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# Procurement governance

<b>Produced for:</b>	Resources and Place Scrutiny Committee
<b>Requested by:</b>	Cllr Carolyn Culver
<b>Portfolio Member:</b>	Councillor Vicky Poole
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## 1 Purpose of the Briefing

- 1.1 This briefing note sets out details of the governance in place to ensure robust procurement of goods and services, particularly for contracts over £2.5m, in order to enable the committee to respond to a proposal from a member of the public for a scrutiny review.

## 2 Executive Summary

- 2.1 The change to the process for awarding larger contracts was implemented in March 2023, in order to streamline the governance process and mitigate the risks caused by a delay in appointing a preferred supplier. This did not negate the requirements to follow both procurement legislation and the Council’s own Contract Rules. It was also in line with the Local Government Association’s peer challenge recommendation that West Berkshire Council should ‘simplify the governance structure to increase pace and agility’. The arrangements also help ensure the Council’s adherence to the Procurement Act 2023.

## 3 Background

- 3.1 The Council encourages members of the public to engage and contribute to the scrutiny process. This includes making suggestions for subjects for scrutiny review. Such a suggestion has been received asking the committee to look at the process for letting larger contracts. A copy of the full proposal is attached as appendix 1.
- 3.2 In summary, the proposal is for a scrutiny review of:

*The justification, authority, approval process, governance, supporting documentation, transparency, accountability and consequences with respect to: “Contracts for Award Under Delegated Authority from Executive Board; To gain approval from Executive to delegate authority to an individual (Service*

Lead or Service Director) to proceed with contract awards with a value in excess of £2.5m”.

## 4 The Council’s approach

- 4.1 The Council’s arrangements for tendering for and letting contracts are set out in the Constitution, in particular Part 8 – the [Contract Rules](#). In accordance with good practice, these are kept under review on an ongoing basis and updated as and when required.
- 4.2 Authority to make a decision about entering into a contract is delegated from Council. The limits and thresholds of delegated authority are set out in [appendix A](#) to the Contract Rules. That section also sets out requirements for any such decision over £100,000 and up to £2.5m to be appropriately documented and approved by the Procurement Board. Decisions over £2.5m fall within the purview of the Executive, although they can be delegated to specific officers in consultation with stakeholders such as the portfolio holder, s151 Officer, etc. None of this negates the requirements to follow and document the process.
- 4.3 These requirements have not changed significantly in recent years, although an amendment to the process was made in March 2023 in order to address issues of delay caused by having to seek final approval from the Executive at the end of a procurement process. The report to the Governance and Ethics Committee (now simply the Governance Committee) sets this out, proposing:

*....a slight variation to the process by which contracts, requiring Executive approval, are dealt with. At present, contracts with a value over £2.5m are sent to Executive at the end of the procurement process, prior to contract award. This can present difficulties with the timing of an award. It is therefore proposed that the Executive will be provided with Quarterly Contract Update reports, which will seek delegated authority [to an officer] within the parameters detailed within that report, and which will require consultation with the Executive Portfolio Holder, the Section 151 Officer and the Monitoring Officer.*

- 4.4 The Council’s Procurement Board, which includes senior representatives from Legal, Finance and Procurement is responsible for ensuring that ‘the Council’s procurement activity is well governed, compliant with the law and constitution and delivers best value for money across the Council’s contracting activities’. The Executive Member for Strategy, Governance and Commercialisation is an attendee at the Board. As part of this, any procurement with a value of £2.5m has to be considered by the Board *before* a tender process commences (through scrutiny of the procurement strategy, i.e. the procurement approach to be followed) and *after* it has concluded (by considering the proposal to award report, which contains full details of the tender process, including costs, scores, etc.). In addition, the Board is required to bring to the Executive’s attention any future potential award of contract over £2.5m and seek appropriate delegated authority to award once the Board is satisfied with the process that has been followed in accordance with the Council’s Contract Rules. Under the updated rules, the Executive can opt to reserve contract awards to itself rather than delegating decisions to officers, as it has done recently for the proposed highways contract.

