

Manchester City Council Report for Information

Report to: Resources and Governance Scrutiny Committee - 27 June 2024

Subject: Social Value and Ethical Procurement

Report of: City Treasurer

Summary

The government recently announced that the new Procurement Act 2023 will come into force on 28 October 2024. The Act sets new legislative requirements for how public authorities procure and contract. Alongside the new legislation the government also published in May in new National Procurement Policy Statement, setting out 'strategic priorities' that all contracting authorities, including the Council, must have regard to. This includes priorities around social value.

The new legislation and Policy Statement provide additional flexibilities which will support the Council's work to drive social value creation through its contracts. This paper discusses these and how they might be applied to future contract opportunities within the Council, along with related considerations and risks. Overall, the forthcoming changes are welcome; they represent an evolution in the policy and legislative landscape, as opposed to a significant overhaul.

The final part of this paper sets out the emerging plan and direction of travel for social value work more generally in the Council.

Recommendations

The Committee is recommended to:

- To consider and comment on the information in the report;
 - Note there will be continued work developing the Council's social value approach and working regionally and nationally with government (after the general election) to help shape future policy.
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Wards Affected: All Wards

Environmental Impact Assessment - the impact of the issues addressed in this report on achieving the zero-carbon target for the city	The new procurement legislation will continue to enable the council to promote zero-carbon and wider environmental measures through its procurements and contracts.
Equality, Diversity and Inclusion - the impact of the issues addressed in this report in	The new legislation and National Policy Statement will continue to enable the Council to promote social value in its procurements and

meeting our Public Sector Equality Duty and broader equality commitments	contracts, and equality, diversity and inclusion being one of the key priorities within the Council's Social Value objectives.
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Manchester Strategy outcomes	Summary of how this report aligns to the Our Manchester Strategy/Contribution to the Strategy
A thriving and sustainable city: supporting a diverse and distinctive economy that creates jobs and opportunities	Social value touches on all the Manchester Strategy outcomes. This report does not focus on any one in particular, but rather sets out the work underway to prepare for new legislation and policy in relation to social value.
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

No direct consequences

Financial Consequences – Capital

No direct consequences

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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.

Social Value Update, report to Resources and Governance Scrutiny Committee, November 2023, provides further background on social value in Manchester.

Information on the Economic Impacts of Social Value, report to the Economy and Regeneration Scrutiny Committee - 5 December 2023

1. Introduction

- 1.1. The government recently announced that the Procurement Act 2023 will come into force from 28 October 2024. Alongside this, the government also published a new National Procurement Policy Statement, which sets out national 'strategic priorities' including social value, that the Council must have regard to when procuring goods, services or works contracts. The Policy Statement will also come into force on 28 October.
- 1.2. These developments broadly go with the grain in terms of the Council's existing work on social value. There remains a legislative framework which the Council must work within when procuring and contracting and, with the advent of the National Policy Statement, there are now further national policy considerations that the Council will have to consider as well as local priorities in Manchester.

2. Background

- 2.1. The Council procures contracts for goods, services and works¹ covering a diverse range of requirements, including children's and adults' social care services, highways and construction services, neighbourhoods services such as waste collection, and back office goods and services (e.g. ICT), etc.
- 2.2. In its procurements, Manchester has a long, established history – well over a decade - of promoting social value. 20% of the evaluation scoring of tenders relates to non-environmental social value creation, and a further 10% of the scoring relates specifically to zero carbon and the environment. This high percentage reflects the importance Manchester attaches to securing wider public benefit from its spend. The social value updates to the November 2023 Resources and Governance Scrutiny Committee and to the December 2023 Economy Scrutiny Committee (referenced in the background documents section) provides further background and examples of social value being delivered.
- 2.3. Each procurement will have its own social value considerations. In general, officers are interested in two aspects: (i) what is the bidder like as an organisation for contracts like the one being procured – how, for example, do they apply good employment practices, consistent with the Greater Manchester Good Employment Charter; and (ii) how will they look to create social value over the life of the particular contract opportunity in question. The specific questions asked of bidders will vary depending on the nature of the contract opportunity. Some contract opportunities may (for example) lead to new job creation, in which case the procurement would look to focus on how those jobs will be advertised and recruited, particularly in relation to Manchester's priority groups (people who are more likely to face disadvantage in life opportunities). Other contract opportunities may have less scope for job creation but instead may present opportunities for supporting local community

¹ Works are construction and engineering contracts for delivery of buildings and structures.

organisations or promoting social value through the supplier's own supply chain. The questions the council asks bidders on social value will therefore vary.

