

Finance Sub-Committee

11 January 2024

Procurement Pipeline

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

Report Reference No: FSC/31/23-24

Ward(s) Affected: All

Purpose of Report

- 1 The purpose of this report is to enable Finance Sub-Committee to fulfil its responsibilities in relation to the oversight of the procurement pipeline of the Council. This report provides an update of the pipeline of procurement activity, an update on the contracts awarded this fiscal year, and an update on the number of cases where, and reasons why, procurement activity has required the use of waivers.
- 2 This report supports the Council being open and working transparently with its residents, businesses, and partners.
- 3 **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.
- 4 **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.
- 5 **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

- 6 The report provides an overview of procurement activity across the council during 2023 – 2024 fiscal year. This includes the pipeline of high value (over £1m) procurement activity, all contracts awarded since 1st April 2023 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.
- 7 The Procurement Bill received Royal Assent in October 2023. In early 2024 the secondary legislation will be laid to bring the regime into effect. The anticipated go live date is October 2024. The existing Public Contract Regulations 2015 will apply until the new regulations go live.
- 8 The Provider Selection Regime (PSR) will come into force on 01 January 2024. The PSR removes the procurement of health care services, when procured by the relevant authority from the scope of the Public Contract Regulations (PCR).

RECOMMENDATIONS

The Finance Sub-Committee is recommended to:

1. Approve the 3 pipeline projects in Appendix 1 column H as business as usual.
2. Note the reason for 1 waiver approved between 1st September 2023 and 31st December 2023 (5 in total in 2023/24).
3. Note the contracts awarded since April 2023, Appendix 2.
4. Note the change to the public procurement legislation (paragraph 17), Public Contract Regulations 2023 and Provider Selection Regime.

Background

- 9 The sub-committee has responsibility for the oversight of procurement. 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 covered by the Public Contract Regulations 2015 (PCR's) 2015.
- 10 To ensure compliance with the PCR's, the Constitution and the Commissioning Framework a procurement pipeline of work is

maintained which the Committee should review as part of their responsibilities. This is attached at Appendix 1.

- 11 The procurement pipeline provides a list of all the Council's scheduled procurement activity above £1m. The Committee should be reassured that significant decisions are managed and therefore consider reviewing important or valuable contracts. The pipeline is also available on the [Cheshire East Transparency Pages](#).
- 12 A Significant Decision is “A decision which is likely to result in the local authority incurring non-routine expenditure which is, or the making of non-routine savings which are, significant having regard to the Council's budget for the service or function to which the decision relates; and / or is likely to be significant in terms of its effects on communities living or working in an area comprising one or more wards or electoral divisions in the area of the Council. For these purposes, savings and expenditure are 'significant' if they are equal to or greater than £1,000,000, unless the context requires otherwise”.
- 13 Significant Decisions are decisions that need to go to committee. The definition was simplified to a decision over £1m but this was causing unnecessary activity as the Council has regular 'business as usual' decisions over £1m which would still have required routine reports to committee. To ensure alignment with the Council's vision to be Open the Sub-Committee has responsibility to oversee the procurement pipeline, this means members are sighted on all procurement activity and approve any procurement which is classified as business as usual in column G to ensure the process remains proportionate. The procurements requiring approval are shown in Appendix 1, approval required.
- 14 Oversight is important as 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.
- 15 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 the Councils transparency pages. Appendix 2 provides a list of all contracts awarded over £5000 since April 2023. 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.
- 17 The Procurement Bill received Royal Assent in October 2023. In early 2024 the secondary legislation will be laid to bring the regime into effect. The anticipated go live date is October 2024. The existing Public Contract Regulations 2015 will apply until the new regulations go live.
- 18 The first official training product to support the introduction of the new Procurement Act was launched in December and can be found <https://www.gov.uk/guidance/the-official-transforming-public-procurement-knowledge-drops>. The knowledge drops are designed to provide a high-level overview of the changes to the procurement regulations.
- 19 The Provider Selection Regime (PSR) will come into force on 01 January 2024. The PSR removes the procurement of health care services, when procured by the relevant authority from the scope of the Public Contract Regulations (PCR). The PSR will not apply to goods and non-health care services such as social care.
- 20 All waivers approved in the periods between Finance Sub-Committees will be presented to the next Sub-Committee meeting. The number of waivers to be reported to this meeting is 1. The waiver is set out in Part 2 of the agenda.

Waivers	2016-2017	2017-2018	2018-2019	2019-2020	2020 - 2021	2021-2022	2022-2023	2023-2024
	40	20	16	17	25	37	24	5

- 21 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 number of non-adherences to present to this meeting is 0.

Non-Adherence	2016-2017	2017-2018	2018-2019	2019 - 2020	2020-2021	2021-2022	2022-2023	2023-2024
	33	10	5	1	3	3	4	0

- 22 To support the Council budget response team CEBERT, and as part of the financial measures to control day-to-day spending, a Spend Review Board has been created. The Board was created to review all procurement activity across the Council to ensure that the spending is essential. The results from the Board are reported into CEBERT on a weekly basis.

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 which the Committee should review as part of their responsibilities. This is attached at Appendix 1.
- 25 Column G of the pipeline identifies which procurements are categorised as business as usual and which are categorised as Significant Decisions and require service committee approval. This is due to them incurring non-routine expenditure or having a significant effect on communities.
- 26 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.
- 27 Waivers are pre-approved variations from the Contract Procedure Rules, and these form part of the procurement process.
- 28 To remind the Sub Committee of the pending changes to the public procurement regulations and provide details on where to find the official update from the Cabinet Office.

Other Options Considered

- 29 There is an option not to publish a pipeline of procurement activity that classifies business as usual activity and significant decisions. This option would lead to all procurement activity requiring detailed reports to Committees in addition to the existing oversight from the Finance Sub-Committee and exception reporting to the Audit and Governance Committee. This would cause additional work for officers having to draft routine reports for committee for business-as-usual expenditure. This option is not recommended as the Finance Sub-Committee can provide

suitable assurance that spending is, or is not, routine and within the Budget and Policy Framework.

- 30 The responsibility of the Sub-Committee is to establish a procurement forward plan, which is provided at Appendix 1. Other information such as the past spend, review of waivers and approval of significant decisions could therefore be removed from this report as an alternative option. 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

- 31 The Council's commercial legal team will work with procurement and seek to ensure that the Council's procurement activity complies with the PCR's and the Council's contract rules; and will look to advise on the appropriate form of contracts to be used.

Section 151 Officer/Finance

- 32 The recommendations in this report do not impact on the Council's Medium Term Financial strategy (MTFS).

Policy

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

Equality, Diversity and Inclusion

- 34 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.
- 35 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

36 There are no direct implications for HR.

Risk Management

37 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

38 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)

39 There are no direct implications for children and young people.

Public Health

40 There are no direct implications for public health.

Climate Change

41 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.

Access to Information	
Contact Officer:	Lianne Halliday, Head of Procurement Lianne.halliday@cheshireeast.gov.uk
Appendices:	Appendix 1 Pipeline (spreadsheet) Appendix 2 Contracts (spreadsheet) Appendix 3 CPR Waiver Categorisations
Background Papers:	None