

Audit Committee

25 November 2019



Report of: Denise Murray – Finance Director

Title: Proposed Changes to Bristol City Council Procurement Rules

Ward: n/a

Officer Presenting Report: Steve Sandercock – Head of Strategic Procurement and Supplier Relations Service

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Recommendation

To recommend to Full Council that:

- (i) The proposed change to the Procurement Rules be approved.
- (ii) Delegation be granted to Finance Director (S151) to undertake any necessary updates to finalise minor drafting of the Procurement Rules and/ or supporting Procedural Rules, in conjunction with Director Legal & Democratic Services

Summary

Members are reminded that the current Procurement Rules (the Rules) form a key part of the Council's Constitution.

In doing so the Rules must abide by the statutory requirements of the EU Treaty Principles and UK law of Public Contracts Regulations 2015 ('PCR'). The EU Treaty principles are:

- non-discrimination; free movement of goods; freedom to provide services; freedom of establishment

General principles of law the following apply in how procurement is to be undertaken:

- equality of treatment; transparency; mutual recognition; proportionality

The Rules were last reviewed in January 2018. With the Rules being in place for a period of over 18 months it is appropriate timeframe to review and give consideration to how these changes are supporting effective commercial governance in a proportional and effective manner.



The significant issues in the report are:

The main purpose of the changes proposed is to enable and empower effective procurement and commercial decision making and how this is aligned to the Council's Constitution.

Policy

1. As noted the Procurement Rules form a fundamental part of the Council's overarching Constitution.

Consultation**2. Internal**

Principle engagement has been through the Constitutional Review Group and internal subject matter experts within Legal and Finance.

3. External

Not applicable

Context**4. Key changes are:**

- i. The proposed structure has been re-ordered following a typical commissioning, procurement and contract management cycle taking the reader through the various options, routes to market and related steps in a logical way;
- ii. Replacement of the Commissioning and Procurement Group (CPG) approval and authorisation process in favour of a more streamlined proportional approach, linking to the Council's Schemes of Delegation;
- iii. Improved clarity on the process to be followed in regards to waivers (e.g. approvals to step outside of the set Rules) including clarity on what grounds approvals are made;
- iv. Improved clarity on when the Procurement Rules do not apply;
- v. Setting out clearer procedural guidance that works alongside the Procurement Rules and avoids unnecessary detail in the Rules themselves, with Procedural Notes relating to: Concessions; Waivers; Late Submissions; Missing /Omitted Information; Acquisition and Commissioning of Art; Bonds and Parent Company Guarantees;
- vi. Setting out details of approach to breaches of the Rules and escalations that would follow;
- vii. Clarify contract variations and contract management;
- viii. Improved clarity on the sourcing approach to be followed, for example, the requirement to source from internal provision in the first instance ahead of considering formal procurement.
- ix. Improved clarity in connection to extreme urgency or emergency situations;
- x. Raising £15k threshold to £25k to align with Contracts finder, in order to reduce barriers and procurement "getting in the way".

Proposal

5. The Rules are informed both by consideration of the overarching legislation (e.g. Public Contracts Regulations 2015) and sound approach to commercial governance with the requirement for such rules around procurement and contracting to be part of the wider Constitutional framework of the Council.
6. Accordingly the formal changes to the Constitutional matters rests with the Full Council. Audit Committee are asked to endorse what is proposed to Full Council at the next Full Council meeting.

Other Options Considered

7. The work to review and update the Procurement Rules are informed by internal assessment on how effective or otherwise the current Rules are in delivering a governance framework for procurement and contract activity. What is proposed is therefore based on a wider position of what is deemed appropriate for the Council going forward.

Risk Assessment

8. The risk of not recommending and ultimately adopting changes to the current Procurement Rules are that the Council does not maximise efficient and effective ways of undertaking procurement and contracting activities.

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

- Non-compliance with the Public Contracts Regulations 2015, the Concession Regulations 2016 and the Public Services (Social Value) Act 2012.
- Failure to exploit the benefits of Social Value for the social, economic and environmental wellbeing of the city.
- Failure to optimise the delivery of 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:
 - 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) Limited risks identified in the Equalities Impact Assessment which accompanies this report.

Legal and Resource Implications

Legal

These Procurement Rules constitute the Council's Standing Orders in respect of contracts for the purposes of section 135 of the Local Government Act 1972. Accordingly they must include provision for securing competition for such contracts and for regulating the manner in which tenders are invited. Section 135 allows the Council to exempt from any such provision contracts for a price below that specified and may authorise exemptions from any such provision when the authority is satisfied that the exemption is justified by special circumstances. The Procurement Rules seek to encourage competition and value for money, set out tendering requirements and provide for exemptions and waivers in defined circumstances.

Legal advice provided by Eric Andrews, Senior Solicitor 31/10/2019

Financial

(a) Revenue

The Procurement Rules are part of the overall finance governance framework. The Council's financial regulations state that all payments for goods, works and services must comply with the Council's procurement rules and approved payment processes. The Procurement Rules set out to assure that the Council is achieving best value on its procured expenditure and also to comply with relevant legislation.

(b) Capital

See above

Financial advice provided by Michael Pilcher, Chief Accountant 29/10/2019

Land

"not applicable">

Personnel

"not applicable">

Appendices:

Appendix 1 Revised Procurement Rules

Appendix 2 Comparison Table of Original Rules (May 2018) to Proposed December 2019

Appendix 3 Equalities Impact Assessment

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

Background Papers: