

# Full Council

15 January 2018



**Report of:** Monitoring Officer

**Title:** Review of the Procurement Rules

**Ward:** Citywide

**Member Presenting Report:** Cllr Cheney, Deputy Mayor and Cabinet Member for Finance, Governance and Performance

## Recommendation

**That the revised Procurement Rules be approved.**

## Summary

The City Council's Procurement Rules have been reviewed as part of the broader review of the Constitution. These revisions have received considered Member involvement via the Scrutiny Task and Finish Group on Contracts and Commissioning.

## The significant issues in the report are:

Language has been simplified and updated to reflect changes in the City Council's decision-making structure and changes in legislation.

Stronger references have been made to the City Council's Social Value Policy.

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## 1. Policy

The City Council's Social Value Policy sets out policy objectives relating to the economic, social and environmental well-being of Bristol.

### Consultation

## 2. Internal

There has been significant Member involvement, through the Commissioning and Contracts Task and Finish Group.

The Group identified the need to provide dedicated advice and challenge, and met with officers on two specific occasions to comment and revise the amended Procurement Rules.

Members gave advice on all aspects of the Procurement Rules, and highlighted a number of aspects in particular, notably Social Value, officer accountabilities, proportionality and contract management, as well as use of clear language and provision of links to guidance.

## 3. External

*Not applicable*

## 4. Context

### 4.1 PURPOSE OF DOCUMENT

The City Council's Procurement Rules define the principles and procedures governing the procurement of goods, services and works and the award of concessions and licences.

The City Council's Procurement Rules must abide by the statutory requirements of the Public Contracts Regulations 2015 ('PCR').

The City Council's Procurement Rules apply to all decisions to purchase goods, services and work, not just those above the EU financial thresholds defined in the PCR.

The City Council is legally able to waive (suspend) its own Procurement Rules, provided this is done under the appropriate delegations, but is not able to suspend the statutory requirements of the PCR.

### 4.2 PURPOSE OF PROPOSED CHANGES

The review of the Procurement Rules serves a number of purposes:

Clarity	To clarify language and procedures, to ensure that they are simple to understand, for instance the term 'regulations' refer to the Public Contracts Regulations, where the term 'rules' refer to the City Council's own rules. This is to prevent misunderstanding of rules that the City Council can determine (or suspend) and regulations by which the City Council must abide.
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**Effectiveness** To ensure that the City Council's procurement practice is both compliant the PCR and leads to the outcomes required by the City Council.

**Outcomes** To review the contribution to four specific outcomes:

1. Legal compliance
2. Value for money, including Social Value
3. Prevention of corruption
4. Promotion of the local economy and environment

## **Proposal**

**5.** There are a number of key revisions, including:

**5.1.** Language

Simplification of language, and updated references to Public Contracts Regulations and Concessions Regulations, both of which arose subsequent to the current Procurement Rules.

A new definition of value for money has been adopted – the 'optimum combination of whole-life cost and quality (or fitness for purpose) to meet the customer's requirement'.

Updating of references to the City Council's Constitution, including the role of the Mayor and Cabinet.

**5.2.** Social Value and priorities

Stronger references to the City Council's Social Value Policy, including ensuring that smaller, local providers are enabled and encouraged to bid to meet the City Council's requirements.

Specific reference to diversity, which had not be highlighted in previous iterations of the Procurement Rules.

**5.3.** Officers responsibilities

Clarification of the roles of officers, notably the accountability of Directors for procurements being undertaken and the specific role of the Procurement and Commercial Solutions service.

This includes ensure that officers should seek to use an in-house provider or an approved corporate contract if one exists, before seeking new sources of supply.

Roles and job titles have been updated.

**5.4.** Thresholds for decision making

It is proposed to retain the current threshold of £15,000 for the requirement of three quotes and use of the City Council's procurement system.

There is detailed table setting out the required procurement routes for proposals of each type (e.g. goods, services, care & support, and works) and specific financial thresholds.

The processes and financial thresholds for seeking a 'waiver' from the City Council's Procurement Rules have been strengthened, which will ensure a high degree of professional

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challenge and a robust audit trail.

#### **5.5. Exemptions**

The occasions where a decision is statutorily exempt from the Procurement Rules have been clarified in line with the Public Contracts Regulations, including:

- Legal services
- Purchase of property and land transfers
- Treasury and money market transactions
- Mandatory works and those by statutory undertakers
- Awards to controlled ('Teckal') companies

All such awards must demonstrate value for money.

#### **5.6. Contract documentation and standard terms**

Standard contract requirements have been clarified, relating to:

- Bonds
- Parent Company Guarantees
- Payment terms
- Contract documents and Deeds

#### **5.7. Contract management**

Expectations for effective and tenacious contract management, over the life a contract, have been made clear.

