

Review of Council Procurement Policies and Food and Music Festival – Report of the Overview and Scrutiny Board – Draft Report

Report to Cabinet on 11 June 2024

Background

1. The Review of Council Procurement Policies and Food and Music Festival Task and Finish Group met on 3 April 2024 to consider changes to the Council's Procurement Policies following the Devon Audit Partnership Review of the Food and Music Festival.
2. The Review Panel comprised Councillors Amil, Brook, Carter, Harvey, Long and Twelves (and was Chaired by Councillor Long).

(Note: Councillor Brook declared a non-pecuniary interest as a member of the English Riviera Business Improvement District (ERBID) Board and the person who submitted the tender for the Food Festival on their behalf.)

3. The background papers for the Review and the recording of the meeting can be found at <https://www.torbay.gov.uk/DemocraticServices/ieListDocuments.aspx?CId=1956&MIId=26151&Ver=4>
4. Key evidence considered by the Panel included:
 - Report of Council Procurement Policies – Food and Music Festival
 - Revised Contract Procedures

5. Key Findings

- 5.1 Weakness in the due diligence and contract management were identified by the Devon Audit Partnership in relation to the contract award to Case Live Limited for the provision of a Food and Music Festival in May 2023. This came at a time when the Head of Commercial Services was already reviewing policies and processes to align with new Legislation which was expected to be in force for April 2024, but was now due to be in place in October 2024. Some of the changes were in respect of transparency around decision making and contracts and ensuring that small and medium enterprises (SMEs), including local businesses were not disadvantaged by the process.
- 5.2 Members heard evidence from Councillor Brook on his experience in submitting a bid for the original Food Festival and the complexities of the tender documents and errors made in the application process which resulted in the ERBID not being evaluated and thus not successful. The ERBID Board decided not to retender and then heard that Case Live Limited had been successfully awarded a revised contract with a different type of festival to that to that originally proposed with additional 2 years seed funding at £80,000 extra. The ERBID were unable to support Case Live Limited as the new date did not fit in with their events programme and extending season.
- 5.3 Many of the recommendations arising from the Review had been implemented and new Contracts Procedures were approved by the Council on 22 February 2024 and the changes were being rolled out as part of the transforming procurement programme. The further changes would be developed between now and October with fine tuning between October and December 2024. Secondary Legislation was being proposed and would be incorporated once it was introduced.
- 5.4 Due diligence around procurement waivers had been strengthened since June 2023 and they were now checked by the Commercial Services Team looking at risks to the Council in more detail as well as the reasons for the waiver, which were then considered weekly by the Section 151 Officer before they were sent to the budget holder for decision if they were going to award the contract. Having a central point of contact through the Section 151 Officer makes the decisions on waivers more consistent. The Section 151 Officer advised that high numbers of waivers had been received in the past and that he had refused a number of these, particularly when they were further waivers for contracts. The number of waivers was reducing as a result of the new process. Members were assured that the change from the original Food

Festival to the Food and Music Festival with a change in date and funding levels would have been challenged by this process and alternative options would have been proposed. Further work was required to ensure that the Contract Procedures aligned with this new waiver process. It was noted that Councillors were not involved in the waiver process as this related to how we award the contract and not the actual decision to award the contract.

5.5 It was proposed to implement a new financial checks process based on a toolkit from the Cabinet Office taking into account proportionality depending on the amount and the risk of the contract so as not to put small or new suppliers at a disadvantage. These checks include looking at both Dunn and Bradstreet and Companies House records for the preferred supplier and their Directors (as appropriate) in relation to the preferred supplier pre contract award and will be further developed in line with upcoming legislative changes. A new risk tool was also being developed, also based on a Cabinet Office contract risk tool. to use at pre-procurement stage to determine what checks need to be built into the process taking into account supplier market and ability to reprocure etc. This would then be reviewed again once a potential supplier had been identified to determine how the contract would be managed. Annual financial checks would be carried out on contracts with an additional flag for major contracts so that the Council was notified straight away of any issues.

5.6 There had been a restructure within the Commercial Services which had resulted in the creation of a number of new posts to improve procurement and contract management oversight:

- Deputy Head of Commercial Services – responsible for managing the procurement and contract management function to ensure team resources were allocated appropriately and providing advice and guidance across the team and wider Council in relation to the application of public contracts legislation and case law, would be in post June 2024.
- Policy and Compliance Manager – responsible for ensuring the appropriate policies, procedures, guidance and training tools were in place to support effective procurement and contract management, would be in post May 2024.
- Commercial Business Partner – responsible for working across directorates to ensure we were able to develop a robust procurement pipeline and that we understand and can respond to individual directorates training and support needs, would be in post April 2024.

