

<b>Item No.</b> 16.	<b>Classification:</b> Open	<b>Date:</b> 1 February 2022	<b>Meeting Name:</b> Cabinet
<b>Report title:</b>		Update to Fairer Future Procurement Framework	
<b>Ward(s) or groups affected:</b>		All	
<b>Cabinet Member:</b>		Councillor Rebecca Lury, Finance, Performance and Democracy	

## **FOREWORD - COUNCILLOR REBECCA LURY, CABINET MEMBER FOR FINANCE, PERFORMANCE AND DEMOCRACY**

Thanks to the work of the council's scrutiny commission who looked into procurement in detail, we have made a number of changes to our Fairer Future Procurement Framework. These are reflected in this cabinet report.

We will continue to work to take forward the recommendations from the committee during 2022.

### **RECOMMENDATIONS**

1. That cabinet approve the refreshed Fairer Future Procurement Framework (FFPF), at Appendix 1.
2. That cabinet note the update on actions taken and that a report will be brought back to Cabinet by the end of 2022 to update on the next steps within this report in relation to social value.
3. That cabinet agree the continued delegation of approval for minor and consequential amendments to the FFPF to the Director of Law and Governance, in consultation with the Cabinet Member for Finance & Resources.
4. That cabinet note the on-going work across the Council, led by the Local Economy Team to support the delivery of the recommendations of the education and business scrutiny commission's report on procurement: accessibility and social value from July 2020 as detailed in paragraph 15.

### **BACKGROUND INFORMATION**

5. A review by overview & scrutiny committee of commissioning and procurement in Southwark in 2015 led to the development of the first Fairer Future Procurement Strategy (FFPS). This aimed to introduce clear processes, including Gateway 0 reports for services over £10m in value, briefings for cabinet members for all procurements over £100k in value and enhanced provisions relating to blacklisting.

6. Following this, the council approved the Council Plan 2018-22 and revised Fairer Future Commitments in November 2018. These changes were reflected in an updated document, the Fairer Future Procurement Framework (FFPF), which incorporated changes to legislation, guidance and policies, made reference to social value, the Construction Charter and the End Violence at Work Charter, and strengthened provisions in relation to workforce issues.
7. The revised Framework was approved by cabinet on 18 June 2019 and cabinet was also asked to note next steps for enhancing the council's commitment to social value in procurement, with a report to be brought back on their implementation and impact.
8. At their meeting in December 2020, cabinet received a report which considered the recommendations made by the education and business scrutiny commission in July 2020 following their investigation into the accessibility of procurement opportunities in Southwark to local businesses and community organisations and their review of the council's early activity to implement social value provisions of its Fairer Future Procurement Framework. This report builds on that and also proposes further changes to ensure this is a living document best supporting the council's needs and aspirations from partner organisations it enters into contracts with.
9. A future report progress in relation to the scrutiny report and on updates to the FFPF and were presented to Cabinet on 8 December 2020 and 18 January 2021 respectively.

### **Summary of the business case/justification for the procurement**

10. As the education and business scrutiny commission noted in their report to cabinet in July 2020, there is currently a gap between where the council is and where it wishes to be in terms of its strategic ambitions in respect of accessibility to small businesses and existing social value practice within the procurement landscape, as well as having the data to measure and report upon these areas. The report back to cabinet in December 2020 recognised that many of the areas identified through the commission's review need to be considered in the context of broader priorities and work streams already being undertaken across the council, including the Fairer Future Procurement Framework and also Southwark Stands Together, the Borough Plan, and the Economic Renewal Plan. Recommendations which are of particular relevance to the work on the refresh of the FFPF have been considered in the paragraphs below.
11. The scrutiny commission recommended that the council should collect equalities data and local spending data. The refreshed FFPF includes a commitment to supporting this aspiration and the ongoing Southwark Stands Together programme, the Economic Renewal Plan aspirations and the refreshed Borough Plan are all relevant to this piece of work. However, the collection of data has significant resource implications (in terms of staffing and potentially changes to IT systems) and its implementation was dependent on additional funding, a bid for which was made as part of the council's 2021-22 budget setting process.

