

Item No. 11.	Classification: Open	Date: 18 June 2019	Meeting Name: Cabinet
Report title:		Fairer Future Procurement Strategy	
Ward(s) or groups affected:		All	
Cabinet Member:		Councillor Victoria Mills, Finance, Performance and Brexit.	

FOREWORD – COUNCILLOR VICTORIA MILLS, CABINET MEMBER FOR FINANCE, PERFORMANCE AND BREXIT.

Southwark’s vision is to create a fairer future for all in Southwark. We have promised to deliver value for money and high quality services so naturally this is central to our strategy for the procurement of supplies, services and works. We also know that our procurement can and should deliver much more than this.

Our new Fairer Future Procurement Framework builds on the strategy that the council agreed in June 2016. It sets out how we will use procurement to promote enhanced employment rights, to ensure fair pay and terms and conditions, to reduce inequality and to encourage ethical corporate behaviour. As well as our continued commitment for all contractors to pay the London Living Wage, and making clear that companies that engage in illegal blacklisting of union members and activists can expect to have their contracts terminated, we have new requirements for contractors including publishing their gender and BAME pay gaps and setting out clear action plans for how they will resolve.

Our contracts also present an opportunity for added social value and our updated framework requires that this accounts for at least 15% of the available evaluation marks when tenders are being assessed and awarded. We want contractors to play a central role in delivering our fairer future commitments such as local employment and apprenticeship opportunities.

Finally, whilst we recognise the importance of a diverse and competitive range of suppliers – including many local small firms, social enterprises, minority businesses, and voluntary and community sector groups - the council remains firmly committed to an ‘in-house’ preferred provider model and the expectation that we will continue our record of bringing previously outsourced services in-house.

RECOMMENDATIONS

1. That Cabinet approve the updated Fairer Future Procurement Framework, (FFPF) including the draft Southwark Construction Charter.
2. That Cabinet note the next steps for enhancing our commitment and approach to social value in procurement as outlined in paragraphs 16- 18.

3. That Cabinet note there will be consequential amendments to the constitution, including the contract standing orders, following the approval of the FFPF to reflect updates required as highlighted in the report.
4. Cabinet receive a report back on the implementation and impact of the FFPF in December 2020.
5. That The Leader delegate any minor and consequential amendments and updates to the Fairer Future Procurement Framework to the cabinet member for finance procurement and Brexit in consultation with the Director of Law & Democracy.

BACKGROUND INFORMATION

6. In 2015, Overview & Scrutiny Committee undertook a review of Commissioning and Procurement in Southwark. The first Fairer Future Procurement Strategy (FFPS) was developed in response to those recommendations which included:
 - i) Introducing clear processes for procurements in Southwark
 - ii) The introduction of Gateway 0 reports for services over £10m in value.
 - iii) Briefings for Cabinet members for all procurements over £100k in value.
 - iv) Enhancing the provisions relating to blacklisting.
7. In November 2018 the council approved The Council Plan 2018-2022, together with the revised Fairer Future Commitments. The updated document reflects these changes and is now included in the Fairer Future Procurement Framework (FFPF). The FFPF is attached at Appendix 1 and has been revised to:
 - Reflect the changes in the Council Plan 2018-2020
 - Include changes to legislation, guidance and policies
 - Include reference to social value and the Construction Charter
 - Strengthen provisions in relation to workforce issues
 - Refer to the End Violence at Work Charter
8. The changes made to the Fairer Future Procurement Framework has moved the document from being an inward facing document, providing guidance to our staff, to an outward facing document to our contractors and external organisation, setting clear expectations of the values expected from those who are interested in delivering services on behalf of the council.

KEY ISSUES FOR CONSIDERATION

9. It is essential that the council undertakes procurements fairly and well, as good procurement practice is central to achieving the council's fairer future commitments. Good procurement has the potential to deliver key community impacts by encouraging local small and medium sized businesses to seek to do business with the council and by enhancing the social value the council gains from its spending.

Delivering the Fairer Future Commitments through Procurement

10. The council's Fairer Future Commitments are:
 - A place to call home
 - A place to belong
 - A greener borough
 - A full employment borough
 - A healthier life
 - A great start in life
 - A safer community
 - A vibrant Southwark

11. The values of the council are that we will:
 - Treat residents as if they were a valued member of our own family;
 - Be open, honest and accountable;
 - Spend money as if it were from our own pocket;
 - Work for everyone to realise their own potential;
 - Make Southwark a place to be proud of.

