

**Manchester City Council
Report for Information**

Report to: Resources and Governance Scrutiny Committee - 22 June 2023

Subject: Ethical Procurement Policy and Fair Tax

Report of: Head of Integrated Commissioning and Procurement
Strategic Lead Commissioning

Summary

This report provides an update on the Council's ethical procurement and fair tax assessments in procurement and development decision-making.

Recommendations

The Committee is recommended to:

- (1) Note the content of the report and comment / question the information presented to the Committee as appropriate.
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Wards Affected: All

Environmental Impact Assessment - the impact of the issues addressed in this report on achieving the zero-carbon target for the city

No direct impact. However environmental impact is considered in the procurements of new contracts and in the subsequent contract management.
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Equality, Diversity, and Inclusion - the impact of the issues addressed in this report in meeting our Public Sector Equality Duty and broader equality commitments

The issues addressed in this report will have a direct impact on meeting Public Sector Equality Duty and broader equality developments by ensuring that the council's suppliers demonstrate commitment to support disadvantaged groups identified as priority groups in the council's Social Value Policy

Manchester Strategy outcomes	Summary of how this report aligns to the OMS/Contribution to the Strategy
A thriving and sustainable city: supporting a diverse and distinctive economy that creates jobs and opportunities	The Council's Ethical Procurement Policy has a significant role in supporting the Manchester Strategy outcomes both in terms of their direct impact and in terms of their indirect impact, through (for example) the creation of additional social value for Manchester and helping to ensure that appointed suppliers of goods, services and construction projects share the council's values.
A highly skilled city: world class and home-grown talent sustaining the city's economic success	
A progressive and equitable city: making a positive contribution by unlocking the potential of our communities	
A liveable and low carbon city: a destination of choice to live, visit, work	
A connected city: world class infrastructure and connectivity to drive growth	

Full details are in the body of the report, along with any implications for:

- Equal Opportunities Policy
- Risk Management
- Legal Considerations

Financial Consequences – Revenue

There are no direct capital consequences arising specifically from this report.

Financial Consequences – Capital

There are no direct capital consequences arising specifically from this report.

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Background documents (available for public inspection):

The following documents disclose key 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.

- Report to RAGOS on 19th July 2022 on the subject of Ethical Procurement and Forthcoming Changes to Government Procurement Rules

1. Introduction

- 1.1. This report is to provide an update on the Council's Ethical Procurement and fair tax assessments in procurement and development decision making.
- 1.2. A previous report on Ethical Procurement was tabled in July 2022 also provided an update on proposed changes to the procurement regulations to relax the restriction on taking "non-commercial considerations" into account when awarding contracts.

2. Ethical Procurement Policy

- 2.1. A number of updates have been provided in relation to the Ethical Procurement Policy over the 10+ years since its adoption by the council. The latest report was in July 2022 which provided an update in the context of the new procurement rules which at the time were expected to be in place in late 2022. The implementation date was then changed to Spring 2024 but notification was received last week from Cabinet Office that this has been delayed further and new rules are now expected to be in place in October 2024.
- 2.2. No changes have been made to the Ethical Procurement pending a complete review when the new rules are in place. In view of the continuing delays it is intended to review the policy and to update it where appropriate, for example in relation to applications to the principles of the GMCA good employment charter.
- 2.3. The Ethical Procurement Policy sets out expectations on ethical practices that the council expects all suppliers to commit to and to promote within their own supply chains. The policy sits alongside the Social Value Policy which is subject to a separate report on this agenda.
- 2.4. The policy covers key basics, such as compliance with laws, but also commends various good practices including "employment" in terms of improving working conditions, paying a living wage, Health and Safety, a right to be part of a trade union, child employment, working hours, regular employment, apprenticeships, abuse, equality, access to training, promotion, termination or retirement.
- 2.5. Current legislation (in particular Section 17 of the 1988 Local Government Act) places legal limitations on what the council can consider when procuring. In particular section 17 of the Local Government Act 1988 states that "*It is the duty of every public authorityin relation to its public supply or works contracts..... to exercise that function without reference to matters which are non-commercial matters*". The Act defines several non-commercial considerations and relevant examples of matters that cannot be taken into consideration include:

- the terms and conditions of employment by contractors of their workers or the composition of the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces
 - whether the terms on which contractors contract with their sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self-employed persons of their services only
 - the conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of contractors in industrial disputes between other persons
- 2.6. This legislation means that a supplier could challenge a decision to award a contract that had been made on the basis of the specific “non-commercial matters” so the policy has been worded to ensure that there is no scope for suppliers to challenge.
- 2.7. As outlined above, it is anticipated that changes to legislation will allow more account to be taken of these “non-commercial” matters.

