

**Manchester City Council
Report for Resolution**

Report to: Finance Scrutiny Committee - 15 February 2016
Executive – 2 March 2016

Subject: Manchester City Council's Ethical Procurement Policy

Report of: City Treasurer

Summary

To present to members the Ethical Procurement policy for approval. A draft is attached in Appendix 1 to this report.

Recommendation

That Executive approves the adoption of the Ethical Procurement Policy.

Wards Affected - All

Manchester Strategy outcomes	Summary of the contribution to the strategy
A thriving and sustainable city: supporting a diverse and distinctive economy that creates jobs and opportunities	The Council is committed to improving engagement with Small – Medium organisations, voluntary sector and charitable organisations, and where appropriate tenders will be adapted to their needs, particularly with regard to dividing large contracts into lots, in accordance with the Public Contract Regulations 2015
A highly skilled city: world class and home grown talent sustaining the city's economic success	Provide better Health and Wellbeing for Manchester residents through promotion of fair working conditions, better training opportunities and sustainable economic growth.
A progressive and equitable city: making a positive contribution by unlocking the potential of our communities	The Council favours an asset based approach which looks at the uniqueness of people, their potential skills, assets, relationships and community resources. This approach concentrates primarily on what is important to people, what they want to do, and the strengths and nature of their social networks. This underpins wider Council priorities of building self reliance and strengthening communities.

A liveable and low carbon city: a destination of choice to live, visit, work	The supplier, service provider and contractor endeavour to purchase through suppliers and contractors who are continuously working at improving labour and environmental standards in the supply chain.
A connected city: world class infrastructure and connectivity to drive growth	Through commissioning and procurement activities the policy will promote Manchester as an attractive place to work by securing wider benefits and improvement to the lives of people in Manchester and the environment.

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Background documents (available for public inspection):

The following documents disclose important facts on which the report is based and have been relied upon in preparing the report. Copies of the background documents are available up to 4 years after the date of the meeting. If you would like a copy please contact one of the contact officers above.

- A copy of the Draft Ethical Procurement Policy

1.0 Introduction

- 1.1 As of September 2015, the Finance Scrutiny Committee commissioned a Task and Finish Group to investigate Ethical Procurement. This report is to obtain member approval of the draft Ethical Policy (attached see appendix 1).

2.0 Development of the Ethical Policy

- 2.1 The Task and Finish Group have held 3 substantive meetings with the following objectives:
- 2.1.1 Review how ethical the Council's current procurement policy is to identify any gaps or areas.
 - 2.1.2 Review what others are currently doing in respect of ethical procurement including other local authorities and the Greater Manchester Combined Authority (GMCA).
 - 2.1.3 To consider the legal position in respect of ethical procurement and explore the scope for developing the Council's current policy and/or encouraging ethical companies to apply for procurement opportunities with the Council.



Manchester City Council Ethical (Procurement) Policy

	Date	Summary of Changes	Issued
V1.0	04.02.16		

Ethical Policy for Manchester City Council

1. Purpose

This policy sets out the context for ethical trade practices and the ethical core objectives that Manchester City Council has agreed to deliver through commissioning and procurement activities.

The Council is committed to ensuring a high standard of ethical trade practices, across its commissioning and procurement activities. In accordance with this Policy the Council expects its suppliers, service providers and contractors to observe the policy's provisions and to demonstrate a similar commitment to an ongoing programme of ensuring and, where necessary, improving ethical practices locally and globally.

The Council will proactively work to ensure that all goods, works and services it procures are sourced ethically in terms of both the way the Council procures and in terms of the standards that we expect our suppliers, service providers and contractors to meet. Within its obligations as a Best Value Authority, and in compliance with UK and underpinning EU legislation, the Council will conduct its procurement process in line with this Ethical Procurement Policy ("the Policy") which is based upon the principles of the Ethical Trading Initiative (ETI) Base Code, which were founded on the conventions of the International Labour Organisation (ILO) and is an internationally recognised code of labour practice.