12. It should be noted that successful implementation of these proposals is dependent on the voluntary provision of information by businesses and work to be undertaken will include consultation and engagement with them.
13. The commissioning of external data analysis and training to understand the current situation in relation to Southwark Council is underway following the commissioning of the Centre for Local Economic Strategies (CLES) by the Local Economy Team in support of achieving the scrutiny panel's recommendations. It is intended that this work will support Southwark Council in its aims to increase local spend volumes as part of community wealth building, as well as being shared via the work with Southwark Anchor Institutions in which procurement is a key element.
14. The report back to cabinet on the scrutiny commission's review also noted that, in relation to its recommendation that the council should share best procurement practice across departments, this was already in place through newsletters and drop in advisory sessions, but this will always be considered wherever possible.
15. It should also be noted that, although some of the actions below have been addressed relatively easily and speedily, others have resourcing implications and are being led by the Local Economy Team who have commissioned the Centre for Local Economic Strategies (CLES) for spend data upon which to baseline the Council's current position in relation to spend with local and small and medium sized businesses. This will form the basis of next steps to deliver on this work.
16. The approval of key updates to Equalities, Health Impact and Climate Change Strategy by Cabinet in July 2021 have all been reflected within the updated FFPF to ensure that this is up to date.

## KEY ISSUES FOR CONSIDERATION

17. A summary of the updates to the FFPF are included below:

Update	Comment
Included reference to Southwark Council's Climate Change Strategy that was approved by Cabinet in July 2021.	Additional work to support procurement on integrating climate change and environmental targets such as climate change are planned by the Climate Change Team and incorporating any targets and actions into the FFPF will be carried out to keep this up to date.
Included reference to Southwark Council's Framework for Equality that was approved by Cabinet in July 2021.	Revised guidance to support the new Framework for Equality for procurement and commissioning is planned for equality impact and needs analysis (EINA) following work by September 2022.

Update	Comment
<p>Training for officers around procurement, social value and contract management.</p>	<p>As well as the training for officers that was developed, including social value and the achievement of best value, as part of a digital training package available to all staff via MyLearningSource.</p> <p>A new toolkit on Contract Management best practice that includes the monitoring of FFPF elements and requirements for updating the Contracts Register has been delivered to support officers with contracts to manage.</p> <p>On-going reviews on training and capacity building will be undertaken as required in the National Procurement Policy Statement that is detailed later in this report.</p>
<p>Updates to terminology to reflect house style and agreement have been reflected in the FFPF.</p>	<p>This has been carried out in the light of the Southwark Stands Together programme within the council.</p>

### Other areas

18. Other areas that have come about and may have future impacts on elements for the council's procurement and inclusion within the FFPF are set out below.

### Modern Slavery

19. Support and membership of the Task and Finish Group in relation to delivery of the outcomes of the Community Safety Scrutiny Commission's May 2019 report into Modern Slavery is on-going with the Procurement Advice Team as part of this forum. Future updates to the FFPF may flow from any resultant strategy or policy on this, which is expected in mid-2022.

### Legislative Changes

20. New Public Contract Regulations following Britain's departure from the European Union had been expected. This has now been confirmed as being likely in 2023, with 6 months' notice of implementation. Once known, a report will come to cabinet updating relevant elements of the constitution and the FFPF.
21. A National Procurement Strategy Statement was published by the government in June 2021. The NPPS includes a number of requirements for all Local Authorities and includes the requirement to:
- Publication of a pipeline of future procurement projects to be undertaken in the next 2-3 years for the council from April 2022.
  - Consider national as well as local priorities in terms of procurement that is undertaken.
  - Review and benchmarking of procurement skills and capacity to deliver to

the needs of the organisation.

22. Legislation to enact the obligations from the NPPS is expected but the exact working is not yet known. As this the changes to the Public Contract Regulation, this will be monitored to ensure that the council meets its statutory obligations.

### **Medium Term Resource Strategy (MTRS)**

23. The importance of the FFPF in relation to the way in which resources are delivered to the council when it partners with external contractors has meant that reference to the FFPF has been specifically included.

### **Contract Management**

24. A Contract Management Toolkit has been developed and implemented to support the Lead Contract Officers within departments to manage and monitor their larger contracts. The Contract Management Toolkit sets out a structure and includes templates and guidance documents that support Southwark's approach to effective contract management. It is designed for contracts with a value over £100,000; however as the toolkit is best practice and can be applied to any contract.
25. The purpose of the Contract Management Toolkit is to provide a consistent approach to contract management across the council. The toolkit provides tools, techniques and templates to support contract management at both a strategic and an operational level. It is designed to be flexible and proportionate depending on the nature of the contract.
26. Effective contract management is important as it:
  - Ensures the contract is delivered for the purpose it was intended, at agreed levels, workmanship and costs
  - Effectively measures contract compliance and performance in a continuous way
  - Ensures all parties to the contract have an effective working relationship
  - Reduces the risk of disputes and litigation, which can be costly and cause reputational damage
  - Provides clear mechanisms for managing change
  - Ensures accurate and relevant reporting and monitoring including on the FFPF
  - Fulfils the parties' contractual obligations.
27. The templates within the toolkit provide guidance for officers to deliver and report on the achievement of the council's commitments within the FFPF as this remains the responsibility of individual departments and contract owners for management, monitoring and reporting.

## Social Value

28. Social Value is defined by the Public Services (Social Value) Act 2012 (PSSVA) as “the additional benefit to the community from a commissioning or procurement process over and above the direct purchasing of goods, services and outcomes”. The Act requires considerations at the pre-procurement stage of how the procurement might “improve the economic, social and environmental well-being of the relevant area” via the procurement process.
29. The council’s approach goes further than the requirements of the Act, which covers only services contracts over £189k in value. The FFPF confirmed that social value should be considered for inclusion in all contracts (goods, works and services) over £100k.
30. In recognition of the significant impact that the council’s spend can have on its residents and local area, the FFPF states that all tenders, over £100k in value should include social value criteria equivalent to at least 15% of the tender evaluation scores. Full details of the evaluation criteria and the assessment of social value should be set out in the gateway 1 report as this has to be assessed on a case-by-case basis.
31. The ideal area for social value is to be a win/win: of benefit to the council / borough but practicable for a supplier to offer. This may be offering apprenticeships, work placements or career talks at schools. Equally it can also cover elements around efforts towards meeting the council’s environmental targets e.g. carbon reduction targets (aiming for a carbon neutral borough by recycling / use of sustainable materials / reduction in use of single use plastics).
32. As set out in the January 2021 report, the council uses the Social Value Portal for appropriate larger value and longer terms contracts that seek approval from Cabinet for their procurement strategy and award.
33. These have been used but have been lesser in relation to the delivery of some of the new council homes procurement processes. These have been generally very high value but have relatively quick procurement timelines, especially with time-limited grant conditions attached and are complex in their ability to approach the market.
34. Social Value has been included from the start of the FFPF with guidance on allowing percentages of up to 15% being allocated to Social Value. As per the report to Cabinet in January 2021, those contracts over a value for which they come to Cabinet will also, where appropriate, utilise greater support via the use of the Social Value Portal (SVP). This tool allows suppliers to bid against Themes, Outcomes and Measures (TOMs) including those that are central to Southwark’s commitments, such as London Living Wage (LLW). Successful suppliers use the SVP to report on social value delivery and record this as part of contract management and monitoring.
35. This has worked well to date and social value inclusions within procurements

has been successful in delivering outcomes for Southwark and its residents.

36. Social value does present challenges in relation to the core focus of what is desirable from external partner organisations in support of delivering apprenticeships and achieving carbon neutrality but the complexities that are presented, such as definitions of local within London are an ongoing area of challenge to successfully support the delivery of Southwark’s Fairer Future Commitments and Borough Plan.

**Framework Agreements**

37. Framework Agreements are often used by the council to access goods, works and services that have been procured in accordance with the Public Contract Regulations (2015). When calling off from a Framework Agreement, it can be challenging to incorporate the full obligations of the FFPF but this should be explored by officers and set out in relevant gateway reports where intending to use a framework, how these elements will be included.

