

Full Council

17 December 2019



Report of: Monitoring Officer

Title: Proposed Changes to Bristol City Council Procurement Rules

Ward: n/a

Member Presenting Report: Chair of the Audit Committee

Recommendation

(i) That Full Council consider the proposed changes.

(ii) That the Service Director Finance in conjunction with Director – Legal and Democratic Services be authorised to undertake any necessary updates or amendments to reflect changes in the law or to correct errors and/or to finalise drafting of the Procurement Rules and / or supporting guidance.

Summary

To consider the proposed changes to the Council's Procurement Rules and seek formal approval from Full Council.

The significant issues in the report are:

The Procurement Rules establish the formal governance around how the Council procures, enters into and manages contracts with third parties. The main aims of the proposed changes are to introduce a more effective and proportional risk based approach in conducting such arrangements.



Policy

1. The Procurement Rules provide the overarching commercial governance framework for the approach to be carried out when undertaking spend with third parties. It supports the delivery of the Council's wider Social Value Policy that sets out objectives in relation to economic, social and environmental well-being.

Consultation

2. Internal

Principle engagement has been through the Constitutional Review Group.

3. External

n/a

Context

The Rules were last reviewed in January 2018. With the Rules having been in place for a period of over 18 months, it is an appropriate time to review and give consideration to how these changes are supporting effective commercial governance in a proportional and effective manner. The main purpose of the changes proposed is to enable and empower effective procurement and commercial decision-making.

Proposal

- 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;
- 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;
- 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;
- Improved clarity on when the Procurement Rules do not apply;
- 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;
- Setting out details of approach to breaches of the Rules and escalations that would follow;
- Clarify contract variations and contract management;
- 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;
- Improved clarity in connection to extreme urgency or emergency situations;
- Raising £15k threshold to £25k to align with Contracts finder, in order to reduce barriers and procurement "getting in the way".

Other Options Considered

4. The Council is legally required to have established rules in relation to the procurement of contracts. The proposed Procurement Rules with this report set out what is considered appropriate for the Council and compliant within the legislative framework.

Risk Assessment

5. 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

- 6a) 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.
- 6b) 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

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.

(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:

None