



Report to Overview and Scrutiny Committee

10 November 2016

Report of: Executive Director Resources

Subject: How Sheffield City Council would like to do Business (Ethical Procurement)

Author of Report: Marianne Betts, Director of Finance and Commercial Services

Summary:

Members requested a review of our commissioning cycle specifically with regard to the Council's ability to address the following topics:

- Tax Compliance
- Ethical Procurement
- Grave Misconduct
- Living Wage
- Blacklisting
- Local Economic Impact; and
- Social Value

The purpose is to enable the Council to '*conduct business ethically, effectively and efficiently for the benefit of Sheffield*'

This paper articulates a series of proposed revisions to protocols, process and tools associated with those topics and running across Sheffield City Council (SCC) and its supply chain. In particular, the paper focusses on adopting three key tools, Social Value tests, Ethical Code of Conduct for suppliers and revised Tender processes.

Type of item: The report author should tick the appropriate box

| | |
|---|---|
| Reviewing of existing policy | X |
| Informing the development of new policy | |
| Statutory consultation | |
| Performance / budget monitoring report | |
| Cabinet request for scrutiny | |
| Full Council request for scrutiny | |
| Community Assembly request for scrutiny | |
| Call-in of Cabinet decision | |
| Briefing paper for the Scrutiny Committee | X |

| | |
|-------|--|
| Other | |
|-------|--|

The Scrutiny Committee is being asked to:

Provide steer and contribute to the development of the Ethical Procurement approach. Consider the summary of proposals, key assumptions and key risks and seeks Scrutiny's feedback and approvals

Background Papers:

Category of Report: OPEN

How SCC would like to do Business (Ethical Procurement)

Executive Summary

Members requested a review of our commissioning cycle specifically with regard to the Council's ability to address:

1. Tax compliance;
2. **[Ethical Procurement];**
3. Grave Misconduct;
4. Living Wage; and
5. Blacklisting;

within the supply chain. After initial CMT and EMT feedback the scope of work was aggregated to produce an approach on 'How SCC would like to do business' and the further topics of

6. Local Economic Impact; and
7. Social Value

were integrated into the work and the overall banner of 'Ethical Procurement' adopted to cover all the items listed.

This paper articulates a series of proposed DRAFT revisions to protocols, process and tools across Sheffield City Council (SCC) and its supply chain, to enable the Council to '*conduct business ethically, effectively and efficiently for the benefit of Sheffield*' (the vision). In particular focusses on adopting three key tools, Social Value tests, Ethical Code of Conduct for suppliers and revised Tender processes.

The proposals should enable the following outcomes:



How are we addressing Ethics specifically in this proposal?

The 'How we do business proposals' cover a broader agenda than Ethics alone, however Ethics is at the heart of the proposed changes and runs throughout the proposals as a principle.

The proposals together achieve the following:

1. Clearly set out our Ethical principles in the Ethical Code of Conduct for Suppliers (Appendix 2)
2. Embeds the Ethical principles in day to day procurement practice (PQQ and Tender documentation includes enhanced Ethical tests (Appendix 3 and 4)
3. Holds suppliers to account for unethical behaviour through contractual obligation, with the ultimate consequence of contract termination.
4. Increases the potential growth of the Sheffield '£' and demonstrates our value of use of local Sheffield suppliers.

Summary of Draft Proposals

This report focusses on the proposed measures directly impacting the external supply chain and Sheffield in regard to Ethical Procurement, rather than the total programme of activity being undertaken by the Council in regard to the wider 'How SCC would like to do business' programme.

Taking each 'ask' from Members in turn, please see a summary of the proposed changes below.

Overall our base position (what's currently in place) largely concurs with the other Local Authority approaches. However the new additions seek to put Sheffield City Council ahead, by engaging with suppliers and increasing challenge in the supply chain in a number of areas. The Council is limited by EU and UK Law, and instances Central Government policies.