**Update on additional elements**

38. A number of elements in relation to the FFPF are still outstanding as have been noted in previous reports.

Bring the Southwark construction charter back to cabinet for approval in September 2019. Once agreed, it will be incorporated into future construction contracts entered into by the council.	The Southwark construction charter is based on the Unite charter and is on hold pending ongoing consideration by the trade union of revisions: it will be brought back to cabinet once Unite has finalised the wording.
Undertake further investigation into the work of ‘Electronic Watch’ which monitors the public procurement of electronic goods and supply chains, with a view to see what more the council needs to do to ensure the rights of all workers in our electronic supply chain are respected and their working conditions are safe and decent	This action was put on hold during the pandemic with prioritisation of resources as this work requires the involvement of the shared IT service. Resources to undertake this work have yet to be identified.

**The refreshed Fairer Future Procurement Framework**

39. The refreshed Fairer Future Procurement Framework is attached at Appendix 1. Further changes made in light of other policy commitments are set out in the paragraphs below.
40. The Economic Renewal Plan includes a work stream (2.19) being led by the Local Economy Team to support Southwark Black, Asian and Minority Ethnic led and women-led businesses to secure contracts with public sector anchor institutions. One of the key tasks is to develop a plan of support, aligned to the FFPF, to assist these enterprises to bid for and secure public sector

contracts. These commitments are also set out in the council's Borough Plan and are reflected in the refreshed FFPF.

41. The Economic Renewal Plan also sets out a work stream (2.20) to encourage all Southwark businesses with more than 50 employees to publish their Black Asian and Minority Ethnic and gender pay gaps ( this is also included in the council's Borough Plan) and notes that as part of the FFPF, the council will request that all contractors with 50+ employees commit to publish their Black, Asian and Minority Ethnic and gender pay gap on contracts greater than £100k and will also develop an engagement plan with Southwark businesses to encourage them to do this. The requirements for the gender and Black, Asian and Minority Ethnic pay gap information that go above and beyond statutory provisions are already within the FFPF.
42. As noted, the Contract Management Toolkit that has been developed that includes the templates to support the management and monitoring of contracts, including the obligations of the FFPF as an aid for departments and Lead Contract Officers when managing their contracts.

### **Next Steps**

43. Further updates on local spend reporting as the basis for delivering upon the scrutiny recommendations will follow the work being undertaken by CLES as set out in paragraph 15 above.
44. In relation to the FFPF, there are a number of areas that it is recommended that work is undertaken in addition to those elements already covered in this report that will be reported back to Cabinet by the end of 2022.
45. The progress undertaken by the council in relation to the delivery of Social Value from its procurement processes is recognised but should be reviewed through 2022/23 to develop a Social Value Strategy for Southwark Council that takes into consideration:
  - the council's priorities and updated borough plan
  - the work and opportunities presented across the council on this area including on Climate Change and Action Plans
  - the work associated Community Wealth Building and Economic Renewal aims via networks of Southwark-based Anchor Institutions, in relation to key shared areas of interest in procurement, social value, climate change and modern slavery
  - the statutory framework that new Public Contract Regulations will present in relation to Social Value.
46. A review of governance arrangements should be made with recommendations around the processes for departments to report at a council-wide level, the performance of their contracts in relation to core contract deliverables, social value commitments and adherence to the FFPF requirements by their contracts.

47. Review of the impact of new procurement legislation will be undertaken as soon as this is available.

### **Identified risks for the procurement**

48. There are no specific risks inherent in the recommendations contained within the FFPF. Each procurement required appropriate decision making processes to be carried out within the governance process and include any risks that are specific to the procurement being carried out.

### **Key / Non Key decisions**

49. This report deals with a key decision.

### **Policy Framework Implications**

50. The FFPF is designed to support in the delivery of the Fairer Future Commitments and the council's Borough Plan delivered via external partner organisations.

### **Community, equalities (including socio-economic) and health impacts**

#### **Community impact statement**

51. There are no direct implications of the FFPF on community impact as these will be required in line with the council's requirements in line with the community impact for all contracts and to be reported in gateway reports for all over £100k in value.