- Data and Compliance – responsible for monitoring and reporting on compliance with Contract Procedures and contract compliance, in post from December 2023.

5.7 The Deputy Head of Commercial Services, Policy and Compliance Manager and Commercial Business Partner will work with the Head of Commercial Services to implement the new contract procedures and requirements of the Procurement Act 2023 and it was anticipated that all of the posts would be filled by June 2024 and that they would be up and running fully as soon as possible after June.

5.8 Members welcomed the following aspirations, that the revised Contract Procedures would provide a framework, underpinned by policy and guidance, which would deliver the following, but questioned how delivery against this would be monitored:

- Creating a simpler and more flexible commercial system that better meets the Council's needs and enables the Council to meet its obligations under the existing and future regulatory framework for public procurement;
- Providing a simpler, more transparent and flexible approach to spending money that is based on what we are buying, the associated risks and optimal route to achieving best value from our spend.
- Opening up public procurement to new entrants such as small businesses and social enterprises so that they can compete for and win more public contracts. Creating greater opportunities for local businesses, small and medium enterprises and the voluntary and community sector to do business with the Council. The range of procurement options within the proposed £25,001 to regulated threshold will allow us to direct opportunities for higher value contracts to pre-selected local suppliers, which under the current system would have to go to the open market.
- Improving levels of transparency on all aspects of decision making in relation to the award of contracts – not just the decision on who we award the contract to, but also around the decision to purchase externally and the route to market chosen. Enabling how we spend public money to be properly scrutinised and for the Council to be held to account.
- Improving our decision making, procurement and contract management practices to ensure we deliver best value and best outcomes for our residents;
- Delivering consistent (but not uniform) capability which promotes innovation and community partnership;

- Enabling tougher action to be taken on underperforming suppliers and exclusion of suppliers who pose unacceptable risks, through more effective contract management and the use of mechanisms being put in place by government for this purpose; and
- Revised spend thresholds will enable staff (once trained) to put lower value / lower risk contracts in place without the need for hands-on procurement officer support, this will allow the Commercial Services Team to focus resources on the higher value / more complex contracts.
- Making the way in which we spend money “everyone’s business”.

5.9 The Head of Commercial Services was working with the Section 151 Officer to include targets within the Business Plan to monitor spend, how much was spent locally and ensuring the Council received best value.

5.10 The Council was engaging with local small and medium enterprises (SMEs) as part of a Devon and Cornwall Procurement Partnership, which holds an annual supplier event to meet with local suppliers part of this covers the E-Tendering Portal and options for contracts. The Commercial Services Team was also part of a Community Wealth Building Sub-Group working with the voluntary and community sector and the Economic Regeneration Team. Part of implementing the new Legislation would be further engaging with potential suppliers on the development of new procurement documents. The Commercial Services Team has already worked with local suppliers through workshops on the new contract documents and was working with the Economic Development Team who have developed a tool for local businesses to complete and an online questionnaire.

5.11 The TDA transferred to Torbay Council on 1 April 2024 and contracts which were completed on behalf of the Council would remain unchanged, but a review was being undertaken to novate (transfer) the contracts awarded under TDA to the Council. This would mean that they were monitored in accordance with Torbay Council’s Contract Procedures.

6. Conclusion

6.1 The Panel reflected and debated the information provided to them, both verbal and written. Members were satisfied that the lessons learned from the Review of the Food and Music Festival and the implementation of the recommendations arising from that review, some of which had already been implemented and others that would be incorporate with the requirements of the new Legislation, would prevent the likelihood of a repeat of the issues

found. They welcomed the work with small local businesses and ensuring that the Council does all it can to support Community Wealth Building to ensure that as much spend as possible is kept within Torbay, as well as the risk based and flexible approach adopted.

- 6.2 The Panel formed the following recommendations to the Cabinet which were approved by the Overview and Scrutiny Board on 8 May 2024. **On being put to the vote, the motion was declared carried unanimously.**

7. Recommendations

Recommendations to Cabinet:

- 7.1 That the Cabinet be recommended:
- a. to clarify how the monitoring of the new Contract Procedures will be tracked in order to demonstrate how many local businesses have been awarded contracts as well as the overall implementation of the new arrangements (highlighted in paragraph 5.8 above); and
 - b. to continue to support Community Wealth Building and work with small and medium local businesses to enable them to influence the Contract Procedures and to successfully apply for contracts.

Recommendations to Overview and Scrutiny Board:

- 7.2 that the revised Procurement Policies be presented to the main Overview and Scrutiny Board prior to their approval; and
- 7.3 that an update be given to all Councillors on the changes to Procurement once the new Legislation is in place.