Ethical Procurement

| What is currently in place? | What's happening to it? | What's new/changing? |
|------------------------------------|---|--|
| Separate policy statements: | | |
| Employment and Skills Charter | Remains in place and embedded in the ECCS | <p>New Ethical Code of Conduct for Suppliers (ECCS) – Consolidation of existing statements alongside refreshed ethical position statements.</p> <p>Makes a clear statement of intent when engaging the market.</p> <p>To be embedded as part of the contract and hold suppliers to account against the code.</p> |
| Fair City Charter | As above | |
| British Steel Charter | Remains in place as a policy and contract requirement in Construction Contracts | |

Tax Compliance

| What is currently in place? | What's happening to it? |
|---|-------------------------|
| Self Declaration on Tax Compliance per supplier within the PQQ | Remains as is, plus... |



| What's new/changing? |
|--|
| Reinforced in ECCS – Consolidation. Enables termination where breach without rectification occurs. |

Grave Misconduct

| What is currently in place? | What's happening to it? |
|---|-------------------------|
| Self Declaration Misconduct per supplier within the PQQ and in model contracts | Remains as is, plus... |



| What's new/changing? |
|--|
| Expanded PQQ disqualification tests against suppliers, parent company, group and subsidiaries. (See appendix 3&4) |
| New PQQ disqualification test introduced for breach of International Human Rights. |

Foundation Living Wage

| What is currently in place? | What's happening to it? |
|--|-------------------------|
| Tender documentation and Contracts require suppliers to work towards paying FLW | Remains as is, plus... |



| What's new/changing? |
|---------------------------------------|
| Reinforced in (ECCS) – Consolidation. |

Blacklisting

| What is currently in place? | What's happening to it? |
|--|-------------------------|
| PQQ, Tender documentation and Contracts allow disqualification or termination for breach if found to blacklist. | Remains as is, plus... |



| What's new/changing? |
|---------------------------------------|
| Reinforced in (ECCS) – Consolidation. |

Local Economic Impact

| What is currently in place? | What's happening to it? |
|--|-------------------------|
| Nothing consistent. Ad hoc tender questions inputted as part of the | Replaced by... |



| What's new/changing? |
|---|
| Introduces two mandatory new tests to evaluate local economic impact of a |

Quality Tests.

| |
|--|
| |
| |

contract being awarded.
(see appendix 4)

Increase the threshold of Works contracts for Tender to £150k. (Means quote for works below this threshold)

Mandate one of three Quotes is requested from a Sheffield Supplier.

Social Value

| What is currently in place? | What's happening to it? |
|---|--|
| Apprenticeships embedded in the PQQ and tender documentation. Anything additional is applied in Ad hoc approach, with social value embedded by individual Commissioner requests. | Apprenticeships remains as is, plus... |



