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## **Audit and Governance Committee**

**27 July 2023**

### **Annual Procurement Update**

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**Report of: Alex Thompson, Director of Finance and Customer Service, S151**

**Report Reference No: AG/08/23-24**

**Ward(s) Affected: All**

#### **Purpose of Report**

- 1 The purpose of this report is to provide Audit and Governance Committee with an update on procurement activity during 2022 – 2023 financial year. This report will provide an update on the number of tenders completed, number of contracts awarded and the number of cases where, and reasons why, procurement activity has required the use of waivers and/or non-adherences (WARNs).
- 2 The report will also provide an update on the Councils Contract Management System (Atamis), Contract Management Training, Procurement Regulations and the key deliverables for 2023-2024.
- 3 This report supports the Council being open and working transparently with its residents, businesses, and partners.
- 4 **Ensuring that there is transparency in all aspects of Council decision making** (page 3 and 13 Corporate Plan 2021 to 2025) by publishing a pipeline of procurement activity and contracts awarded on the Councils Open Data.
- 5 **Ensuring that there is transparency in all aspects of Council decision making** (page 3 and 13 Corporate Plan 2021 to 2025) by implementing a contract management system to provide greater governance and transparency in the way the council manages its contracts.

- 6 **Support a sustainable financial future for the council, through service development, improvement and transformation** (page 3 and 13 Corporate Plan 2021 to 2025) by improving the visibility of contracts ensuring that outcomes are met or exceeded, contract and supply chain risk is managed, and efficiency savings are secured.

## Executive Summary

- 7 The report provides an overview of procurement activity across the council during 2022 – 2023 financial year. This includes all contracts awarded (which is also available on the Councils transparency pages), the number and reasons for waivers to the Contract Procedure Rules and the number of non-adherences to the Contract Procedure Rules.
- 8 This report also provides an update on the Councils Contract Managements system which is a cloud-based system that supports the commissioning, procurement and contract management life cycle.

### RECOMMENDATIONS

The Audit and Governance Committee is recommended to:

1. Note the reason for 24 waivers approved between 1<sup>st</sup> April 2022 and 31<sup>st</sup> March 2023.
2. Note the reason for 4 non-adherences between 1<sup>st</sup> April 2022 and 31<sup>st</sup> March 2023.
3. Note the update on the contract management system, contract management training and Procurement Regulations.

## Background

- 9 The Audit and Governance Committee has an assurance role in overseeing governance arrangements within the Council. The Committee exercises this role in relation to the Council's Contract Procedure Rules (CPRs) by having oversight of the procurement process. The CPRs promote good procurement and commissioning practice, transparency, and clear public accountability.
- 10 Procurement is the process of acquiring goods, works or services from third parties including wholly owned subsidiary bodies of the Council. The process spans the whole commissioning cycle and is generally covered by the Public Contract Regulations 2015 (PCR's) 2015.

- 11 To ensure compliance with the PCR's, the Constitution and the Commissioning Framework a procurement pipeline of work is maintained within the new Contract Management System.
- 12 The procurement pipeline provides a list of all the Council's scheduled procurement activity. The pipeline is also available on the [Cheshire East Transparency Pages](#).
- 13 Oversight is important because in a normal operating year the Council spends more than £350m with external parties which need to be procured in accordance with the PCRs 2015, ensuring value for money and that the Council's Social Value principles and objectives are achieved.
- 14 The Local Government Transparency Code was published in 2015 which details, amongst other things, the procurement information local authorities are required to publish. Cheshire East Council publishes a monthly spend report which details the previous months spend and on a quarterly basis contracts awarded, a procurement pipeline and purchase card spend. This is all available on [Cheshire East Transparency Pages](#).
- 15 Appendix 1 provides a list of all contracts awarded over £5000 for 2022-2023 financial year. The Council also complies with the Public Contract Regulations and publishes all contracts above £25k on Contracts Finder and Find a Tender.
- 16 The contract procedure rules set out the necessary controls that are used to manage related spending. There are occasions where it is appropriate to waive these rules with the proper authority. Waivers are pre-approved variations from the Contract Procedure Rules, and these form part of the procurement process. The total number of waiver during 2022-2023 was 24.

<b>Waivers</b>	<b>2016-2017</b>	<b>2017-2018</b>	<b>2018-2019</b>	<b>2019-2020</b>	<b>2020 - 2021</b>	<b>2021-2022</b>	<b>2022-2023</b>
	40	20	16	17	25	37	24

- 17 Any breach of, or non-adherence to, the Contract Procedure Rules is reported to the Chief Finance Officer and Monitoring Officer on discovery. The relevant Director or their delegated representative are required to outline the reasons for the breach and the steps taken to prevent recurrence. The total number of non adherences for 2022-2023 is 4.