- 2.4. Underpinning all public procurements – including social value considerations - are principles of value for money, fairness, proportionality and transparency, which are codified in various pieces of legislation. For example, procurement legislation generally requires a new contract opportunity being openly advertised – the council could not restrict a contract opportunity to only (for example) bids from the voluntary, community, faith and social enterprise sector (VCFSE). Authorities also can only award contracts based on subject matter relevant to the contract and when it comes to ethical practices, there are only limited instances where potential suppliers can be excluded from the procurement - for example if they have broken the law.
- 2.5. The principal pieces of legislation when procuring contracts are as follows:
- The Public Contracts Regulations 2015. These regulations are the main piece of procurement legislation, covering most types of contracts. They include (among other things) the criteria the Council may use to select a supplier, the set processes for how a procurement can be structured, and the public notices that are required from before a tender opportunity goes live, through to the notices required after contract award.
 - The Concession Contract Regulations 2016, which are similar to the Public Contracts Regulations 2015, but specifically concern concession contracts. Concession contracts are contracts where the holder of the contract pays for the right to exploit services or works to make income – e.g. the right to sell ice creams in a Council park. The Council only has a small number of concession contracts.
 - Local Government Act 1988 – specifically Section 17 of the Act which sets out several non-commercial matters which local authorities must not consider when procuring contracts. These non-commercial matters include the country where supplies originate from, and any political, industrial or sectarian affiliations or interests of suppliers and their employees, amongst others. Unlike the Public Contracts Regulations 2015 and the Concession Contract Regulations 2016, which apply to most of the public sector, the Local Government Act 1988 only applies to local government.
- 2.6. The new Procurement Act 2023 replaces the current separate pieces of procurement legislation, bringing together the different elements into a single Act that covers most areas of public procurement². The Act also gives government Ministers the power to make regulations to disapply elements of section 17 of the Local Government Act 1988. However, no regulations have yet been laid in Parliament specifically in relation to this and, prior to the general election announcement, the government was only proposing small

² The main exception is health services, which are subject to the new Provider Selection Regime.

changes that will have limited impact – this is discussed further in section 3 below.

2.7. The National Procurement Policy Statement sits alongside the new legislation and must too be followed by contracting authorities. The Statement sets out national priorities that public procurement must have regard to when procuring new contracts. The priorities that are relevant in relation to social value and ethical procurement are as follows:

- Contracting authorities ‘must place value for money at the forefront of all procurement activities’. This includes ‘consideration of wider socio-economic and environmental benefits and impacts’
- On social value, contracting authorities should, alongside any additional local priorities, have regard to outcomes of “creating resilient businesses and opportunities for quality employment and skills development”, “improving innovation, supply chain resilience, and security of supply”, “tackling climate change and reducing waste”. Social value requirements must not be onerous on suppliers.
- Contracting authorities should ensure a level playing field for small and medium-sized enterprises (SMEs), Voluntary, Community and Social Enterprises and startups in public procurement.

3. Main issues from the forthcoming changes in relation to social value and ethical procurement

3.1. The changes further support contracting authorities looking to drive social value in procurements. Authorities already have a legal duty to ‘consider’ social value but the new Act and Policy Statement subtly strengthen this. For example the Act states that in procurements, contracting authorities must have regard to certain objectives, including ‘maximising public benefit’; it also states that that contracting authorities may award a contract to a supplier that submits the ‘most advantageous tender’ in a competitive tendering procedure. Previously the legislative language used was ‘most economically advantageous tender’ – a subtle change but one that carries significance in the public procurement world.

3.2. On a practical level the additional flexibilities that contracting authorities will have under the new Act when structuring a procurement will help social value efforts. Under current legislation, negotiation with bidders is often not permitted; it is only allowed for more complex procurements where there are multiple stages involved in the procurement process. This can be a stumbling block in relation to social value, where bids might be lacking and social value offers could be strengthened. The new Act however introduces a new ‘competitive flexible procedure’ where contracting authorities can design a procurement process to suit their requirements. This flexible procedure could be used to include (for example) an optional negotiation stage, if officers believe initial bids could be improved. This has potential for securing better final bids and improve the value for Manchester residents.

