

# BRIDGEND COUNTY BOROUGH COUNCIL

## REPORT TO CABINET

22 OCTOBER 2019

### REPORT OF THE HEAD OF LEGAL AND REGULATORY SERVICES

#### PROCUREMENT UPDATE

##### 1. Purpose of report

1.1 The purpose of this report is to update Members on the UK Steel Charter, Code of Practice – Ethical Employment in the Supply Chain, Welsh Government’s Foundation Economy model – Better Jobs Closer to Home, the South East Wales Delivery Group and the Welsh Government Project Bank Account Policy and seek approval to:-

- Sign the UK Steel Charter with a view of working towards achievable commitments within the Charter if reasonable to do so.
- Sign the Code of Practice – Ethical Employment in the Supply Chain with a view of working towards achievable commitments within the Code if reasonable to do so.
- Work with Welsh Government to work towards the principles of the Foundation Economy Model – Better Jobs Closer to Home – Local Wealth Building when procuring goods, works and services.
- Agree for the council to participate in the South East Wales Delivery Group for common and repetitive collaborative Framework Agreements, if they provide value for money for the council.
- Adopt the principles within the Welsh Government Policy on Project Bank Accounts and apply payment through project bank accounts on contracts where their application is deemed appropriate and reasonable to do so.

##### 2. Connection to corporate improvement objectives/other corporate priorities

2.1 This report assists in the achievement of the following corporate priority/priorities:

- **Supporting a successful economy** – taking steps to make the county a good place to do business, for people to live, work, study and visit, and to ensure that our schools are focused on raising the skills, qualifications and ambitions of all people in the county.
- **Helping people to be more self-reliant** – taking early steps to reduce or prevent people from becoming vulnerable or dependent on the Council and its services.
- **Smarter use of resources** – ensuring that all its resources (financial, physical, human and technological) are used as effectively and efficiently as possible and support the development of resources throughout the community that can help deliver the Council’s priorities.

### **3. Background**

#### **3.1 UK Steel Charter**

- 3.1.1 The UK Steel Charter has been developed by UK Steel, together with industry and public sector partners including Welsh Government and was launched on 20<sup>th</sup> May 2019. It aims to boost the levels of Welsh and UK produced steel used in UK construction and infrastructure projects by asking organisations to sign up and commit to a range of steps that improve the use of Welsh and UK Steel.
- 3.1.2 The Charter is not designed in any way to mandate the council to use UK produced steel, rather it symbolises an intention to support the industry.
- 3.1.3 There is no expectation on which measures, or how many, the council should commit to.

#### **3.2 Code of Practice – Ethical Employment in the Supply Chain**

- 3.2.1 The Code of Practice – Ethical Employment in the Supply Chains was published in March 2017 by Welsh Government and is designed to help ensure workers in the public sector supply chains in Wales are employed in a fair and ethical way.
- 3.2.2 The Code has a range of commitments and sign up is voluntary and a proportionate approach can be taken, prioritising the actions of each commitment and taking time to implement in full.

#### **3.3 Foundation Economy Model – Better Jobs Closer to Home – Local Wealth Building**

- 3.3.1 The Better Jobs Closer to Home Welsh Government programme is focused on coordinating a range of policy interventions to help utilise public procurement and 3<sup>rd</sup> party expenditure to provide meaningful employment in communities with high levels of joblessness and contribute to local wealth building. It is built from the activities that provide the essential goods and services for everyday life.
- 3.3.2 The model is to nurture and grow the foundations of our local economies. Utilities, care, food, housing, retail, distribution and construction are all examples of the foundational economy.
- 3.3. Working in partnership with our Public Services Board (PSB) to have intelligence on spend and look to support and develop our local economy would be the main focus of the model.

#### **3.4 South East Wales Delivery Group**

- 3.4.1 In September 2018 the First Minister published a written statement through which Local Government were informed that the National Procurement Service (NPS) would cease to operate in its current form.
- 3.4.2 Welsh Government (WG) representatives have informed us of their intentions to form a smaller national contracting body which would sit within WG. They have proposed a pipeline which would result in them retaining 33 of the 61 contracts which Local

Authorities would typically use with 28 being handed back to Local Government to deliver.