4.5 It is worth noting that, even when an award of contract decision is taken by the Executive, it is primarily to ratify the outcome of the procurement process. The Contract Rules require that:

(a) *All tendering procedures (including obtaining quotes), from planning to contract award and execution (seal or signature), shall be undertaken in a manner so as to ensure:*

- *sufficient time is given to plan and run the process;*
- *equal opportunity and equal treatment;*
- *openness and transparency;*
- *proportionality;*
- *probity;*
- *outcomes that deliver sustainability, efficiency and cost savings (where appropriate).*

4.6 There is a presumption in favour of competition under the Contract Rules, and therefore all opportunities over £1,000 are dealt with via the Procurement Portal, ensuring that contract awards are undertaken in an open and transparent manner.

4.7 The Procurement Board's responsibility is to ensure that the appropriate process has been followed, which will identify the successful tenderer based on the scoring matrix (assessing quality and price criteria). At the point the 'decision' is made, neither officers nor members could change the outcome of the procurement process without exposing the Council to risk of legal challenge. Having this additional stage simply prolongs the governance process and delays the award of contract.

## 5 Examples from the submission

5.1 The submission contains two particular examples of reports prior to the changes that the member of the public suggests demonstrate how the previous approach was more robust.

5.2 EX4332: Newbury Sports Hub – this is actually not an award of contract, as that had already been agreed previously (December 2021). Rather it seeks to adjust the original costs, which had been inflated whilst the initiative was delayed by a lengthy legal challenge.

5.3 EX4159: Northcroft Lido – this is a detailed report that sets out the results of public consultation and the business case for redevelopment of the lido. It delegates authority for an award of contract but contains little detail about the procurement process.

5.4 Neither of these reports demonstrate that the process prior to March 2023 was more robust than was previously the case.

5.5 Historically, reports for contract awards would provide a brief summary of the services to be delivered, an assurance that an appropriate procurement process had been followed, and a request that the contract be awarded to the successful bidder. The detail of proposed contract awards would be classified as commercial information that would generally be exempt from publication. The following are two examples of reports seeking awards of contracts up to March 2023:

- Contract award for Pelham House (EX4169)
- Contract award for leisure management (EX4221)

## 6 Next Steps

- 6.1 It is for the committee to decide whether it wishes to accept the proposal from a member of the public for a scrutiny review.
- 6.2 The rules governing the letting of contracts are set out in the Constitution, so, as an alternative, the Committee may wish to refer the matter to the Constitution Review Group for consideration as to whether the existing rules are fit for purpose and adhere to the Procurement Act 2023.

## 7 Appendices

- 7.1 Appendix 1 – proposal for a scrutiny review

## 8 Background papers

- 8.1 [The Council's Contract Rules](#)
- 8.2 [Updates to the Constitution](#) – report to the Governance and Ethics Committee, 6 March 2023
- 8.3 [Award of contract to build Newbury Sports Hub](#) – report to the Executive, 16 December 2021
- 8.4 [Newbury Sports Hub – revised costs and seeking permission to sign Development Management Agreement](#) – report to the Executive, 23 March 2023
- 8.5 [Contract award for Pelham House](#) – report to the Executive, 24 March 2022
- 8.6 [Contract award for leisure management contract](#) – report to the Executive, 23 March 2023
- 8.7 Procurement Board Terms of Reference [internal document]

## Appendix 1: proposal for a scrutiny review from a member of the public

Your suggested topic(s)	
<p><b>Your suggested topic for scrutiny</b></p>	<p>The justification, authority, approval process, governance, supporting documentation, transparency, accountability and consequences with respect to:</p> <p>“Contracts for Award Under Delegated Authority from Executive Board; To gain approval from Executive to delegate authority to an individual (Service Lead or Service Director) to proceed with contract awards with a value in excess of £2.5M”</p>
<p><b>Your reasons for requesting that this topic be considered (Please include your reasons for suggesting the topic and include details of any evidence you may have)</b></p>	<p>At the exec meeting on 6 July 2023 was the first time that this “new” process was submitted to the Executive (EX4407).</p> <p>EX4407 provided a summary table of 10 contracts, with each contract valued over £2.5 million. The justification for providing an “overview” only was / is “It follows the work by a constitution task group over last two years and resulting recommendations”.</p> <p>Since July 2023 key spending decisions (contracts) over £2.5 million are being made with little supporting detail, therefore it’s unclear what has been approved, at what cost, how it is being funded etc. These massive spending decisions (that go up to £20 million) are being taken without the full detail, evidence and justification that was previously required and provided. Examples of detailed reports provided BEFORE 6 July 2023 are:</p> <ul style="list-style-type: none"> <li>• <a href="#">EX4332</a>: Newbury Sports Hub - revised costs and seeking permission to sign Development Management Agreement: dated 15 March 2023 (To approve the allocation of £3.878M)</li> <li>• <a href="#">EX4159</a>: Re-development of Northcroft Lido Northcroft Lido: dated 24 March 2022 (The cost of the lido is estimated at £5M with an annual repayment of £186,670 per annum which will include payment for both principal and interest over a 40-year term)</li> </ul> <p>Reports such as EX4332 and EX4159 are no longer being provided. Due to this change in process the biggest Council contract decisions, since July 2023, have been / are being taken with scant &amp; incomplete information based on a summary generic description only. The only information provided relates to the procurement status which comes at the end of the process. It should be informed by detailed objectives and a balanced report that is produced by the appropriate service area (e.g. Adult Social Care, Environment,</p>

