



EAST STAFFORDSHIRE BOROUGH COUNCIL

REPORT COVER SHEET

Title of Report:	Procurement Policy Update 2022	To be marked with an 'X' by Democratic Services after report has been presented
Meeting of:	Corporate Management Team: 21st September 2022	X
	Leader and Deputy Leaders: 26th September 2022	X
	Leader's / Leader of the Opposition's Advisory Group / Independent Alliance Advisory Group: 5th / 6th October 2022	X
	Cabinet: 18th October 2022	
	Scrutiny Audit and Value for Money Council Services Committee	



Is this an Executive Decision:	YES	Is this a Key Decision:	NO
Is this in the Forward Plan:	YES	Is the Report Confidential:	NO
If so, please state relevant paragraph from Schedule 12A LGA 1972:	N/A		

Essential Signatories:

ALL REPORTS MUST BE IN THE NAME OF A HEAD OF SERVICE

Monitoring Officer: **John Teasdale**

Date Signature

Chief Finance Officer: **Sal Khan**

Date Signature

EAST STAFFORDSHIRE BOROUGH COUNCIL

Report to Cabinet

Date: 18th October 2022

REPORT TITLE: Procurement Policy Update 2022

PORTFOLIO: Finance, Treasury Management and Communications

HEAD OF SERVICE: Sal Khan

**CONTACT OFFICER: James Abbott (Corporate and Commercial Manager)
Ext. No. x1244**

WARD(S) AFFECTED: Non-Specific

1. Purpose of the Report

1.1. To provide an overview of the refreshed Procurement Policy which is recommended for approval and implementation within the Council.

2. Executive Summary

2.1. The Procurement Policy Update 2022 continues to detail all considerations that need to be incorporated into a procurement exercise. It now includes strengthened actions for maximising opportunities for local supply while maintaining compliance with the Public Contracts Regulations 2015 and the Council's Contract Procedure Rules.

2.2. Procurement is the term used for how organisations and businesses acquire goods, services and works. Procurement can range from the materials needed for buildings to the grass cutting of open spaces.

2.3. As a local authority we follow the necessary rules to ensure that the procurement of goods and services is open, fair and transparent ensuring that the borough of East Staffordshire receives good quality at a competitive price.

2.4. Our revised Procurement Policy aims to look at how the procurement process can be made more appropriate for potential suppliers to bid for opportunities and also how the procurement of goods and services can benefit the Borough.

- 2.5. The Council will try to encourage more businesses, including local businesses, to engage in procurement by breaking bigger contracts down into smaller ones or smaller lots and by making the process to bid for contracts as simple as it can (within the rules and regulations that it has to observe).
- 2.6. Cost will always play a role in the fair procurement of goods and services, but where possible the Council can maximise local opportunities and the revised Policy will enhance the existing framework for delivering that.
- 2.7. However it is also important to look at more than just the financial cost. We should also look at what additional value, or benefit, we can get from what we are buying. For example, the construction of new buildings and developments can benefit local companies through them supplying materials and labour, and our locality through employment opportunities either during construction or afterwards in the new businesses which move into these new developments.
- 2.8. Similarly if goods are sourced from local businesses then this not only cuts down on our carbon footprint (supporting the Council's Climate Change Action Plan), but also supports those local businesses and communities. This then creates a ripple effect with local workers having better financial stability and available income to enjoy businesses in their area such as shops and restaurants ensuring the proceeds of business supports communities.
- 2.9. Whilst the revised Procurement Policy may not give us all the answers instantly, it provides the necessary steps to build on the current solid base and further maximise opportunities for businesses.

3. Background

- 3.1. The Council is required to procure and commission a range of works, supplies and services. It is important for the Council to have a robust Procurement Policy in place to guide procuring officers when making purchases.
- 3.2. The Procurement Policy 2020 was developed to build upon the Council's well embedded approach detailed in previous Procurement Strategies, and is intended to support compliance with the Contract Procedure Rules and Financial Regulations which form part of the Council's constitution.
- 3.3. The Council's Corporate Plan 2022-23 contains a target (CR04) committing to reviewing the Procurement Policy with a focus on maximising opportunities for local businesses.
- 3.4. To support the refresh work, the Council has obtained external legal opinion on the working draft of the revised policy, to inform the final draft of the policy as presented in this report.
- 3.5. The Council also met with a representative of the CIPFA Procurement and Commissioning Network to discuss our Policy approach to inform the refresh.