3.4.3 It is intended that these changes would take effect from April 2020.

3.4.4 For delivery of collaborative contracts by Local Government post April 2020 there is a clear preference to establish regional delivery arrangements as it was considered this would:

- support a move towards regionally/locally focused sourcing strategies which could better support delivery of local business requirements and the development and use of regional/local supply chain;
- support regional economic development priorities, Future Generation initiatives and development of the Foundation Economy; and
- simplify organisational arrangements.

### **3.5 Welsh Government Project Bank Account Policy**

3.5.1 In December 2017 Welsh Government launched a new project bank accounts policy to support ethical business practices in government funded construction, infrastructure and service contracts. Project bank accounts (PBAs) are ring-fenced bank accounts with trust status that act solely as a receptacle for transferring funds from the client to the lead contractor and supply-chain. They were developed to address poor payment practices in the construction industry but can be applied to any contract that relies on sub-contractors.

3.5.2 Under traditional contractual payment terms, payments made direct to a lead contractor are paid onto the supply-chain at a later a date. PBAs provide a mechanism to meet statutory requirements for payments in public contracts and facilitate fair and prompt payment for contractors and sub-contractors, helping to alleviate cash flow pressures that can have a considerable effect on smaller companies who rely on cash flow to a greater extent than companies 'above' them in the supply chain.

## **4. Current situation/proposal**

### **4.1 The UK Steel Charter**

4.1.1 The UK Steel Charter will require the council to commit to achieving at least one of the steps of the Charter, which are:-

1. Establish clear and simple criteria to identify which projects are in the scope of our charter commitments.
2. Develop a future steel pipeline.
3. Monitor and produce data on the levels of UK-produced steel used in our projects.
4. Place a requirement in our appropriate contracts requiring the origin of steel to be provided.
5. Stipulate use of steel products accredited to BRE standard BES 6001.
6. Advertise opportunities for steel providers and/or require our contractors/sub-contractors to do so.

7. Introduce a requirement for tender applications to include supply chain plans.
8. Host engagement meetings/events for major projects in advance of procurement decisions being made.
9. Develop our organisation's approach to the 'most economically advantageous tender'.
10. Appoint a 'UK supply chain champion' to manage engagement with steel sector, and other suppliers.
11. Use UK-produced steel to meet KPIs for your organisations corporate social responsibility commitments.

4.1.2 It is proposed that the council signs up to the UK Steel Charter with a view of working towards committing to the steps that are considered to be achievable and reasonable to do so.

## **4.2 The Code of Practice – Ethical Employment in the Supply Chain**

4.2.1 The Code of Practice – Ethical Employment in the Supply Chain (the "Code") will require the council to commit to some or all of the 12 commitments within the Code, which are:-

1. Produce a written policy on ethical employment within our own organisation and our supply chains. Once produced we will communicate the policy throughout our organisation and will review it annually and monitor its effectiveness. As part of this we will appoint an Anti-Slavery and Ethical Employment Champion.
2. Produce a written policy on whistle-blowing to empower staff to raise suspicions of unlawful and unethical employment practices, and which places a responsibility on staff to report criminal activity taking place within our own organisation and our supply chains. Once produced we will communicate the policy throughout our organisation. We will review the policy annually and monitor its effectiveness. We will also provide a mechanism for people outside our organisation to raise suspicions of unlawful and unethical employment practices.
3. Ensure that those involved in buying/procurement and the recruitment and deployment of workers, receive training on modern slavery and ethical employment practices, and keep a record of those that have been trained.
4. Ensure that employment practices are considered as part of the procurement process. We will include a copy of our policy on ethical employment in procurement documentation and include appropriate questions on ethical employment in tenders and assess the responses provided. We will incorporate, where appropriate, elements of the Code as conditions of contract and ask bidders to explain the impact that low costs may have on their workers each time an abnormally low tender is received.
5. Ensure that the way in which we work with our suppliers does not contribute to the use of illegal or unethical employment practices within the supply chain. We will ensure that undue cost and time pressures are not applied to any of our suppliers if this is likely to result in unethical treatment of workers and ensure that our suppliers are paid within 30 days of a valid receipt.
6. Expect our suppliers to sign up to the Code to help ensure that ethical employment

practices are carried out throughout the supply chain.