#### **5.8. Review**

It is proposed the Procurement Rules are reviewed every two years.

### **Other Options Considered**

#### **6. N/A**

### **Risk Assessment**

#### **7. Not reviewing the City Council's Procurement Rules would lead to a number of risks:**

- Non-compliance with the Public Contracts Regulations, the Concessions Regulations and the Public Services (Social Value) Act.
- Failure to exploit the benefits of Social Value to the social, economic and environmental wellbeing of the city.
- Failure to deliver financial savings from successful procurements and commercial opportunities.

### **Public Sector Equality Duties**

- 8a) Before making a decision, section 149 Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following "protected characteristics": age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:

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- i) Eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.
  - ii) Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to --
    - remove or minimise disadvantage suffered by persons who share a relevant protected characteristic;
    - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);
    - encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
  - iii) Foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to –
    - tackle prejudice; and
    - promote understanding.

8b) The City Council is responsible for commissioning a number of critical care and support services for vulnerable adults and children, meaning that robust Procurement Rules are essential to the sourcing of high quality services to service users with protected characteristics.

The City Council seeks to utilise external spend in such a way as to improve the life chances of residents with protected characteristics, for instance by promoting access to employment for vulnerable people whose protected characteristics are associated with barriers to employment and/or causes of social isolation.

## **9 Legal and Resource Implications**

### **9a) Legal**

The Council Procurement Rules comprise its Standing Orders on Contracts required by virtue of Section 135 Local Government Act 1972. Under this provision a local authority shall make standing orders with respect to the making by them or on their behalf of contracts for the supply of goods or materials or for the execution of works. In addition it may make standing orders with respect of other contracts (eg services). Standing Orders shall include provision for securing competition for contracts, and for regulating the manner in which tenders are invited, but they can exempt from any such provision contracts below a specified value. In addition they may authorise exemptions from any such provision when the authority are satisfied that the exemption is justified by special circumstances. The Procurement Rules annexed meet the requirements of S135, and also identify circumstances where the rules do not apply or may be waived.

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**Legal advice provided by Eric Andrews, Team Leader, Commercial and Governance Team, Legal Services**

**Financial**

**(a) Revenue**

*Not applicable*

**(b) Capital**

*Not applicable*

**Land**

*Not applicable*

**Personnel**

*Not applicable*

**Appendices:**

*Procurement Rules*

**LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985**

**Background Papers:**

*Commentary on changes, as discussed with Scrutiny Task and Finish Group*



**THE CITY COUNCIL OF BRISTOL**

**PROCUREMENT RULES**

**January 2018**

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# THE CITY COUNCIL OF BRISTOL

## PROCUREMENT RULES

### 1. INTRODUCTION

1.1 The Council is accountable to the public for the way it spends public funds, ensuring efficient, effective and economic delivery of services, maximising the benefits available from the budgets and activity supports the Council's strategic objectives. These Rules set out the rules that must be followed by the Council:

1.1.1 For the procurement of goods, services or works; and/or

1.1.2 for the award of any concession or licence.

1.2 These Rules constitute the Council's standing orders in respect of contracts for the purposes of section 135 of the Local Government Act 1972 and Statutory Instrument 2001/1517.

1.3 These Rules have four purposes:

1.3.1 To ensure that the Council complies with its legal obligations regarding the procurement of goods, services and works;

1.3.2 To ensure that the Council obtains Value for Money;

1.3.3 To prevent corruption or the suspicion of it;

1.3.4 To ensure fairness and equality of treatment of all suppliers, avoidance of bias, favoritism, and that fairness can be demonstrated through an audit trail; and

1.3.5 To the extent legally permitted the promotion of the local economy and the promotion of environmental sustainability.

### 2. GENERAL PRINCIPLES

2.1 All contracts must be let in accordance with:

2.1.1 All UK and European Union legal requirements (including

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the [Public Contracts Regulations 2015](#), the [Concessions Contracts Regulations 2016](#) and the general EC Treaty principles of transparency, equal-opportunity and equal-treatment);

2.1.2 All procurement related to Financial, Legal or ICT related goods or services should not commence without prior written approval from the Director with responsibilities for those functions;

2.1.2 These Rules and the Constitution;

2.1.3 All relevant decisions of the Council or the Mayor applicable either to the procurement generally or to that particular contract; and

2.1.4 The principles of the [Council's Commissioning Framework](#)

2.2 The Council's e tendering system must be used for all aspects of letting contracts including obtaining quotations where the contract value exceeds £15,000.

2.3 The Council has a clear duty to promote economic, social and environmental wellbeing, as defined in the Bristol City Council Social Value Policy; and to reduce disadvantage, advance equality and promote community cohesion as defined in the Equality Act 2010. The Council's procurement process should make every effort to promote local business including Small and Medium Enterprises in accordance with the Council's duty to stimulate the local economy.

2.4 Failure to comply with these Rules constitutes a disciplinary matter that will be pursued, as appropriate, in accordance with the relevant [Human Resources Policy Framework](#).

2.5 Consideration should be taken at the commencement of the commissioning cycle to any potential opportunities for collaboration with other public bodies.

2.6A contract should not be let unless:

2.6.1;

2.6.2 There is a statutory power to do so;

2.6.3 It can be demonstrated that it represents and achieves Value for Money;

2.6.4 There has been a formal process undertaken to identify the goods, services and/or works required, that the proposed Contract Value has been properly calculated so as to represent a genuine pre-estimate of the contract's overall value, and this has been translated into a formal written specification;

2.6.5 Due consideration has been given to the Council's Social Value Policy; and

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- 2.6.6 The necessary authorisation has been obtained in accordance with the constitution.
- 2.7 An officer or Councillor must not seek or receive any bribe, gift or inducement of any kind in connection with:
- 2.7.1 The procurement of works, goods or services; and/or
- 2.7.2 The award of any concession or licence.
- 2.8 If anyone makes any attempt to bribe a Councillor or officer or to offer a gift or inducement of any kind, or any fraud, bribery or corruption is suspected, the officer or Councillor shall report it to the Chief Internal Auditor or the Director Legal Services.
- 2.9 If a Councillor or officer could be in a position where somebody with whom they have a family, personal or financial relationship might bid for a contract, they must not be involved in any way in the procurement exercise or seek to influence it. Councillors and officers shall be aware of the requirements of the appropriate codes of conduct and must declare any direct or indirect interest in accordance with the law and such codes. Officers should follow the [Code of Conduct for Employees](#).
- 2.10 The Mayor and Councillors make strategic decisions over the budgetary and policy framework within which procurement plans are developed and implemented.
- 2.11 Decisions to approve procurement processes leading to the award of contracts that constitute Key Decisions can only be made by the Mayor, or other body or individual delegated this authority, as prescribed in the City Council's Constitution. Where a Key Decision is made, the Mayor and Cabinet will generally authorize the procurement process to be followed and delegate the contract award to the relevant Director.

### 3. OFFICER RESPONSIBILITIES

- 3.1 Officers responsible for purchasing and relevant Director must:
- 3.1.1 Comply (and ensure that any agents, consultants and contractual partners acting on their behalf also comply) with these Rules, the [Financial Regulations](#), the [Constitution](#) and with all UK and European Union legal requirements;
- 3.1.2 Comply with all of the obligations set out in the Procurement Guidance and have regard to all other aspects of the [Procurement Guidance](#);
- 3.1.3 Ensure compliance with the requirements of the Public Services (Social Value) Act 2012 and the [Bristol City Council Social Value Policy](#);

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3.1.4 Agree annual service procurement plans for their directorate. These plans should be considered and approved by the appropriate category manager for that service area before the start of each financial year. The plans should detail existing contracts / spend, pending contract renewals and any new contract / spend identified for the coming year. In drawing up these procurement plans the Director should consider:

- The [Procurement Guidance](#) to allow an understanding of the corporate approach to procurement
- The [Council's Social Value policy](#)
- Future service projections and known requirements for the year to come, including potential regulatory changes.
- Current and future budgetary considerations
- Links to the corporate plan and directorate business plans and how the objectives set out within this document will be supported by the annual procurement plan.
- Utilisation of internally provided services and corporate contracts and use of approved suppliers

3.1.6 When any employee either of the Council or of a contractor may be affected by any transfer arrangements, ensure that the Transfer of Undertakings (Protection of Employment) (TUPE) and pension's issues are considered and that legal advice is obtained before commencing the procurement procedure;

3.1.7 Consult with the relevant Procurement Officer or Category Specialist to establish whether a suitable contract or external framework contract may exist, before commencing a new procurement project; where corporate contracts have been procured these will be used throughout the Council;

3.1.11 Take into account (to the extent legally permitted) the promotion of the local economy and the promotion of environmental sustainability;

3.1.7 Ensure that for contracts in excess of £15,000 all contact with any Bidder is conducted using the Council's e-tendering system;

3.1.8 Ensure Value for Money through whole life contract management and contractor performance monitoring as set.

3.2 Directors must:

3.2.1 In prior written consultation with the Procurement and Commercial Relations Manager and advice from legal services, only approve variations to contracts where there are financial, legal or commercial implications within their delegated limit of authority;

