

To: Policy and Resources Committee

From: Head of Commercial and Business Support – Tracey Stradling

Presenting officer(s): Deputy Chief Executive Officer – Matthew Warren
Telephone: 01480 444619
matthew.warren@cambsfire.gov.uk

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Commercial and Procurement Activity – Annual Update

1. Purpose

- 1.1 The purpose of this report is to provide the Policy and Resources Committee with an update on the commercial activity of the organisation for the financial year 2022/23 (including exemptions), the key priorities for 2023/24 and an overview of changes to public procurement.
- 1.2 The last update was presented to this Committee at its meeting on 28 April 2022.

2. Recommendation

- 2.1 The Committee is asked to note the contents of this report and make comment as appropriate.

3. Risk Assessment

- 3.1 Economic - throughout all commercial activity ensuring the management of costs remains a priority as some uncertainty due to current conflicts, scarcity of supplies and increased pricing prevails.
- 3.2 Ethical – ensuring fair-trade practices throughout commercial and procurement activity which includes modern slavery issues, increasing demand for conscious business models and ensuring corporate social responsibility. Ethical procurement also considers risks associated with bribery, fraud and corruption and has plans and mitigations in place to keep the Authority free from risk or perceived risk.
- 3.3 Political – considering how government policy, guidance and changes to best practice can impact on commercial activity and the markets we operate within.
- 3.4 Sociocultural – ensuring due regard is given to social value and safeguarding in all commercial activity by considering the impact on local

communities. We must also ensure our supply chains can support maximising social value for the communities we serve and the economy.

Changing demographics - ensuring goods, works and services procured are flexible enough to meet changes within the workforce, our communities and supply chains.

- 3.5 Legislative – ensuring all commercial activity is compliant with Public Procurement (Amendment etc) (EU Exit) Regulations 2020, the Trade Co-operation Agreement as well as other relevant legislation for example General Data Protection Regulation and Freedom of Information, ensuring the basic principles of transparency, fairness and equal treatment are adhered to at all times.
- 3.6 Technical – ensuring as an authority we are compliant with the requirements for e-sourcing and build appropriate measures into all commercial activity to mitigate risk and cost to the Authority, meeting all compliance requirements in relation to transparency as well as the potential to deliver increased savings. Standardising bidding and opening up opportunities to bigger and more diverse markets. This also leads to a reduction in the administrative burden and therefore returning a cost saving.
- 3.7 Environmental – ensuring as an authority we deliver sustainable procurement. There is a requirement for the Authority to deliver sustainable outputs through all commercial activity and improving social impact through the supply chain (Social Value Act 2012).
- 3.8 Demographics and people - ensuring as an authority we are compliant with sustainability, diversity and inclusion and social justice.

4. Equality Impact Assessment

- 4.1 A high-level equality impact assessment (EqIA) will be undertaken for all procurement and commercial related policies, strategies and statements. Full EqIA's will be undertaken for those procurements which become full implementation projects or changes to items that have an impact on end users for example, equipment, clothing and training.

5. Background

- 5.1 The Procurement Team is now referred to and named the Commercial Team to better reflect its wider core function which is ensure our managers and stakeholders are aware of their commercial responsibilities and seek to drive value for money, ethical commercial dealings, sustainability, social value and innovation as well as transparency and equal and fair treatment in all commercial dealings. This continues to remain a high priority at a time of continuing global uncertainty within supply chains and rising inflation.

- 5.2 The team continues to operate and work well under a category management arrangement, aligned to the National Fire Chiefs Council (NFCC) National Procurement Hub categories and the structure of the team remains as follows with no turnover of staff;

Head of Commercial and Business Support

Category Lead	Category Lead	Category Lead
Fleet	Clothing	ICT
Professional Services	Operational Equipment	Property and Estates