2. Scope

The aim of the Policy is not to alter the commissioning and procurement processes, but to ensure that as part of these processes, the Council gives consideration to the wider impact of the service's delivery. It allows the authority to, for example, choose a supplier under a tendering process who not only provides the most economically advantageous service, but one which goes beyond the basic contract terms and secures wider benefits and improvement to the lives of people in Manchester and the environment.

The Policy applies to all areas of the Council and to its direct suppliers and contractors. The Council requires all direct suppliers and contractors to observe the provisions of this Policy and requires that such suppliers and contractors, in turn obtain similar compliance with its provisions from their suppliers and contractors. All parties to whom this Policy applies are also required to comply with applicable national and international laws.

This policy statement sets out the Council's aims in this regard. In particular it seeks to:

- Set out a definition of ethical practice for Manchester
- Sets out a clear statement of policy for ethical practice in Manchester
- Set out the core policy objectives
- To promote the adoption and improvement of ethical practices globally
- Sets out a Manchester Ethical Framework

3. Defining Ethical Practices

Procurement processes which respect fundamental standards and conduct relating to criminal/non criminal conduct, and human rights/environmental abuse which are designed to discourage conduct and behaviours resulting in progressive improvement to the lives of people and the environment to the extent that the same can be influenced by supply chain decision-making.

Criminal/Non Criminal Conduct includes but not exhaustive to:

- transparency
- bribery
- fraud
- corruption
- Tax Abuse
- conflict of interest
- fairness

Human Rights/Environmental Abuse includes but not exhaustive to:

- Employment
 - Improving working conditions
 - Paying a living wage
 - Health and safety
 - Accidents
 - Diseases
 - Right to be part of a trade union
 - Child employment
 - Working hours - Zero hour contracts
 - Training
 - Regular employment
 - Apprenticeships
 - Abuse
 - Equality – hiring, compensation, access to training, promotion, termination or retirement
 - Race
 - Caste
 - National Origin
 - Religion
 - Age
 - Disability
 - Gender and Gender Identity
 - Marital status
 - Sexual orientation
 - Union membership
 - Political affiliation
 - Slavery
 - Abuse – Physical, Verbal and Sexual
- Environment
 - Sustainability
 - Global Warming

- Global Climate Change
- Deforestation
- Pollution
- Threat of Extinction

4. Working with Manchester City Council

All suppliers, service providers and contractors to Manchester City Council must commit to employing the highest ethical standards in every area listed in all sections of this policy, in their own operatives and those within their supply chain. In addition social value principles and practices apply to suppliers, service providers and contractors and their supply chain as required in the Council's Social Value Policy (see appendix 1) ensuring maximum benefits are gained for improving economic, social and environmental well-being.

5. Improve labour conditions in the supply chain

Through the following principles:

Freedom of association and the right to collective bargaining are respected

- Workers, without distinction, have the right to join or form trade unions of their own choosing and to bargain collectively.
- The employer adopts an open attitude towards the activities of independent trades union or other workers' association and their organisational activities
- Workers representatives are not discriminated against and have access to carry out their representative functions in the workplace.
- Where the right to freedom of association and collective bargaining is restricted under law, the employer facilitates, and does not hinder, the development of parallel means for independent and free association and bargaining.

Equalities

- Practice no discrimination in hiring, compensation, training, promotion, termination or retirement either directly or indirectly.
- Suppliers, service providers and contractors shall not unlawfully discriminate within the meaning and scope of any Law (whether in age, race, gender, religion, disability, sex orientation or otherwise in employment) including but not limited to the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

Blacklists

- Suppliers, service providers and contractors shall not unlawfully compile, use, sell or supply a prohibited list which:

- a) contains details of persons who are or have been members of trade unions or persons who are taking part or have taken part in the activities of trade unions, and
- b) is compiled with a view to being used by employers or employment agencies for the purpose of discrimination in relation to recruitment, or in relation to treatment of works within the meaning of The Employment Act of 1999 (Blacklists) Regulations 2010.
- c) contains details of persons who are or have been involved in whistleblowing to appropriate bodies as a result of becoming aware of any deficiency in service provision, impropriety, fraud, customer abuse, breach of procedure or maladministration.

