

**Forward Plan reference number: FP/183/10/21**

<b>Report title: Essex County Council Social Value Policy</b>	
<b>Report to:</b> Cabinet	
<b>Report author:</b> Councillor Christopher Whitbread - Cabinet Member for Finance, Resources and Corporate Affairs	
<b>Date:</b> 21 December 2021	<b>For:</b> Decision
<b>Enquiries to:</b> Melanie Evans, Director Procurement email <a href="mailto:melanie.evans2@essex.gov.uk">melanie.evans2@essex.gov.uk</a> or Laura Lee, Head of Procurement – Place and Corporate <a href="mailto:laura.lee@essex.gov.uk">laura.lee@essex.gov.uk</a> or Samantha Butler, Social Value Lead, <a href="mailto:samantha.butler@essex.gov.uk">samantha.butler@essex.gov.uk</a>	
<b>County Divisions affected:</b> All Essex	

## **1. Everyone's Essex**

- 1.1 Essex County Council spends approx. £1.2 billion per annum via its suppliers. This report proposes harnessing the power of this spend to help deliver the aims of Everyone's Essex.
- 1.2 The policy will do this by including social value in the quality assessment of a tender evaluation, allowing ECC to take into account the way an organisation will deliver a contract and contribute to important Everyone's Essex commitments to residents. This allows us to consider areas such as providing jobs and skills opportunities to residents and positive climate impacts in line with the ECC strategy to reach Net Zero targets, when a contract is being performed.

## **2 Recommendations**

- 2.1 Agree the social value policy in the form appended to this report.

## **3 Background and Proposal**

- 3.1 The term 'Social Value' is defined in the Public Services (Social Value) Act 2012 which came into force in January 2013. It requires all public sector organisations (and their suppliers) to look beyond the financial cost of a contract and consider how the services they commission and procure might improve the economic, social and environmental well-being of an area. (Local Government Association).
- 3.2 Public authorities consider the wider financial and non financial value created by the way an organisation delivers the contracts they let and express the contribution to its commercial outcomes in terms of the wellbeing generated for individuals, communities, the economy and the environment. This must be

achieved in accordance with the Public Contracts Regulations 2015 and the 1988 Local Government Act.

- 3.3 Social Value through Procurement is where an authority uses its purchasing power to achieve added value to the community. This can be achieved in the way that we specify what goods or services we are buying, but most commonly it is done by scoring tenders to give weight to added commercial value that a provider contributes to the authority and community through the way it performs the contract. For example, if a vendor's recruitment procedures included outreach to those furthest to the job market they might commit to employing the long term unemployed or those not in education, employment or training. Social value is not a new idea, but it is one currently enjoying a renaissance.
- 3.4 Examples of social value include creating employment or training opportunities for our residents, providing careers advice and employment support for the long term unemployed, or reducing the use of single-use plastic.
- 3.5 Following approval of an amendment to the Procurement policy and procedures, in September 2020 ECC commenced use of the National Social Value Taskforce<sup>1</sup> Framework Themes, Outcomes and Measures methodology where appropriate for tenders over £100,000.
- 3.6 Our procurement procedures permit a flexible weighting of up to 20% of total scores available on a tender to be assigned to social value, with social value forming part of the quality assessment of bids received.
- 3.7 The National Social Value Measurement Framework 'Themes, Outcomes and Measures' – or 'National TOMs' for short – is a method of reporting and measuring social value to a consistent standard. It provides the golden thread between an organisation's overarching strategy and objectives, to the delivery of specific social value Outcomes achieved through procurement. The National Framework is reviewed and endorsed by the National Social Value Taskforce.
- 3.8 The National Social Value Taskforce ('NSVTF'<sup>2</sup>) is the governance body for the master list of social value Measures and is chaired by the Local Government Association's National Advisory Board. The NSVTF updates the master list of Social Value Themes, Outcomes, Units of Measure and associated Financial Proxies annually. This can include changes due to inflation, improvements to the definitions (based on feedback from Councils across the country) and the inclusion of new measures, to harness opportunities in particular sectors. For example, in recent years the NSVTF added measures for construction and facilities management procurements.
- 3.9 The taskforce have published proxy values calculated for the National Social Value Taskforce using the Unit Cost Database (UCD)\* that was developed for Government and follows the principles laid out by HM Treasury for monetising