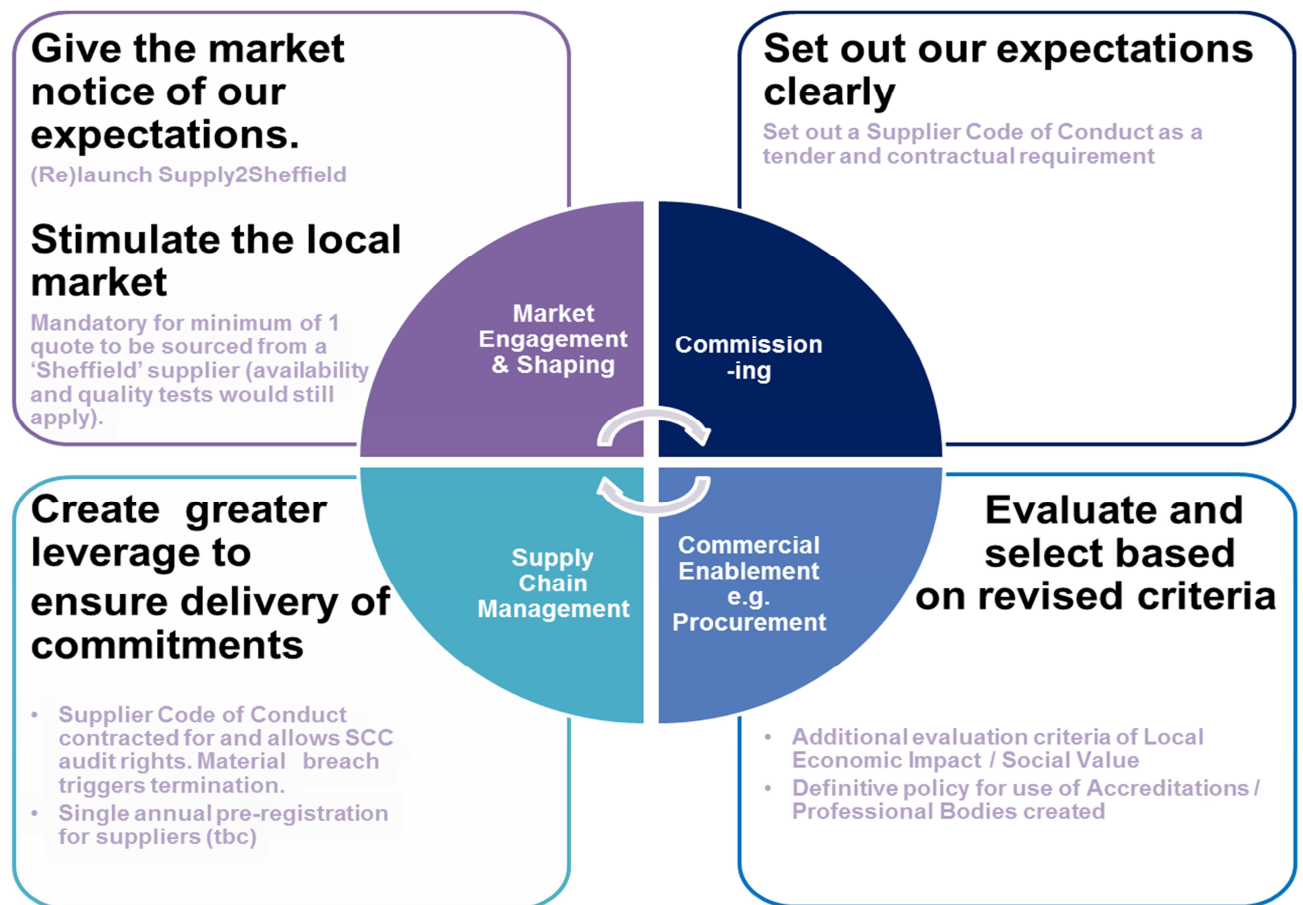
| What's new/changing? |
|--|
| Reinforced in (ECCS) – Consolidation. Mandatory social value evaluation criteria for all tenders. |

How do we hold suppliers to account?

Figure 1 below, demonstrates that for each aspect of the commissioning cycle we need to take an action to ensure suppliers can be held to account fairly and in a sustainable manner.

If we were to take one action (bold black text) and ignore any other we will create a greater risk of challenge from the supply chain in embedding any change.

Proposals being developed to enable each action to be taken are in the purple text and further detail can be found in Appendix 1.



Why is this positive for Sheffield and suppliers?

Please Table2 below for a summary of potential benefits to Sheffield and suppliers per proposed activity.

| Proposal | Benefit to Sheffield | Benefit to Supplier |
|---|---|--|
| New Ethical Code of Conduct for Suppliers (ECCS) | Driving up Ethical Standards. Wearing our heart on our sleeve and want to foster best practice with suppliers | Single reference point for ethical policies and understanding their implications |
| Expanded PQQ disqualification tests against suppliers, parent company, group and subsidiaries. | As above | |
| New PQQ disqualification test introduced for breach of International Human Rights. | As above | |
| Introduces two mandatory new tests to evaluate local economic impact of a contract being awarded. | Aims to increase the Sheffield '£' | Greater opportunity to join SCC supply chain for local suppliers |
| Increase the threshold of Works contracts for Tender to £150k. (Means quote for works below this threshold) | Aims to increase the Sheffield '£' | Greater opportunity to join SCC supply chain for local suppliers |
| Mandate one of three Quotes is requested from a Sheffield Supplier. | Aims to increase the Sheffield '£' | Greater opportunity to join SCC supply chain for local suppliers |
| Introduce mandatory Social Value weighting and menu selection of social value test appropriate to each tender. | Greater service benefits for Sheffield residents | |
| (Re)Launch Supply2Sheffield (previously Buy4Sheffield) | | Increase access to SCC procurers and market engagement. Clarity on pipeline of opportunities |
| Single Annual Pre-Registration for suppliers (TBC) | Services potentially available more quickly | More efficient processes for suppliers |
| Premier Supplier Scheme | | Better cash flow opportunities for suppliers |

