

<b>Committees:</b>	<b>Dates:</b>
Finance Committee Court of Common Council	22 September 15 15 October 15
<b>Subject:</b> City of London Procurement Code 2015	<b>Public</b>
<b>Report of:</b> The Chamberlain	<b>For Decision</b>

### **Summary**

The report summarises the new City of London Procurement Code 2015, with key updates reflecting new legislation introduced by the Government in February 15 and recommended operational changes to drive future procurement efficiency and savings.

#### **Recommendation:**

Members are asked to approve the City of London Procurement Code 2015 Part One, to be effective from 1<sup>st</sup> November 2015.

### **Main Report**

#### **Background**

1. The Procurement Steering Group (PSG) agreed that in line with newly introduced UK procurement legislation and on-going operational efficiencies that City Procurement should develop refreshed City of London procurement regulations. The City of London Procurement Code 2015 is the proposed new version. The name change comes at the request of the Comptroller to differentiate our regulations from the UK Public Contracts Regulations 2015 and avoid confusion.
2. The Procurement Code has been developed in consultation with the Comptrollers, Chief Officers, PSG members, Procurement Category Boards members and Heads of Finance.
3. A paper will be presented to Project Sub Committee and Finance Committee in October/November reflecting on the UK and Local Government interpretation of the EU Procurement Directives in comparison to other member states.

#### **City of London Procurement Code 2015**

4. The City of London Procurement Code 2015's format has been substantially revised from the current City of London Procurement Regulations 2014. The Code will be published in two Parts.
  - **Part One** – Procurement Rules, these are the over-arching rules that must be followed by any City of London officer when purchasing goods, works or services or entering into or extending a contract with a 3<sup>rd</sup> party supplier

to the City. The full City of London Procurement Code 2015 Part One can be found at Appendix 1.

- **Part Two** – An internal supporting guide to the Procurement Code, this part will give more detailed advice, process and information on each of the rules to support those officers who are not familiar with the rules or infrequent purchasers of 3<sup>rd</sup> party supplier goods, works or services. The full City of London Procurement Code 2015 Part Two is being finalised to support the launch of the Part One Code as at 1<sup>st</sup> November.

5. A summary table of the rationale for each of the rules in Part One below illustrates which changes are due to UK Law and which are local arrangements recommended by City of London's interpretation of the UK and EU regulations. The table reflects the fact that the public procurement process is highly regulated, more so with the advent of the newly introduced Public Contracts Regulations 2015 and the Small Business Employment and Enterprise Act 2015. There are now clear government sanctions and legal remedies available for suppliers where contracting authorities fail to apply the regulations correctly. Those rules which specifically address legislative requirements are marked with a Yes. It is hoped that the table will prove useful in referencing the main changes within the Procurement Code 2015.

<b>Rule</b>	<b>Rationale</b>	<b>Legislation</b>
<b>Section One – Introduction</b>	Brief Summary of the purpose & format of the Code	No
<b>1 External Regulations</b>	Makes clear that there are a number of UK public regulations that govern procurement and thereby the City is subject to statute for all City Fund spend, with a consistent approach taken for City Cash activity.	Yes
<b>2 Public Contracts Regulations 2015</b>	New rule with brief summary of the new changes to UK public procurement arising from PCR 2015 and that City Procurement must undertake all procurements above the OJEU thresholds including non-local authority procurement unless the Comptroller advises otherwise in writing	Yes
<b>3 Governance</b>	Brief summary of the governance arrangements for City Procurement	No
<b>4 Monitoring</b>	Makes clear the arrangements for monitoring procurement & that City Procurement is responsible	No
<b>5 Best Value</b>	Part of a section of new rules setting out the key public procurement principles set out in LG Act 1999, EU Treaties, PCR 2015, Bribery Act 2010 – failure to apply these principles could open the City to legal challenge	Yes
<b>6 Codes of Conduct</b>	See 5 above & aligns Rules to the City's Codes of Conduct	Yes