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<sup>1</sup> Founded in 2016 the National Social Value Taskforce (NSVTF) is a subgroup of the LGA's National Advisory Group for procurement. It is not a legal entity in itself; it is an LGA initiative.

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the economic, environmental and social impact, with specific regard to potential savings for the public sector.

- 3.10 Where the UCD does not provide a proxy value for a certain measure, then one has been developed on behalf of the National Social Value Taskforce - following relevant government guidance if any exists. The National TOMs Framework 2019 for social value measurement set out this methodology, together with relevant sources. For example the employment of an apprentice is likely to save benefit costs or training costs which would have been incurred if that person had not been employed as an apprentice and that person's improved life chances may mean that they are less likely to use other ECC services.
- 3.11 These calculations have been used, adapted to ensure they reflect the commercial value to Essex County Council to produce the ECC TOMs calculator which is appended to this report as Appendix 2. This assigns a value to different categories of social value and is used to calculate a 'proxy value' for the social value being provided. The calculator is already being used and is a subset of the National Social Value Taskforce set of Measures and comprises amended Financial Proxies where necessary to ensure that they meet ECC conditions and objectives, in accordance with the Local Government Act 1988. This enables a 'social value' to be calculated with respect to the tender
- 3.12 By considering social value in the early stages of a commissioning and procurement projects and by engaging the market before a tender is issued, public authorities can ensure that bidders are prepared and that social value requirements are proportionate to the size and duration of the contract. Moreover, we can encourage vendors' understanding and consideration of social value in areas that matter most to our residents and make a commercial contribution to the organisation's objectives. In this way we can maximise the benefits for Essex residents, delivering on specific corporate objectives including climate, jobs and skills development.
- 3.13 To achieve this, it is important that social value is not only a responsibility of the Procurement team, but also budget-owners and commissioners who have responsibility for the contracts being let. Therefore, it is considered best practice for authorities to have a corporate-wide social value policy. In addition, the introduction of a corporate policy for social value would indicate to vendors the importance and longevity of this agenda.

## **4 Links to our Strategic Ambitions**

4.1 This report links to the following aims in the Essex Vision

- Enjoy life into old age
- Strengthen communities through participation
- Develop our County sustainably
- Connect us to each other and the world
- Share prosperity with everyone

- 4.2 A positive impact is anticipated on the Council's ambition to be net carbon neutral by 2030 because vendors are encouraged to design social value offers relating to improving climate and environment-related practices. Climate is one of ECC's Priority Social Value Measures. These Priority Measures are set out in the 'ECC TOMs Calculator' and a Multiplier of three is applied to them when the total Value Score is calculated.
- 4.3 This report links to the following strategic priorities in the emerging Organisational Strategy 'Everyone's Essex':
- A strong, inclusive and sustainable economy
  - A high quality environment
  - Health, wellbeing and independence for all ages
  - A good place for children and families to grow

**Annex A** to the Social Value Policy sets out the proposed updated Social Value Outcomes that are mapped to the new 20 Commitments set out in 'Everyone's Essex'. Subject to approval by the Cabinet, the Master TOMs Calculator will be updated in line with these new Outcomes.

## 5 Options

### 5.1 Option 1 - Do nothing – not recommended

Without a corporate-wide social value policy, social value remains the responsibility of the Procurement Team, not those responsible for the commissioning intent of projects. This can mean that conversations about social value can take place much later in the procurement process and limit the authority's ability to consult the market and raise awareness of the opportunities in a timely manner. For this reason, this option is not recommended.