7. Assess our expenditure to identify and address issues of modern slavery, human rights abuse and unethical employment practice. We will carry out regular reviews of expenditure and undertake a risk assessment on the findings, to identify products and/or services where there is a risk of modern slavery and/or illegal or unethical employment practices within the UK and overseas. We will investigate any supplier that is identified as high risk, by direct engagement with workers wherever possible, and work with our suppliers to rectify any issues of illegal or unethical employment practice. We will monitor the employment practices of our high risk suppliers, making this a standard agenda item for all contract management meetings/reviews.
8. Ensure that false self-employment is not undertaken and that umbrella schemes and zero hour contracts are not used unfairly or as a means to – avoid, or facilitate the avoidance of, the payment of tax and national insurance contributions and the relevant minimum wage; unduly disadvantage workers in terms of pay and employment rights, job security and career opportunities; or avoid health and safety responsibilities.
9. Ensure that workers are free to join a Trade Union or collective agreement and to undertake any related activity and raise workers concerns without risk of discrimination. We will not make use of blacklists/prohibited lists, ensure that suppliers do not make use of blacklists/prohibited lists, not contract with any supplier that has made use of blacklist/prohibited list and expect suppliers to ensure that Trade Union representatives can access members and contracted workers.
10. Consider paying all staff the Living Wage Foundation's Living Wage as a minimum and encourage suppliers to do the same. We will consider becoming an accredited Living Wage Employer and encourage suppliers based overseas to pay a fair wage to all staff, and to ensure that staff working in the UK are paid at least the minimum wage.
11. Produce an annual written statement outlining the steps taken during the financial year, and plans for future actions, to ensure that slavery and human trafficking are not taking place in any part of our organisation and its supply chain. We will ensure that the statement is signed off at senior management / board level and publish the statement on its website. If publication is not possible, we will provide a copy to anyone within 30 days of a request being made. (All organisations signing up to the Code are expected to produce and publish this annual written statement).
12. Ensure all those undertaking work on an outsourced contract are treated fairly and equally. We will ensure that public sector staff who are transferred as part of a public service which is outsourced to a third party retain their terms and conditions of employment. We will ensure that other staff working on an outsourced public service are employed on terms and conditions that are comparable to the transferred public sector staff.

4.2.2 It is proposed the council signs up to Code with a view of working towards achieving the commitments within the Code in the future if considered reasonable to do so.

#### **4.3 Foundation Economy Model – Better Jobs Closer To Home – Local Wealth Building**

4.3.1 The foundational economy is made up of goods and service in our communities that we use every day – by focusing our efforts on supporting these parts of the economy we can help keep money in communities, create better employment conditions and increase prosperity across Wales.

4.3.2 Welsh Government's initiative for the foundation economy offers support to local PSB's to better understand the model, help local anchor institution by working in collaboration to support local businesses and create supply chains within communities, achieve wider outcomes, develop more pre-commissioning dialogue with community enterprises, build a more inclusive economy by looking at what we already have and how we build from within and contribute to the development of our local economy. Changing the way in which we procure could contribute to driving up skills and employment opportunities.

4.3.3 It is proposed that the council agrees to work with Welsh Government to better understand how we can contribute to the development of the local economy when procuring goods, works and services, working on the principles of the foundation economy model.

#### **4.4 South East Wales Delivery Group**

4.4.1 Following the change of direction of the National Procurement Service it is proposed that the council agrees to membership of the Regional South East Wales Delivery Group for Bridgend to collaborate for common and repetitive spend areas to ensure economies of scale and ensuring value for money.

#### **4.5 Welsh Government Project Bank Account Policy**

4.5.1 The Welsh Government policy on Project Bank Accounts is directly applicable to all construction and infrastructure projects and any other appropriate contracts valued at £2m or more which are part or all funded by Welsh Government where the terms of such funding require a PBA to be applied. In such cases PBAs must be applied unless there are compelling reasons not to do so. The Welsh Government policy on Project Bank Accounts is also intended to provide best practice guidance to support the implementation of PBAs in the delivery of construction and infrastructure and any other appropriate projects by Welsh public sector bodies.