Table 2: Proposed benefits to Sheffield and SCC suppliers

Key Assumptions

1. This paper only considers impact on the Supply Chain (not whether to choose to go to market or not).
2. No protocol or process will be sought shall be retrospectively applied. Though the Council shall seek to influence the existing supply chain to adopt the same principles.

3. Any protocol or process proposed in this document will be subject to a minimum annual review (and updated as appropriate).
4. The proposals shall be applicable to prime and material sub-contractors.

Employee Considerations

None. There are no changes to Employee Terms and Conditions.

Legal Implications

The proposed policies and following documentation will be required to be amended and/or signed off by Legal Services:

- Amendments to Contract Standing Orders
- Procurement Templates
- Model Contract drafting

There is an increased risk of legal challenge from Suppliers in embedding these new proposals.

Equality Implications

None.

Costs

Policy Development costs have been absorbed within the SCC budget 16/17 and implementation costs shall be minimal. The large majority of work has been picked up as part of business as usual activity within Finance & Commercial Services. Anticipated costs for implementation include:

| Activity | Cost Estimate 16/17 | Notes |
|-------------------------|---------------------|--|
| Supply2Sheffield Events | £12,000 | On-going annual Requirement at £20k. Sheffield Chamber of Commerce have also offered to support/host events. |

Key Risks

There are a limited set of risks associated with developing this proposal further:

| Risk | Risk assessment | | Mitigation |
|---|-----------------|-------------|--|
| | Impact | Probability | |
| Supplier challenges increase | High | Low-Medium | Clear Communications. Re-launch Supply2Sheffield |
| Supplier costs increase as a direct consequence of introducing revised contractual terms. | Medium-High | Low-Medium | Using existing precedents wherever possible. This should be a market norm. |

| | | | |
|---|--------|--------------|---|
| The 'Business-like Council' ethos and approach remains conceptual only. | Medium | Medium-High | Use of SCC tools. AGM / PLTs etc. to raise awareness. Train key stakeholder groups. |
| Crown Commercial Services mandates stop or alter proposed changes | Medium | Low - Medium | Large majority of proposals fall within SCC discretion. The exception are the qualification tests for suppliers in the PQQ, these will need CCS sign off. |

Report Author: Marianne Betts, Director of Finance and Commercial Services (Interim)

Appendix 1: Ethical Code of Conduct for Suppliers

Context:

The following text is based on SCC's Fair City Employer Charter and DEFRA's Ethical Code of Conduct (amended to reflect SCC's policy).

These ethical principles are not normally included in the subject matter of contracts as most are governed by law within the EU and, as such, are inherent legal requirements which if breached would be grounds for excluding the supplier for non-compliance regardless.

We are however, proposing inclusion of these terms into contract to ensure Suppliers are clear of the Council's expectations in regard to ethical standards and to enable SCC to exercise our 'Discretion' as articulated in EU Public Procurement Regulations (2015), but the terms will not take precedence, in any event, over any Legislation or Regulation the Council or its supply chain is bound by.

Please also note that public sector bodies may also work in partnership with suppliers to pursue wider ethical issues 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 EU law, as this may deter bidders from member states and could be challenged as a restriction on free trade.

DRAFT Ethical Code of Conduct for Suppliers

Sheffield City Council (SCC) defines its ethical standard for suppliers through its Ethical Code of Conduct Principles. The principles outlined below include, but are not limited to, the ethical aspects of conducting business, that SCC would expect any member of its supply chain to adhere to.

