

To: Finance and Performance Panel
Date: 2 August 2021
Report of: Head of Financial Services
Title of Report: Social Value update and Transforming Public Procurement

Summary and recommendations	
Purpose of report:	1. To update the Panel on previously discussed Social Value in relation to Small Medium sized Enterprise (SME) performance. 2. To notify the Panel of the potential impact of the Green Book "Transforming Public Procurement"
Key decision:	No
Cabinet Member with responsibility:	Councillor Ed Turner, Cabinet Member for Finance and Asset Management
Corporate Priority:	All
Policy Framework:	Corporate and Budgetary Framework
Recommendation(s): That the Panel resolves to:	
1. Note the intention to <ul style="list-style-type: none"> • benchmark the Council against relevant commercial and procurement operating standards and other comparable organisations; 2. <ul style="list-style-type: none"> • Undertake an analysis of the Councils most important contracts and review the Management of the Contracts. 	

Appendices

Appendix 1	<p>Procurement Strategy</p>  <p>Procurement Strategy FINAL as agr</p>
Appendix 2	<p>Green Paper “Transforming Public Procurement”</p>  <p>Transforming_public_procurement.pdf</p>
Appendix 3	<p>National Procurement Policy Statement</p>  <p>National_Procurement_Policy_Statement.p</p>

Introduction and background Social Value

1. At its meeting on 25 February 2020, the Finance Panel considered a report on Social Value in Procurement. A number of recommendations were made by the Panel and they remained interested in monitoring the embedding of the principles of social value effectively within its procurement processes and requested that an update was to be provided in September 2020.
 - 1.1. The Panel’s recommendations were :
 - The Council benchmarks its spending with Small Medium sized Enterprises (SME’s) against other similar councils nationally; and
 - The Council underwrites an event for social value similar to that run by fraud prevention which brings neighbouring councils, support service providers and experts together to improve overall standards.
 - 1.2. At its meeting on 29 September 2020, the Finance Panel were updated on the recommendations concerning social value in procurement. At that time the procurement team did not have a procurement manager and were also one team member short. Added to that were the implications of covid-19 and emerging unforeseen requirements meaning that some of the recommendations had not been fully completed.
 - 1.3. The initial focus for the new procurement manager was to agree a procurement strategy; September 2020 to September 2022 (Appendix 1) (written before the procurement manager start date of December 2020) incorporating a focus on social value and the use of SMEs as well as appointing a new team member.

- The progress to date on key strategy areas linked to Social Value and the use of SME's is detailed below:
 - 1.3..1. Amendment to the constitution to better enable the use of SME's, local suppliers, co-operatives, charities, VCSE's (Voluntary, Community and Social Enterprise) and public service mutuals for lower value spend (up to £10,000).
 - 1.3..2. Amendment to the constitution to make it easier to engage with SME's , local suppliers, co-operatives, charities, VCSE's and public service mutuals for spend up to £25,000.
 - 1.3..3. Amendment to the procurement templates to consider social value at 10% rather than the original figure of 5%.
 - 1.3..4. Amendment to the procurement templates to encompass not only the Oxford Living Wage, but expanded to incorporate the National Living Wage Foundation rates.
 - 1.3..5. A review of the National social value calculator TOMs (Themes, Outcomes and Measures).
 - A more in-depth update will be coming to the September Panel.
- 1.4. In response to the Panel's recommendations to benchmark the Council SME spend against other similar councils the outcome is detailed below:
- Although 11 authorities were contacted only 4 were able to provide data, namely
 - Croydon City Council
 - Southampton City Council
 - Stoke City Council
 - Birmingham City Council

Information for the years 2018-19 and 2019-20 are shown below compared to that of the Council Group.

April 2018 - Mar 2019

Year	Total Spend	SME Spend	% SME spend
Oxford (excluding ODS/ODSTL/OCHL)	£39,919,129.70	£24,964,681.47	62.59%
ODSL/ODSTL			
OCHL			
Birmingham	£1,498,878,694.06	£899,406,085.10	60.01%
Stoke	£167,900,000.00	£25,800,000.00	15.37%
Southampton			
Croydon			

April 2019 - Mar 2020

Year	Total Spend	SME Spend	% SME spend
Oxford (excluding ODS/ODSTL/OCHL)	£34,813,393.42	£22,087,114.19	63.98%
ODSL/ODSTL	£23,147,994.20	£15,068,803.48	65.10%
OCHL	£4,227,342.24	£3,596,114.57	85.07%
Birmingham	£1,430,342,338.54	£880,978,578.87	61.59%
Stoke	£185,746,099.17	£35,452,550.00	19.09%
Southampton	£24,989,744.87	£16,471,467.56	65.91%
Croydon			12.60%

Notes

- Croydon provided limited statistics (April 2019 – March 2021) as shown in the comparison table at clause 1.4.1.
- Southampton provided statistics for July 2019 to January 2021 as shown in the comparison table at clause 1.4.1. Southampton have confirmed that their target for SME spend has been set at 43%.
- Stoke provided statistics for two years (2018/19 and 2019/20) reporting in a slightly different way however the results are shown in the comparison table at 1.4.1.
- Birmingham provided very detailed month by month data from 2017 to 2020, the results are shown in the comparison table at 1.4.1.
- Oxford City statistics are not straight forward due to the entities (ODS / ODSTL and OCHL). For the purpose of this benchmarking exercise the figures have been provided for 2019_20 with the wholly owned company external supplier spend figures shown separately.
- The Councils target has been set at 60% (above the national standard of 33% that has been set by government).
- The percentage spend with SME's for OCC (63.98%) and the entities (ODSL 65.10%) and (OCHL 85.07%) 2019-20 are in excess of the Government target and are on par with or better than other comparator authorities.

1.4.1. Conclusion

- From the limited response received Oxford City Council is performing well above the target set by government at 33%
- For this year to date the Council (May 2021 88.99%) (June 2021 88.62%) is on track to maintain SME spend above the Council target of 60% and the government target of 33%.

- For this year to date ODL/ODSTL (May 2021 67.30%) (June 2021 60.86%) is on track to maintain SME spend above the Council target of 60% and the government target of 33%.
- For this year to date OCHL (May 2021 88.95%) (June 2021 82.36%) is on track to maintain SME spend above the Council target of 60% and the government target of 33%.
- Compared to other Councils reviewed to date we are either outperforming or matching SME performance.

1.5. In response to organising an event bringing together neighbouring councils, support service providers and experts to improve overall standards and learn from each other, whilst not fully achieved due to covid-19, several on-line meetings have been attended as detailed below, with on-going reviews as to how to progress further.

- Berks/Bucks/Oxon procurement hub review on social value.
- Meeting a Social Value expert at Birmingham City Council to discuss merits of TOMS;
- Meet the Buyer hosted by Aspire / OSEP (Oxfordshire Social Entrepreneurship Partnership (attended and held 1:2:1 sessions with a number of potential suppliers, mainly SMEs);
- Social Value webinars;
- Council hosted meeting – Social Value and inclusive economy;
- Engaged with Durham and Sheffield City Councils resulting in the opinion that Oxford City should create a local version of TOMS (current proposed name OXTOMS). OXTOMS will be specific to Oxford. TOMS (national version) costs £15,000 per annum. Most councils engaged with to date hold their own register and do not pay a yearly fee.
- Procurement nationally hold a great deal of events where best practice is shared. Council resource has been under pressure in the last year due to Covid-19 along with new ways of working including technical issues in terms of quality to host large on-line webinars or meetings.
- In conclusion due to the high level of national procurement conferences it may be more prudent for the Council to consider more of a local emphasis on improving standards (South and Vale, West Oxfordshire, Cherwell, County and the Universities) with a drive towards a local TOMs that we are all signed up to. This in turn will help local SME's, social enterprises etc.