- 5.3 This category management approach enables the fostering of good commercial relationships with key suppliers within the market to deliver goods and services in the best way for the Authority. It also means the commercial category lead gains and maintains a good understanding of the supply chain and therefore early identification of risks and opportunities within the market.
- 5.4 The category structure also enables the team to build relationships with key stakeholders within the Service to best deliver their requirements whilst ensuring compliant routes to market and therefore reduce the risk of challenge, or perceived risks of fraud or corruption for the Authority.
- 5.5 As stated above, the category structure is aligned with the National Procurement Hub category structure. The Head of Commercial and Business Support continues to be the NFCC National Category Lead for Professional Services with the Chief Fire Officer continuing as Category Sponsor. Working as part of the National Procurement Hub as well as the wider blue light commercial organisation means we are able to influence national procurement frameworks across all blue light categories by regular stakeholder engagement to ensure the requirements of this Service are included where possible.
- 5.6 The wider Commercial Team also work closely with the National Procurement Hub and other public buying organisations to ensure sufficient and fit for purpose frameworks and supplies are available for the sector and partner agencies.

6. Key Priorities 2023/24

- 6.1 Delivery of the procurement pipeline – whilst pipeline planning is a business-as-usual activity along with the requirement to publish our five-year procurement pipeline, the focus of this year's planning meetings will be those procurements that will fall into the latter part of this calendar year and early next as they will fall under the new regime.

The pipeline is a rolling live document amended as and when changes and new requirements come to light through regular meetings with our integrated risk management plan (IRMP) team and key stakeholders as well as information and decisions passed to the Head of Commercial and Business

Support following Programme Board. This pipeline will be shared with the IRMP team, Chief Officers Advisory Group and Heads of Group to ensure that all planned projects which involve a procurement and/or commercial activity have been captured. After this the draft pipeline will be finalised and published.

- 6.2 Preparing and embedding the new Procurement Act – the major focus for the team this year will be preparing for the implementation of the new Procurement Bill. Royal Ascent is expected late spring, followed by secondary legislation and supplementary guidance in readiness for a six-month lead in with expected adoption of the Act by contracting authorities in early 2024. We are currently drafting our implementation strategy which will be finalised once the Act and secondary legislation is published. The priority for the Head of Group and the wider team will be to amend our policies, guidance and training materials, tender documentation and contracts to ensure compliance in all commercial dealings. There are a number of known and expected changes which the team are preparing for by gaining an understanding of them and the impact for the team and wider authority.

The new Procurement Bill is designed to consolidate the current four sets of regulations into one, with the aim of saving money, boosting domestic productivity, spreading opportunity, improving public services, empowering communities, taking social value into account as well as;

- simplifying procurement and enabling flexibility to better meet the needs of suppliers and contracting authorities,
- reducing bureaucracy for suppliers with the introduction of a single digital platform,
- creating a fairer system, more open and competitive system for suppliers and authorities, taking into account removing some of the barriers for SME's and voluntary organisations,
- increased transparency, with more recording and reporting throughout the procurement and contract management lifecycle,
- support transition into more sustainable procurement and net zero carbon emissions,
- further embed ethical trading, in relation to modern slavery, fraud, bribery and corruption, placing a further duty on contracting authorities to take all reasonable steps to identify actual or potential conflicts and keep them under review.

Some amendments to public procurement have already been introduced both as a result of Brexit and also Cabinet Policy Notes. These have been in relation to;

- advertisement of tender opportunities,
- inclusion of VAT in thresholds,
- modern slavery,
- supplier qualification also known as conditions for participation,

- ethical trading,
- sustainability.

All of the above have been adopted by the Authority and incorporated into our current practices.

The National Procurement Policy Statement will be issued once the Bill has received Royal Assent setting out the government's strategic and policy priorities. As a contracting authority we must also have regard to this when planning our commercial activities and build it into our transition.

The Cabinet Office will be providing a comprehensive learning and development programme to support commercial teams in the transition to the new regime and as a team we have signed up to these sessions in readiness. We have drafted "*An Overview of the Changes and Impact*" for the Commercial Team as a starting point and a copy of this is attached at Appendix 1 which will provide further information on the proposed changes and preparedness.

- 6.3 **Commercial awareness training** – we will pause commercial awareness training for the first half of this year to focus on understanding the impact of the regulations and prepare for transition to the new regime. The redraft of training materials will commence once there is certainty on the new legislation and statutory instruments and training will be delivered to key stakeholders.

