



Agenda Item No: 7.2

## Procurement Policy

To: Cambridgeshire and Peterborough Combined Authority Board

Meeting Date: 25 January 2023

Public report: Yes

Lead Member: Deputy Mayor Councillor Anna Smith

From: Edwina Adefehinti  
Interim Chief Officer Legal and Governance, Monitoring Officer

Key decision: No

Forward Plan ref: N/A

Recommendations: The Combined Authority Board is recommended to:

- a) Approve the attached procurement policy
- b) Delegate authority to the Monitoring Officer in consultation with the Chief Finance Officer/S.73 Officer and the Chief Executive Officer to amend the policy when the expected changes in law come into force, later this year.

Voting arrangements: Simple majority of members present and voting

## **1. Purpose**

- 1.1 The Combined Authority should keep under review the governance arrangements, such as policies and the constitution, of the Combined Authority.
- 1.2 This report sets out proposed changes to the Combined Authority's procurement policy in line with the recommendations within the review of governance and changes. The Procurement policies detailed in this report have been reviewed and are considered to remain current, relevant and fit-for-purpose, subject to changes in law expected later this year.
- 1.3 These changes will lead to constitutional change. The Combined Authority Board is asked to consider the content of the report, comment on the proposed changes and note the timetable that will also be taken.

## **2. Background**

2.1 The proposed Procurement Policy directly supports the Combined authority's governance framework.

2.2. Best practice dictates that organisations should have an overarching Procurement Policy in place to offer clear guidance to officers when procuring goods and services, whilst at the same time supporting the organisations' priorities and strategic themes.

2.3 The risk to the Combined Authority in not having a Procurement Policy is that officers do not have guidelines to follow to ensure that the CA is not open to challenge because of their procurement activities.

2.4 The Policy should also offer clear guidance to ensure procurements comply with both statutory requirements and the Combined Authority's own constitutional requirements.

## **3. Financial Implications**

3.1 N/A

## **4. Legal Implications**

4.1 Having a clear policy ensures the Combined Authority will be better placed to reduce the likelihood of subsequent (costly) challenges to non-compliant procurements.

4.2 Public procurement in the UK is governed by legislation set out in the Public Contracting Regulations 2015. These provide a legal framework based on principles of non-discrimination, equal treatment, transparency, mutual recognition and proportionality and has taken over from EU legislation regarding Procurement post Brexit. This is accompanied by other relevant legislation including the Utilities Contracts Regulations 2016, Concession Contracts Regulations 2016, the Freedom of Information Act 2000, Data Protection Act 2018 and the General Data Protection Regulation, Equalities Act 2010, Localism Act 2011, Social Value Act 2012, the Bribery Act 2010. Local Government Act 1988 and the Local Government (Transparency Requirements) (England) Regulations 2015

4.3 In accordance with the public procurement rules, it is therefore necessary to ensure that ethical issues are relevant to the subject matter of the contract and are consistent with the requirement within the Local Government Act 1999 to achieve “best value”. In the context of procurement, best value for money means choosing the option or bid that offers “the optimum combination of whole life costs and benefits to meet the customer’s requirements.” Ethical considerations that are “relevant” to the subject matter of the contract may arise where there is a risk to the Authority from a supplier being unable to deliver the product or service to time and of sufficient quality due to say insufficient health and safety provisions for its employees. If a clear link can be established between poor conditions of employment and the ability or motivation of an employee to maintain required equality standards, this will be relevant to the supply of goods, works or services.

4.4 Responsible procurement is defined as “the process whereby organisations meet their needs for goods, services and works in a way that achieves value for money on a whole life basis and generates benefits not only to the organisation, but also to society, the economy and the environment”. The Public Services (Social Value) Act 2012 provides the relevant legislative framework and requires local authorities to consider these wider benefits when procuring and entering into contracts. The Act applies to public services contracts and framework agreements to which the Public Contracts Regulations 2015 apply and aims to provide a tool to assist commissioners to get more value for money out of procurement.

4.5 Under the Public Services (Social Value) Act 2012, the CA must consider before starting the process of procurement of services how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area, and how, in conducting the process of procurement, it might act with a view to securing that improvement.

4.6 This social value duty is balanced by obligations to ensure fair and open competition as set out in the Public Contracts Regulations 2015 which state, inter alia, that award criteria must be ‘linked to the subject matter’ of the contract in question and must be contract-specific and not aimed at assessing the business or corporate policies of the tenderer.

4.7 Contracting authorities are entitled to decide not to award a contract to the tenderer submitting the most economically advantageous tender where they have established that the tender does not comply with applicable obligations in the fields of environmental, social and labour law established by retained laws in the UK-EU Trade and Cooperation Agreement, national law, or collective agreements. The list of such obligations is prescribed and must be strictly construed. If the tenderer is not in breach of any of those obligations the contracting authority is bound to select its bid if it is the most economically advantageous tender.

4.8 One of the proposals in the Transforming Public Procurement Green Paper is that the most economically advantageous tender (MEAT) criterion is changed to the most advantageous tender (MAT), which would allow more latitude to contracting authorities in designing their procurements to secure social value outcomes. In the meantime, contracting authorities may pursue their social value duty under the MEAT criterion so long as the award criteria are linked to the subject matter.

4.9 Government has issued a procurement policy note (05/21) requiring that contracting authorities familiarise themselves with the contents of the National Procurement Policy Statement. The Statement advises that contracting authorities should have regard to the

following national priorities in their procurement where it is relevant to the subject matter of the contract, and it is proportionate to do so:

- creating new businesses, new jobs and new skills
- tackling climate change and reducing waste, and
- improving supplier diversity, innovation and resilience

4.10 The National Procurement Policy Statement affirms the requirement to comply with legal obligations including those in the UK-EU Trade and Cooperation Agreement, and these obligations include the binding commitment to fair and open competition which is assured by the Public Contracts Regulations.

4.9 The procurement policy note also advises that contracting authorities should consider whether they have the right policies and processes in place to manage the key stages of commercial delivery identified in this statement where they are relevant to their procurement portfolio. They should consider whether they have the right organisational capability and capacity with regard to the procurement skills and resources required to deliver value for money.

## **5. Public Health Implications**

5.1 N/A

## **6. Environmental and Climate Change Implications**

6.1 N/A

## **7. Other Significant Implications**

### **7.1 Risk Management**

- The key risks associated with procurement are that the CA does not get value for money from external spend or that it is challenged for non-compliance with its internal processes or with legislation. Consistent processes, effective procurement planning, and focus of governance and procurement professional time on high-value high-risk projects provides mitigation against these. This policy and the underpinning framework provide clarity around The CA's priorities for responsible procurement, clearly linking requirements to the CA's outcomes, to ensure any benefits are channelled appropriately.
- Internal and external Audit can provide assurance to senior management and Members on procurement controls and the assurances being obtained by management that the process is operating effectively the requirements are being complied with. Internal Audit may include procurement controls within the Continuous Auditing programme and reviews of procurement and contract management arrangements in the annual Internal Audit Plan.

## **8. Appendices**

1. Draft Procurement policy
2. Procurement Policy Note – National Procurement Policy Statement Action Note PPN 05/21 June 2021
3. The Procurement Bill- a summary guide