<b>Non-Adherence</b>	<b>2016-2017</b>	<b>2017-2018</b>	<b>2018-2019</b>	<b>2019 - 2020</b>	<b>2020-2021</b>	<b>2021-2022</b>	<b>2022-2023</b>
	33	10	5	1	3	3	4

- 18 The Council procured and implemented a new contract management system during 2022. The system is now fully operational and is currently being rolled out to Contract Managers across the council. So far there are 139 colleagues out of 238 Contract Managers named on the register who have been trained and are using the system, 58%.
- 19 The system is a cloud-based software which supports the commissioning, procurement and contract management lifecycle. It is a centralised digital repository for all council contracts with audit trails that provide access to the whole contract. It provides automatic alert notifications to increase contract renewal awareness and contains all contract compliance and accountability.
- 20 Training sessions will continue for Contract Managers and Heads of Service during 2023. These are delivered by a mixture of in person and online training sessions. There is also a suite of eLearning training to support Contract Managers along with new process and procedure documentation. These are all available on Centrnet and the Learning Lounge.
- 21 Foundation contract management training has also been launched in July via learning lounge. This is through the Government Commercial College and is available for all public sector colleagues. The course provides a certificate on completion which needs to be uploaded to learning lounge so professional development can be monitored.
- 22 The new Public Procurement Regulations are due to get Royal Assent in September 2023, with the regulations coming into force October 2024. Procurement is developing a communication and training plan for Cheshire East Council to ensure all colleagues who undertake commissioning, procurement and contract management activity have the required knowledge before go live.

## **Consultation and Engagement**

- 23 Consultation and engagement have been undertaken with Cheshire East Council staff who have a role within Commission, Procuring and Contract Managing goods, services or works for the Council.

## Reasons for Recommendations

- 24 To ensure compliance with the Public Contract Regulations 2015 (PCRs), the Constitution and the Commissioning Framework a procurement pipeline of work is maintained and published on [Cheshire East Transparency Pages](#).
- 25 The Contract Procedure Rules set out the necessary controls that are used to manage related spending. There are occasions where it is appropriate to waive these rules with the proper authority.
- 26 Waivers are pre-approved variations from the Contract Procedure Rules, and these form part of the procurement process.

## Other Options Considered

- 27 There is an option not to publish a pipeline of procurement activity and other information such as the past spend, review of waivers and non adherences and contracts awarded. This option is not recommended as the Corporate Plan supports transparency which is enhanced by providing additional context around procurement activity.

## Implications and Comments

### *Monitoring Officer/Legal*

- 28 All employees must ensure that they use any Council or other public funds entrusted to them through their job role in a responsible and lawful manner.
- 29 The Councils commercial legal team will work with procurement and seek to ensure that the Council's procurement activity complies with the PCRs and the Council's contract rules; and will look to advise on the appropriate form of contracts to be used.

### *Section 151 Officer/Finance*

- 30 The Council's Constitution Finance Procedure Rule 2.11; Chapter 3 - Part 4: Section 2 explains that the Corporate Leadership Team (CLT) are responsible for working within their respective budget limits and to utilise resources allocated to them in the most efficient, effective and economic way. This is supported by effective commissioning, procurement processes and appropriate contract management.
- 31 Along with comments from Procurement and Legal Officers, Finance Officers are invited to make comments in respect of each WARN, to help ensure Finance Procedure Rules are adhered to in this regard. The comments of Finance Officers focus on whether the Service: has identified sufficient existing budget to cover the proposal; and has also considered.

### *Policy*

- 32 New policies regarding Contract Management and the roles and responsibilities

### *Equality, Diversity and Inclusion*

- 33 All tenders issued by the Council include a Selection Questionnaire which asks bidders to confirm obligations in environmental, social and labour laws. This is a self-declaration which provides a formal statement that the organisation making the declaration has not breached any of the exclusion grounds, including Equality Legislation. If a serious misrepresentation is found in the Selection Questionnaire, bidder may be excluded from the procurement procedure, and from bidding for other contracts for three years.
- 34 All Cheshire East Council contracts have a clause stating “the supplier shall perform its obligations under the Contract in accordance with all applicable equality Law and the Council’s equality and diversity policy as provided to the Supplier from time to time”.

### *Human Resources*

- 35 There are no direct implications for HR.

### *Risk Management*

- 36 Contract and supplier risks and issues will be managed through the new Contract Management System ensuring supply chain risks are monitored and managed appropriately with visibility across the Council.

### *Rural Communities*

- 37 There are no direct implications for rural communities.

### *Children and Young People including Cared for Children, care leavers and Children with special educational needs and disabilities (SEND)*

- 38 There are no direct implications for children and young people.

### *Public Health*

- 39 There are no direct implications for public health.

### *Climate Change*

- 40 Carbon and the environment form part of the Council’s Social Value Policy and Framework. How the Council measures the outcomes and

performance from the supply chain will be through the Contracts Management Framework.

<b>Access to Information</b>	
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Appendices:	Appendix 1 Waivers and Non Adherences – part 2 Appendix 2 CPR Waive Categorisations
Background Papers:	None

## Appendix 2

### **CPR WAIVERS – CATEGORIES FOR INTERNAL REPORTING**

Category Ref	Ref Description
A	Genuine Emergency - which warrant an exception to the requirements of competition
B	Specialist Education or Social Care Requirements
C	Genuine Unique Provider - e.g. from one source or contractor, where no reasonably satisfactory alternative is available.
F	No valid tender bids received; therefore, direct award can be substantiated
G	Lack of Planning
H	Any other valid general circumstances up to the EU threshold
I	No time to undertake a tendering exercise, therefore extension necessary to avoid non-provision of deliverables
J	Procurement from any other source would be uneconomic at this time
K	Added value being offered by the Provider(s)
L	Extension is best option as highlighted in request form
D	Compatibility with an existing installation and procurement from any other source would be uneconomic given the investment in previous infrastructure
V	Covid-19 Exemption
E	In-depth Knowledge, skills and capability of project/services already in existence with consultants/providers carrying out related activity – therefore procuring new consultants/skills would be uneconomic given the investment in previous, related work.