4. Contribution to Corporate Priorities

- 4.1. The Procurement Policy contributes directly to the Council's priority "Value for Money Council".
- 4.2. The revisions to the Policy will now strengthen the contribution to the Community Regeneration Corporate Priority through further maximising opportunities for local business.
- 4.3. The revisions to the Policy will also now strengthen the contribution to the Environment and Health & Wellbeing, through further supporting the Climate Change Action Plan through Carbon reduction.

5. Procurement Policy

5.1. Procurement Policy Overview

- 5.1.1. Like all local authorities East Staffordshire Borough Council is required to procure and commission a wide range of works, supplies and services to support its activities.
- 5.1.2. Organisations of all sizes need to procure goods. As a local authority we are bound by a set of rules to ensure that the procurement of goods and services is open, fair and transparent ensuring that the borough of East Staffordshire receives good quality at a competitive price.
- 5.1.3. Whether it is called procurement, commissioning, purchasing, contracting or buying, the Council spends a significant amount with the external market.
- 5.1.4. With such significant spend it is imperative that the Council has in place robust arrangements for ensuring that its supplies, products and services are procured or commissioned in a way that provides Value for Money. Ensuring Value for Money means the Council will take into account the optimum combination of quality and "whole-life" cost.
- 5.1.5. The Council takes the approach of devolved responsibility for procurement, i.e. Service / Contract managers are ultimately responsible for their own budgets and therefore all associated purchases in compliance with the Contract Procedure Rules.
- 5.1.6. This Procurement Policy provides a framework for the processes and resource allocation of the organisation in its procurement of supplies, products and services. The Policy is intended to, and must, be used in conjunction with the Council's Contract Procedure Rules as set out in Part 4D of the Constitution, and having regard to the Council's Financial Regulations, as set out in Part 4H of the Constitution.
- 5.1.7. The Policy also has regard to applicable National procurement legislation and practices. The Public Contracts Regulations 2015 have

been implemented with accessibility of contracts to SMEs as a focus. The Council's current procurement policy implements the Public Contract Regulations 2015 and the proposed policy will further maximise opportunities for more businesses, including local business, to engage with us in procurement.

5.1.8. The Policy incorporates methods and techniques designed to meet the varying requirements of the Council. The policy will guide officers in making the right decisions and engage with colleagues and elected Members as appropriate when undertaking contracting activities while complying with the Council's Contract Procedure Rules which form part of the Council's Constitution.

5.1.9. The Council will continue its approach of using best practice procurement approaches and processes. This will assist in the delivery of high quality services and support the Council's Corporate Priorities through ensuring Value for Money and contributing positively to the Community Regeneration and Environment and Health & Wellbeing.

5.2. Updates to the Procurement Policy

5.2.1. The Policy details all considerations that need to be incorporated into a procurement exercise. The notable amendments to the Policy are summarised in this section of the report.

5.2.2. The Policy **ensures the relevant Cabinet Member(s) is engaged prior to the commencement of any potential non-routine procurement** (subject to any potential conflicts of interest). The relevant officer should keep the Cabinet Member(s) updated throughout all routine tender exercise.

5.2.3. Examples of "non-routine" procurement could be a procurement that is of particular importance; is of significant financial value; or has potential for significant impact on the organisation or the Borough. An example of "routine" procurement could be lower value procurements; regular / reoccurring exercises; or "technical" procurements such as external consultancy support.