4.5.2 It is proposed the council adopt the principles contained within the Welsh Government Policy on Project Bank Accounts and apply payment through a PBA on contracts where their application is deemed appropriate. Potentially suitable projects will be assessed prior to commissioning to determine whether the application of PBAs is appropriate. Whether a PBA is appropriate will largely depend on the duration of the project and the subcontract packages involved. Welsh Government general guidance is that PBAs should be used in all construction and infrastructure (or other public contracts with a significant sub-contracting supply chain) of over 6 months duration

and valued at £2 million or more and where there are sub-contracting opportunities valued at 1% or more of the contract value.

## **5. Effect upon policy framework and procedure rules**

- 5.1 The council's Contract Procedure Rules will need updating in order to comply with the commitments of the UK Steel Charter, the Code of Practice – Ethical Employment in the Supply Chain and to reference the relevant requirements of the Welsh Government Project Bank Accounts Policy.

## **6. Equality Impact Assessment**

- 6.1 There is no impact on specific equality groups as a consequence of this report.

## **7. Well-being of Future Generations (Wales) Act 2015 implications**

- 7.1 A Well-being of Future Generations (Wales) Act 2015 assessment has been completed. A summary of the implications from the assessment relating to the five ways of working is as follows:

### **Long term**

The UK Steel Charter, Code of Practice – Ethical Employment in the Supply Chain, the foundation economy model and Welsh Government Project Bank Account Policy work towards building local wealth and better jobs closer to home, developing the local economy and helping towards unemployment. Working on the principles of these will contribute to helping with unemployment, developing local supply chains and help to ensure fair, ethical employment across the supply chain in the future. These are not short term solutions but are principles to develop on for the future.

### **Prevention**

Working towards a different model of procuring goods, works and services and the commitments of the code of practice will help to contribute to the prevention of further unemployment, developing the local economy and preventing unfair working practices in the supply chain.

### **Integration**

Many of the commitments for the various initiatives involve working in partnership with our PSB. Working closely with private, public and third sector organisations will support the achievement of the wellbeing goals; a more Prosperous Wales, a more Equal Wales and a Wales of Cohesive Communities. Involving citizens to help shape future services and working to help contribute to unemployment, encouraging apprentices by the way we procure.

### **Collaboration**

Many of the commitments involves working in collaboration with all services within the council, working in partnership with other local authorities across the south east region and working closely with private and third sector organisations.

### **Involvement**

Involvement with the citizens of Bridgend will be key in developing new models of service delivery. Public, private and third sector involvement will ensure we work

towards achieving our commitments as well as working with the local economy and unemployed for them to have a voice as to how we build local wealth.

## **8. Financial implications**

- 8.1 Whilst the initial signing of the UK Steel Charter and the Code of Practice – Ethical Employment in the Supply Chain has no financial implications, depending on the commitments the council work towards in the future there are potential financial implications, which will be reported to Cabinet.
- 8.2 The establishment of the South East Wales Delivery Group has no financial implications, but the council will be expected to contribute to the setting up of regional frameworks via a levy. This will be offset with Bridgend leading the procurement on specific framework agreements, for which we would be paid a levy, in addition to savings from the frameworks themselves. However, it is too early to anticipate what the financial implications of this is, and this will be reported at a later time.
- 8.2 The adoption of the Welsh Government policy on Project Bank Accounts will have no direct financial implications but its application to appropriate projects may add additional costs to contractors who may seek to pass these costs on to the council through an uplift in their bid for that contract. It is too early to anticipate the financial implications of this but it is expected that costs in setting up and operating a PBA will be modest.

## **9. Recommendation**

9.1 Cabinet is recommended to:-

- Sign up to the UK Steel Charter with a view of working towards committing to the steps that are considered to be achievable and reasonable to do so
- Sign up initially to the Code of Practice – Ethical Employment in the Supply Chain with a view of working towards achieving the commitments within the Code in the future if considered reasonable to do so.
- Agree with working towards the Foundation Economy model.
- Agree for Bridgend to participate in the South East Wales Delivery Group.
- Adopt the principles contained within the Welsh Government Policy on Project Bank Accounts and apply payment through a PBA on contracts where their application is deemed appropriate and reasonable to do so.

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**Background documents:**

UK Steel Charter

Code of Practice – Ethical Employment in the Supply Chain

The Future Local Government Collaborative Procurement in Wales

Welsh Government policy on Project Bank Accounts and Guidelines for deploying the

Welsh Government Project Bank Account Policy