3. Fair Tax

- 3.1. As outlined, Manchester’s ethical procurement policy goes as far as we can within the legislation. The Council achieved accreditation as a Real Living Wage authority in 2019 and this has implications for procurement in that all suppliers are expected to pay their workforce the Real Living Wage as declared by the Living Wage Foundation.
- 3.2. In addition to being a living wage local authority, the council has signed various employment charters including the union living wage for social care and the unite construction charter. The council is now considering how it should approach the Fair Tax agenda.
- 3.3. Councils are being encouraged to show support for the Fair Tax Mark by passing a resolution approving the “Councils for Fair Tax Declaration”. The Declaration commits councils to:
- leading by example and demonstrating good practice in our tax conduct, right across our activities
 - ensuring contractors implement IR35 robustly and pay a fair share of employment taxes
 - not using offshore vehicles for the purchase of land and property, especially where this leads to reduced payments of stamp duty
 - undertaking due diligence to ensure that not-for-profit structures are not being used inappropriately as an artificial device to reduce the payment of tax and business rates
 - demanding clarity on the ultimate beneficial ownership of suppliers and their consolidated profit and loss position
 - promoting the Fair Tax Mark certification for any business in which we have a significant stake and where corporation tax is due
 - supporting calls for urgent reform of EU and UK law to enable local

authorities to better penalise poor tax conduct and reward good tax conduct through their procurement policies

- 3.4. 48 Authorities are listed as having made Fair Tax Declarations including Oldham, Trafford and Bury within GM. Larger unitaries such as Birmingham, Newcastle and Edinburgh are listed as well as several London Boroughs including Southwark, Richmond on Thames, Westminster, Barnet, Lambeth and Greenwich.
- 3.5. Not all of the requirements of the Fair Tax charter are enforceable in procurement law and whilst the council can encourage, the above criteria cannot be enforced.
- 3.6. The implications of making a declaration were discussed with the LGA's Procurement National Advisory Group in 2022. Some authorities shared legal advice that, under current procurement legislation LAs are unable to exclude companies from supply chains on the grounds of tax practices unless they have been prosecuted and convicted of a specific offence. It would therefore be possible for a supplier to challenge a contract award decision that excluded them from being awarded a contract for tax reasons.
- 3.7. There has been further delay in New Procurement Regulations expected to come into force in October 2024 and the draft regulations include stronger provisions and grounds for exclusion, but the legislation has not yet been passed so the position is not fully clear.
- 3.8. In signing the Fair Tax declaration, it is likely that there would be some scrutiny into the council's various arrangements with investors. The Head of Integrated Commissioning and Procurement held an informal discussion with the Fair Tax Foundation who have confirmed that they would want any such arrangements clarified.
- 3.9. Strategic Development are working to ensure that all arrangements will be on shore with Commercial Governance undertaking due diligence on any new joint venture partners to understand their investment, financing and operational structures prior to any arrangements being entered into.
- 3.10. Of the 79 organisations listed on the Fair Tax Mark's website as being accredited in September 2022, only 6 are current or past suppliers to the council. It would not therefore be practical to make accreditation mandatory.
- 3.11. Another point to note is that the Fair Tax Mark is not the only organisation that promotes a fair approach to taxation. Other examples include The Good Business Charter, Tax Justice UK, Actionaid International, the Global Alliance for Tax Justice, and Tax Research UK. These do not all have accreditation schemes, but they promote different similar approaches to the same end.
- 3.12. The principle in the Fair Tax Mark is very much in line with the Ethical Procurement Policy. MCC's Ethical Procurement Policy demonstrates the long-term commitment to a high standard of ethical trade practices across the

council's commissioning and procurement activities and has been in place since 2007 and regularly reviewed and updated since then.

- 3.13. MCC is considered as a model of good practice amongst Local Authorities. The council already endorses several causes/initiatives within this policy including the Care Leavers Covenant, the Armed Forces Covenant, Fair Payments through the supply chain. The Ethical Procurement Policy requires review once the new procurement regulations have been finalised in the next month or two.
- 3.14. In relation to progressing the Fair Tax Agenda, the suggested approach is to:
- Complete the updated due diligence on council JVs
 - Await final details of the new Procurement Regulations (expected to be published in July 2023 and in force by October 2024) and to further consider this issue along with all other aspects of the Council's Ethical Procurement Policy.
 - Open dialogue with the Fair Tax Mark Organisation
 - Embed the Fair Tax principles as something the council would like to see into the Ethical Procurement Charter when revised

4. Recommendations

- 4.1. The Committee is recommended to note the content of the report and comment / question the information presented to the Committee as appropriate.