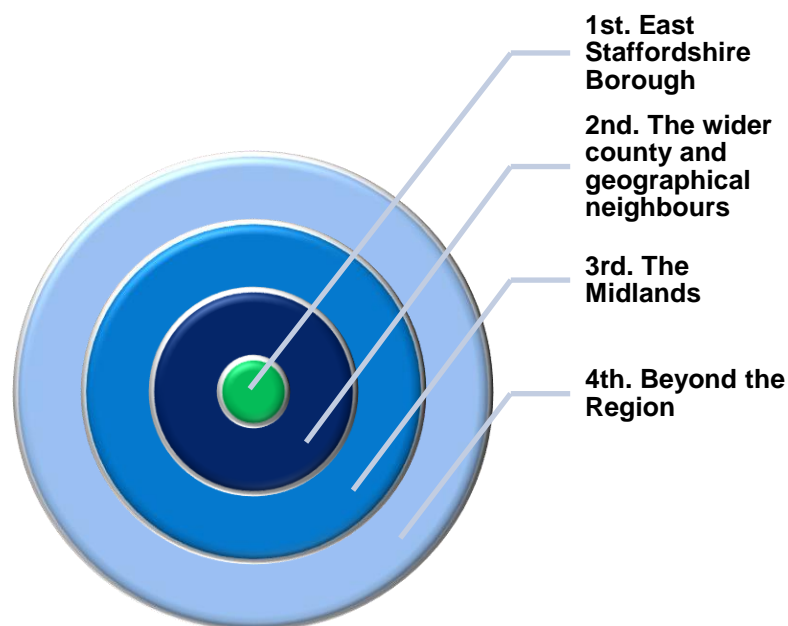
5.2.4. Our revised Procurement Policy aims to look at how the procurement process can be made more appropriate for potential suppliers to bid for opportunities and also how the procurement of goods and services can benefit our borough.

5.2.5. The Policy has strengthened its approach to supporting local businesses. The Council recognises its responsibilities to local communities including promoting local economic development through its Corporate Plan. Local businesses should be able to compete for work alongside contractors from outside the area and this should be considered when developing procurement requirements.

5.2.6. The Policy provides a framework to encourage more businesses, including local business, to engage with us in procurement by breaking bigger contracts down into smaller ones or smaller lots and by making the process to bid for contracts as simple as we can (within the rules and regulations that we have to observe).

5.2.7. Specifically defining what “local” is can be difficult given the geographical location of the Borough, however this can bring opportunities through easy access to neighbouring counties and both the East and West Midlands. What is local should be considered specifically in the context of any given procurement process based on an understanding of the local and national market, which is significant as it may be relevant in the shaping of the appropriate lots for the procurement process. Where appropriate the local focus should be on the Borough of East Staffordshire, extending to direct geographical neighbours and the wider county of Staffordshire, then into the Midlands region and beyond. References to “local” within this policy refer to consideration of the appropriate area of focus in the following order:

- (1) The Borough of East Staffordshire
- (2) The wider county and geographical neighbours
- (3) The Midlands
- (4) Beyond the Region



5.2.8. The Council can invite a local supplier to participate in a below threshold procurement, provided there is a reason as to why that supplier is “suitable”. For example, it may be the most cost effective supplier. In above threshold contracts for Goods or Works the Council may be able to include selection criteria or award criteria relevant to the subject matter of the contract which helps increase opportunities for local suppliers. For above threshold contracts for Services the Council may take into account non-

commercial considerations but only where it is necessary and expedient to do so to enable compliance with the Public Services (Social Value) Act 2012. The Council must still comply with the general principles in the Public Contract Regulations 2015, including equal treatment and non-discrimination. In most cases, this is likely to preclude requirements that mandate local suppliers only, but it may allow consideration of issues relating to supporting the local economy for example.

5.2.9. In line with these principles and requirements maximising opportunities for local businesses and organisations is a key principle throughout the Policy. The Policy ensures a number of mechanisms are considered to maximise opportunities, including the following:

5.2.9.1. Reiterating the need to understand the local and national market, and opportunity to undertake soft market testing. What is local should be considered specifically in the context of any given procurement process based on an understanding of the local and national market, which is significant as it will be relevant in the shaping of the appropriate lots for the procurement process.

5.2.9.2. Where tendering is relevant, service managers must consider sub-dividing the contract into separate lots to maximise opportunities for smaller / local organisations to bid for the services / works. An indication of the main reasons for any decision not to sub-divide into lots shall be recorded.

5.2.9.3. Reiterating the need to undertake risk assessment to understand service and financial risk relating to the procurement to inform the procurement approach and the necessary financial assessment methodology;

5.2.9.4. Outlining that all assessments of bidders' financial standing should be proportionate, flexible, contract specific and not overly risk averse while ensuring protection of taxpayer value and safety, and compliance with relevant procurement law;

5.2.9.5. Strengthening the need for appropriate local advertisement of procurement opportunities and how local organisations can do business with the Council via the Council's website, social media channels, business e-newsletter and other appropriate mechanisms, linking to the Communications Planner;

5.2.9.6. Liaison with the Enterprise Team to ensure appropriate advertisement of opportunities via the relevant Local Business Networks.