12. The FFPF sets out the framework within which the council will deliver goods, services and works over £100k in value, with partner external organisations and contractors, to residents and businesses in Southwark. The framework will assist in delivering value for money in the procurement process, while ensuring openness transparency and good governance. For procurement below £100k officers will have regard to the resources available to smaller providers which may bid for lower value contracts.

Financial Context

13. The council has an annual turnover of £1.2bn, of which approximately £650m each year is spent with external contractors for a variety of goods, works and services that allow Southwark to meet its commitments to residents. This spending power means the council can, and should, use its financial influence for ethical sustainable impact across the local economy and wider community.

14. Through the procurement process the council will seek the maximum value from it's spend with external organisations via the additional value linked to the contractual spend that benefits the local area, economy and health and wellbeing of our residents. This is referred to as 'social value'. There is also a legal obligation to achieve this under the Public Services (Social Value) Act 2012. Paragraphs 51-59 of the FFPF details how the council will aim to deliver maximum social value through our procurement process.

15. Social value can bring long-term benefit to Southwark by providing opportunities through engagement with organisations as part of the award of contracts and funds that the council uses. These include:

- Creating skills and training opportunities;
 - Creating employment opportunities for the long-term unemployed or those not in education, employment or training (NEETs);
 - Offering work placements to school children and young adults;
 - Providing career advice and information for young people on specific careers, such as construction, architecture or engineering;
 - Offering curriculum support to schools, with contractors sharing knowledge and expertise about their discipline;
 - Improving the health and wellbeing of Southwark residents;
 - Providing additional opportunities for individuals or groups facing greater social or economic barriers;
 - Creating supply chain opportunities for SMEs and social enterprises;
 - Creating opportunities to develop third sector organisations;
 - Encouraging community engagement;
 - Supporting initiatives like targeting hard to reach groups;
 - Encouraging ethical and fair trade purchasing.
16. 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 include 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. This approach goes further than the requirements of the Public Services (Social Values) Act 2012.

Social Value Portal

17. The council has invested in the social value portal as a way for organisations to bid as part of the tender process, the additional social value that they propose to bring to the council if they are successfully awarded the contract. The portal allows a clear record of this commitment that will form part of the contract. The successful tenderer will use the portal to record and reflect their delivery against these commitments as part of contract management and monitoring. Initial use of the portal is currently in progress with live tenders and if found to be successful will be adopted as part of the council's contract standing orders.
18. The national themes, outcomes and measures (TOMs) have been used for the pilot projects using the social value portal. If the pilot projects are successful, further work on developing the TOMs to ensure they fully represent the priorities of the council's fairer future commitments for use in future projects.

Southwark Construction Charter

19. The council has significant house-building and regeneration projects planned. The draft Southwark construction charter aims to address specific industry issues and workplace standards and is included as part of the FFPF. A copy of the draft Southwark construction charter is being presented to Cabinet for consideration as Appendix 2 of this report.

20. A final Southwark construction charter will need to be approved by Cabinet. Once approved, it will be included with all construction contracts, published on the council's website, and sent to those contractors on the council's approved list so they are clear what the council expects from those companies it works with.

Health and Safety and Wellbeing

21. The council recognises that anyone working on contracts for the council must be protected, either to the extent of statutory requirements or beyond where appropriate to the nature of the contract. Specific codes of conduct exist for those working at heights, with scaffolding or removing asbestos.
22. The council is also committed to ensuring that staff providing services on behalf of the council should receive protection from violence in the workplace. To demonstrate this commitment the council is awaiting Cabinet's approval of the end violence at work charter details of which can be found in paragraph 32 of the FFPF.
23. The council's women's safety charter was developed in recognition of the serious nature and need to address harassment in bars and nightclubs. Contractors who operate in these industries would be expected to sign up to the charter. Full information and details of the code are signposted in the FFPF.

