

Meeting: Cabinet **Date:** 26 November 2024

Wards affected: All

Report Title: Commercial Policy

When does the decision need to be implemented?

Cabinet Member Contact Details Councillor Alan Tyerman, Cabinet Member for Housing and Finance, alan.tyerman@torbay.gov.uk

Director Contact Details: Malcolm Coe, Director of Finance, malcolm.coe@torbay.gov.uk

1. Purpose of Report

1.1 The purpose of the report is to obtain Cabinet approval to implement the proposed Commercial Policy, which sets out how the Council's Contract Procedures will be implemented.

2. Reason for Proposal and its benefits

2.1 The proposals in this report help us to deliver the ambitions within the Community and Corporate Plan by ensuring the priorities within the plan are considered within all procurement processes.

2.2 Procurement and Contract Management activities are vital for enabling the Council to meet its strategic objectives and operational needs whilst gaining best value for money in delivering services for our residents and communities.

2.3 The proposed Commercial Policy sets out how Council Contract Procedures will be implemented and will be underpinned by a wider framework of guidance and training for Officers. An example of the type of guidance which will sit below this Policy, is provided at Appendix 2 – Financial Checks Guide.

2.4 The Commercial Policy also sets out the strategic and operational responsibilities of Council Officers to ensure:

- a) the Council's approach to procurement and contract management is fair, open and transparent; and
- b) the effectiveness and efficiency of Procurement and Contract Management activities.

2.5 The Policy also addresses the recommendations made by the Devon Audit Partnership (DAP) following a review of the Torbay Food and Music Festival. Appendix 3 - Addressing

DAP recommendations. In view of this audit the Commercial Policy was taken to Overview and Scrutiny Board on 02/10/2024 for their consideration and recommendations to Cabinet. The Board welcomed the Commercial Policy and acknowledged the recommendations raised by Devon Audit Partnership had been addressed in the Commercial Policy and lessons had been learned.

- 2.6 The reasons for the decision are to enable to the Policy to be implemented and underpinning guidance and training to be put in place to support delivery of Council priorities and statutory obligations.

3. Recommendation(s) / Proposed Decision

1. To approve the implementation of the Commercial Policy as set out at Appendix 1.

Appendices

Appendix 1: Commercial Policy

Appendix 2: Financial Checks Guide

Appendix 3 – Addressing DAP Recommendations

Background Documents

[Financial Regulations and Contract Procedures – Torbay Council Constitution](#)

Supporting Information

1. Introduction

- 1.1 The Council does not currently have a Commercial Policy to implement the revised Contract Procedures put in place on 01 April 2024, the Health Care Services (Provider Selection Regime) Regulations 2023, the Procurement Act 2023 and any associated secondary legislation.
- 1.2 The benefits of the Commercial Policy are:
- a) to provide clarity to Officers on the accountability and responsibilities placed on them in relation to external spend on behalf of the Council;
 - b) to ensure a consistent approach to commercial activities to better enable local suppliers to compete for Council contracts;
 - c) delivering local and national priorities set out in the National Procurement Policy Statement and Community and Corporate Plan.
 - d) mitigating the risk of legal challenge or complaint about poor procurement practice and non-compliance with primary and secondary legislation.
- 1.3 The Commercial Policy will provide a framework for ensuring the Council gives regard to the following procurement principles:
- e) delivering value for money;
 - f) maximising public benefit;
 - g) working transparently and sharing information where appropriate;
 - h) acting with, and being seen to act with, integrity;
 - i) treating Suppliers the same unless a difference between the Suppliers justifies different treatment;
 - j) giving regard to the fact that small and medium enterprises (SMEs) may face particular barriers to participation;
 - k) securing the needs of people who use services, improving the quality of services and improving efficiency in the provision of services.

2. Options under consideration

- 2.1 The only alternative option is to not put a Commercial Policy in place.
- 2.2 This alternative is not part of the proposal, as Contract Procedures states that there is a Commercial Policy and the purpose of which is to provide more detail on how Contract Procedures will be implemented and adhered to.

3. Financial Opportunities and Implications

- 3.1 The financial benefits of the Commercial Policy are:
- a) Ensuring contracts are awarded based on the most advantageous tender, thereby delivery best value;

- b) Reducing the risk of financial penalties or fines being imposed on the Council as a result on non-compliance with legislation

3.2 There are no direct resource implications.

4. Legal Implications

4.1 The Commercial Policy will enable the Council to meet the following statutory obligations and other requirements:

- a) the World Trade Organisation Agreement on Government Procurement (GPA), which takes precedence over national procurement regulations and legislation;
- b) the Procurement Act 2023, the Health Care Services (Provider Selection Regime) Regulations 2023 (PSR), the Public Contract Regulations 2015, the Concession Contract Regulations 2016 and Utilities Contract Regulations 2016 (collectively the Regulations) which, where they apply, take precedence over local procurement considerations;
- c) other applicable primary or secondary legislation .
- d) best practice and national guidance, including government Procurement Policy Notes (PPNs) and Procurement Playbooks; the National Procurement Policy Statement, National Procurement Strategy for Local Government in England and relevant case law.

