement service.

- 4.28 It is considered that these benefits would substantially mitigate the risks associated with current service provision as highlighted earlier in the report, together with providing opportunities to strengthen the Procurement Function at the Council.

Proposed Way Forward

- 4.29 Following discussions with the Head of Procurement at the NHS Trust, the Council could be easily assimilated into the current Shared Service as there are unlikely to be any TUPE implications as detailed in Section 6. It is considered that a high level work programme could quickly be established and that current resources in the Shared Service are sufficient to absorb and meet the Council's requirements.
- 4.30 At no cost to the Council, the NHS Trust have already reviewed the Council's current function, its policies and undertaken spend and category analysis, together with a review of the Contracts Register.
- 4.31 The Shared Service currently has contracts secured for several areas of the Council's spending programme. In addition, they have contractors on framework agreements that the Council currently uses separately, in particular for larger housing capital contracts. The local authority team at the NHS Trust have extensive experience in the procurement of contracts for housing repairs and planned maintenance, etc.
- 4.32 If the Council agreed to join this shared service arrangement, the services provided as detailed earlier in the report, would be governed by a Service Level Agreement. The NHS Trust would ideally look for an initial 3-year agreement to enable them to deliver a plan over the medium-term. The proposed Procurement Plan would be agreed with the Council.
- 4.33 Overall, it is considered that the reasons for joining the Shared Service are compelling. The procurement resources and skills are established at the NHS Trust and are already delivering a high quality and cost effective procurement service to other local authorities in Derbyshire.

Remote Support

- 4.34 It should be noted that the Shared Service and staff are based in Chesterfield. There would be no full-time presence in the Council's offices following the service being bedded in. Clearly, staff would be available on site for training and tender meetings, etc. but this may only be for 1 day per week. However, a dedicated contact would be available at all times during normal office hours by email, telephone and conference calling, etc.
- 4.35 This is the standard model for all other authorities in the shared service and has proven to work effectively.
- 4.36 Some administrative support locally would still be delivered by the existing Procurement Support Officer as detailed in Section 6.

5.0 Financial Implications

- 5.1 The total cost of the vacant post of Head of Procurement on the Council's establishment is £64,100 per year, including on-costs. This was the cost inherited from the previous employer under TUPE. The post holder had not requested a transfer to the Council's terms and conditions of employment.
- 5.2 It is considered unlikely that the equivalent post would have been at this pay level under the Council's current Pay and Grading structure. Although this post has not been formally assessed under job evaluation, it is likely that the grade would have been lower, with an estimated cost nearer to £50,000 in total.
- 5.3 The Council has been quoted a maximum cost of £30,000 per year for entering the Shared Service. This is still subject to finalisation depending on confirmation of the Council's expenditure and average number of hours support per week; this is currently estimated at 26 hours which would be subject to a quarterly review.
- 5.4 The NHS Trust has indicated that it would be their intention to use the Council's contribution (£30,000) towards the appointment of a further trainee or modern apprentice.

6.0 Legal and Employment Implications

Legal Implications

- 6.1 The legal basis for a shared service is contained within provisions of the Local Government Act 1972 and Section 20 of the Local Government Act 2000. This legislation effectively allows another public body to discharge the functions of another local authority.

Employment Implications

- 6.2 It is proposed to transfer the main strategic and professional functions of the existing procurement service into the Shared Service. These were undertaken by the former Head of Procurement and as this post is vacant, there is no one that could transfer under the Transfer of Undertakings (Protection of Employment) (TUPE) Regulations 2006.

- 6.3 Evidently, the Council would have recognised its responsibilities had the post been occupied. If the Shared Service proposal is approved, this post would be deleted from the Council's establishment.
- 6.4 The Procurement Support Officer, who also transferred from Northgate, is currently on maternity leave. The current post holder has voluntarily transferred on to the Council's terms and conditions of employment. They have been fully consulted on the proposal to move the strategic and professional functions of the procurement service into a Shared Service.
- 6.5 The main duties associated with their current role are to:
- Review and monitor purchase orders
 - Set up and amend new suppliers on the Council's financial system
 - Monitor the procurement in-box
 - Update internal documents as requested
 - Assist with data compilation for reporting
- 6.6 Therefore, it is considered that as these functions are to remain with the Council and that the post holder is wholly assigned to this work that TUPE would not apply to the employee. Besides some ad hoc reporting requirements, these duties are not being transferred to the Shared Service.
- 6.7 As noted, ongoing consultation has been held with the current post holder and they are aware that their post will not be transferred under TUPE to the Shared Service. Ongoing discussions are being held to confirm the arrangements regarding the post that is to be undertaken when the post holder returns to work after maternity leave.
- 6.8 As required under employment legislation, the employee returning to work after a period of maternity leave has the right to do so to the job she occupied immediately before her maternity leave began or, in prescribed circumstances, to a suitable alternative job on terms and conditions no less favourable than those of her original job
- 6.9 Consequently, as the duties of the Procurement Support Officer have some synergy with Finance, it is proposed to relocate the post within the Financial Services Unit.

Financial Services Manager

- 6.10 It is considered that whilst the transfer of the Procurement Support Officer will add to the duties and responsibilities of this post holder, they are not considered material and therefore no change to the current grade is proposed.

7.0 Community Implications

- 7.1 Efficient procurement helps to bring benefits to the Community as services will be more cost effective and efficient. Resultant budget savings can be directed to those services deemed as a priority in the Corporate Plan.
- 7.2 In addition, Procurement supports the Council in achieving several of its key outcomes as set out in the Corporate Plan and in particular, financial health and good governance.

8.0 Corporate Implications

- 8.1 Moving to a Shared Service centre will provide all services across the Council with access to a resourced, professional and effective procurement service that will support their work when dealing with a range of procurement issues.
- 8.2 It will also provide additional reassurance to the Council that procurement exercises are managed in full compliance with the appropriate legislation and its own Policies and Procedures.