1.6. As part of the ongoing embedding of social value into procurement within the Council and following of the agreement by Cabinet of recommendations put forward by Finance Panel, further work in this area has included:

- Social value in procurement has been increased from 5% to 10% since April 2021 when proportionate and relevant (benefits of this change have not been realised to date).
- A register of possible social value deliverables has been commenced (OXTOMS), with a number of these inserted into tender documents to support suppliers not familiar with the requirement.

- Social value recently committed to by suppliers include:
 - 1.6..1. Identification of the full range of social and physical infrastructure required to deliver a development which is sustainable, socially beneficial and people-centred. As such the importance of social value will be a core thread running through the project. The brief lists further details about how this would be achieved.
 - 1.6..2. The offer of employment opportunity to OCC residents to work as home-based interviewers in a virtual call centre.
 - 1.6..3. To support local businesses to survive, adapt and recover, increase visitor economy spend and dwell time, improve the visitor economy offer in Oxford through engagement and support to tour operators and help address the negative impacts of certain visitor groups so that overall visitor and resident experience is improved
 - 1.6..4. 1hr CPD session on Commercial Awareness of Housing Developments and areas affecting viability
 - 1.6..5. 2 out of 3 of: Paid work placement of 4-6 weeks paid at Oxford Living Wage; 4 days of support to collaborate with Oxford Brookes researchers; up to 6 pro bono volunteering days by staff
 - 1.6..6. wellbeing whitepaper, podcasts, work with SME and local business
 - 1.6..7. Supporting local schools via engaging them with the CIPFA management games and setting up stands/stalls (or joining virtual presentations) to promote apprenticeships. We have a strong base of internal audit clients in Oxford as a team (we have just won Oxford University Hospitals) and nationally and therefore it is in our interest to promote our roles here.
 - 1.6..8. Donation of gifts to the charity Crisis to be prizes for an away day jointly ran with the OCC. We annually donate to Crisis as a firm and were happy to support the mental health awareness session.
- Each team member has an element of social value built into their objectives.
- Procurement have engaged with its current tender portal supplier to explore the possibility of linking Social value to TOMS without cost.

Introduction and background Transforming Public Procurement

2. The Government is developing major legislative reforms for public procurement (set out in its Green Paper on Transforming Public Procurement) at Appendix 2 which will deliver a new regulatory regime that better meets the needs of the UK. All contracting authorities need to prepare now to ensure that they have the right procurement capability and capacity so that they can benefit from these changes.
 - 2.1. The procurement team at the Council responded to the 42 questions raised in the Green Paper and are now waiting for a date for the potential reforms to come into effect. It is unlikely that the reforms will come into effect until spring next year, however on some legal forums it has been stated that some reforms could come into effect from September this year. The Council therefore needs to be prepared for any or all of the following:

- Legislation to require contracting authorities to have regard to the Government's strategic priorities for public procurement in a new National Procurement Policy Statement with the establishment of a new unit to oversee public procurement with powers to review and, if necessary, intervene to improve commercial capability of contracting authorities.
- The reducing of 350+ regulations governing public procurement and integrating the current regulations into a single, uniform framework (Public Contract Regulations 2015 (PCR); Utilities Contracts Regulations 2016 (UCR); Concession Contracts Regulations 2016 (CCR); and Defence and Security Public Contracts Regulations 2011 (DSPCR).
- The overhaul of complex and inflexible procurement procedures and replacing with three simple modern procedures. This will allow commercial teams to tailor their procedure to meet the needs of the market. There are currently seven procurement procedures available to award contracts over the thresholds. Any reforms will need to comply with the UK's obligations of non-discrimination, transparency and openness, avoiding conflicts of interest and preventing corruption.
- The retention of the current requirement in that the award criteria must be linked to the "subject matter of the contract" but amending it to allow specific exceptions so that a wider point of view can be taken exceptionally and only within a clear framework of rules. The exclusion rules would be used to tackle unacceptable behaviour in public procurement. The introduction of a centrally managed debarment list and the allowance of past performance to be more easily taken into account in the evaluation. Changing from MEAT (Most Economically Advantageous Tender) to MAT (Most Advantageous Tender) – giving more regard to social value (this could lead to gold-plating).
- Possible legislation for a new Dynamic Purchasing System (DPS+) that may be used for all types of procurement(not just commonly used goods and services) and new options in framework agreements including an 'open framework' with multiple joining points and a maximum term of 8 years (current framework – max term 4 years).
- The establishment of a single digital platform for supplier registration that ensures businesses only have to submit their data once to qualify for any public sector procurement. Embedding transparency from planning through to procurement, contract award, performance and completion and for all authorities to implement the Open Contracting Data Standard (OCDS) so that data across the public sector can be shared and analysed at contract and category level. Implementation would require a revised set of contract notices. The Government proposes developing a digital strategy and roadmap for public procurement including the development of a central platform and to legislate to require all contracting authorities to publish procurement and contracting data throughout the commercial lifecycle to the central platform via links to their own systems or directly as appropriate.
- The reform of court processes to tailor expedited processes, to speed up the review system and make it more accessible. Possible tribunal system to determine low value claims and issues. A refocusing of supplier redress onto pre-contractual measures preserving their opportunity to participate in

the procurement. Capping the level of damages and removing automatic suspension of the award of contract let competitively in crisis or extreme urgency situations and removing the mandated standstill letters.

- Giving small businesses, charities and social enterprises within the supply chain better access to contracting authorities to expose payment delays. More flexibility to amend contracts in times of crisis, introduction of a requirement to publish contract amendments notices and capping the profit paid on contract extension where the incumbent raises a legal challenge.
- No amendments to the current EU thresholds (Goods and Services £189,330 (Contract value) excluding Vat and £4,733,252 Works) are proposed.

2.2. All contracting authorities are required to have regard to the National Procurement policy Statement (see note 2.1.1 above) (Appendix 3) when undertaking procurements.

- Contracting authorities with an annual spend of £200m or more are required from April 2022 to publish procurement pipelines and to benchmark their procurement capability.
- Contracting authorities with an annual spend of £100m or more are required from April 2023 to publish procurement pipelines and to benchmark their procurement capability.

2.3. The Council spend for 2019/20 and 2020/21 is detailed below. If the council and its entities are considered as one the procurement pipelines and benchmarks will need to be produced by no later than April 2023. If considered independently there will be no requirement at this stage (however it is known that OCHL has a sustainable housing build in programme that is likely to take it's spend over £100M and possibly £200M during the coming years. This threshold will need clarification over the coming months.

2019/20 Supplier Spend			
	External Supplier Spend £	Inter-OCC Company Spend £	Total Spend £
Council Revenue	25,855,523	25,809,568	51,665,091
Council Capital	24,323,642	12,656,805	36,980,447
ODSL	20,774,564	6,026,839	26,801,403
ODSTL	1,294,323	3,573,116	4,867,440
OCHL	7,545,060	680,209	8,225,269
	79,793,113	48,746,538	128,539,650

2020/21 Supplier Spend

	External Supplier Spend £	Inter-OCC Company Spend £	Total Spend £
Council Revenue	67,227,783	24,838,626	92,066,409
Council Capital	49,511,672	4,935,125	54,446,796
ODSL	23,225,606	6,305,093	29,530,699
ODSTL	574,730	2,415,033	2,989,763
OCHL	14,098,111	5,764,001	19,862,112
	154,637,901	44,257,878	198,895,779

2.4. Contracting authorities should consider the following national priority outcomes alongside any additional local priorities in their procurement activities:

- 2.4..1. Creating new businesses, new jobs and new skills;
- 2.4..2. Tackling climate change and reducing waste, and
- 2.4..3. Improving supplier diversity, innovation and resilience.