- 3.3. The government is also emphasizing flexibilities for reserving what are called “below-threshold contract opportunities” to “VCSEs” (to use the acronym used by government in the National Procurement Policy Statement) and / or local suppliers. Below-threshold opportunities refer to lower value contract opportunities that are under the threshold amounts for when the Procurement Act fully kicks in. For most goods and services contracts, the current threshold is £214,904 including VAT; for works contracts the threshold is £5,372,609 including VAT. For contract opportunities with an expected total value above those thresholds, authorities generally have to openly advertise (i.e. no restrictions on who can bid). For below-threshold contract opportunities however, the government wants to enable authorities to be able to reserve opportunities for particular organisations like VCSEs. This has been government policy since 2020 and it is now on a statutory footing.
- 3.4. Under the current government’s plans, much of section 17 of the Local Government Act 1988 will, we understand, still apply meaning that the restrictions on considering ‘non-commercial’ matters continue. These could be a source of tension where there is overlap with social value priorities, although this potential contradiction between different pieces of legislation and policy hasn’t stopped the Council from pursuing social value. Another potential source of legislative tension will be with location of suppliers – government policy had been since 2020 for authorities to consider the option for reserving below-threshold contract opportunities to local suppliers; however that is (for now) still ruled out by section 17 of the Local Government Act 1988.
- 3.5. There are also potential future tensions between the national priorities in the Policy Statement and local priorities in Manchester. For example, the Policy Statement states that “contracting authorities should not ‘gold-plate’ the Equality Act 2010 by setting unnecessary diversity reporting or ‘equality, diversity and inclusion’ requirements for the private and voluntary sectors.” In Manchester, one area the procurement team is considering is how it can get better data on equality, diversity and inclusion from suppliers (not at the procurement stage but during the life of the contract).
- 3.6. A further observation – and this applies more generally to the Act too, not just social value – is that the government is requiring authorities to publish more information across the contract cycle, from initial procurement pipeline notices and market engagement opportunities before procurement, through to publishing the contracts themselves and KPI performance (for larger contracts) over the contract lifetime. This in turn highlights the need for effective contracts and contract management, including on social value.

4. Steps the Council is taking in preparation for the new legislation

- 4.1. Although the new legislation may represent an evolution rather than a revolution in public procurement policy, it still involves significant change in underlying processes and ways of working not just for the procurement team but also for commissioners, contract managers and stakeholders across the Council. The Integrated Commissioning and Procurement Team (ICP) is

working with other Greater Manchester procurement teams to help develop and implement the changes. The work comprises three main areas of focus: Systems; Processes and Procedures; and People.

- 4.2. On systems, there are three main systems where work is progressing. From a social value perspective, the system with most relevance is the new contract management system, which is the subject of an accompanying paper to the Resources and Governance Scrutiny Committee. In particular, the system will support contract managers to capture and monitor agreed KPIs on social value, which Council officers have developed working with the system provider (further bespoke social value KPIs can also be created). Capturing and monitoring social value KPIs has been a challenge up to now, without a proper system in place to support contract managers. Now, with the new system, contract managers can easily record the agreed KPIs and put in place dates when monitoring data is due from the supplier (and receive accompanying reminders and alerts ahead of the due date). Similarly, the supplier will be able to submit data against KPIs via the system. This in turn will support the council to comply with new transparency requirements. The system is still in the implementation phase – it is live and being used, but with some refinements and snagging issues currently being worked on. It is a major project and the accompanying report provides further detail.
- 4.3. The other two systems being developed apply more broadly to procurement but are critical projects for the Council. The first of these is the procurement portal – known as ‘the Chest’ - that the council, and authorities across Greater Manchester use for advertising and procuring contract opportunities. Various changes will be made to the Chest to accommodate the new legislative requirements and also link in with a new central contracts website that the government is currently developing. This is a technical but critical piece of work. Proactis, the company that provides the Chest, is part of a central government group, along with other major procurement portal providers to develop and implement the required changes. Manchester and Greater Manchester are in turn working with Proactis.
- 4.4. The other system of importance is the new finance and HR solution which will replace the current SAP system. There are new processes that need to be developed for, for example, adding new suppliers to the system, for making payments to suppliers and for running reports on things like spend against contract, payment timeliness among other things. This is a major programme of work for the Council overall and for the procurement team.
- 4.5. On processes, all elements of the current procurement processes and paperwork need to be reviewed and updated to comply with the new legislation. Focusing on areas of interest in relation to social value, as a matter of course, the ICP Team reviews tender paperwork periodically and over the last six months has made changes to template social value questions and accompanying guidance to suppliers in invitations to tender. There will be further reviews and edits over the summer as the Council’s wider social value policy thinking develops (see section 4 below), and also as wider thinking nationally develops – for example, the procurement team are linked in with the

Cooperative Councils Innovation Network who are continuing to develop a new framework for social value.