5.2.10. The Policy also reiterates that when procuring goods and services it is also important to look at more than just the financial cost. We should also look at what additional value, or benefit, we can get from what we are buying. For example, the construction of new buildings and developments

can benefit local companies through them supplying materials and labour, and our locality through employment opportunities either during construction or afterwards in the new businesses which move into these new developments.

5.2.11. Similarly if goods are sourced from local businesses then this not only cuts down on our carbon footprint (supporting the Council's Climate Change Action Plan), but also supports those local businesses and communities. This then creates a ripple effect with local workers having better financial stability and available income to enjoy businesses in their area such as shops and restaurants ensuring the proceeds of business supports communities.

5.2.12. Cost will always play a role in the fair procurement of goods and services, but the Policy allows, where possible, to take a wider look at the impact of their work and make a conscious choice to support local business where possible.

5.2.13. Budget Managers should think about these potential wider benefits, as the outcome of these considerations could inform the procurement approach and the design of the services required, noting the need to also comply with the Public Contracts Regulations 2015.

5.2.14. The Policy reiterates the importance of engaging with all necessary stakeholders within relevant procurement processes, including Council colleagues from a range of disciplines in addition to the relevant portfolio holder(s) at the appropriate stage(s).

5.2.15. To support decision making and improved record-keeping the Council will, via its Programmes & Transformation Team, co-ordinate a written record of each tender threshold procurement process which will include all key considerations and decisions made throughout the end to end process. For contracts between £3,001 and £50,000, budget managers must also keep a record of why organisations invited to quote were considered as suitable.

5.2.16. The Policy has also been refined to reflect the changing legislative position, referencing the Procurement Bill, which will reform and replace the existing Public Contracts Regulations.

5.2.17. A strengthened process map summarising the necessary steps has been added in order to assist officers in understanding and implementing the Policy.

5.3. Next Steps

5.3.1. It is intended that the updated Policy be communicated effectively to all procuring officers, including giving a briefing on the Policy to ensure their understanding and enable operational delivery of its requirements.

- 5.3.2. To maintain an understanding of the current and future levels of local provision in the Council's contracts and purchases, periodic spend analysis exercises should be undertaken.
- 5.3.3. The Council should continue to engage with the local business community, working with the Council's Enterprise Team, for example through "supplier information" or "meet-the-buyer" days.
- 5.3.4. The existing operational procurement planner will be expanded to be more strategic and provide an overview of each contract's procurement lifecycle. Contract managers will be able to include details of any non-routine procurements, as well as renewals, timelines for the service commissioning phase, potential mobilisation periods and other deadlines. The operational procurement planner will assist teams within the Council in programme planning.
- 5.3.5. The Procurement Bill, which will reform and replace the existing Public Contracts Regulations is, at the date of drafting this report / Policy, going through Parliament. The Policy will need to be revised once the new Procurement Bill is finalised and comes into force. Once the new Procurement Bill is finalised and comes into force, the Council will need to understand any implications for the authority and its resource and the Procurement Policy will need to be further updated accordingly.

6. Financial Considerations

*This section has been approved by the following member of the Financial Management Unit: **Lisa Turner***

- 6.1. There are no significant direct financial issues arising from this report. The policy is intended to, and must, be used in conjunction with the Council's Financial Regulations, as set out in Part 4H of the Constitution.

7. Risk Assessment and Management

- 7.1. The main risks to this Report and the Council achieving its objectives are as follows:
- 7.2. **Positive** (Opportunities/Benefits):
- 7.2.1. The Procurement Policy contributes to reducing financial risk through providing a common framework for undertaking purchases and for securing Value for Money via effective procurement.
- 7.2.2. The Procurement Policy contains a detailed section on risk management and the key stages in which risk should be considered in order to minimise the impact on achieving the Council's objectives.

7.3. **Negative** (Threats):

7.3.1. Failure to adhere to the Procurement Policy could result in ineffective or inefficient procurement or commissioning.

7.4. The risks do not need to be entered in the Risk Register. Any financial implications to mitigate against these risks are considered above.

8. **Legal Considerations**

This section has been approved by the following member of the Legal Team:
Glen McCusker – Locum Solicitor

8.1. The revised policy is intended to, and must, be used in conjunction with the Council's Contract Procedure Rules as set out in Part 4D of the Constitution.

