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To: Scrutiny Committee, 24th January 2024

Subject: Contract Management

Status: Unrestricted

Summary: This report outlines the Council's policy and practice for contract management, overseen by the Commercial and Procurement division.

Recommendation: The Scrutiny Committee is asked to:

- **NOTE** the content of the attached report, including the further reporting as set out to P&R Committee.
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1. Introduction

- 1.1. The Commercial and Procurement (CPD) division was launched in September 2023, following a restructure of the former Strategic Commissioning division. One of the key aims underpinning the formation of the CPD was to create a renewed central focus on embedding commercial rigour throughout the Council's contracting activities. The role of the CPD, in addition to providing a skilled and experienced resource to help maximise the value the council obtains from its contracting undertakings, is to develop and implement policy, guidance and reporting capabilities that will ensure that Officers undertaking commercial activity do so in accordance with best practice.
- 1.2. A key stage of the Commercial lifecycle is that of Contract Management: namely, ensuring that contracts are fit for purpose at the point of procurement, and then effectively managed throughout their lifecycle to ensure that required outcomes are delivered. To deliver a best-in-class approach to contract management, Officers need the right policy, the right tools, the right expertise, the right data, the right performance measures, and the right training. This report outlines the Council's approach to ensuring that all these crucial elements are in place.

2. Strategic and Governance Context

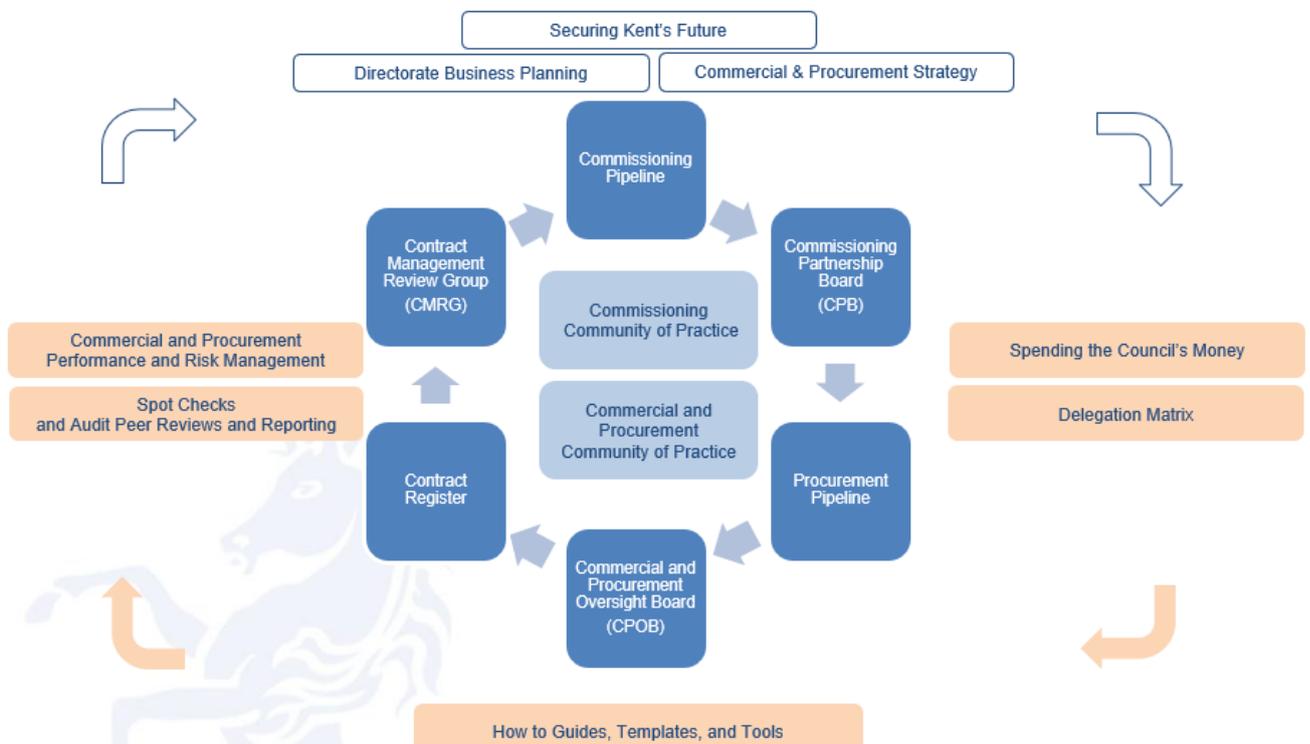
- 2.1. CPD's vision is as follows:

"We will be a leader in procurement, and a commercial champion, enabling innovation, value for Kent residents and securing efficiencies through best-in-class procurement practice. We will strive for the best providers with a strong focus on economic and social responsibility throughout our supply chain.

We will do this by creating an engaging environment with a highly motivated and highly qualified team, who can challenge and innovate, supported through clear governance and processes. By maximising efficiency in all our activities, we will drive demonstrable value to support the council to spend the Kent pound well.”

2.2. To realise effective contract management in line with the above statement, there are six interlinking mechanisms of governance and control, that support the existing formal governance and approval processes. These are outlined below, with the diagram beneath showing how they interlink.

- Commissioning Pipeline - a repository of forthcoming commissioning activity.
- Commissioning Partnership Board – informal governance overseeing proper process and peer review of planned commissioning activity.
- Procurement Pipeline – a repository of all forthcoming commercial activity, much of which will feed through from the Commissioning pipeline.
- Commercial and Procurement Oversight Board – informal peer review and approval of commercial strategy adopted for individual projects tiered “gold”. Tying is further explained below.
- Contract Register – a detailed repository of every contract that the council is currently entered, with a value over £25k.
- Contract Management Review Group (CMRG) – a joint Member and Officer led group that considers the efficacy and performance levels of key strategic contracts during their life.



- 2.3. These six mechanisms support **Spending the Council's Money**; the revised policy, launched Autumn 2023 which contains the mandatory rules that must be complied with when spending money on behalf of KCC. It applies to all Members and those working for, or on behalf of, KCC. Its launch has been supported by an extensive communications and training programme, to embed good practice and highlight how conformance to its principles will be managed. Spending the Council's Money is explored further below.
- 2.4. The integrity and comprehensiveness of the Contract Register is crucial and developing further assurance on the wholesale coverage of this will be a key focus in the immediate term. This will capture detail relating to timelines and extensions to help inform governance routes and detailed planning to determine the best commercial approach to securing best value well in advance.
- 2.5. The Council's Commercial and Procurement Strategy for 2024 – 2026 is currently in development for launch early in the new financial year. Three key elements have been identified to support the prioritisation of Supplier Performance and Accountability. These are:
- Scrutiny of Contract KPIs
 - Supplier Management and Development
 - Effective Contract Management
- 2.6. To ensure that Officers undertake the most appropriate action throughout the Commercial Lifecycle, including Contract Management, "Spending the Council's Money" is underpinned by a range of guides, checklists and tools and templates.

3. Commercial and Procurement Division – Structure, Resource and Workload

- 3.1. In 2023, Kent County Council spent £1.6 billion on goods and services with suppliers, including the authority's trading companies; our aim is to ensure this money is spent in the best way possible.
- 3.2. To manage this workload, the division is split into three key work areas: People, Place and Corporate:
- **People** oversees supplier spend of around £854 million, including Adults and Children's Social Care, Health, and Community, Families and Education.
 - **Corporate** oversees supplier spend of around £240 million, including Property, Facilities Management, ICT, Corporate and Professional Services and Common Goods and Services (everything from stationery to ICT consumable equipment)
 - **Place** oversees supplier spend of around £300 million, including that on Waste and Environment, Highways and Transport and Growth and Communities.

4. Role of Contract Management

- 4.1. Operational and day to day contract management is the responsibility of commissioning or operational teams within the directorate. The role of the CPD is to provide strategic oversight for key suppliers and contracts, identified through a

tiering tool to identify “gold” and “silver” contracts, and the way in which that these are managed. The division will also support in contract management training and development to embed good practice throughout the directorate.

4.2. The CPD will therefore offer commercial support on key contracts, helping contract managers with contract mobilisation, contract performance concerns, managing risks, contract changes, and commercial negotiations. The division will monitor the success of this through developing collective means of overseeing contract management, performance, and adherence – and then offering tailored support where required. However, the key aim is to embed good practice in contract management within every team, where there is any responsibility for overseeing the delivery of supplier outcomes.

4.3. The distinction between what the CPD offers, as opposed to the named contract manager, is therefore as follows:

- Senior Officers (Heads of Service and above) are ultimately responsible for the effective management of contracts within their area in line with guidance issued by the Commercial and Procurement Division.
- All contract management activities should be delivered by either a dedicated contract manager or by someone with that responsibility as part of a wider role.
- The named contract manager must assess the level of risk of their contract by completing a tiering exercise using the tiering tool and guidance made available by the Commercial and Procurement Division on the Council’s intranet. The classification assigned to the contract following the tiering exercise must be recorded on the Council’s contract management system. For those contracts within the Procurement Pipeline, the Commercial and Procurement Division will take a lead on this contract tiering exercise working with the Services.
- The Commercial and Procurement Division will take a commercial lead on all high-risk contracts identified through the tiering exercise, working alongside the named contract managers within Services and a named legal advisor.
- The Head of Commercial and Procurement is responsible for ensuring that training is available to support contract managers across KCC regardless of the tier of the contract they are managing. Senior Officers (Heads of Service and above) are responsible for ensuring that those managing contracts within their area are appropriately trained.

5. Role of Contract Management Review Group (CMRG)

5.1. The role of the CMRG is to provide oversight and assurance as to good practice in the management of KCC’s contracts and challenge to identify potential

improvements, helping to deliver better outcomes, value or money, mitigation of risk, and the delivery of 'best value'.

5.2. Its functions are as follows:

- Agree a programme of key contracts to review across the Council at mid-life and prior to extension.
- Review contract managers' self-assessment against the NAO Good Practice Contract Management Framework proportionate to the contract's value, complexity, and risk.
- Review a wider presentation from contract managers which answers questions on Operational, Commercial, and Financial Performance, Governance, and Risk.
- Review the proposed 'forward look' on contracts, including future re-commissioning intentions.
- Provide challenge on whether the contractual arrangements represent 'best value' overall.
- Provide challenge on whether there is compliance with internal rules, regulations, and transparency.
- Champion best practice and the continuous improvement of contract management across KCC.

5.3. Contracts are selected for review based on several key considerations: their relevance to "Securing Kent's Future"; their strategic importance to the Council; their value, risk and complexity; and their synergy with the Audit programme.

5.4. Contracts being reviewed should also be at either the mid-life point or attending prior to any extension. The Council's Contracts Register is available for review to help determine the above contracts, along with recommendations for consideration.

5.5. CMRG will form part of the Council's Informal Governance Arrangements and half-yearly reports on its findings will be delivered to the P&R Cabinet Committee covering the outcomes from the meetings, actions and recommendations, and lessons learned.

6. Spending the Council's Money – Key Stipulations

6.1. Spending the Council's Money (SCM) sets out the responsibilities for anyone spending on behalf of KCC and the accountabilities of Senior Officers and Members, alongside the distinct role of the Commercial and Procurement Division (CPD). It lays out the role of the Section 151 Officer, Monitoring Officer, and Internal Audit and Counter Fraud, including in the ongoing monitoring and reporting of compliance with SCM.