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3.2.2 In prior written consultation with the Procurement and Commercial Relations Manager and the Section 151 officer, seek approval of the Cabinet to accept any tender other than the first ranked tender evaluated in accordance with prescribed procedures and criteria declared before submission of tenders;

3.2.2 Provide information to the nominated representative of the Procurement and Commercial Relations Manager for the maintenance of a register of all minor, medium and major contracts;

3.3 Procurement and Commercial Relations Manager must:

3.3.1 Provide commercial advice and support to members and all services on how to purchase services, supplies and works in accordance with these procurement rules; 3.3.2 Promote the Procurement approach, policies and procedures and initiate appropriate reviews;

3.3.3 Ensure the contracts register is maintained for all contracts above £15,000;

3.3.4 Approve any:

- Guidance containing permanent alternative practices to the Procurement Policies and Procedures because of market-specific conditions;
- Variations to the Standard Procedure subject to consultation with the Section 151 officer and Legal officer where there are financial and legal implications respectively;

3.3.5 Initiate the Gateway Approach and ensure major procurement activity is strategically managed;

3.3.6. Designate Procurement Officer or Category Specialists in consultation with Directors and ensure appropriate training is given and appropriate systems are in place and observed for the proper discharge of the procurement activity.

3.4 In addition to any other responsibilities set out in these Rules, the Director - Finance shall:

3.4.1 Conduct financial appraisals of organisations where required, including advising on the most appropriate form of financial assurance;

43.4.2.2 Make payments from the Council's funds upon the receipt of a proper original, certified copy or valid electronic VAT invoices that have been checked, coded and certified by the Service. Details of the rules applying to payment of suppliers are set out in the Council's [Financial Regulations](#).

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3.4.3 Standard payment terms are 30 days from date of invoice. Any variation to this must be approved by the Section 151 officer.

#### 4. FINANCIAL THRESHOLDS & PROCUREMENT PROCEDURES

##### 4.1 Observance of Thresholds

4.1.1 There shall be no disaggregation of requirements in order to avoid monetary thresholds. Where numerous contracts are held for an area of spend, this spend should be aggregated to ensure compliance with the Public Contract Regulations and value for money principles.

4.1.2. The Contract Value for a proposed contract must be a genuine pre-estimate and must be based on the total aggregated value. Guidance regarding estimating a Contract Value is set out in the [Procurement Guidance](#).

##### 4.2 Procurement Processes

4.2.1 Where the Contract Value for a proposed contract is within the values in the first column in Table 1 below, the procurement procedure in the second column must be followed unless a waiver has been granted under Rule 7:

**Table 1 - Financial Thresholds & Procurement Procedures for Contracts for Services and Goods and Works.**

<b>Contract Value</b>	<b>Procurement Procedure</b>
Up to £15,000	Use of Corporate Contract using the Council's Finance and Ordering System (currently ABW). or Where a Corporate Contract does not exist, then a single written quotation is sufficient (where possible using the Council's Finance and Ordering System).  Where practicable an eligible quotation from a local supplier must be sought or where this is not possible the reasons must be recorded. (Managers must retain sufficient evidence to demonstrate compliance and that best value has been obtained).

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<p>£15,000 - EU Threshold for Services and Supplies</p>	<p>Use of the Council's e tendering system to either:</p> <ul style="list-style-type: none"> <li>i) Follow the Open Procedure (or another procedure to be agreed with the Procurement and Commercial Relations Manager); or</li> <li>ii) Call off from a compliant Framework; or</li> <li>iii) Obtain at least three Quotations (except where there is likely to be cross-border interest) and at least one quotation should be from a local supplier and where this is not possible the reasons must be recorded; or</li> <li>iv) Call off from a compliant Dynamic Purchasing System (Managers must retain sufficient evidence to demonstrate compliance and that best value has been obtained).</li> </ul> <p>Evaluation, weightings and procedures to be conducted in accordance with the published <a href="#">Procurement Guidance</a></p>
<p>£15,000 – EU Threshold for Schedule 3 of the Public Contract Regulations 2015 (“light touch regime”)</p>	<p>Use of the Council's e tendering system to either:</p> <ul style="list-style-type: none"> <li>i) Follow the Open Procedure (or another procedure to be agreed with the Procurement and Commercial Relations Manager); or</li> <li>ii) Call off from a compliant Framework; or</li> <li>iii) Obtain at least three Quotations (except where there are concrete indications of cross-border interest) and at least one quotation should be from a local supplier and where this is not possible the reasons must be recorded; or</li> <li>iv) Call off from a compliant Dynamic Purchasing System.</li> </ul> <p>Evaluation, weightings and procedures to be conducted in accordance with the published <a href="#">Procurement Guidance</a></p>