### 5.2 Option 2 – Adopt the proposed Social Value Policy with approval for changes to specific social value Measures to be delegated to the Executive Director for Corporate Services and Cabinet Member for Finance, Resources and Corporate Affairs — recommended option

Implementing a Social Value Policy can elevate social value from a procurement process to an organisation-wide policy. Organisation-wide ownership of social value, will encourage each project owner across the authority to consider how they can achieve priority objectives in the Corporate Strategy, thereby ensuring they make a commercial contribution in line with the 1988 Local Government Act. For example, a project manager in Directorate A can enable local jobs and skills opportunities, thereby delivering on Corporate objectives in Directorate B.

The Policy can also enable us to set out a framework for:

- ensuring the social value measures we use align to the Corporate Strategy

- how changes to Social Value Themes, Outcomes and Priorities are made
- how changes to the specific Measures listed in the TOMs Calculator\* where they deliver Outcomes agreed by the Cabinet (\*this is the master list of Social Value Units of Measures. Each Measure sits under one of the agreed Social Value Outcomes).
  - For example, in a large construction project, there may be particular opportunities for local jobs for priority groups and we could add more detailed social value units of measure to encourage and capture this opportunity but only if these measures meet with the specific Social Value Themes and Outcomes approved by the Cabinet.
- In this option, we recommend that:
  - Cabinet approves the Social Value Themes and Outcomes and Priorities.
  - the Cabinet Member for Finance, Resources and Corporate Affairs approves changes to the list of Social Value Measures in the ECC TOMs Calculator, where those measures deliver on the Outcomes agreed by the Cabinet.

NB: If there is a proposal to add a new measure that does not align to the existing Social Value Themes, Outcomes and Priorities approved by Cabinet, the decision would be referred to the Cabinet.

  - Responsibility for approving the removal of TOMs measures for specific procurements, to meet the Public Contracts Regulations requirements for relevance, proportionality to the subject matter of the contract and non-discrimination is delegated to Heads of Procurement. Responsibility for variations to the TOMs measures for specific procurements, to meet the Public Contracts Regulations requirements for relevance, proportionality to the subject matter of the contract and non-discrimination is delegated to Heads of Procurement.
- We recommend this option, because it meets best practice principles of publishing an organisation-wide Social Value Policy, it will enable the Council to update the master ECC TOMs Calculator efficiently to harness specific opportunities to deliver on corporate objectives (but only where they deliver on the Outcomes already agreed by the Cabinet).

5.3 Option 3 – Adoption of the Social Value Policy, with the Cabinet approving all changes to the master list of specific social value Measures in the ‘ECC TOMs Calculator’ - not recommended.

- By requiring Cabinet approval of any changes to the master list of TOMs measures, we will significantly increase the resources required to update the framework, even when the Measures deliver on the Outcomes agreed by the Cabinet.
- For this reason, we do not recommend this option, but instead propose that the Cabinet approve changes to Measures that do not align with the Themes and Outcomes they have ratified.

## **6 Issues for consideration**

### **6.1 Financial implications**

- 6.1.1 Embedding social value throughout the Essex County Council tender and procurement process (for tenders in excess of £100,000 where relevant, proportionate and non-discriminatory to do so) should realise local economic benefits over the long term, within the existing budget envelope of the Council.

It would be expected that the long term result of local economic benefits realised through the implementation of Social Value Policy and the achievement of Essex County Council Social value Outcomes (annex A), would reduce the overall cost to Essex County Council of supplying services to the county.

