

## Procurement Legislation

To: Assets and Procurement Committee

Meeting Date: 18<sup>th</sup> October 2023

From: Executive Director of Finance and Resources

Electoral division(s): All

Key decision: No

Forward Plan ref: N/a

Outcome: Committee is asked to consider the implications of forthcoming Procurement Act 2023 and note the key risks.

Recommendation: Committee is asked to note the report.

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## 1. Background

- 1.1 The Council is classified as a Contracting Authority under public procurement law. Since 2015 the Council has been operating under the Public Contract Regulations which are distilled into the Council's own Contract Procedure Rules.
- 1.2 Following Brexit, in July 2020 the Government published their Green Paper 'Transforming Public Procurement'. Following consultation, the Procurement Bill (2023) received its first reading in the House of Lords in May 2022.
- 1.3 Progress of the Bill through parliament has been subject to several delays, but it is currently expected to receive Royal Assent in Autumn 2023. Due to the extent of the required secondary legislation and the promised 6 month transition period, go live is expected in Autumn 2024.
- 1.4 The Procurement Act 2023 (as it will be known) represents the largest change the public sector has seen to procurement law so it is important that the Procurement and Commercial Team and the Council more generally are prepared and trained prior to go live.

## 2. Main Issues

- 2.1 The first significant change is that the Bill sets out the principles which must govern all the Council's procurement activity, these are value for money, maximising public benefit, transparency and acting with integrity. Our procurement activity must also support the delivery of the national priorities set out in the National Procurement Policy Statement; these are:
  - Creating new businesses, new jobs and new skills
  - Tackling climate change and reducing waste; and
  - Improving supplier diversity, innovation and resilience.
- 2.2 The current range of possible procurement processes are replaced with 2: the open tender which operates in the same way as the one we have now, and the competitive flexible procedure which we can design ourselves. There are a limited number of circumstances in which it may be possible to award a contract without competition – in order to protect life and public order.
- 2.3 There continues to be a special regime for social and education contracts – the Light Touch Regime. Health related contracts, though, will be covered by a new Provider Selection Regime established by the Health and Care Act 2022. This new Regime provides for 3 decision circumstances:
  - Continuation of existing arrangements where the incumbent is the only viable provider.
  - Identifying the most suitable provider where existing arrangements need to change considerably.
  - Competitive procurement.
- 2.4 For the first time, detailed provisions on contract management are set out, these include the steps that must be taken to manage a contract, strengthened rules around the payment of suppliers and the publication of supplier performance information.

- 2.5 Transparency is more important than ever, with a significant increase in the number of notices that must be published through the procurement and as the contract is being managed. Key new notices are:
- Contract details notice which includes (where the contract is valued over £5m) a requirement to publish a redacted copy of the contract.
  - Contract change notice to be published whenever changes are made to an above threshold contract.
  - Contract performance notice which must contain performance against published KPIs where the contract is valued over £5m.
- 2.6 Rules around modifying existing contracts remain strict:
- Any change to a contract is classified as substantial where it is valued over 10% of the original contract value.
  - A contract change notice will be required to be published when a contract is modified.
  - Modifications may trigger the need to re-publish a redacted copy of the contract.
- 2.7 In the short term it is anticipated that the impact on the Council will be as follows:
- Changes will be required to the Contract Procedure Rules and all related procurement documentation including the Procurement Guide and templates.
  - The Procurement and Commercial Team will need to complete the core training (3 days) with other key stakeholders being invited to the 1 hour briefing sessions.
- 2.8 In the medium term it is anticipated that the extent of the new transparency requirements and the need to publish notices throughout the term of the contract, rather than just during the procurement phase, may require a review of how contract information is recorded and managed. A review of how the Council resources the transparency requirements may also be needed. A specific risk assessment for this is in the process of being produced.

### 3. Alignment with ambitions

- 3.1 Net zero carbon emissions for Cambridgeshire by 2045, and our communities and natural environment are supported to adapt and thrive as the climate changes

There are no significant implications for this ambition.

- 3.2 Travel across the county is safer and more environmentally sustainable

There are no significant implications for this ambition.

- 3.3 Health inequalities are reduced

There are no significant implications for this ambition.

- 3.4 People enjoy healthy, safe, and independent lives through timely support that is most suited to their needs

There are no significant implications for this ambition.

3.5 Helping people out of poverty and income inequality

There are no significant implications for this ambition.

3.6 Places and communities prosper because they have a resilient and inclusive economy, access to good quality public services and social justice is prioritised

There are no significant implications for this ambition.

3.7 Children and young people have opportunities to thrive

There are no significant implications for this ambition.

## 4. Significant Implications

Not used.

## 5. Source documents

5.1 Source documents

[The Procurement Bill 2023](#)