SCC expects its suppliers to maintain high standards of integrity and professionalism in their business dealings, adhering to the laws of the countries where they operate and taking action where necessary to minimise negative impacts and potential risks.

Sheffield is also committed to becoming the fairest city in the country. SCC therefore recognises that championing fairness is important for the city and also central to recruiting and retaining the most talented individuals and clients and contributing to the best type of economic growth.

DRAFT Ethical Code of Conduct Principles

SCC therefore asks its suppliers to abide with the following principles where proportionate and directly relevant to the subject matter of the contract.

1. **Instil a culture of fairness, teamwork, engagement, accountability and enjoyment**

No discrimination

- Practice no discrimination in hiring, compensation, training, promotion, termination or retirement either directly or indirectly, in accordance with the Equality Act 2010 (or subsequent iteration of the Regulation). For the avoidance of doubt this includes compliance with Regulations in relation to backlisting employees.

Disputes procedure

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

2. Ensure that all staff have the opportunity to seek out innovative practices and products and contribute to sustainable growth

3. Work toward paying the living wage, promote fair and flexible contracts of employment, and deploy recruitment and employment practices that identify and support talent, value diversity and promote aspiration and social mobility

Employment is freely chosen

- 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' associations 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 hours are not excessive

- Comply with national and international laws or industry standards on employee working hours, whichever affords greater protection.

Living and Minimum wages

- Work towards paying the Living Wage and provide wages and benefits at rates that meet at least national legal standards.
- 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.
- Wages should be in cash and not in kind (e.g. goods, vouchers) with no deductions made unless permitted under national law or agreed by the employee, without duress.

Child labour is eliminated

- Support the elimination of child labour.

- Provide for any children found to be performing child labour to attend and remain in quality education until no longer a child.
- Ensure no children and young persons are employed at night or in hazardous conditions, as defined by the International Labour Organisation.

4. Commit to the delivery of excellent working conditions, high ethical standards, positive health and wellbeing, and training, development and reward opportunities for all

Working conditions are safe

- Operate appropriate health and safety policies and procedures overseen by a senior manager responsible for compliance and monitoring and ensuring employees have the necessary training and health and safety equipment.
- 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.

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.

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.

Privacy

- Respect privacy of the individual (whether a customer or employee) and handle personalised data appropriately.

5. Acting with integrity and transparency

Dignity and Respect

- Treating customers and employees with dignity and respect.

Transparency

There is a strong public interest in public procurements to ensure that:

- 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.
- Suppliers are tax compliant.

Appendix 2: Social Value in Tenders

Sheffield City Council has been reviewing how it can be more effective regarding the benefits of Social Value and how this can increase value for money obtained in conjunction with the purchase and delivery of services.

As a result of changes to legislation within our Pre-Qualification Questions and Contractor Suitability questions we already ask about Social, Economic and Environmental questions. We now need to consider what if any questions we can incorporate and effectively score as part of the method statement element.

Commissioning and procuring for social value can help join up all the strategic aims of a public body. As a result of this a series of 'Social Value' type questions have been directly linked back to Sheffield City Council, Our Plan 2015 – 2018.

The reason for the above is that any social requirement should reflect the aims and objectives of the Council. In addition any social requirements should be drafted in the specification and form part of the contract. In this context they can only be used if and where they are meaningful to the goods/services/works being commissioned. In addition we need to be mindful that any requirement must not be defined in ways that discriminate against any bidders across the EU member states.

The questions will fall under one of the 5 Outcomes within the Corporate Plan which are:

| Overall Outcome/Priority | What it looks and feels like |
|--|--|
| An in-touch organisation | To listen and be responsive, so services are designed to meet the increasingly diverse needs of individuals in Sheffield |
| Strong Economy | To achieve our economic potential, be well-connected, with skilled individuals and growing businesses, playing a distinctive role in the global economy |
| Thriving neighbourhoods and communities | For people to have a good quality of life and feel proud of where they live, with access to great schools and local amenities |
| Better health and wellbeing | To promote good health, prevent and tackle ill-health by providing early help, earlier in life; particularly for those at risk of illness or dying early |
| Tackling inequalities | To make it easier to overcome obstacles by investing in the most deprived communities and supporting individuals to help themselves and achieve their full potential |

Under the above headings there are additional outputs which we want to achieve which will form the basis of the overall outcome. It is proposed that these outputs will form the basis of the social value questions.