Workforce Issues

24. Workforce issues are that covered by the FFPF are intended to ensure that council policies and commitments are included in all appropriate contracts. Whilst not intended to be a complete list, this will include the following:
 - Payment of the London Living Wage (LLW) as set by the Living Wage Foundation
 - Pension provision
 - The transfer and treatment of staff under TUPE
 - Ensuring all employees have a written statement of their pay and conditions
 - Terms and conditions including sick pay, holiday pay and provision of equipment
 - Trade Union Recognition
 - Modern Slavery
 - Gender Pay Gap
 - BAME Pay Gap
 - The requirement for an offer of guaranteed hours that reflect an employee's normal working patterns and with no harmful short or zero hour contracts that are detrimental to the employees affected
 - Adequate training and development for employees that equips them with the skills and expertise needed to deliver the service; including clear information on their right to request time off for training or study

Governance

25. The council has an established procurement process as part of the governance process set out in contract standing orders. This includes gateway reports that detail the strategic assessment, procurement strategy, contract award and contract variations for procurement and contracts, depending on their value. They are approved as set out in the council's constitution and offer clear governance and best practice in the procurement processes.
26. Contract managers are responsible for the on-going management, measurement and reporting of the delivery of the social value commitments as part of contract management. This includes requirements to:
 - Place contract award notices on the government website contracts finder for all contracts placed that are worth £25,000 or more, regardless of whether these have been advertised
 - Add all contracts over £5,000 or more to the council's contracts register
 - Prepare and review contract performance for all to manage and monitor contracts in respect of at least:
 - a) compliance with specification and contract
 - b) contractor performance and KPIs
 - c) budget and cost
 - d) user satisfaction
 - e) risk management
 - f) delivery of social value commitments, including London Living Wage.
 - Where the Estimated Contract Value exceeds the relevant EU threshold, a six-monthly monitoring report to the relevant department contracts review board (DCRB).
 - Where the contract relates to a strategic procurement or if it was awarded by an individual decision maker, an annual monitoring report to the corporate contracts review board (CCRB) should be taken within six months of the contract anniversary.

Staff Procurement and Contract Management Skills and Training

27. The need to support the training and best practice advice for procurement and commissioning skills, as well as those for contract management and monitoring across the council is well recognised. Support, advice and guidance will continue to be made available, as well as developing new training to underpin the FFPP. This will involve the appropriate use of the eProcurement system and cover requirements for the tender process and evaluation including the evaluation of social value. Contract management techniques, including continuous improvement and learning from 'relationship management', as well as tools and best practice will also be shared.

Consultation

28. The revised FFPF, social value portal and construction charter have been developed in consultation with the procurement and legal teams, with input from financial and information governance and the local economy team. In addition Directors Forum has seen the FFPF and the director of new homes has supported the development of the Southwark construction charter. Any comments received have been incorporated into the draft documentation.

Next Steps

29. Following the agreement of the FFPF a number of actions will be undertaken. These will include:
- Publishing the FFPF on Southwark's website so this is available as a public document to any external organisation that might wish to work with the council
 - Publishing the FFPF on the council's intranet with supporting guidance and advice for council officers e.g. on the new social value evaluation requirements and incorporating these into existing templates
 - Review the social value portal's themes, outcomes and measures (TOMs) in the light of successful pilots, to ensure that these are prioritised and aligned to the council's fairer future commitments
 - Review the outcomes of the climate emergency summit in July 2019 and potentially incorporate additional targets and actions
 - Working to understand whether additional training is required
 - The Southwark construction charter will be brought back to the cabinet for approval in September 2019. Once this has been agreed, it will be incorporated into future construction contracts entered into by the council.
 - Amend and update guidance for officers on relevant contracts and justifications for the grounds for best value when assessing the payment of the London Living Wage (LLW) or real UK Living Wage (as set by the Living Wage Foundation).
 - Further investigation will also be undertaken into the work of 'Electronics 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.
30. Legislative changes and new policies that support and further the aims of the council, such as the major's good works standard will be kept under review and incorporated into the FFPF where appropriate.

Constitution implications

31. If Cabinet agrees the proposed FFPF, a number of changes to the council's constitution, including the contract standing orders would need to be made to reflect this.
32. These amendments cover:
 - Inclusion within the CSOs for at least 15% for social value evaluation for contracts over £100k
 - Potential to require the use of social value portal, subject to the approval of the FFPS and successful use of the pilot projects.