<p>£15,000 - £250,000 for Works</p>	<p>Use of the Council's e tendering system to either:</p> <ul style="list-style-type: none"> <li>i) Follow the Open Procedure (or another procedure to be agreed with the Procurement and Commercial Relations Manager); or</li> <li>ii) Call off from a compliant Framework; or</li> <li>iii) Obtain at least three Quotations (except where there is likely to be cross-border interest) and at least one quotation should be from a local supplier and where this is not possible the reasons must be recorded; or</li> <li>iv) Call off from a compliant Dynamic Purchasing System.</li> </ul> <p>Evaluation, weightings and procedures to be conducted in accordance with the published <a href="#">Procurement Guidance</a> Bidder</p>
<p>Above EU Threshold for Services and Supplies</p>	<p>Use of the Council's e- tendering system to follow the appropriate EU Procedure</p> <p>For services within Schedule 3 of the Public Contract Regulations 2015 ("light touch regime") advice should be sought from the Procurement and Commercial Relations Manager in relation to procedure to be followed.</p>
<p>£250,000 - EU Threshold for Works</p>	<p>Use of the Council's e tendering system to either:</p> <ul style="list-style-type: none"> <li>i) Follow the Open Procedure (or another procedure to be agreed with the Procurement and Commercial Relations Manager); or</li> <li>ii) Call off from a compliant Framework; or</li> <li>iii) Call off from a compliant Dynamic Purchasing System.</li> </ul> <p>Evaluation weightings and procedures to be conducted in accordance with the published Procurement Guidance</p>
<p>Above EU Threshold for Works</p>	<p>Follow the appropriate EU Procedure using the Council's e-tendering system</p>

Guidance regarding the detail of the procurement procedures is set out in the [Procurement Guidance](#).

- 4.3 Use of third party Framework Agreements will be an option for contracts of any value so long as they are entered into in accordance with Rule 6.

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- 4.4 If a procurement procedure involves an in-house bid by the Council (or by any organisation owned and/or controlled by the Council) then the formal advice of the Procurement and Commercial Relations Manager and Legal Officer must be sought regarding the conduct of the procurement procedure (including but not limited to the criteria used for Shortlisting and for evaluation of Tenders).
- 4.5 The advice of the relevant Category Manager and Legal Officer must be sought prior to commencing any procurement procedure that is required as a result of a Community Right to Challenge.
- 4.6 In the event that a contract is being advertised:
  - 4.6.1 All tender documents must be made available electronically at the start of the process;
  - 4.6.2 Consideration must be given to sub-dividing the contract into lots and the reasoning provided where it is decided that this is not appropriate;
  - 4.6.3 The advert must be placed on the [Contracts Finder portal](#) within 24 hours of having been advertised in any other way;
  - 4.6.4 A contract award notice must be published within 30 days of contract award.
- 4.7 If an abnormally low tender is received, the advice of the Procurement and Commercial Relations team must be sought.

## 5. GATEWAY APPROVALS

- 5.1 The Procurement and Commercial Relations Manager is responsible for establishing and providing guidance on Gateway Approvals, which are a series of quality assurance checkpoints through which a procurement project needs to pass prior to approval, publication and contract award.
- 5.2 Directors and Officers seeking to procure goods, services or works shall comply with whatever arrangements for Gateway Approvals as are established under this Rule.
- 5.3 The Director – Finance may authorise the establishment, maintenance or suspension of a Commissioning and Procurement Group (CPG) as a mechanism to operate gateway approvals of procurement proposals.
- 5.4 If a CPG is established, it will function as a strategic body which seeks to ensure that the Council commissions and procures services with efficiency, value for money and in line with best practice and the Council's policies and procedures. Its approval would be required at various stages of the procurement process, detailed in its [terms of reference](#).

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## **6. FRAMEWORKS/DYNAMIC PURCHASING SYSTEMS (DPS)**

- 6.1 Framework Agreements and DPS shall only be set up internally to procure batches of similar works, supplies or services which the Council expects to need over a period of time, but where it has no certainty as to what sort of quantity or details it may require. All Framework Agreements and DPS must be awarded, set up and managed strictly in accordance with the Public Contracts Regulations 2015.
- 6.2 All call offs must be in accordance with the terms of relevant framework agreement.
- 6.3 The term must not exceed four years for frameworks.
- 6.4 The use by the Council of a Framework Agreement or DPS set up by a third party must be approved in writing by a legal officer and the Procurement and Commercial Relations Manager. For the avoidance of doubt this includes any Framework Agreement or DPS set up by the Crown Commercial Services or any successor body.
- 6.4 Any procurement or purchasing conducted through a Central Purchasing Body must be approved in writing by Procurement and Commercial Relations Manager.