<b>Rule</b>	<b>Rationale</b>	<b>Legislation</b>
<b>7 Conflicts of Interest</b>	See 5 above & note that PCR 2015 requires authorities to have procedures to address conflicts	Yes
<b>8 Transparency</b>	See 5 above and note that the rules sets out the City's obligations regarding the LG Transparency Code and the exemptions for private funds	Yes
<b>9 Collaboration</b>	See 5 above and makes clear that collaboration is a key requirement of the City's new Procurement Code	Yes
<b>10 Equal Treatment</b>	See 5 above – a key feature of PCR 2015 reinforces the need to be fair to all bidders	Yes
<b>11 Proportionality</b>	See 5 above a key feature of public procurement rules & processes should be proportionate to risks and not unduly add costs to the public or bidders	Yes
<b>12 Annual Sourcing Plan</b>	Updated rule confirming procedures for planning major procurements	No
<b>13 Section 20 Consultation</b>	New rule to ensure compliance with Section 20 of the Landlord & Tenant Act 1985 as amended by the Common hold & Leasehold Reform Act 2002.	Yes
<b>14 Estimating Contract Values</b>	New rule for calculating contract value for the purposes of the thresholds in the Code makes clear that deliberate disaggregation to avoid the thresholds is non-compliant: this is a key part of PCR 2015	Yes
<b>15 Procurement Thresholds</b>	Updated rules setting out thresholds for inviting and advertising tenders. Main change is the new minimum threshold for officer's discretion of £10k agreed by PSG and Chief Officers Group in June. Also supplies, services & works merged into one table for easier use and consultancy now subject to services thresholds (consultancy has always been classified as a services for the purposes of the PCR 2015)	Yes – below and above OJEU threshold procurement subject to legislation
<b>16 Contracts Lettings Thresholds</b>	Updates contracts thresholds rule removing the per annum provision to total contract value to align with rules 14 and 15 bringing more clarity & consistency but it will result in more contracts being subject to committee approval	No
<b>17 Corporate Contracts</b>	New rule setting out the benefits of corporate contracts, stating that they must be used & the information is commercially sensitive and must not be disclosed to external suppliers	No

<b>Rule</b>	<b>Rationale</b>	<b>Legislation</b>
<b>18 Concession Contracts</b>	New rule requiring officers to consult City Procurement when considering concession contracts. This is a complex area where the supplier accepts all the commercial risk and delivers the service in return for direct income without cost to the City – will soon be subject to an EU Concessions Directive for contracts above £5m. Guidance to be provided in Part 2	Partially but only for contracts over £5m
<b>19 Creating a City of London Framework Agreement</b>	Confirms that City Procurement must manage the procurement process when the City invites tenders for the award of its own frameworks in accordance with PCR 2015	Yes
<b>20 Using Framework Agreements created by external authorities</b>	Confirms that City Procurement must be consulted before external frameworks are used. Incorrect use of framework agreements could result in legal challenges especially for high value contracts so these checks are important to mitigate risk. The levels of checks are proportionate to the value and risk of the proposed contract.	Yes
<b>21 Access Agreements</b>	Confirms that City Procurement must be consulted before access agreements (required to use some external frameworks) are signed to check the City's liabilities	No
<b>22 Police Act 1996 Regulations 2011</b>	New Rule to ensure that where the CoLP are required to use contracts mandated by the Regulations they are not required to obtain a waiver from the City's Code	Yes
<b>23 Appointment of External Procurement and Legal Consultants</b>	Rule designed to ensure that City Procurement is consulted before external procurement or legal advisors are appointed. Several reasons: avoidance of duplication & increased costs and if such appointments are necessary ensuring appropriate terms are in place for IP, disclosure, conflicts of interest etc.	No
<b>24 Communication with Suppliers and Consultants during procurement</b>	New rule designed to ensure that City Procurement manage communication's during tenders and mitigate the risks associated with miscommunications etc.	No
<b>25 Waivers</b>	Updated rule but with a change that the minimum threshold for procurement waivers has been increased from £2k to £10k in line with the tender thresholds in rule 14 agreed by PSG and Chief Officers Group in June	No

<b>Rule</b>	<b>Rationale</b>	<b>Legislation</b>
<b>26 Procurement Exemptions</b>	New rule confirming those areas not subject to competitive tendering. The exemptions will be set out in a table Part 2 of the Code and will generally be those things such as contracts of employment, grants, ALMO's and reciprocal public authority service provision that are not subject to PCR 2015	Yes
<b>27 Contract Management</b>	New rule clarifying who is responsible for contract management	No
<b>28 Contracts Register</b>	New rule confirming that City Procurement are responsible for the City's Contract Register and that officers are responsible for keeping it up to date	No
<b>29 Document Retention</b>	New rule aligning the Procurement Rules to Financial Regulations to ensure that original signed copies of contracts are stored by Comptrollers. This ensures that the City is compliant from an audit and legal perspective	Yes
<b>30 Contract Extensions (Non Projects)</b>	New rule confirming that contract managers must consult City Procurement before extending contracts. A new review process with thresholds is introduced to explore commercial opportunities, highlight any risks of non-compliance and to ensure that records are kept & the contract register is updated if the option to extend is taken	No
<b>31 Increases in Contract Value</b>	Update of existing Regulation setting out approvals process and thresholds for increasing contract values where the City has approved a specific amount of funding e.g. projects	No
<b>32 Contract Variations</b>	Carry through of existing Regulation confirming that changes to or suspensions of contract terms must be approved by the appropriate committee	No
<b>33 Contracts Procured by Third Parties Assigned to the City</b>	Carry through of existing Regulation confirming procedures for the assignment of third party contracts to the City e.g. when the City acquires buildings with legacy supplies or services contracts	No
<b>34 Assignment (Transfer) of Contracts</b>	New rule confirming procedures for the transfer of existing contracts e.g. when an existing supplier is purchased	No
<b>35 Contract Signatures</b>	New rule aligning the Procurement Rules to the City's scheme of delegations – provides much needed clarity to officers	No