8.2. The proposed changes to the Policy comply with the Public Contracts Regulations 2015, but will need to be re-viewed again once the Procurement Bill is enacted.

8.3. External and internal legal opinion has been obtained on a working draft of the revised Procurement Policy, which has been considered and reflected in the Policy and this report.

8.4. Advice has also been provided by CIPFA and taken into account in formulating the revised Policy.

9. **Equalities and Health**

9.1. **Equality Impacts:** The subject of this Report is a policy, strategy, function or service that is new or being revised. An equality and health impact assessment is attached as Appendix 2.

9.2. The main equality or health issues arising from this Report are as follows:

Is it a Health or Equality action?	Issue/impact identified	Recommendation/Action required	Lead officer and timescale	Resource allocation
Health	[Positive Impact] Through strengthened local procurement and accessibility to SMEs, the well-being of residents in the area is contributed to.	Strengthened appropriate local advertisement of the tender opportunity, such as the Council's website, social media channels, and business e-newsletter. Positive impact, which would not cause public concern.	Corporate & Commercial Manager [Ongoing]	Officer time

Is it a Health or Equality action?	Issue/impact identified	Recommendation/Action required	Lead officer and timescale	Resource allocation
Health	[Positive Impact] Strengthened social, economic and environmental factors are embedded in the Corporate Priorities. The Policy ensures sound procurement of effective services in line with the Priorities.	Positive impact, which would not cause public concern	Corporate & Commercial Manager [Ongoing]	Officer time
Equality	The Policy has a focus on electronic procurement. People with visual impairments may have difficulty accessing online forms or submitting online tenders.	Engagement with suppliers to highlight the message that online procurement is necessary; through publication of tendering procedures and / or Council attendance at "Meet the Buyer" events. Ensure that Web Accessibility Initiative standards are considered in the Council's E-procurement portal contracts.	Corporate & Commercial Manager [Ongoing]	Officer time
Equality	As the Council advertises all tendered contracts, and receives tender submissions via online means only, organisations without internet access may experience difficulty tendering.	Engagement with suppliers to highlight the message that online procurement is necessary; through publication of tendering procedures and Council attendance at "Meet the Buyer" events.	Corporate & Commercial Manager [Ongoing]	Officer time

10. Human Rights

10.1. There are no Human Rights issues arising from this Report.

11. Data Protection Implications – Data Protection Impact Assessment (DPIA)

11.1. A DPIA must be completed where there are plans to:

- use systematic and extensive profiling with significant effects;
- process special category or criminal offence data on a large scale; or
- systematically monitor publicly accessible places on a large scale
- use new technologies;
- use profiling or special category data to decide on access to services;
- profile individuals on a large scale;
- process biometric data;
- process genetic data;
- match data or combine datasets from different sources;
- collect personal data from a source other than the individual without providing them with a privacy notice ('invisible processing');
- track individuals' location or behaviour;
- profile children or target marketing or online services at them; or
- process data that might endanger the individual's physical health or safety in the event of a security breach

11.2. Following consideration of the above, there are no Data Protection implications arising from this report which would require a DPIA.

12. Sustainability (including climate change and change adaptation measures)

12.1. Does the proposal result in an overall positive effect in terms of sustainability (including climate change and change adaptation measures) **Yes**

12.2. Please detail any positive/negative aspects:

Positive (Opportunities/Benefits)

12.2.1. The Procurement Policy details a commitment to considering sustainability and supports the Council's climate change commitments.

12.2.2. Further local provision of contracts can contribute to carbon reduction commitments (supporting the Council's Climate Change Action Plan).

12.2.3. The Procurement Policy details a strengthened commitment to local purchasing in order to support the local economy.

Negative (threats)

12.2.4. None identified

13. Recommendation(s)

13.1. That the Council adopts the updated Procurement Policy.

13.2. That the updated Procurement Policy be communicated effectively to all procuring officers.

13.3. That spend analysis be undertaken to gain an understanding of the Council contracts and spend, and to inform subsequent mechanisms for measuring and monitoring local spend.

13.4. That the existing operational procurement planner will be expanded to be more strategic and provide an overview of each contract's procurement lifecycle.

13.5. That the Procurement Policy be reviewed again following implementation of the Procurement Bill.

14. Background Papers

14.1. None

15. Appendices

15.1. **Appendix 1:** Procurement Policy Update 2022

15.2. **Appendix 2:** Equality and Health Impact Assessment