Where a need for some commercial training is identified for example at the commencement of a procurement related project or a tender evaluation panel training, this will be delivered.

Once the impact of the new regime is fully known a basic commercial awareness e-learning course will be developed which will be a mandatory course for middle managers to complete and will include key areas such as basic commercial principles, value for money, sustainability, ethics, bribery, fraud and corruption.

- 6.4 **Value for Money** – we do know that value for money is one of the seven procurement principles at the heart of the new regulation. Therefore a priority for the team will be to further embed value for money into all commercial activity and contract management.

To be as efficient as we can in undertaking procurement activity, where possible the Authority aims to undertake joint procurements and make use of framework agreements and permissible direct awards.

- 6.5 **Embedding ethical procurement into each procurement process** – in addition to the new Bill, the Public Services (Social Value Act) also places an obligation on public sector organisation to ensure delivery of social impact through public money. As stated above a key driver within public sector

procurement reform is to further embed social value into all procurement activity and our processes, evaluation criteria and guidance will be further revised to ensure this is an integral part of our tenders.

- 6.6 **Sustainability** - is an integral part of the proposed new regulations and in readiness for this and to support the wider sustainability agenda for the Authority a sustainable procurement strategy has been drafted and will be finalised over the coming weeks. Sustainability award criteria will be incorporated into all relevant tenders and will be embedded into contract management.

The Commercial Team will be ensuring that sustainable procurement and the Authority's aims are addressed early with the supply market at premarket engagement stage and that all tender documentation and contract management provides for achieving our targets.

- 6.7 **Modern slavery** – it is a requirement of each public sector organisation to publish a modern slavery statement and work is underway to finalise ours as part of our wider ethical procurement statement which is currently being drafted. Ethical procurement will be fully embedded into all procurement and contract management activity particularly where there is a supply chain.
- 6.8 **Embed EqIA's** – we will continue to ensure EqIA's are carried out for every procurement and policy change within the commercial function.
- 6.9 **Off contract spend** – monitoring the off contract spend will continue to be a high priority for 2023/24. There are still some areas across the Service that can be identified as not having contracts in place for regular purchases. Through further engagement, the Commercial Team will work with the stakeholders to implement contractual arrangements, identify opportunities to make potential savings through aggregation of requirements whilst ensuring compliance with legislation.

7. Current Challenges

- 7.1 **Changes to policy and legislation** – the proposed new legislation sets out to bring more flexibility and improve efficiency in public spending by simplifying the rules and regulations. Commercial awareness and value for money are very much the focus within the proposed regulations and this is a key driver for upskilling staff across the organisation in these areas.

In addition to this, the new regulations provide considerably more flexibility with routes to market and increased transparency requirements. This does however bring the risk of challenge and therefore the need for upskilling across the wider organisation to ensure we don't fall foul of the requirements. For the Commercial Team it means a significant review and rewrite of our guidance, processes, reporting and contracts.

- 7.2 **Supply chain uncertainty** – challenges facing the Commercial Team currently relate to increasing prices within our supply chain and the work being undertaken to understand cost breakdowns within our contracts and where applicable rises are justified and negotiate accordingly.

Scarcity of supplies means we are having regular discussions within our supply chains about potential delays, not being able to meet our order quantities and making our stakeholders aware of the situation and putting appropriate resilience in place should this happen.

The Commercial Team maintains a risk tracker to help keep abreast and record risks which may arise due to for example, the aftermath of the pandemic, issues post Brexit, domestic and foreign industrial action and power outages as well as risks relating to the current conflict within Ukraine. Recent events in Turkey have impacted the manufacture of some of our firefighting PPE items and although we haven't encountered an issue due to the nature of our contract it is something which requires monitoring.

- 7.3 **Financial austerity and increased prices** – this continues to be a challenge for the team. Whilst the financial situation remains uncertain, the Commercial Team are continuing to work with suppliers and key stakeholders to review contractual pricing and requirements and to identify opportunities to minimise price increases. With the fall of sterling and economic conditions still unstable, this has impacted severely on some of our supply chains and in particular costs have risen where goods and services are imported from overseas or due to the Ukraine conflict. Rising fuel prices and labour costs, mean the team have to find ways of mitigating these through the drafting of requirements and review meetings with contractors.

