

Audit Committee

30 July 2020



Report of: *Matt King, Commercial Systems, Performance & Strategy Manager*

Title: *Proposed Changes to Procurement Rules*

Ward: *City Wide*

Officer Presenting Report: *Denise Murray, Director of Finance (S151 Officer)*

Recommendation

That the Committee note the changes made to the procurement rules following presentation to Council 17 December 2019.

Summary

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

A significant update of the Rules was formally approved by Full Council on 17th December 2019. The following recommendation was also approved:

“(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.”

Some corrections and minor changes now need to be made to the Rules published in December 2019, mainly prompted by work that has happened since then on developing the associated procurement guidance documents (Procedural Notes).

The existing Rules are [published](#) on the BCC website. Proposed corrections and changes to these are detailed below.



Policy

None affected by this report.

Consultation

1. **Internal**
Denise Murray, Director of Finance (S151 Officer)
2. **External**
None

Background and Context

This commentary provides details on the changes made.

Minor changes made throughout (and not specifically highlighted) include:

- Minor wording tweaks which do not change the sense of paragraphs
- Updating the names of Procedural Notes to be consistent
- Replacing any references to “Waivers” with “Compliant Exceptions”, for consistency with the “Procedural Note: Modifications, Compliant Exceptions, Deviations and Breaches”
- Updating hyperlinks to OJEU thresholds to point to the correct 2020 values
- Minor formatting changes
- Addition of a summary of what is covered by each Procedural Note

PARAGRAPH	CHANGE	RATIONALE
1.1	Words “or licence” deleted from paragraph 1.1: 1.1 “These Procurement Rules (the Rules) set out the Rules that must be followed by the Council for: i. The procurement of Supplies, Services or Works and / or, ii. The award of any Concession or licence. ”	Words “or licence” removed , as there can be licences that are granted by the Property team that are unrelated to procurements. Licences would only be subject to the procurement rules when they are part of a contract which is covered under i and ii of this paragraph already.
2.21	Paragraph 1.21 deleted : “1.12. These Rules do not apply to: ... 1.21. Contracts entered into with others Local Authorities in accordance with the Local Authorities (Supplies and Services) Act 1970, to include the supply of goods or materials and the provision of any administrative, professional and/or technical services; ”	Paragraph 1.21 is deleted as these exempt scenarios are already covered (more accurately) by paragraph 1.15: <i>Contracts awarded under PCR 12(7) (e.g. establishing or implementing a public contract with another public sector entity).</i>
1.23 (now 1.22)	Paragraph 1.23 changed from : 1.23. The obligation to obtain	The previous wording implied that these placements were exempt from the

	<p>quotations or tenders would not apply in the situation of social care services and related services (e.g. fostering placements) for vulnerable adults or young people and where there is either,</p> <ul style="list-style-type: none"> i. the right for the service user choice around provision; ii. a panel or tribunal led placement decision and / or; iii. a judicial review or decision directing the placement.” <p>To: “1.22. The Procedural Note: Social Care and Education Placements applies in the situation of social care services and related services (e.g. fostering placements) for vulnerable adults or young people and where there is either,</p> <ul style="list-style-type: none"> i. the right for the service user choice around provision; ii. a panel or tribunal led placement decision; iii. a judicial review or other court or tribunal decision directing the placement and / or; iv. allowance under PCR, in-line with the Council’s obligations under legislation governing care, support and / or education of children or adults” 	<p>procurement rules (including PCR), but this is not necessarily the case, so we need to refer to more detailed guidance instead.</p> <p>Change is therefore to refer to a new “Procedural Note: Social Care and Education Placements” to provide more detailed guidance for placement scenarios, as well as adding reference to PCR.</p>
(now 2.5)	<p>Added paragraph: “2.5. The Procedural Note: Financial Value Calculations and Authorisation Paths should be followed when determining which threshold applies in particular circumstances.”</p>	<p>Added a paragraph to refer to new “Procedural Note: Financial Value Calculation and Authorisation Paths” which provides additional guidance in order to reduce ambiguity when determining contract value and resulting authorisation paths</p>
Table 1	<p>Table 1 headings changed from: “Over £25k to £250k or relevant OJEU Threshold”</p> <p>To: “Over £25k to £250k (Works only) or to relevant OJEU Threshold (Services, Supplies, Concessions or Light Touch Regime)”</p> <p>And from:</p>	<p>Clarified wording to make it clear that (in-line with the Rules prior to December 2019) the £250k limit for procuring via an Request for Quote (RFQ) only applies to Works contracts, and that for Supplies, Services, Concessions and Light Touch Regime, the limits for procuring via an RFQ are the respective OJEU thresholds.</p>

