

Date: 11 July 2024

Item: Procurement Act 2023 Update

This paper will be considered in public

1 Summary

- 1.1 The Procurement Act 2023 has a planned implementation date of 28 October 2024. The purpose of this paper is to brief the Committee on the core objectives and key changes of the reforms.
- 1.2 A paper is included on Part 2 of the agenda which contains exempt supplementary information. The information is exempt by virtue of paragraph 3 of Schedule 12A of the Local Government Act 1972 in that it contains information relating to the financial and business affairs of TfL. Any discussion of that exempt information must take place after the press and public have been excluded from the meeting.

2 Recommendation

- 2.1 **The Committee is asked to note the paper and the exempt supplementary information on Part 2 of the agenda.**

3 Background

- 3.1 The Procurement Act 2023 received Royal Assent in October 2023 and is planned to go live on 28 October 2024.
- 3.2 The main objectives of the reforms fall into three areas:
- (a) to create a simpler and more flexible commercial system, introducing a single set of procurement regulations, replacing the three sets of legislation TfL currently operates under (Public Contracts Regulations 2015, Utilities Contracts Regulations 2016 and Concessions Contracts Regulations 2016);
 - (b) to open public procurement to new entrants, with an emphasis on reducing barriers to entry for Small and Medium Enterprises (SMEs); and
 - (c) to embed transparency through the commercial lifecycle, so that the spending of taxpayer money can be properly scrutinised.

4 Key changes in the new Procurement Act

- 4.1 Several contract award procedures from existing regulations are reduced to three procedures under the Procurement Act 2023. This will provide some flexibility for contracting authorities in designing procedures, described further in section 5. Appendix 1 illustrates how the existing procedures have been condensed.

- 4.2 Enhanced transparency requirements will span the full procurement lifecycle, making our procurement activity more visible. Alongside the Procurement Act 2023, the National Procurement Policy Statement (NPPS) (published on 13 May 2024 and coming into effect with the new legislation) also places an emphasis on contracting authorities reducing barriers to entry for SMEs, which enhanced transparency will support. With an awareness of removing barriers to entry when tendering, alongside enhanced visibility of our activity, this should benefit TfL by attracting new entrants to compete for contract awards.
- 4.3 We are in a good position to both comply with NPPS and take advantage of this opportunity, through work to deliver commitments in the Greater London Authority Group Responsible Procurement Policy, and work to develop the pipeline of forthcoming key procurement activities (that is already being shared with the Committee). Under the new Procurement Act 2023 there is greater opportunity for planned dialogue with suppliers as part of tender processes. This should be welcomed by suppliers and enable TfL to hear from them directly to understand challenges and clarifications.
- 4.4 The new legislation changes the focus of tender evaluation criteria from 'Most Economically Advantageous Tender' to 'Most Advantageous Tender', with the intention of enabling higher weighting to social value initiatives and responsible procurement policies. The NPPS also requires that contracting authorities should have regard to several social value outcomes in their procurement activities. The TfL responsible procurement team began introducing social value as part of our mandatory evaluation criteria in late 2023 and we have the opportunity to build on this further.
- 4.5 Regulation will be introduced regarding contract management. All contracts with a value over £5m must include at least three Key Performance Indicators (KPIs) and supplier performance against these will be publicly reported. The intention is to drive higher performance in supply chains and, potentially, to centrally exclude suppliers who pose unacceptable risks from contracting with public authorities.

5 Readiness

- 5.1 A six-month notice period for the commencement date of 28 October 2024 was issued by Government Commercial Function (GCF) in late April 2024. While timescales are tight, we are making good progress towards readiness for day one.
- 5.2 To manage the successful implementation of this business change, a programme group has been established with colleagues from impacted business areas. The focus now is planning for compliance with day one requirements. The group will also develop a roadmap to optimal adoption and work is underway to develop clear guidance for Procurement and Commercial colleagues about when and how they should use the more flexible procedures available under the new legislation and how TfL governance and assurance will apply. Not all requirements are mandatory, and some do not commence on day one of the new legislation.
- 5.3 The GCF has provided a learning and development offering with learning pathways tailored to the level of engagement required, including knowledge-drops available to suppliers. Alongside providing colleagues with appropriate access to

this GCF learning and development offering, we are reviewing and updating our existing training and planning targeted training to fill any gaps specific to TfL.

- 5.4 To raise awareness of the changes, we have launched a 'one-stop' SharePoint web page providing an overview of the Procurement Act 2023, key changes and including direct access to learning. We are also planning proactive engagement with stakeholders to raise awareness more widely in TfL as the Procurement Act 2023 will impact other areas. For example, where contracts are managed by delivery functions outside of Procurement and Commercial.
- 5.5 To ensure suppliers are aware of the new legislation we will be sharing the relevant information produced by the GCF through existing networks.

6 Compliance

- 6.1 A new government Procurement Review Unit (PRU) will be established with the aim of improving capability and practices of contracting authorities by ensuring compliance with the Procurement Act 2023. It will focus on investigating systemic and institutional non-compliance, with expanded powers in the Procurement Act 2023 allowing for investigation of sub-central contracting authorities (including TfL), to make statutory recommendations and monitor progress.
- 6.2 Any PRU investigation findings would be captured in a report and contracting authorities may be requested to provide an action plan and progress reports in response. Both sets of reports may be published.
- 6.3 As always, our primary focus is on compliance with procedures as a responsible contracting authority. The programme group is putting in place guidance and processes outlining how we will engage with PRU in the event of an investigation, and how we consider any updates to NPPS, guidance or lessons learnt published as a result of investigations elsewhere.

List of appendices to this report:

Appendix 1: Diagram showing change from existing procedures into new procedures

Exempt supplementary information is included in the paper on Part 2 of the agenda.

List of Background Papers:

None

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Appendix 1: Diagram showing change from existing procedures into new procedures