- 4.6. On the 'People' side, again there is work on a number of fronts. ICP are working with colleagues in City Policy and other teams to develop a 'sustainable procurement' (a working name) toolkit, providing further support for staff. The toolkit will provide guidance on important principles that should be applied in commissioning, procurement and contract management to deliver relevant economic, social and environmental outcomes, emphasising the importance of the commissioning/pre-procurement stage. It will offer a practical guidance on relevant environmental and social value topics, through the procurement cycle, including examples and case studies which include actions, key lessons and outcomes. This toolkit will also inform a toolkit on sustainable procurement for suppliers.
- 4.7. On the training front, all members of the ICP Team are currently working through detailed government e-learning and training aimed at procurement professionals to prepare for the new Act, with an internal end-June completion date. Following this, the team will be working with commissioning and contract stakeholders, from operational level to senior management, to establish the new ways of working. As an example, ICP and Manchester Local Care Organisation commissioners have a workshop in early-July on this.
- 4.8. ICP are also developing e-learning for Council staff on social value. The initial focus has been on the Council's zero-carbon ambition and what it means for commissioners and contract managers – the content has been created for a programme of e-learning modules and ICP are working with HR over the summer to get the content into the council's e-learning platform. This will be followed up by similar e-learning on social value, which the team will develop in the second half of the year, (the current focus is on the Procurement Act preparation and contract management system roll-out).
- 4.9. Wider engagement, both internally and externally continues. For example, ICP are currently in the middle of a series of workshops with Homelessness colleagues, developing commissioning and contracting practice including opportunities around social value. Externally, earlier this month ICP, Work and Skills and Far East Consortium ran a session on social value opportunities in construction at a conference organised by the Construction Industry Training Board held at the Etihad stadium; in May the Head of Commissioning and Procurement spoke on social value at a national procurement conference, attended by government.
- 4.10. Finally, in addition to the above changes, the Council is conducting some major new procurements currently or in the new future including Learning Disability and Mental Health Services framework (currently in procurement), Wythenshawe development partner (currently in procurement), Security services (procurement imminent), Home Care (procurement planned for later in the year). These are just a few examples of major contract opportunities that have had particular focus from ICP and wider colleagues (e.g. Work and Skills are closely involved in the Wythenshawe procurement) on social value

and evaluation, with the intention of driving more social value commitments and better underpinning contracts (e.g. contractual KPIs).

- 4.11. The above has focused on specific procurement work in relation to the Procurement Act and National Policy Statement. However there is wider work regarding the development of social value more broadly, which is the subject of the next section below.

5. Next phase for Social Value in Manchester

- 5.1. Manchester City Council is embarking on a two-year scheme of work to further strengthen its approach to social value. This is to ensure that the Council continues to maximise the benefit that social value brings to residents and neighbourhoods.

- 5.2. In 2022, the Council reviewed and updated the Social Value Policy, further 'priority cohort groups', and strengthened the membership and terms of reference for its Social Value Governance Board, ensuring thematic and cross-departmental representation.

- 5.3. In 2024 the Council appointed a new Social Value Programme Lead. There are four main workstreams that are being taken forward and will be updated on at future Resources and Governance Scrutiny Meetings:

- Communications
 - Finding more ways to profile social value initiatives in Manchester
 - Updating the Council social value communications campaign plan
 - Creating a new social value 'look and feel' brand and newsletter
- Governance
 - Strengthening existing governance structures, improving cross-department collaboration and efficiencies
 - Creating a new social value staff network and leadership team
 - Reviewing and updating the Council social value policy
- Modelling
 - Developing a strategic framework for impact reporting
 - Creating service-level approaches and plans for social value
 - Aligning and integrating social value with strategic priorities, such as the Economic Strategy, Equality Objectives, and Climate Change Action Plan
- Learning and Development
 - Developing additional materials to support Council staff, suppliers, and partner organisations who are involved in delivering social value

6. Recommendations

- 6.1. The Committee is recommended to:

- To consider and comment on the information in the report;
- Note there will be continued work developing the Council's social value approach and working regionally and nationally with government (after the general election) to help shape future policy.