Employment is freely chosen

- There is no forced, bonded or involuntary prison labour.
- Workers are not required to lodge "deposits" or their identity papers with their employer and are free to leave their employer after reasonable notice
- Afford employees the freedom to choose to work and not use forced, bonded or non-voluntary prison labour.
- Afford employees freedom of association with the right to join an independent trades union or other workers' association and to carry out reasonable representative functions in the workplace.
- Facilitate alternative means of democratic representation where laws restrict freedom of association and collective bargaining.

Working conditions are safe

- Appropriate health and safety policies and procedures are operated and are overseen by a senior manager responsible for compliance and monitoring and for ensuring employees have the necessary training and health and safety equipment.
- Adequate steps are taken to prevent accidents and injury to health arising out of, associated with, or occurring in the course of work, by minimising, so far as is reasonably practicable, the causes of hazards inherent in the working environment.
- Provide comfortable and hygienic working conditions with clean toilets and water suitable for drinking and washing. Where worker housing is provided it should meet the same standards for health and safety as the workplace.
- Workers shall receive regular and recorded health and safety training, and such training shall be repeated for new or reassigned workers.

Good health is promoted

- Invest in measures for tackling ill health as healthy employees experience a better quality of life and tend to be more productive.

Working hours are not excessive

- Comply with national laws or industry standards on employee working hours, whichever affords greater protection.
- Provide clear, easily understood disciplinary, grievance and appeal procedures that are lawful and appropriate. Any disciplinary measures should be recorded and suppliers should not seek to deprive employees of their legal or contractual rights.

Minimum wages

- Provide wages and benefits at rates that meet at least national legal standards with no deductions made unless permitted under national law or agreed by the employee, without duress.

Since 2008 the Council has operated the Manchester Minimum Wage (MMW, now called the Manchester Living Wage MLW) which defines the Council's policy with regard to its lowest paid employees. The main drivers that led to the creation of the Manchester Minimum Wage were the impact of the economic downturn, positive links between wage levels and all aspects of well being, the Council's Community Plan objectives, and the direct contribution this strategy had on the Community Strategy vision.

The MLW supports the Council in meeting many of its social, economic and environmental objectives, including:

1. Ensuring that wages in the City can sustain families and individuals
2. Attracting and retaining motivated employees, thereby reducing the impact of staff turnover.
3. Helping to underpin a thriving economy.
4. The current MLW rate of pay is £7.85 per hour

In accordance with the Council's aspirations and objectives and its obligations under the Public Services (Social Value Act) 2012 we commend the adoption of the MLW to our contractors and suppliers

- Provide employees with an easy to read contract of employment clearly explaining wage levels. Where employees are unable to read, the contract should be explained to them by a union representative or another appropriate third party.

Regular employment is provided

- To every extent possible work performed must be on the basis of recognised employment relationship established through national law and practice.

- Obligations to employees under labour or social security laws and regulations arising from the regular employment relationship shall not be avoided through the use of labour-only contracting, sub-contracting, or home-working arrangements, or through apprenticeship schemes where there is no real intent to impart skills or provide regular employment, nor shall any such obligations be avoided through the excessive use of fixed-term contracts of employment.
- Excessive use of Zero Hour contracts should be avoided and suppliers, service providers and contractors should be working toward eliminating such contracts or where used give more protection to the work force such as adopting an element of guaranteed hours where employees express a preference for this or where flexibility is required. In these circumstances it is expected that employers ensure their employees receive their entitlement to holiday and sick pay.

Training is provided

- Raise employees' skills through training and access to professional development as befits their role to improve quality and secure greater value for money.

Disputes procedure

- Provide clear and accessible processes for resolving disputes with employees.

Child labour is eliminated

- Support the elimination of child labour. The course of action taken shall be in the best interest of the child, conform to the provisions of International Labour Organisation (ILO) Convention 138 and be consistent with the United Nation's Convention on the Rights of the Child.
- Provide for any children found to be performing child labour to attend and remain in quality education until no longer a child. 'Child' refers to any persons less than 15 years of age, unless local legislation on the minimum age stipulates a higher age for work or mandatory schooling, in which case the higher age shall apply.
- Ensure no children and young persons (over the age of a child, as defined above, but under the age of 18) are employed at night or in hazardous conditions, as defined by the International Labour Organisation.