## **7. EXEMPTIONS AND WAIVERS**

### **RULES General Exemptions**

- 7.1 These Rules do not apply to:
  - 7.1.1 Contracts for employment which make an individual a direct employee of the Council (for the avoidance of doubt this exemption does not apply to the appointment of consultants or the use of agency staff);
  - 7.1.2 Contracts regarding the purchase or lease of property, acquisition, disposal, transfer of land, or any interest in land (for which the Council's Corporate Land Policy shall apply). This rule extends to works carried out by the other party to such transaction, where these are a condition of the contract, but does not extend to any service, supplies or works contracts required of the Council, for example, to make the land, existing buildings or immoveable property ready for acquisition, disposal or leasing
  - 7.1.3 A transaction conducted by the Director - Finance (Section 151 Officer) either on the money market or concerning the sourcing of finance;
  - 7.1.4 Non-contractual funding arrangements (including grant agreements under which the Council gives grant to third parties)

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provided that the terms of the funding arrangements do not constitute a contract (rather than a grant);

7.1.5 A contract for or on behalf of a school with a delegated budget, where the contract has been procured in accordance with the school's procurement and contractual regulations;

7.1.6 Contracts for the execution of either mandatory works or provision of goods or services which must be provided by Statutory Undertaker other than the Council. This includes but is not limited to arrangements with a utilities provider, where the City Council has no discretion regarding whether works are required or who must deliver them; and

7.1.7 Legal services (including all associated costs and fees) in connection with legal proceedings (including tribunals, inquiries, civil or criminal court proceedings).

7.2 The obligations relating to tendering procedures, including Rule 4, together with Rules 5 and 9, shall not apply:

7.2.1 In relation to contracts awarded under Regulation 12(1) of the Public Contract Regulations (2015) (formerly referred to as the Teckal exemption);

7.2.2 In relation to contracts awarded under Reg 12(7) of the Public Contract Regulations (2015) (Contracts which establish or implement co-operation between contracting authorities). Officers must ensure that any procurement in these areas is consistent with the Council's duty to obtain value for money and other relevant policies of the Council.

## Waivers

7.3 Subject to Rule 7.5, where the Contract Value is within the range of values specified in the first column of Table 2, these Rules may be waived by express written authorisation of the individual specified in the second column (having consulted first the individual(s) specified in the third column), when one of the following situations exist:

7.3.1 Only one contractor can provide the goods, services or works required and there is no reasonable alternative contractor;

7.3.2 The need for the goods services or works is so urgent that the time needed to comply with the procurement procedure would be prejudicial to the Council's interest;

7.3.3 The purchase is through an auction that is conducted in accordance with the requirements of relevant procurement law; and/or

7.3.4 The best interests of the Council are being secured.

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**Table 2**

<b>Contract Value</b>	<b>Individual authorised to grant waiver under Rule 7.3</b>	<b>Consultees</b>
Below the relevant EU Procurement Threshold and below £250k	Procurement and Commercial Relations Manager	Legal officer Director(s) for service(s) affected
Above the relevant EU Procurement Threshold and above £250k	Director of Finance/ s151 Officer	Legal officer Director(s) for service(s) affected Procurement and Commercial Relations Manager

- 7.4 Where a waiver request involves an Officer Executive Decision, Corporate Finance should be consulted.
- 7.5 Where a waiver under Rule 7.3 would constitute a Key Decision, the waiver may only be authorised by Cabinet.
- 7.6 Rule 7 **cannot authorise** any approach that breaches:
- 7.6.1 EU and/or UK procurement law; and/or
  - 7.6.2 A Community Right to Challenge.
  - 7.6.3 Any other relevant legislation
- 7.7 When granting a waiver pursuant to this Regulation 7, the relevant individual (as identified in the second column in Table 2) shall ensure that the [appropriate pro forma](#) is used.