	<p>Property Services / Education, Leisure etc.) – examples being EX4332 and EX4159. The scant information provided in the summary of “Contracts for Award under Delegated Authority from Executive” is written by officers in the procurement, finance, commissioning team and not by officers in the service areas. Also, the Portfolio Member and Portfolio Member who agreed the report is either Jeff Brooks or Iain Cottingham – why are the responsible service portfolio leaders being bypassed?</p> <p>Other consequences of this are:</p> <ul style="list-style-type: none"> <li>• Contracts that are expected to have a contract value of over £2.5m are now being discussed in Part II. The public and members are no longer being provided with reports that can be reviewed. If a decision made by the Executive or an Individual Executive Member, or a senior officer is disputed then it can be 'called-in' for review. Call-in has the effect of stopping the decision from being implemented until the relevant Scrutiny Committee has reviewed it. The Scrutiny Committee is unable to overturn a decision, but they can refer it back to the decision maker for further consideration with recommendations for changes.</li> <li>• How can decisions taken on high value and key projects / services be understood and if required be called in if there is no report to review? – This is a change - the public and press are no longer denied access key information / details.</li> <li>• Massive decisions are being made by less people on minimal data / evidence. No granularity, transparency or detail is provided in the Forward Plan summary.</li> </ul>
<p><b>The outcomes that you hope scrutiny of this topic will achieve</b></p>	<ul style="list-style-type: none"> <li>• To provide visibility / details of the recommendations of “Constitution task group over last two years”</li> </ul> <p>Copy of the report / audit trail / evidence / full details of the report / sign off process / date / objectives and resulting recommendations that “follows the work by a constitution task group over last two years”</p> <ul style="list-style-type: none"> <li>• Justification / explanation of why supporting detailed reports (exemplified by EX4332 and EX4159) are no longer being provided?</li> </ul> <p>Since July 2023 (EX4407) to September 2025 (EX4726) qty 7 EX reports have been approved covering 23 contracts of over £2.5 Million.</p> <p>Can scrutiny request any / all supporting information supplied to the Exec for the 23 contracts of over £2.5 Million approved since July 2023?</p>

	<p>Since July 2023 has the Exec requested “further information regarding any of the contracts identified” in the EX reports?</p> <p>Can scrutiny request that all future contracts for high value contracts must be supported by a formal and detailed written report?</p> <ul style="list-style-type: none"> <li>• Can scrutiny undertake a review of why forthcoming contract awards, since July 2023 is now Part II.</li> <li>• Can scrutiny clarify and document the approval process required to approve large contracts?</li> </ul> <p>At a recent governance committee meeting a legal officer suggested that contracts over £2.5 Million should be approved by full council. What is the process?</p> <ul style="list-style-type: none"> <li>• Can scrutiny recommend that ALL contracts over £2.5 Million are once again individually highlighted on the Forward Plan (not hidden under the generic title “Contracts for Award Under Delegated Authority from Executive)</li> </ul>
<p><b>If you have already raised this issue with a Member or Officer of West Berkshire Council, please provide details here</b></p>	<p>Raised at Executive questions (Northcroft Dry side Project and Grazeley Solar Farm Project)</p> <p>Also raised with Councillor Howard Woollaston.</p>
<p><b>Topics suggested for scrutiny need to meet one of the following criteria.</b></p>	<p>(3) It is a budgetary area in need of examination to ensure value for money is being obtained.</p> <p>(4) There has been a pattern of budgetary overspends within the area.</p>