No inhumane treatment is allowed

- Prohibit physical abuse or coercion, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation.

Acting with integrity and transparency

- Procurement processes are conducted in an open and honest way
- There is transparency in the spending of public money

- Suppliers have systems in place to ensure high standards of propriety which make sure public money is used for the purpose it is intended.

6. Responsible supply chain

MCC expects a commitment by the supplier, service provider and contractor to continuous improvement of the ethical performance of their supply chain.

Small to Medium Enterprises (SMEs)

- The Council is committed to improving engagement with SMEs, voluntary sector and charitable organisations and where appropriate tenders will be adapted to their needs, particularly with regard to dividing large contracts into lots, in accordance with the Public Contract Regulations 2015 which encourages authorities to use the 'Code of Best Practices Facilitating Access by SMEs to Public Procurement Contracts'.

'Small to Medium Enterprises (SMEs)' means

The definition of an SME is that it must meet two of the following criteria:

- It has a turnover of less than £25M
- It has gross assets of less than £12.5M
- It has less than 250 employees

Environment

- The supplier, service provider and contractor endeavour to purchase through suppliers and contractors who are continuously working at improving labour and environmental standards in the supply chain. Organisations such as but not limited to Environment standards (ISO14001 and EMAS management systems), Good agricultural standards (GlobalGAP), Consumer facing standards (Fairtrade, Rainforest Alliance, Tea Sourcing Partnership (TSP)), Organic (Soil Association), Management of world forests (FSC and PEFC) and Commitment to continuous improvement of the ethical performance of supply chain (SEDEX)
- Manchester - A Certain Future – the city's Climate Change Action Plan sets out our commitment to be a leading low carbon Council where our services are transformed so that they are designed and delivered with a minimum impact on the local and global environment. The City Council is committed to reducing the city's CO₂ emissions by 41% on 2005 levels by 2020, and to engage and embed low carbon thinking into the lifestyle and operations of the city. Suppliers, service providers and contractors are required to contribute to the Council reaching these goals through management of their own carbon impacts and transforming the city's procurement to a lower carbon supply chain.

Citizen Engagement

- The supplier, service provider and contractor will work intensively with communities and our partners to develop greater resilience in communities, building on the strong networks that already exist in neighbourhoods, and current leading work such as Age Friendly Manchester.

- The Council favours an asset based approach which looks at the uniqueness of people, their potential skills, assets, relationships and community resources. This approach concentrates primarily on what is important to people, what they want to do, and the strengths and nature of their social networks. This underpins wider Council priorities of building self reliance and strengthening communities.
- The key principles are:
 - Connecting people with local community solutions which may include a community hub, a social group or peer support
 - People of all ages should have access to community facilities which support them to be healthy and engaged in the life of their place. This does not have to be just physical buildings or universal services, but residents should be able to readily find information to access to community initiatives either run by the voluntary sector or through individuals and groups of residents

Fair Payments throughout the Supply Chain

- The Council is committed to ensuring fair payment for goods and services are paid for promptly through the supply chain.
- The Council is signed up to the 'Prompt Payment Code' administered by the Chartered Institute of Credit Management on behalf of the Department for Business, Innovation and Skills. The Council recommends that suppliers, service providers and contractors sign up to this Code.
- The Council's standard terms of payment to its suppliers, service providers and contracts are 30 days from receipt of invoice, however the Council is committed to paying it's suppliers as promptly as possible and endeavours to do so within 10 days of invoice date wherever possible. The Council also encourages payment by Purchase card enabling suppliers to be paid within 4 days. The Council requires that all direct suppliers, service providers and contractors demonstrate a similar commitment through the supply chain in paying their suppliers and contractors which in turn is passed through to manufacturers, and producers.