3. Wider Council impacts and Considerations

3.1 Transforming public procurement will impact on all service areas through the Contract management element of procurement and requirements for the publication of supplier performance. This may require a gap analysis of current capabilities and possible Contract Management training.

4. Other implications

4.1 Procurement are already working with IT to move its contract register and pipeline to Microsoft Sharepoint, software which enables teams to more easily share documentation and information regarding previous and upcoming procurements across the authority. This work will be complete within the next 3 months.

4.2 Procurement can only detail potential tenders on the pipeline that it is aware of – there needs to be an early warning from all areas of the Council for potential new work (above threshold in particular).

4.3 Procurement will require more notice from service areas to undertake tenders to allow it to review the following in line with the National Procurement Policy Statement:

4.3.1 A market health and capability assessment to determine how the commercial strategy and contract design could be set to address potential market weakness.

4.3.2 Assess and agree performance measures that are relevant to the service objective and proportionate to the size and complexity of the contract. (Performance Indicators and Service Level Agreements are detailed within template documents including the Contract handover guidance).

- 4.3.3 Scrutinise the risk allocation for key contracts prior to going to market, with meaningful market engagement.
- 4.3.4 The approach to pricing and payment goes hand in hand with risk allocation and should similarly be subject to consideration and scrutiny to ensure it incentivises the desired behaviours or outcomes.
- 4.3.5 Ensure Complex outsourcing projects go through an independent review prior to any public commitment being made in order to benefit from cross sector expertise in assuring deliverability, affordability and value for money.
- 4.3.6 Ensure a proportionate delivery model assessment is conducted before deciding whether to outsource, insource or re-procure a service through evidenced based analysis.
- 4.3.7 Ensure that Complex projects have a Should Cost Model produced as part of the Delivery Model Assessment to estimate the total cost of delivering the service and protect the contracting authority from low bid bias.
- 4.3.8 Ensure that Pilots are used where a service is being outsourced for the first time. Piloting a service delivery model is the best way to understand the environment, constraints, requirements, risks and opportunities.

5. Financial implications

- 5.1 Depending on the final drafting of the Green Book there may be a cost implication in terms of additional staff to manage the requirements and implementation of the Green Book whilst continuing to manage procurements for its stakeholders. The recommendations of the Green Book not only impact on procurement, but the wider service areas in terms of contract management, IT and Legal.
- 5.2 There are a number of professional standards that contracting authorities can choose to benchmark themselves against. These include the Commercial Continuous Improvement Assessment Framework produced by the Government Commercial Function with NHS England and NHS Improvement, and the National Procurement Strategy Toolkit produced by the Local Government Association. There may be a cost of undertaking this work which is yet to be determined

6. Legal issues

- 6.1 Should the proposals put forward within the Green Paper be turned into legislation, there will undoubtedly be implications for the Procurement and Legal service teams as policy and procedures will need to be implemented to ensure compliance with the change in law.
- 6.2 However, it is difficult to quantify at this time due to the fact that the Green Paper has been submitted to a national consultation exercise, and we can't reasonably foresee the outcomes of that exercise.
- 6.3 However systems should be considered to improve existing internal and national procurement strategy and react to any outcomes from the Green Paper consultation.

7. Level of risk

- 7.1 Ensuring that the Council have the right organisational capability and capacity with regard to the procurement skills and resources required to deliver value for money.

- 7.2 Ensuring that the Council has the right policies and processes in place to manage the key stages of commercial delivery where they are relevant to the procurement portfolio
- 7.3 Ensuring that the Council has the right processes and governance in place to determine and manage its most important contracts. This includes Contract Management capability across the organisation.
- 7.4 Under the new proposed procurement regime intervention to improve commercial capability of contracting authorities could be imposed.

Report author	Annette Osborne
Job title	Procurement Manager
Service area or department	Finance
Telephone	01865 335498
e-mail	aosborne@oxford.gov.uk

Background Papers: None

This page is intentionally left blank