Policy implications

33. The FFPF reflects and provides support for how some of the council's policies will be implemented where they affect procurement and commissioning of contracts. These include the payment of the LLW where appropriate, and targets around social value priorities such as apprenticeships that form part of the fairer future commitments.
34. It also refers to supplier commitments to the policies important to the council and by law, including but not limited to the modern slavery commitments and reporting and information on the gender pay gap.
35. Cabinet are asked to note that the current FFPF does not refer to the diversity standard as it is not in itself deliverable by via the procurement process but elements, such as the payments of LLW and no harmful or zero-hours or short contracts are to be included elsewhere in this framework will be checked during the procurement process.
36. A review of the impact of the FFPF will be undertaken and reported to Cabinet in December 2020. The review will explore the implementation and impact of the FFPF and make any recommendations for any amendments.

Community impact statement

37. This framework sets out the consideration that the council will have in future procurement processes, to ensure that the maximum possible benefit and impact of the procurement and resulting contract will be leveraged for local residents and the community. The framework aims to have a significant positive impact but will be assessed on a case by case basis for each procurement process.
38. The provisions within the FFPF, particularly around social value, are designed to encourage and support the integration and early consideration of factors through procurement activities that will provide benefits to local people and communities.

Resource implications

39. The strategy sets out how procurement processes will integrate council policy and best practice and support the delivery of the council's fairer future commitments. It is intended to have a positive impact on improving the outcomes and delivery of value for money from spend with external providers.
40. The procurement advice team will continue to support the development of procurement strategies and processes, as well as providing guidance, templates and training where appropriate to support the FFPF.

Legal implications

41. Please see the supplementary advice from the director of law and democracy.

Financial implications

42. The FFPF and agreement of this report does not have any immediate financial consequences. Any procurement or in-house provision conducted under the FFPF must be achieved within the council's agreed budget.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Finance and Governance

43. The strategic director of finance and governance notes the recommendations of this report for the approval of the updated FFPF and draft construction charter, as well as the expectation for payment of the UK National Living Wage in addition to the London Living Wage where appropriate, and incorporation of council commitment to social value considerations throughout the procurement process.
44. The changes to the framework through which council procurement activity is undertaken is not expected to have an immediate impact on budget or spending requirements. Procurement or in house delivery carried out in accordance with the FFPF is to be achieved within existing council budgetary allocations.

Director of Law and Democracy

45. This report seeks the Cabinet's approval to the updated Fairer Future Procurement framework (FFPF), and other recommendations in relation to its implementation, as further detailed in paragraphs 1-5. Pursuant to Part 3B of the constitution, the Cabinet has responsibility to consider and promote strategic and council wide initiatives to improve the quality, efficiency and effectiveness of the council's services to the public, and therefore the approval of the FFPF is reserved to Cabinet.

46. The key considerations and commitments set out in the FFPF and council procurements must comply with and be delivered in accordance with all applicable EU and UK legislation and guidance. Relevant legislation is noted in the FFPF, but includes the Public Contract Regulations 2015, the Public Services (Social Value) Act 2012 and the Equality Act 2015. Officers in Law and Democracy will continue to provide support and guidance in the implementation of the updated FFPF, and any necessary amendments to contract and tender documents.
47. 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 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 37-38 of this report, and paragraph 21 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 Papers	Held At	Contact
Overview & Scrutiny Committee Agenda 19 January 2015	Scrutiny Team 160 Tooley Street London SE1 2QH	Shelley Burke 020 7525 7344
Link: http://moderngov.southwark.gov.uk/ieListDocuments.aspx?CId=308&MId=4900&Ver=4		
Cabinet Agenda 21 July 2015	Constitutional Team Southwark Council 160 Tooley Street London SE1P 5LX	Paula Thornton Paula.thornton@southwark.gov.uk 020 7525 4395
Link: http://moderngov.southwark.gov.uk/ieListDocuments.aspx?CId=302&MId=5138&Ver=4		

APPENDICES

No.	Title
Appendix 1	Fairer Future Procurement Framework (circulated separately)
Appendix 2	Southwark Construction Charter (circulated separately)

AUDIT TRAIL

Cabinet member	Councillor Victoria Mills, Finance, Performance and Brexit	
Lead Officer	Duncan Whitfield, Strategic Director of Finance and Governance	
Report Author	Elaine McLester, Head of Procurement	
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Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Cabinet Member	Yes	Yes
Head of Finance and Information Governance	Yes	Yes
Date final report sent to Constitutional Team		7 June 2019