7. The legal context for Ethical Procurement

The Council operates within the legal framework governing public procurement as framed by the EU Treaty itself, the relevant EU Directives relating to public procurement and the Public Contract Regulations 2006 as subsequently updated and amended. This legal framework requires contracting authorities to award certain contracts in line with the overarching fundamental principles of the EU Treaty, including the principles of non-discrimination, equal treatment, transparency, procedural fairness, mutual recognition and proportionality.

Mandatory exclusion

Mandatory grounds for exclusion are participation in criminal organisations, corruption, bribery, fraud, and money laundering; those who are guilty of child labour, people trafficking or drug trafficking offences or offences linked to terrorism; and those who have breached their tax or social security obligations (until the supplier has rectified the breach) within a period of five years prior to the procurement.

Discretionary grounds for exclusion

Discretionary grounds for exclusion are more widely defined but include professional or commercial misfeasance and grave professional misconduct in the course of business, payment of taxes under UK law, payment of social security contributions under UK law.

“Grave Professional Misconduct” means:

It has been established by a final judgement or a final administrative decision made by the Council that a supplier, service provider or contractor or persons employed by or subcontracted by a supplier, service provider or contractor that there is guilt of grave misconduct by having violated applicable laws or regulations or ethical standards of the profession to which the supplier, service provider or contractor belongs, or by having engaged in any wrongful conduct which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence.

UK Government additional recommendations on Tax Compliance

In accordance with the UK Governments recommendations the Council places an obligation on suppliers, service providers and contractors to keep the Council notified of any “occasion of tax non-compliance (OONC)” during terms of contracts. The Council will make all reasonable enquiries to see that that the statements made by suppliers, service providers and contractors at selection stage remain valid at the commencement of the contract

“Occasion of Tax Non-Compliance” means:

(a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found to be incorrect as a result of:

- (i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;*
- (ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or*

(b) the Supplier’s tax affairs give rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a penalty for civil fraud or evasion,

Procurement law

The Council shall act fairly, reasonably and in accordance with the rules of Natural Justice in exercising its discretion (pursuant to Rule 57 of the PCR

2015) in considering whether to exclude a potential tenderer from participation in any procurement procedure and shall also take into account any other relevant legislation including but not limited to the Local Governments Act.

The LGA includes the prohibition on public authorities from taking into account “non-commercial” considerations and also includes the obligation to act fairly and with right to fair hearing etc.

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 Council 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.

Public sector bodies may also work in partnership with suppliers to pursue wider ethical issues, in a constructive and collaborative way, outside the public procurement process. This must however be done post-award and on a voluntary basis as contracts must not set standards that exceed the parameters of what may be required under EU law. Further, doing so may deter bidders from Member States and could be challenged as a restriction on free trade.

Signature.....
Chief Executive

Date.....

Appendices of Bodies

- Ethical Trading Initiative [ETI Base Code | Ethical Trading Initiative](#)
- International Labour Code <http://www.ilo.org/global/topics/labour-law/lang--en/index.htm>
- Social Value Policy [GMCA Social Value Policy](#)
- Equality Act 2010 [Equality Act 2010](#)
- The Employment Act 1999 [The Employment Relations Act 1999 \(Blacklists\) Regulations 2010](#)
(Blacklists) Regulations 2010
- International Labour Organisation Convention 138 [Convention C138 - Minimum Age Convention, 1973 \(No. 138\)](#)
- Public Contract Regulations 2015 [The Public Contracts Regulations 2015](#)
- Code of Best Practices Facilitating Access by SMEs [Code of best Practices Facilitating Access by SMEs](#)
- Environmental Standards [BSI Group](#)
[Home - EMAS - EUROPA](#)
[GLOBALG.A.P.](#)
www.fairtrade.org.uk
www.rainforest-alliance.org
[The Ethical Tea Partnership](#)
[Soil Association : Organic standards](#)
<http://www.fsc-uk.org/en-uk>
[PEFC](#)
[Sedex](#)
- MCC Climate Change Action Plan [MCC Climate Change Delivery and Action Plan](#)
- Local Government Act [Local Government Act 1999](#)
- Prompt Payment Code [Prompt Payment Code](#)