#### **Equalities (including socio-economic) impact statement**

52. The public sector equality duty (PSED) requires the council to give due consideration to the needs of different protected characteristics in relation to the three parts of the duty:
- Eliminating discrimination, harassment and victimisation.
  - Advancing equality of opportunity, including finding out about and meeting diverse needs of our local communities, addressing disadvantage and barriers to equal access; enabling all voices to be heard in our engagement and consultation undertaken; increasing the participation of underrepresented groups.
  - Fostering good community relations; promoting good relations; to be a borough where all feel welcome, included, valued, safe and respected.
53. The PSED is now also further reinforced in the two additional Fairer Future values that the council will:
- Always work to make Southwark more equal and just
  - Stand against all forms of discrimination and racism.
54. The revised FFPF has been amended to include commitments in the Borough Plan, Economic Renewal Plan and Southwark Stands Together:

- An equality impact and needs analysis (EINA) must inform all commissioning and procurement. All Gateway 0 strategic assessments and Gateway 1 reports must show that all relevant equality issues and obligations are taken into account and planned throughout both the procurement process and in the delivery of those functions on behalf of the council.
- The Southwark Framework for Equality replaced the Approach to Equality after being approved by cabinet in July 2021. One key element will be commissioning, procurement and equalities. Revised guidance will also be produced in September 2022 to support officers undertaking procurement or commissioning processes in relation to equalities.

55. The public sector equality duty (PSED) is a continuing duty, equality considerations must be considered at each stage of the commissioning and procurement cycle.
56. There are no direct implications of the changes to the FFPF on equality requirements as all procurement and contracts over a value of £100k will be required to complete gateway forms in line with the council's Framework for Equalities that includes socio-economic impact.

### **Health impact statement**

57. There is no direct implication of the FFPF on the health of residents of the borough, as the specific details and implications of procurement processes for all requirements that are required and will be recorded in gateway reports for all contracts over £100k in value with their health impact statement.

### **Climate change implications**

58. The FFPF now includes the obligations to review and include the requirements of Southwark Council's Climate Change Strategy when assessing all relevant contract. Future work on developing additional processes and information that will support procurements around baselines plans and reporting are planned and will be supported to include these elements within the FFPF as part of procurement evaluation processes and during the performance of the contract as part of the contract management and reporting mechanisms.

### **Staffing/procurement implications**

59. No additional resource implications follow from the recommendations in the updated Fairer Future Procurement Framework. A review of a future resourcing implications that arise from the outcomes of the CLES work in relation the delivery of the scrutiny panel recommendations and in support of great local spend and Community Wealth Building will be considered by the Local Economy and Procurement Advice Teams respectively.

### **Financial implications**

60. There are no direct implications of the Fairer Future Procurement Framework

and all information will be contained within individual gateway reports relating to contracts.

61. There are potential resource implications and any budgetary implications arising from these will need to be considered as part of the wider consideration of next steps. Where it is not possible to contain the costs of any action plans arising from this report within existing budgets, they may need to be considered in relation to seeking additional funding as part of the council's budget setting process.

### **Legal implications**

62. Please see concurrent from the Director of Law and Governance.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Director of Law and Governance**

63. This report seeks the Cabinet's approval to the refreshed Fairer Future Procurement Framework (FFPF), shown in Appendix 1 and to note the update on actions taken to enhance the council's commitment to social value in procurement. Cabinet is also requested to agree the continued delegation of approval for minor and consequential amendments to the FFPF to the Director of Law and Governance, in consultation with the Cabinet Member for Finance & Resources. Furthermore, Cabinet is requested to note the on-going work across the council, led by the Local Economy Team to support the delivery of the recommendations of the education and business scrutiny commission's report on procurement: accessibility and social value from July 2020 as detailed in paragraph 15 of this report.
64. Paragraph 17 of this report gives a summary of the updates to the FFPF with further details being in the body of this report and in Appendix 1.
65. The key considerations and commitments set out in the FFPF and council procurements must comply with and be delivered in accordance with all applicable UK legislation and guidance. Relevant legislation are noted in the FFPF, but includes the Public Contract Regulations 2015, as amended by Brexit provisions including the Public Procurement (Amendment etc.) (EU Exit) Regulations 2020 SI 2020 No.1319, the Public Services (Social Value) Act 2012 and the Equality Act 2010. There is also a need to ensure compliance with the council's Contract Standing Orders which forms part of the council's Constitution. In addition, the National Procurement Strategy Statement published by the government in June 2021 sets out the requirements for all local authorities and includes the requirements outlined in paragraph 21 of this report and paragraph 78 of the FFPF. Officers in Law and Governance will continue to provide support and guidance in the implementation of the refreshed FFPF, and any necessary amendments to contract and tender documents.
66. The Cabinet's attention is drawn to the Public Sector Equality duty (PSED