5. Engagement and Consultation

5.1 Engagement and consultation was undertaken as part of the development of Contract Procedures. As this Policy relates to implementation of those procedures, further consultation was not considered necessary.

5.2 Officers are being engaged and consulted on the training and guidance which will be in place to ensure Officers understanding of their obligations in relation to complying with both Contract Procedures and the Commercial Policy. This is being led by a group of procurement and contract management champions.

5.3 Once the Policy is in place, Commercial Services will engage suppliers on the changes and consult them on the development of new tender documents and guidance on how to do business with the Council.

6. Procurement Implications

6.1 The Commercial Policy sets out the rules for Officers in relation to how Social Value and other benefits, including sustainability, equality, diversity and inclusion, climate impact, local employment and training opportunities, wider Council priorities and opportunities for local suppliers are addressed within procurement processes and resultant contracts.

6.2 The Commercial Policy references and underpins the Council's Social Value policy.

7. Protecting our naturally inspiring Bay and tackling Climate Change

- 7.1 The Commercial Policy will be supported by guidance and training in relation to building sustainability requirements into procurement processes and contracts to establish how Council suppliers are tackling the climate emergency when delivering Council contracts.

8. Associated Risks

- 8.1 The risk if the Commercial Policy is not implemented is non-compliance with statutory obligations, securing best value and lack of regard for any added value or benefits that can be derived from Council contracts.
- 8.2 There are no risks associated with implementing the Commercial Policy.

9. Equality Impact Assessment

The impact will be seen on a contract-by-contract basis and the Commercial Policy, together with its associated guidance, will ensure Officers give due regard at the procurement planning stage of the impact of the proposed contract.

Protected characteristics under the Equality Act and groups with increased vulnerability	Data and insight	Equality considerations (including any adverse impacts)	Mitigation activities	Responsible department and timeframe for implementing mitigation activities
Age	<p>18 per cent of Torbay residents are under 18 years old.</p> <p>55 per cent of Torbay residents are aged between 18 to 64 years old.</p> <p>27 per cent of Torbay residents are aged 65 and older.</p>			There is no differential impact directly related to the policy itself.
Carers	<p>At the time of the 2021 census there were 14,900 unpaid carers in Torbay. 5,185 of these provided 50 hours or more of care.</p>			There is no differential impact directly related to the policy itself.
Disability	<p>In the 2021 Census, 23.8% of Torbay residents answered that their day-to-day activities were limited a little or a lot by</p>			There is no differential impact directly related to the policy itself.

	a physical or mental health condition or illness.			
Gender reassignment	In the 2021 Census, 0.4% of Torbay's community answered that their gender identity was not the same as their sex registered at birth. This proportion is similar to the Southwest and is lower than England.			There is no differential impact directly related to the policy itself.
Marriage and civil partnership	Of those Torbay residents aged 16 and over at the time of 2021 Census, 44.2% of people were married or in a registered civil partnership.			There is no differential impact directly related to the policy itself.
Pregnancy and maternity	Over the period 2010 to 2021, the rate of live births (as a proportion of females aged 15 to 44) has been slightly but significantly higher in Torbay (average of 63.7 per 1,000) than England (60.2) and the South West (58.4). There has been a notable fall in the numbers of live births since the middle of the last decade across all geographical areas.			There is no differential impact directly related to the policy itself.
Race	In the 2021 Census, 96.1% of Torbay residents described their ethnicity as white. This is a higher proportion than the South West and England. Black, Asian and minority			There is no differential impact directly related to the policy itself.

	ethnic individuals are more likely to live in areas of Torbay classified as being amongst the 20% most deprived areas in England.			
Religion and belief	64.8% of Torbay residents who stated that they have a religion in the 2021 census.			There is no differential impact directly related to the policy itself.
Sex	51.3% of Torbay's population are female and 48.7% are male			There is no differential impact directly related to the policy itself.
Sexual orientation	In the 2021 Census, 3.4% of those in Torbay aged over 16 identified their sexuality as either Lesbian, Gay, Bisexual or, used another term to describe their sexual orientation.			There is no differential impact directly related to the policy itself.
Armed Forces Community	In 2021, 3.8% of residents in England reported that they had previously served in the UK armed forces. In Torbay, 5.9 per cent of the population have previously served in the UK armed forces.			There is no differential impact directly related to the policy itself.
Additional considerations				

Socio-economic impacts (Including impacts on child poverty and deprivation)				There is no differential impact directly related to the policy itself.
Public Health impacts (Including impacts on the general health of the population of Torbay)				There is no differential impact directly related to the policy itself.
Human Rights impacts				There is no differential impact directly related to the policy itself.
Child Friendly	Torbay Council is a Child Friendly Council, and all staff and Councillors are Corporate Parents and have a responsibility towards cared for and care experienced children and young people.			There is no differential impact directly related to the policy itself.

10. Cumulative Council Impact

10.1 None.

11. Cumulative Community Impact

11.1 None.