

<b>Committee(s)</b>	<b>Dated:</b>
Procurement Sub Committee	6 November 2020
Subject: Procurement Regulations and Brexit	Public
Which outcomes in the City Corporation's Corporate Plan does this proposal aim to impact directly?	6,7
Does this proposal require extra revenue and/or capital spending?	No
Report of: Peter Kane, Chamberlain	For Information
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### Summary

The United Kingdom transposed the EU Procurement Directives into UK law as Public Contract Regulations 2015, Concession Contracts Regulations 2016 and the Utilities Contracts Regulations 2016. The European Withdrawal Act 2020 did not make any fundamental changes to those regulations. In the event of a No Deal Brexit or a trade deal that does not continue the alignment of UK/EU procurement, the UK has created 'Find a Tender' as a central place for national notices to comply with the international agreements such as the Government Procurement Agreement (GPA).

Central government has promised changes to the procurement regulations and City Procurement have fed into the initial consultation. No details about the timings or content of those changes have been disclosed by central government.

This report seeks to assure Members that City Procurement is keeping a watching brief on procurement changes post Brexit transition period and that at the time of writing this report no substantial changes to are expected in the short term.

### Recommendation(s)

- Members are asked to note the report.

### Main Report

#### Background

1. The United Kingdom transposed the EU Procurement Directives into UK law as Public Contract Regulations 2015 (PCR), Concession Contracts Regulations 2016 and the Utilities Contracts Regulations 2016.
2. As of 31 January 2020, the UK left the European Union and short-term transition period was entered. The European Withdrawal Act 2020 did not make any fundamental changes to procurement regulations.

#### Current Position – Minor Change

3. Information from Crown Commercial Service (CCS), the government's centralised procurement service and lead on procurement policy, has been sparse. In May 2019, CCS issued Procurement Policy Note 02/19 'Preparing

for the UK leaving the EU', which outlined the creation of 'Find a Tender'. Find a Tender will be the UK's e-notice platform replacing Tenders Electronic Daily (OJEU).

4. In accordance with PCR, all tenders over the EU threshold must be published in the OJEU. In the event of a No Deal Brexit or a trade agreement which does not align the UK with EU procurement regulations, all procurements over the current EU threshold will need to be published on Find a Tender instead. This new platform was created to comply with international agreements such as the Government Procurement Agreement (GPA) as relevant procurements in the UK must be advertised through a single point of access available free of charge.
5. The City Corporation uses an e-tendering portal called capitalEsourcing, which is part of the Jaggaer brand of companies. Jaggaer have already developed templates that can be used to published directly from their platforms to Find a Tender.
6. There will be no requirement to publish on both UK and EU platforms. Find a Tender has a field to include the EU notice reference numbers so there is a clear audit trail.
7. Regardless of any changes that may apply due to a possible trade agreement, the Withdrawal Act confirmed that tenders started before the transition period ends will need to comply with the OJEU regulations up until contract award. Additionally, call-off contracts from frameworks which were established under OJEU/PCR regulations will need to comply. Frameworks can be established for a maximum of four years but contracts call-off them can extend passed the framework end date. This is to say that compliance with EU law for those contracts will continue well passed the end of the transition period.

## **Future Changes**

8. There has been no mention of a change to the PCR thresholds which are currently £189,330 goods and services, £4.7m works, and 663,540 for social and other specific services (Light Touch Regime).
9. The prime minister stated back in 2019 he would "fundamentally change" public procurement rules to "back British business" as well as considering changes to rules on remedies, state aid, transparency, procedures and evaluation criteria.
10. Since then there has been no information on how the rules will change. Central Government have, over the last year, been consulting with other departments, local authorities, and suppliers for feedback. A green paper is expected over the coming months.
11. City Procurement have fed into this process through London Heads of Procurement and the Remembrancer. Some areas suggested for review include:
  - Ability to negotiate post award

- Services Threshold being raised as the cost to run a tender at times out weights the benefits currently.
- Length of software maintenance contracts to be extended to up to 10 years to reflect a realistic lifetime for critical software packages
- The introduction of a national contract register used by all the public sector.
- A review of the threshold for framework call-offs to prevent frameworks being seen as a default route to avoid competition.
- Remove the maximum length for Framework Agreements (currently four years) and provide flexibility to consider term based on what is being procured
- Advertising timelines be more flexible and commensurate to the size and complexity of the procurement
- More freedom to use previous poor performance and non-compliance with ethical standards as exclusions from bidding
- Flexibility to amend the standard selection questions (currently requirement to report deviations to CCS)
- Local sourcing initiatives and spend with SMEs be more permissible as a selection criteria
- Contract variations – more flexibility to have additional awards to a current contract if the scope is similar.

## **Conclusion**

12. The UK comprehensively transposed the EU Procurement Directive into UK law so operationally the UK's exit from the transition period with the European Union (deal or no deal) should not impact the operations of City Procurement.
13. The minor change announced was where contract opportunity and award notices would be published. The e-tendering platform used by City Procurement has direct access to publish those notices in the new Find a Tender.
14. It is expected that there will be changes to the procurement regulations over the coming years and City Procurement is supporting central government with that consultation.

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