6.2. It also establishes a new requirement to maintain a pipeline of planned procurements, which must include those for contracts above the Public Contract Regulations (PCR) 2015 Goods and Services threshold and covering the next 18 months. The CPD will maintain this 'Procurement Pipeline' on behalf of the Council, but Directorates need to provide the required information and it will be approved by CMT as part of the business planning cycle.

6.3. All procurement projects will be tiered to identify strategic importance based on a consideration of value, risk, and complexity. This will inform resourcing and the relevant governance.

6.4. SCM revises the previous spending thresholds and required procedures to provide Directorates with more flexibility and autonomy, while ensuring the CPD can focus on leading higher value procurements. Thresholds are shown in the table below:

Aggregate Contract Value (excluding VAT)	Procurement Method	Who is authorised to carry out the procurement?
Up to £25,000	Minimum of one written quotation.	Any Officer
£25,000 up to PCR 2015 value for Goods and Services, or up to £1m for Works	Minimum of three written quotations.	Any Officer, following consultation with the CPD, where that is required
Above PCR 2015 value for Goods and Services, or above £1m for Works	A tendering procedure that is compliant with public procurement regulations must be followed.	CPD will lead the procurement

6.5. SCM also clarifies what commercial support is available on the Council's key contracts, but named contract management responsibility sits with Directorates who must follow the relevant guidance.

6.6. This includes a requirement to ensure contract changes and renewals are permitted under the law, represent best value, and are approved in line with the authority required in the Scheme of Delegation. SCM also establishes a new mandatory requirement that contracts with a value of £25,000 or more and over three months in duration must have a record created in the Council's Contract Management System. A single central Contracts Register provides visibility and oversight of the authority's contracting activity and, alongside the tiering of contracts by strategic importance, supports resourcing, and decision-making.

7. Legislative Changes and Context

7.1. A key change of legislation when procuring healthcare services is the Provider Selection Regime (PSR), which came into effect on 1st January 2024. The new regime focuses on the best interests of users of the service when making procurement decisions, and PSR provides greater flexibility on who should provide services. The PSR highlights the need for integration and proportionality across the system. This legislation is applicable to relevant authorities, inclusive of local

authorities and NHS authorities responsible for procuring or otherwise arranging healthcare services. The new PSR legislation will be impactful for our KCC policies and may carry further implications from a legal and operational standpoint.

7.2. In preparation for these changes a dedicated working group has been created which looks at how these legislative changes will impact the Council's procurement practice, and the policies and procedures required to support the implementation. The available training on PSR will continue to be promoted and will help ensure that the commercial categories with the biggest impact, will be supported with the implementation. This will be done through ensuring Officers can access the training available, as well as continuously linking with the working group to ensure competencies and awareness around this are fulfilled.

7.3. A further legislative change will be to the current Public Contract Regulations (PCR) 2015. A procurement Bill has passed through parliament which will mean a legislative change to the current PCR regulations. The new Bill, and resulting amendments to the 2015 regulations, will focus on:

- Creating an open and transparent system, by putting in requirements for transparency for all local authorities.
- Enabling deliverance of better value for money
- The ability to drive innovation.
- To allow tougher action on under-performing suppliers.
- A focus on 'levelling up' the UK.

7.4. The upcoming changes to PCR are anticipated to come into effect in Autumn 2024, which is anticipated to be October. The Bill will set out how under the legislative changes to the PCR, local authorities should award contracts, manage existing contracts, transparency requirements and delivering optimal best value for money.

7.5. CPD will support implementation of the upcoming changes to PCR via the set up of a dedicated working group that will look at facilitating these changes, with a focus on the implications on our working practice, policies and procedural documents, and our tools, templates and guides. Support will be offered on the legislative change via self-guided online modules, presentations delivered providing an overview of the new regime, and setting up a community forum which focuses on support, sharing best practice, and reflection.