General Duty) under the Equality Act 2010, and when making decisions to have regard to the need to (a) eliminate discrimination, harassment, victimisation or other prohibited conduct, (b) to advance equality of opportunity and (c) foster good relations between persons who share a relevant protected characteristic and those who do not share it. The relevant characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion, religion or belief, sex and sexual orientation, The duty also applies to marriage and civil partnership but only in relation to (a). The Cabinet is specifically referred to the community impact statement at paragraphs 51 to 57 of this report, and also paragraph 22 of the FFPF setting out the consideration that has been given to equalities issues, which should be considered when approving the recommendations in this report.

## BACKGROUND DOCUMENTS

Background Documents	Held At	Contact
Report to cabinet 18 January 2021	Constitutional Team Southwark Council 160 Tooley Street London SE1 2QH	<a href="mailto:Paula.thornton@southwark.gov.uk">Paula.thornton@southwark.gov.uk</a>
<b>Link (please copy and paste into browser):</b> <a href="https://moderngov.southwark.gov.uk/documents/s93008/Report%20Update%20on%20Fairer%20Future%20Procurement%20Framework.pdf">https://moderngov.southwark.gov.uk/documents/s93008/Report%20Update%20on%20Fairer%20Future%20Procurement%20Framework.pdf</a>		
Report to cabinet 8 December 2020:	Constitutional Team Southwark Council 160 Tooley Street London SE1 2QH	<a href="mailto:Paula.thornton@southwark.gov.uk">Paula.thornton@southwark.gov.uk</a>
<b>Link (please copy and paste into browser):</b> <a href="https://moderngov.southwark.gov.uk/documents/s92387/Report%20Response%20to%20the%20Education%20Business%20Scrutiny%20Commission%20report%20on%20procurement%20accessibility.pdf">https://moderngov.southwark.gov.uk/documents/s92387/Report%20Response%20to%20the%20Education%20Business%20Scrutiny%20Commission%20report%20on%20procurement%20accessibility.pdf</a>		
Report to cabinet Report to cabinet 18 June 2019:	Constitutional Team Southwark Council 160 Tooley Street London SE1 2QH	<a href="mailto:Paula.thornton@southwark.gov.uk">Paula.thornton@southwark.gov.uk</a>
<b>Link (please copy and paste into browser):</b> <a href="http://moderngov.southwark.gov.uk/documents/s83220/Report%20Fairer%20Future%20Procurement%20Strategy.pdf">http://moderngov.southwark.gov.uk/documents/s83220/Report%20Fairer%20Future%20Procurement%20Strategy.pdf</a>		

## APPENDICES

No	Title
Appendix 1	Fairer Future Procurement Framework January 2022

## AUDIT TRAIL

<b>Cabinet Member</b>	Councillor Rebecca Lury, Finance, Performance and Democracy	
<b>Lead Officer</b>	Doreen Forrester-Brown, Director of Law and Governance	
<b>Report Author</b>	Elaine McLester, Head of Procurement	
<b>Version</b>	Final	
<b>Dated</b>	24 January 2022	
<b>Key Decision?</b>	Yes	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments included</b>
Strategic Director of Finance and Governance	Yes	Yes
Director of Law and Governance	Yes	Yes
Director of Strategy and Economy	Yes	Yes
<b>Contract Review Boards</b>		
Corporate Contract Review Board	Yes	Yes
<b>Cabinet Member</b>	<b>Yes</b>	<b>Yes</b>
<b>Date final report sent to Constitutional Team</b>	24 January 2022	