## **8. EXTENSIONS AND VARIATIONS TO EXISTING CONTRACTS**

- 8.1 Unless an existing contract makes provision for extension for the original term, a contract must not be extended without confirmation from a legal officer that the extension does not conflict with EU and UK procurement law.
- 8.2 If the existing contract does not have provision for an extension a waiver under Rule 7 would be required.
- 8.3 An existing contract must not be varied unless:
- 8.3.1 The existing contract includes a predetermined mechanism for objectively establishing the scope, terms and implications (in

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particular the pricing implications) of the variation; and

8.3.2 The variation is carried out in accordance with that predetermined mechanism; and

8.3.3 Such variation complies with the Public Contracts Regulations 2015; and

8.3.4 Legal advice has been obtained supporting the proposed variation.

## **9. BONDS AND PARENT COMPANY GUARANTEES**

9.1 The Director - Finance shall consider the necessity of a parent company guarantee when an Bidder is a subsidiary of a parent company and any of the following applies:

9.1.1 The nature of the contract exposes the Council to material financial risk;

9.1.2 The award is based on evaluation of the parent company; and/or

9.1.3 There is some concern about the financial standing of the Bidder.

9.2 The Procurement and Commercial Relations Manager shall consider the necessity of a bond where any of the following apply:

9.2.1 Where the Contract Value exceeds £500,000 (or contracts of lower value where the Director - Finance considers it necessary);

9.2.2 Where it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the contract and there is concern about the stability of the Bidder; and/or

9.2.3 There is some concern about the financial standing of the Bidder.

9.3 All bondsmen must either be:

9.3.1 A major UK Clearing Bank or Building Society; or

9.3.2 On the FSA register (a public record of all firms registered to conduct regulated activities) in the category of Suretyship.

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## 10. CONTRACT DOCUMENTS AND FORMALITIES

- 10.1 The Procurement and Commercial Relations Manager and a Legal Officer must be consulted to determine whether (and if so, in what form) a standstill period must be observed prior to the award of a contract where this is not a requirement under the Public Contracts Regulations 2015 (for example contracts subject to the light-touch regime or contracts with a Contract Value below the relevant EU Threshold).
- 10.2 All contracts with a Contract Value greater than £15,000 shall be in writing and be executed by an officer with authority to do so under the Council's scheme of delegations.
- 10.3 All quotes shall be in writing.
- 10.4 Subject to Rule 10.5, a contract must be sealed and executed as a deed under the Council's seal when one or more of the following situations exist:
- 10.4.1 The contract relates to a construction project (whether a contract for works or a contract for services) where the overall value of the works for the project is greater than £500,000;
- 10.4.2 The Contract Value is greater than £1,000,000;
- 10.4.3 Where it is particularly complex or high risk;
- 10.4.4 Where it is a mortgage or charge;
- 10.4.5 Where it is for the acquisition or disposal of an interest in land;
- 10.4.6 Where it is a release or variation to a Deed;
- 10.4.7 Where it is an appointment of a trustee; and/or
- 10.4.8 Where it is a power of attorney.
- 10.5 There is no requirement for a contract to be sealed and executed as a deed under the Council's seal where it is:
- 10.5.1 An employment contract; or
- 10.5.2 For transactions conducted by the Director: Finance (Section 151 Officer) either on the money market or concerning the sourcing of finance;
- 10.5.3 For contracts where the Monitoring Officer has determined that a Deed is not required.
- 10.6 The formal advice of a Legal Officer must be sought for a contract that includes one or more of the following features:
- 10.7.1 Where the Contract Value is greater than the EU Threshold for

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Services and Supplies and greater than £250,000 for Works;

10.7.2 Where it involves leasing arrangements;

10.7.3 Where it is proposed to use a contractor's own terms; and/or

10.7.4 Where it is particularly complex or high risk;

10.7.5 Where payment in advance is required. **Note: The formal written advice of the S151 officer is also required**

10.7 All contracts must be concluded formally before the supply, service or construction work begins, except in exceptional circumstances, and then only with the written consent of a Legal Officer. All related parent company guarantees and/or bonds should be delivered in accordance with the contract.

10.10 The officer responsible for securing signature of the contract must ensure that the person signing for the other contracting party has authority to bind it.

## 11. CONTRACT MANAGEMENT

11.1 The relevant Director shall name a Contract Manager for all contracts, throughout the life of each contract.

11.2 Payments shall be made in accordance with the contract and in a timely manner so as to avoid the payment of any interest charges.

11.3 The Service Director - Finance shall ensure that there is a system in place to ensure that any invoices received from a contractor are adequately verified, properly certified, and processed for payment by the due date.

11.4 During the life of a contract, the Contract Manager must monitor the contract (using the Council's e tendering system's contract management module or an existing alternative system for which approval has been given by the Senior Leadership team) in respect of:

11.4.1 Performance;

11.4.2 Compliance with contract and specification;

11.4.3 Cost;

11.4.4 Any Value for Money requirements; and

11.4.5 User satisfaction and risk management.

11.5 If a contractor fails to comply with any of the provisions of a contract, the Contract Manager must try to secure compliance. If this is not successful, the matter should be referred promptly to the relevant Procurement and

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Commercial Relations Manager and their advice sought as to what action should be taken to protect the Council's interests.