<b>Rule</b>	<b>Rationale</b>	<b>Legislation</b>
<b>36 Financial Standing &amp; Risk Management</b>	Update of existing rule- updates current threshold from £150k to EU threshold £172k and also in Part 2 will be guidance on new processes for evaluating bidders finances in accordance with new statutory rules applying to below and above OJEU threshold procurements in PCR 2015	Ye
<b>37 Contract Terms and Conditions</b>	New rule confirming that Comptrollers is responsible for Contract terms and conditions	No
<b>38 Standard Procurement Documents</b>	New rule confirming that City Procurement is responsible for procurement documentation including standard templates important to ensure consistency and efficiency and that City's processes are legally compliant e.g. ITT packs, PQQ's, Alcatel letters, Evaluation templates, Price Schedules etc.	Yes
<b>39 Disposal of Goods</b>	New rule confirming procedures and responsibility for the disposal of goods	No
<b>40 Complaints about Police Contractors</b>	New rule ensuring that all Police and corporate contracts used by the CoLP include an appropriate clause to ensure that bidders comply with the Independent Police Complaints Commission (Complaints and Misconduct) (Contractors) Regulations 2015.	Yes
<b>41 References and the Marketing of City Suppliers</b>	New rule confirming that City Procurement coordinate requests for references and marketing of City suppliers. This mitigates the potential problem of officers endorsing suppliers who are in dispute or failing or of compromising procurement exercises by showing favour to an incumbent. Also aligns to new HR policy on the use of social media.	No
<b>42 Purchase Order Exemptions</b>	New rule confirming exemptions from the City's No PO No Pay Policy approved by PSG – list and codes set out in Part 2 e.g. grant payments, utility bills, counsels advice etc.	No
<b>43 Amendments to Purchase Orders</b>	New rule confirming that officers must liaise with City Procurement to amend purchase orders in accordance with the guidance in Part 2	No
<b>44 Prompt Payment Code</b>	New rule confirming that suppliers must be paid within 30 days and 10 days for SME in accordance with City's policy and the Prompt Payment Code. Payment of SMEs now monitored by government re the Small Business Enterprise and Employment Act 2015	Yes

<b>Rule</b>	<b>Rationale</b>	<b>Legislation</b>
<b>45 P Cards</b>	New rule confirming that City P Cards must be used in accordance with the City's policy currently being developed by City Procurement subject to Finance Committee approval in September	No
<b>46 Supplier Creation (Oracle)</b>	New rule confirming that City Procurement is responsible for registering suppliers on Oracle: this is an important step to ensuring efficiency and control of the City's supplier base	No
<b>47 Responsible Procurement Policy</b>	Updated rule confirming that procurement must be conducted in accordance with the City's RP policy - a key feature is that a minimum 10% of the qualitative evaluation score for tenders over £250k should be for RP and that this should not be less than 5% of the overall score including price	No
<b>48 Local, SME and Social Enterprise Directive</b>	Updated rule requiring officers to gain at least one quote from either a local, SME or social enterprise for below OJEU thresholds with the exception of procurements under £10k which are at officers discretion in accordance with the new thresholds in rule 14	No
<b>49 Social Value Panel</b>	Updated rule confirming that the Social Value Panel must be consulted for all service contracts above OJEU thresholds. The panel generates a lot of added value to procurement planning and ensures that the City complies with the Public Services (Social Value) Act 2012	Yes
<b>50 Living Wage Policy</b>	Updated rule confirming that the City's new Living Wage Procurement Policy approved by Finance Committee in May must be complied with - details of the process to be followed and administered by City Procurement process guidance to be set out in Part 2	No
<b>51 Noise Control</b>	New rule designed to ensure that all City contracts comply with the City's noise control policies e.g. for deliveries in residential areas	No
<b>52 Air Pollution</b>	New rule designed to officers take account of the City's Air Quality Strategy when planning or undertaking procurement – guidance on ways this can be done will be provided in Part Two	No
<b>53 Climate Change Mitigation</b>	New rule designed to ensure that officers take account of the City's Climate Change Mitigation Strategy when planning or undertaking procurement – guidance on ways this can be done will be provided in Part Two	No

## **Conclusion**

6. City Procurement recommend approval and adoption of the new City of London Procurement Code 2015 and for it to be effective for use from 1<sup>st</sup> November 15 to ensure the City complies with EU Procurement Directives, the newly introduced UK Public Contract Regulations 2015 and Small Business Employment and Enterprise Act 2015 as well as other laws that govern public procurement and policing activity. The new Code also introduces some new operational changes to assist with efficiency and a reduction of bureaucracy and waivers.

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**Appendix 1 - City of London Procurement Code 2015 Part One "Rules"**