- 6.1.2 The recommendations presented in this report do not request funding or additional budget allocation.
- 6.1.3 There are no direct cost implications to Essex County Council that can be quantified through the implementation of the Social Value Policy in this report.
- 6.1.4 There should not be a price escalation in tenders which include the requirement to demonstrate social value for the quality evaluation of a tender. However, this must be considered when reviewing the increase in cost of products and services to Essex County Council on a periodic basis, to monitor if any associated costs of meeting social value requirements for some suppliers is absorbed, by submitting higher Bid values.
- 6.1.5 The weighting for social value will be form part of the quality evaluation in tenders and is flexible, up to a maximum of 20% of the total scores available in a tender. The ratio of quality-price in a tender will have an impact the % of Social Value available to be achieved and price will be the main allocation of total score, therefore, a target of 20% Social Value will not always be possible in a tender.
- 6.1.6 Tender evaluation on tenders in excess of £100,000 using the Master Essex County Council TOMs Social Value Calculator, will allow a standardised approach to be taken and ensures a consistent, transparent and robust process takes place through assessment to award.

### **6.2 Legal implications**

- 6.2.1 The Public Contracts Regulation 2015 (the “Regulations”) require Local Authorities to award contracts based on the Most Economically Advantageous Tender (MEAT). The MEAT can be determined based on price or quality alone or may be based on a price/quality split.
- 6.2.2 Regulation 67(2) (Contract Award Criteria) states that the ‘tender shall be identified on the basis of the price or cost, using a cost-effectiveness approach,

such as life-cycle costing in accordance with regulation 68, and may include the best price-quality ratio, which shall be assessed on the basis of criteria, such as qualitative, environmental and/or social aspects, linked to the subject-matter of the public contract in question. To ensure compliance with the Regulations, once the social value weighting has been determined it will be clearly stated in decision papers as part of the quality assessment.

6.2.3 Public authorities are required by the Public Services (Social Value) Act 2012 to consider:

- how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area, and
- how, in conducting the process of procurement, it might act with a view to securing that improvement.

6.2.4 The authority must consider only matters that are relevant to what is proposed to be procured and, in doing so, must consider the extent to which it is proportionate in all the circumstances to take those matters into account.

6.2.5 Any social value considerations should be relevant and proportionate to the contract and only relate to the metrics set out in the Public Services (Social Value) Act 2012. Evaluation criteria must be linked to the subject matter of the contract.

6.2.6 Contracts must be awarded on the basis of the most economically advantageous tender and qualitative, environmental and/or social aspects should be linked to the subject matter of the contract.

6.2.7 In order to be contractually enforceable, there would need to be contractual obligations to report and deliver measurable social value improvements in the specification and in the contract.

6.2.8 One difficulty with enforcing social value requirements is that if the benefits are not provided ECC can only sue for direct financial losses which may be difficult to prove with social value. The TOM calculator may assist with this.

6.2.9 It is suggested that the Council includes, where appropriate, a standard clause in contracts which sets out 'liquidated damages' based on the TOM calculator to try to reduce disputes about social value. There will also be a natural temptation for contractors to highlight current activity as social value or to count social value for multiple contracts. Care must be taken to avoid double counting by contractors in any reporting.

6.2.10 ECC will need to keep its policy under review as it may be that future legislative change increases our ability to obtain social value from procurement activity.

## **7 Equality and Diversity Considerations**

- 7.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:
- (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
  - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
  - (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 7.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).
- 7.3 The equality impact assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.
- 7.4 The equality impact assessment indicates that the proposals in this report will make a positive change. It is anticipated that there will be a positive impact on:
- 7.4.1 employment of younger cohorts as a number of measures within the 'ECC TOMs Calculator' relate to employment and skills development for young people and care leavers.
  - 7.4.2 opportunities for people with mental health issues because the ECC TOMs Calculator includes measures for offering more support to those with mental health issues..
  - 7.4.3 opportunities for people with learning disabilities as there is a specific measure for the employability of people with a disability, both learning and physical, and of people with sensory impairment, within the 'ECC TOMs Calculator'.

## **8 List of Appendices**

- 8.1 Appendix 1 Social Value Policy, including Annex A – Social Value Themes and Outcomes, updated to reflect Everyone's Essex Commitments.
- 8.2 Appendix 2: Current ECC TOMs Social Value Calculator – for information
- 8.3 Appendix 3 : EQIA

## **9 List of Background papers**

None