	<p>“Over £250k or relevant OJEU threshold”</p> <p>To: “Over £250k (Works) or over relevant OJEU threshold (Services, Supplies, Concessions or Light Touch Regime)”</p>	
Table 1	<p>Table 1: Stipulation in £5k-£25k bracket changed from: “Seeking a minimum of three Quotations where possible with one of the three quotes from local / SME Suppliers”</p> <p>To: “Seek as a minimum one Quotation (preference for three) via email from appropriate suppliers. This must include local / SME supplier wherever possible”</p>	<p>Wording changed to make it clearer that, below £25k, officers can rely on one written quote where necessary.</p>
Table 1	<p>Within Table 1, added “(award only)” to end of “Contracts Finder (award only)”</p>	<p>Clarified wording to make it clear that for below OJEU threshold procurements, Contracts Finder only needs to be used for Award notices, not for advertising opportunities.</p>
3.27	<p>Paragraph 3.27 changed from: 3.27. “Subject to 3.31, a Contract must be executed as a deed when one or more of the following situations exist:</p> <ul style="list-style-type: none"> i. The Contract relates to a construction project (whether a Contract for Works or a Contract for Services) where the overall value of the Works or Services is greater than £500,000; ii. The Contract Value is greater than £1,000,000 and there is a residual implication beyond the Contract term; iii. Where it is particularly complex or high risk; iv. Where it is a mortgage or charge; v. Where it is for the acquisition or disposal of an interest in land; vi. Where it is a release or variation to a deed; vii. Where it is an appointment of a trustee, and/or; 	<p>Execution as a deed provides an increased 12 year limitation period on claims against a supplier (rather than 6 years).</p> <p>Removed paragraph ii relating to contracts worth over £1,000,000 needing to be executed as a deed if “there is a residual implication”. In practice execution as a deed is only necessary in non-construction contracts where the contract is “particularly complex or high risk” (already covered in part iii).</p> <p>A paragraph has been added to stipulate that Works contracts worth under £500k must also be executed as a deed <u>if there is a risk of latent defects</u>. This is to provide additional protection for the Council in these scenarios.</p> <p>Removed paragraph vi that stipulated that execution as a deed must be used</p>

	<p>viii. Where it is a power of attorney.”</p> <p>Changed to: 3.27. “Subject to 3.28, a Contract must be executed as a deed when one or more of the following situations exist:</p> <ul style="list-style-type: none"> i. The Contract relates to a construction project (whether a Contract for Works or a Contract for Services) where the overall value of the Works or Services is greater than £500,000; ii. Contracts for Works below the value of £500,000 where there is a risk of latent defects; iii. Where it is particularly complex or high risk; iv. Where it is a mortgage or charge; v. Where it is for the acquisition or disposal of an interest in land; vi. Where it is an appointment of a trustee, and/or; vii. Where it is a power of attorney. <p>Additional guidance on the use of deeds can be found in the Procedural Note: Execution as a Deed</p>	<p>“Where it is a release or variation to a deed”. This is because from a legal point of view this is not true, and this makes varying contracts that were executed as a deed unnecessarily difficult.</p> <p>Added a reference to a new “Procedural Note: Execution as a Deed” which provides additional guidance in order to reduce ambiguity when determining contract value and resulting authorisation paths</p>
3.30	<p>3.30. changed from: “Where payment in advance is required then formal written advice of the S151 Officer is also required.”</p> <p>To: “Where payment in advance is required then formal written approval of the S151 Officer is also required.”</p>	<p>Wording changed to mean that the s151 officer’s “approval” is needed to allow payments in advance, not simply the s151’s “advice”. The word “advice” could be read to imply that the s151’s view could be ignored, whereas “approval” makes the responsibility clearer.</p>
(now 3.41)	<p>New paragraph added: “3.41. The use of a Framework Agreement or DPS set up by a third party must be approved by Strategic Procurement and Supplier Relations service, who will seek advice from Legal where necessary. This is to ensure that the framework is both the most appropriate route and that it is open for the council to use.”</p>	<p>Added paragraph to make it explicit that 3rd party procurement frameworks can be used. This was the case previously, but it had not been spelled out anywhere.</p>

Schedule 1	<p>Schedule 1 definition of Concession changed from: “Means Concession as defined under the Concession Regulations 2016”</p> <p>To: “Means any contract under which the Council grants rights, land or property to another organisation”</p>	<p>Broadened the definition of Concession because the definition of a concession under the Concession Contracts Regulations 2016 does not cover all of the concession agreements that the council enters into. Wording therefore changed to make it clear that these are covered too.</p>
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Other Options Considered

Not applicable

Risk Assessment

None necessary for this report

Public Sector Equality Duties

None necessary for this report

Legal and Resource Implications

Legal

None arising from this report

Financial

None arising from this report.

Land

Not applicable

Personnel

Not Applicable

Appendices:

Appendix 1: Bristol City Council Procurement Rules July 2020.

This is the revised procurement rules document, incorporating all changes documented above.

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

Background Papers: