

Cabinet Meeting	
Meeting Date	8 December 2021
Report Title	Commissioning & Procurement Policy
Cabinet Member	Roger Truelove, Leader and Cabinet Member for Finance
SMT Lead	Lisa Fillery, Director of Resources
Head of Service	Phil Wilson, Head of Finance and Procurement
Lead Officer	Charlotte Knowles, Commissioning Manager
Key Decision	No
Classification	Open
Recommendations	1. To adopt the new Commissioning & Procurement Policy.

1 Purpose of Report and Executive Summary

- 1.1 The intention is to replace the existing Commissioning Framework and the Procurement Strategy documents with a combined Commissioning and Procurement Policy.
- 1.2 The aim of the new Commissioning and Procurement Policy is to bring both of these elements together and create a seamless process that will encourage officers and Members to embed sound Commissioning processes in everything they deliver.
- 1.3 The Policy updates the Council's principles around commissioning decisions and the procurement processes for buying goods, works and services, ensuring they meet the Coalition's priorities.

2 Background

- 2.1 The current Procurement Strategy was approved in 2013 and aimed to help move the Council in a new direction of providing services to the community. The strategy set out the principles for how the Council purchased what it needed and also contained an action plan on how it wanted to achieve that. The action plan set short (one year or less), medium (one to five years) and long term (longer than five years) actions to help deliver this. The strategy is therefore overdue a review.
- 2.2 The current Commissioning Framework was approved in 2012. Sitting as a separate document, the Commissioning Framework took a more generic approach to how the Council should make decisions ahead of the procurement stage. Whilst many services end up being procured, the various Commissioning stages help officers and Members to really think about what end outcome is required and what the best way of achieving that is. So commissioning is deciding how we deliver a service and procurement is a tool that could be used to achieve that.

- 2.3 Both of the current documents stand alongside the technical 'Contract Standing Orders' (CSO's) and 'Financial Regulations' for Swale that sit within the Constitution and set our process rules. There is then a suite of templates that are used to complete the processes. These are also being reviewed and updated.
- 2.4 The following paragraphs set out what has been added to the proposed policy.
- 2.5 Recent internal audits have been undertaken on procurement processes and contract management. Both audits identified areas for improvement that have been included in the new Commissioning and Procurement Policy. Training on Commissioning, Procurement and contract management has been delivered to spending officers in March 2021 and will be delivered every two years.
- 2.6 The EU exit has the potential for a range of changes in this area of legislation. The EU principles of procurement were enshrined in UK law and as the Government were keen to ensure a smooth transition, very little has changed so far. Currently we adhere to the Public Contracts Regulations 2015 (and subsequent revisions) and the National Procurement Strategy 2018. However, a green paper 'Transforming Public Procurement' was released in December 2020. The consultation on this paper ran from 15 December 2020 to 10 March 2021. The Government's goal is to 'speed up and simplify our procurement processes, place value for money at their heart, and unleash opportunities for small businesses, charities and social enterprises to innovate in public service delivery.' The policy has been updated to include the national changes that have been implemented so far and it is expected that new legislation will be introduced to Parliament either late 2021 or early 2022.
- 2.7 At the same time, the current administration were keen to explore new ways of delivering services. In order to speed up delivery of their priorities a 'Commissioning working group' was established from Cabinet and Deputy Cabinet Members. The working group established two workstreams – amending the Contract Standing Orders and revising the Procurement Strategy.
- 2.8 A report was taken General Purposes Committee on 16 December 2020 and Council on 6 January 2021 which amended the Contract Standing Orders. As well as correcting a number of inaccuracies, the thresholds were amended to make the required procurement process proportionate to the level of spend and to help simplify the process for local businesses. The main changes were to increase the tender threshold from £25,000 to £100,000 and to reduce the number of quotes required for lower level spend. All of the changes were approved and officers are now operating to the new rules.
- 2.9 The next workstream was the review of the Procurement strategy. The new Commissioning & Procurement Policy incorporates elements of the Commissioning Framework and the current Commissioning Framework will be replaced with an officer 'how to guide'.
- 2.10 The purpose of the new Commissioning and Procurement Policy is to set out the principles for procurement. The technical CSO and Financial Regulations documents then cover the process.