11.6 Where practicable, all contracts should contain a Dispute Resolution procedure.

11.7 If a contractor makes a claim which is not clearly within the terms of a contract, the Contract Manager must not negotiate a settlement until the claim has been referred to:

11.7.1 A Legal Officer for advice about the Council's legal liability; and

11.7.2 The Director - Finance for advice about the financial implications.

11.8.7 These Procurement Rules will be reviewed at least every 2 years.

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## SCHEDULE 1 - DEFINITIONS

### “ABW”

Agresso Business World, the Council’s current finance and ordering system

### “Bidder”

Means any person who asks or is invited to submit a Quotation or Tender;

### “Legal Officer”

Means the Director – Legal Services or such other legal officer with the appropriate delegated authority;

### “Procurement and Commercial Relations Manager”

Means the Procurement and Commercial Relations Manager or such other Procurement Officer or Category Specialist with the appropriate delegated authority

### “Best Value”

Means arrangements to secure [continuous improvement](#) in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.

### “Central Purchasing Body”

Means an organisation that conducts procurements or makes purchases on behalf of one or more other organisations

### “Community Right to Challenge”

Means the community right to challenge under Chapter 2 of the Localism Act 2011;

### “Constitution”

Means the Council’s constitution;

### “Contract Manager”

Means the officer appointed by the relevant Director (pursuant to Rule 11.1) with responsibility for managing a particular contract;

### “Contract Value”

Means the whole life value or estimated whole life value (in money or equivalent value) for any purchase calculated as follows:

- (a) Where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the fixed period;
- (b) Where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions over the life expectancy of the contract;
- (c) Where the contract is for an uncertain duration, by multiplying the monthly payment by 48;

### “EU Procedure”

Means a procurement procedure required under the Public Contracts Regulations 2015;

### “EU Threshold”

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Means the Contract Value at which the full requirements of the Public Contracts Regulations 2015 apply. The current EU Thresholds, excluding VAT, (with effect from 1 January 2018) are:

- Services £ 181,302
- Supplies £ 181,302
- Light Touch £ 615,278
- Works £ 4,551,413
- Concessions £ 4,551,413

**“Framework Agreement”**

means an agreement between one or more public bodies with one or more contractors, the purpose of which is to establish the terms governing contracts to be awarded during a given period;

**“Gateway Approval”**

Means a series of quality assurance checkpoints through which a procurement project needs to pass prior to approval, publication and contract award.

**“Key Decision”**

Means an executive decision as defined in the Constitution.

**“Procurement Guidance”**

Means the guidance issued by Procurement and Commercial Relations, together with a number of standard documents and forms, which supports the implementation of these Rules;

**“Shortlisting”**

Means the process of selecting Bidders;

**“Standstill Period”**

Means a period of at least ten calendar days following the notification of an award decision in a contract tendered via the Official Journal of the European Union, before the contract is signed with the successful supplier(s).

**“Social Value”**

Public authorities are required, under the Public Services (Social Value) Act 2012 to, when commissioning a public service, to consider how the service they are procuring could bring added economic, environmental and social benefits.

**“Tender”**

Means an Bidder’s proposal submitted in response to an invitation to tender;

**“Quotation”**

Means a quotation of price and any other relevant matter (without the formal issue of an invitation to Tender);

**“Value for Money”**

Means optimum combination of whole-life cost and quality (or fitness for purpose) to meet

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the customer's requirement  
This includes consideration of Social Value.

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## KEY LINKS

Public Contracts Regulations 2015

<http://www.legislation.gov.uk/uksi/2015/102/contents/made>

Concessions Contracts Regulations 2016

[http://www.legislation.gov.uk/uksi/2016/273/pdfs/uksi\\_20160273\\_en.pdf](http://www.legislation.gov.uk/uksi/2016/273/pdfs/uksi_20160273_en.pdf)

Public Services (Social Value) Act 2012

<http://www.legislation.gov.uk/ukpga/2012/3/enacted>

Bristol City Council's Social Value Policy

<https://www.bristol.gov.uk/documents/20182/239382/Social+Value+Policy+-+approved+March+2016-1.pdf/391b817b-55fc-40c3-8ea2-d3dfb07cc2a0>

Internal guidance on Bristol City Council procurement guidance (intranet):

<http://intranet.bcc.lan/ccm/navigation/support-services/procurement/>

Published details on Bristol City Council procurement (external website):

<https://www.bristol.gov.uk/tenders-contract/procurement-rules-regulations>

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