- 7.4 **Technical specifications** – the rules on technical specifications have been amended in the new Bill. Specifications must not refer to any specific UK standards unless they adopt an internationally recognised equivalent. A significant amount of fire and rescue service specifications contain standards, therefore prior to any re-procurement these will need to be amended.

There can be a tendency to over specifying for both goods and services, which again is something which the new regulation appears to be explicit on. Requirements and subsequent contracts being too prescriptive can limit competition and innovation within the markets and restrict the Authority from making best use of market information and achieving value for money. In addition to this there is a tendency to re-use or re-issue specifications therefore the team must engage with stakeholders to ensure these are amended.

- 7.5 **Ensuring early engagement** – it is now more important than before when embarking on a procurement process to understand what the market can deliver and again is something the proposed regulations are explicit on. The Commercial Team will need to be involved early to be able to consider the market position prior to any commercial decisions. This will help determine

best routes to market, design the procurement process, publish accurate volumes and contractual terms from the outset.

- 7.6 Recruitment of category lead – the category lead for property and estates and ICT intends to retire at the end of the year. Filling commercial vacancies is challenging within the sector. Without sufficient handover, this could impact the delivery of some of our priorities.

8. Summary of Progress and Review of 2022/23

- 8.1 Work is progressing well with keeping abreast of potential supply chain issues; forecasting attrition rates and forward planning for potential interruptions has meant little disruption. As an example, a significant piece of work was undertaken to ensure continued supply of smoke detectors for the Authority so that we could maintain our programme of safe and well checks.
- 8.2 Negotiations with suppliers on proposed price increases has resulted in more realistic uplifts based on a true breakdown of costs some examples of good commercial conversations and monitoring are included at Appendix 2.
- 8.3 The team are undertaking a review of the off contract spend and third party spend, although this is challenging due to our current financial system. The new system will be in place from October 2023 which should make interrogation of this information much more achievable.
- 8.4 The work plan for this year (2023/24 and rolling five-year plan), based on pipeline information has been drafted in readiness for discussions with the IRMP team and Heads of Group.
- 8.5 There has been more robust challenge to exemptions, with a revised request form in place to provide more transparency and detail of the request. That said there will be times when the exemption route provides more assurance and value for money to the Authority.
- 8.6 Commercial awareness training has continued to be priority, training packages have been devised and delivered or are in the process of being finalised covering:
- what the new Procurement Act means for us as a contracting authority,
 - general commercial awareness,
 - pre-procurement and market engagement guidance,
 - specification/requirements drafting,
 - tender evaluations,
 - achieving value for money,
 - ethical and sustainable procurement,
 - innovation,
 - contract management.

Some of the above have been shared with other fire and rescue services for adoption within their organisations.

- 8.7 In readiness for the new Bill and to provide more robust contract management the new supplier onboarding checklist and contract management checklist have been revised and updated with an expected 'go live' date of 1 June 2023. This is to ensure critical supplier checks are undertaken and recorded to provide assurance to the Authority and to meet transparency requirements, value for money, sustainability, ethical trading, safeguarding and financial due diligence. The 'go live' date is to enable us to include any other requirements that are within the Bill to be incorporated; should there be delays to the final publication of the Act this will move to a later date. Tender documentation and contract documents have been amended to take account of this.
- 8.8 Strategies are in draft and will be finalised shortly relating to sustainability, ethical procurement and modern slavery as well as the next wider commercial strategy to run from 2023 to 2026.
- 8.9 Significant work has been undertaken supporting the National Procurement Hub and which recently successfully let a national framework for all blue light services for pre hospital emergency medicine and first aid training. We have actively supported the national framework for apprenticeships and are working on its successor and fire specific training. Support has been provided to the Fire and Rescue Indemnity Company through their transition to a new structure and fund management company and supporting wider fire and rescue services looking to onboard. The Commercial Team are actively working with the National Clothing Category Lead for the next generation of firefighter clothing.

Source Documents - None