- 2.11 Members of the working group discussed a number of key drivers for change. They wanted to ensure that all options of service delivery are explored, including in-house. The current strategy had a propensity for 'contracting out', whereas members stated that the greater flexibility and control of in-house or trading company delivery should not be ruled out.
- 2.12 Member involvement in decision-making was a topic for discussion. The Local Government Association (LGA) produced a document called 'A Councillors' guide to procurement' in 2019 which sets out the role Members can play. This is focussed around setting the corporate procurement strategy, influencing the early commissioning cycle stages (analyse and plan), overseeing specifications, approving final contract awards and then reviewing performance. The document is clear that Members should not be involved with commercial negotiations, or the evaluation of tenders. The policy therefore explains the greater role Members can play in the process.
- 2.13 Members have set out their direction and focussed on economic development and using direct staff and contractor employment to support the local economy. Payment of the [Real Living wage](#) and making sure contracts are achievable for local, smaller companies are high on the list. The proposed policy includes the new option for councils to reserve contracts below the relevant UK thresholds (currently £189,330 for services, £4,733,252 for Works), to the UK or Kent County area and by Small and Medium Enterprises (SME) and the Voluntary and Community Sector (VCS) under Procurement Policy Note (PPN) 11/20.
- 2.14 The Council has also set ambitious targets relating to the Climate and Ecological Emergency and Members are keen that commissioning and procurement is used to secure gains in reducing the Council's carbon footprint. The proposed policy includes a section on the action plan.

3 Proposals

- 3.1 To adopt the new Commissioning & Procurement Policy.

4 Alternative Options

- 4.1 Do nothing and keep the existing Strategy. This option is not recommended as the Procurement Strategy is out of date and does not meet administration priorities.

5 Consultation Undertaken or Proposed

- 5.1 Consultation was undertaken with the officer group following SMT in March. The group consisted of the then Head of Commissioning, Environment and Leisure, Chief Financial Officer, Head of Housing and Community Services, and the Head of Policy Governance & Customer Services. The Leader, the Deputy Cabinet Member for Finance, the Member Commissioning and Procurement Working Group and Mid Kent Legal Services have also been consulted.

Cabinet Advisory Committee

5.2 This report went to the Policy, Finance and Housing Cabinet Advisory Committee on 13 October and has been updated to take account of members' comments.

6 Implications

Issue	Implications
Corporate Plan	The policy supports the priority: 'Renewing local democracy and making the Council fit for the future'.
Financial, Resource and Property	Whilst there are no direct financial implications of amending the previous strategy, the principles established in the new Policy could have an impact in the cost of service delivery. However, the draft policy states: "The Council will make decisions about the purchasing or delivery of services on the basis of value for money". As such each commissioning process should look at the requirements of the service and business case into each of the options.
Legal, Statutory and Procurement	There is various legislation and guidance linked to the spending of public money. The Public Contracts Regulations 2015, Bribery Act, Public Services (Social Value) Act 2012. The draft policy states: "The Council will fulfil its statutory duties meeting the requirements of the Public Contracts Regulations and taking account of case law that emerges."
Crime and Disorder	None identified at this stage.
Environment and Climate/Ecological Emergency	The draft policy contains a section on sustainable procurement and references the Climate and Ecological Emergency Action Plan. One of the key changes is the continued monitoring of methods presented at tender stage and the inclusion of environmental considerations in specifications.
Health and Wellbeing	The draft policy contains a section on Social Value.
Safeguarding of Children, Young People and Vulnerable Adults	The policy has a specific section on Safeguarding. The council sets different requirements for Safeguarding depending upon the contract type. There are strict criteria of what contractors are required to demonstrate at each stage.
Risk Management and Health and Safety	The policy requires officers and Members to assess the risks of each commissioning process.
Equality and Diversity	There are no differential equality issues raised by the proposals in this report.
Privacy and Data Protection	The standard terms and conditions that are used for procurements include privacy and data protection clauses.

7 Appendices

7.1 The following documents are to be published with this report and form part of the report:

- Appendix I – Proposed Commissioning & Procurement Policy

8 Background Papers

None.