The element(s) of the plan which you can and want to incorporate will be reflected in the type of goods, works or services being commissioned. As a result a menu of options has been provided, of which each procurement will have to include an appropriate series. Commissioners and Procurement Professionals will need to use their knowledge regarding which will apply.

Social Value Menu Questions

| Overall Outcome/Priority | Questions |
|--|--|
| An in-touch organisation | <p>How will you respond to customer feedback and use this information to improve and change your service?</p> <p>How will you deal with customer/service user complaints?</p> <p>How will you feedback/inform SCC of proposals to improve the service if this had an impact on the service specification?</p> |
| Strong Economy | <p>How will you support and provide apprenticeship and volunteer opportunities?</p> <p>How will you support/encourage a buy local policy?</p> <p>How will you support individuals 'furthest from employment' in accessing relevant training and job opportunities?</p> |
| Thriving neighbourhoods and communities | <p>How will you support and provide a positive influence within the community to encourage/overcome</p> <p>How will you encourage the community to develop and promote local amenities?</p> |
| Better health and wellbeing | <p>How will you develop appropriate safeguarding procedures for Children and Adults?</p> <p>How will you ensure individuals and service users within the service are able to access the right care and support they may require?</p> <p>How will you introduce and support people to use the 'Five Ways to Wellbeing' in order to reduce isolation and loneliness?</p> |
| Tackling inequalities | <p>How will you work with service users and the community to increase cohesion and address discrimination in the community?</p> <p>Can you describe the barriers and obstacles individuals face when seeking meaningful and lasting employment and how you will help them overcome these?</p> |

Appendix 3: Ethical Evaluation(DRAFT)

Under Contract Standing Orders and the EU Procurement Regulations, when tendering SCC are required to be open, fair and transparent. This includes stating an evaluation criteria for deselection and selection of bidders at the outset of approaching the market.

PQQ:

We propose adding a **self-declaration of any breach of International Human Rights Law** (including prosecution and conviction), any rectification and the ability for SCC to deselect on the basis that the supplier has not 'self-cleansed' (should they have been convicted). This is aligned to our existing PQQ documentation, where bidders have to self-declare any conviction in a UK Court of Law.

We also propose **expanding the above criteria to apply to the supplier's parent company, group or subsidiaries**. Any deselection of a bidder on the basis of their parent, group or subsidiaries will have to be agreed with SCC Legal, as all our procurement decisions are required to be related to the service being contracted for.

TENDER:

The tender evaluation criteria are a key lynch pin to enabling SCC to effectively meet its strategic outcomes. As a minimum this need to be on the basis of a best quality price ratio (BQPR). However this may now also include a single assessment criterion of 'lowest price'.

SCC currently has two standard evaluation criteria of PRICE and QUALITY. These can be weighted relevant to each procurement and though no policy states weighting values, common practice would be to have at least 30% weighted for PRICE.

The new proposal is to have 4 minimum evaluation criteria with a minimum or maximum weighting and set question where specified in the table below:

| Criteria | Weighting (of a total 100%) | | Set Question(s) |
|-----------------------|-----------------------------|-----|--|
| | Min | Max | |
| PRICE | 30% | | n/a – selected by Client and Procurement Professional |
| QUALITY | 10% | | n/a – selected by Client and Procurement Professional |
| SOCIAL VALUE | 10% | | n/a – selected by Client and Procurement Professional |
| LOCAL ECONOMIC IMPACT | 5% | 5% | 1.Number of employees providing the contracted services who live or work in Sheffield as a percentage % of the total number of company employees. 2.% of the £Total Contract Value delivered through businesses based in Sheffield (include Prime and subcontractors) |

The intention is the above is mandatory and Procurement Officers would have to articulate why any aspect of the above would not apply in any Procurement Strategy.