8. Supporting economy, efficiency, and effectiveness

8.1. One element of focus is ensuring that the product and services delivered offer the best value for money. To delve into an awareness on whether suppliers can deliver services or goods that offer this best value, the CPD uses a range of resources and procedures. This then offers assurance at the crucial points of procurement, and

through the contract management phase of the contract, to ensure that the supplier continually offers best value.

- 8.2. The division will continue to undertake due diligence checks on our potential suppliers; this includes checks on their financial viability and profits to ensure we have insight and assurance on the best use of public funds. This can be undertaken through links with Finance, and the checks they are able to undertake to support the due diligence responsibilities, and additionally to use publicly available information such as Companies House. This helps us look at profitability ratios to ensure that providers are sustainable financially, but that value can also be considered in the context of supplier profits where appropriate.
- 8.3. This due diligence continues through supplier relationships built for existing suppliers, through open and honest discussions and accounting practice. Supplier relationship management in a strategic sense for our key contracts continues to be of great importance as a framework for having these open and honest discussions, transparency with accounting practice, and an understanding of continuous financial sustainability throughout the lifetime of the contract.
- 8.4. Understanding where the best focus of strategic supplier relationship management can be, to allow for the best understanding of strategic level contracts is learned through the 'tiering procedure' using a dedicated tool. The tiering procedure allows us to understand what are considered as our 'gold' contracts, and when and how supplier relationship management should be applied.
- 8.5. Using this knowledge on who the strategic level suppliers are, the Council can utilise 'Oxygen Insights' a tool supplied by Oxygen Finance. The insights tool can provide information on spend with suppliers for every market and the categories within. Work was undertaken in September 2023 to assess and show the supplier's total public sector earnings, and the origin of these earnings, with which it was determined what percentage of their total public sector earnings were from KCC. This piece of work highlights earnings year on year from spend in 20-21, 22-22, and 22-23.
- 8.6. A focus for future will be to further utilise the tool's capabilities on comparative reporting, and to gain further insight on earnings, and how this can enable and support discussions with suppliers.

9. Payment Terms and Flexibility.

- 9.1. The Council's standard Payments terms are thirty days, and these apply for most orders. It should be noted that there are certain payments that are set up on reduced payment terms, particularly those that are imported through other files. There are several historic specific arrangements with bespoke payment terms put in place;

however, the Accounts Payable team are currently reviewing historic arrangements with support from the appropriate Commercial staff to review these and determine whether they should revert to our standard terms.

- 9.2. Moving forward it is important we are flexible in determining the right approach to payment terms and this ties in with current work relating to an Early Payment initiative, whereby discounts can be sought where payments are made quicker than required. It is anticipated that this will save the council money in the long term, and calculations are currently underway to determine how much this could potentially yield.

10. Contract Performance Reporting, KPIs and Remedies

- 10.1. A key objective relates to performance management – both in relation to contract management, and the performance of the CPD itself. There are three key aspects to this:
- Improved and standard reporting for contractual Key Performance Indicators denoting the success of individual contracts – by using a limited number of meaningful metrics to demonstrate actual performance against expected performance. The aim is to be able to report at a high level on appropriate contract performance across the council, whereas this is currently undertaken on somewhat more of a siloed basis, owing to previous team structures.
 - Effective remedies and strategic support for poorly performing contracts and means of monitoring and measuring improvements.
 - A performance report for the Commercial and Procurement division itself – with metrics indicating its success to be agreed. This might include procurement turn-around times or value created through commercial approaches, amongst many others.

11. Contract Management – Training and Development

- 11.1. To continuously improve and ensure our practice shows high levels of competency and confidence it is vital that the appropriate training and development is in place. E-learning courses have been built to support awareness with the requirements of SCM, which will be available to all.
- 11.2. Dedicated training on Contract management is available to those managing contracts, as well as supporting procurement and supply chain qualifications through CIPS where the job description requires it.

12. Recommendation

The Scrutiny Committee is asked to:

- **NOTE** the content of the attached report, including the further reporting as set out to P&R Committee.

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