

<b>Committee(s):</b> Operational Property & Projects Sub Committee Finance Committee Court of Common Council	<b>Dated:</b>  26/09/2022 15/11/2022 8/12/2022
<b>Subject:</b> Revisions to: 1) Procurement Code 2) Competitive Procurement Exemptions Policy	<b>Public</b>
<b>Which outcomes in the City Corporation's Corporate Plan does this proposal aim to impact directly?</b>	4, 5, 6,11
<b>Does this proposal require extra revenue and/or capital spending?</b>	<b>N</b>
<b>If so, how much?</b>	<b>£</b>
<b>What is the source of Funding?</b>	
<b>Has this Funding Source been agreed with the Chamberlain's Department?</b>	<b>N/A</b>
<b>Report of:</b> Emma Moore, Chief Operating Officer	<b>For Decision</b>
<b>Report author:</b> Genine Whitehorne, Commercial Director	

### Summary

The **Procurement Code** is the policy which underpins all procurement and purchasing activity across the City Corporation including our institutional departments. Procurement policies are reviewed annually to ensure they are up to date and still operationally viable. The revisions support the efficiency principles under the Target Operating Model (TOM) specifically to align activity and resources to our corporate outcomes; increase the pace of decision making; and achieve cost savings to resolve budget deficit.

The **Competitive Procurement Exemption Policy** identifies items or categories of expenditure where it has been agreed that they are exempt from requiring officers to undertake a competitive procurement process in the form of the seeking of quotations or a formal invitation to tender. The purpose of the revisions to the Competitive Procurement Exemptions Policy is to ensure operational efficiency and compliance with proposed changes to the Procurement Code.

### Recommendations

Members are asked to:

- Approve the revisions to the City Corporation's Procurement Code effective from **3 January 2023** [for decision by Operational Property and Projects Sub Committee, Finance Committee and Court of Common Council].
- Approve the revisions to the City Corporation's Competitive Procurement Exemptions Policy to be effective from **26 September 2022** [for decision by Operational Property and Projects Sub Committee only – approval by Finance Committee and Court of Common Council is **not** required for this internal policy].

## **Main Report**

### **Background**

1. The Procurement Code is the policy which underpins all procurement and purchasing activity across the City Corporation and the institutional departments.
2. Part 1 of the Procurement Code is the framework of overarching rules to be followed by any officer when purchasing goods, services or works and has been developed in line with UK Public Contracts Regulations 2015. Part 2 of the Procurement Code is the guidance document which provides context, processes, and or further information relevant to compliance with the rules outlined in Part 1.
3. The Competitive Procurement Exemption Policy identifies items or categories of expenditure where it has been agreed that they are exempt from requiring officers to undertake a competitive procurement process in the form of seeking quotations or a formal invitation to tender.
4. The decision to apply the Competitive Procurement Exemption Policy to any item or category of expenditure at a departmental level is not mandatory. Where an exemption has been agreed, it is the responsibility of each department to decide whether or not to use an exemption or whether to engage with the market. For example, should a department wish to obtain three quotes for an item which is on the exemption list they are able to do so.
5. Procurement policies are reviewed regularly to ensure they are up-to-date and still operationally viable. Following a consultation process, the proposed revisions support the efficiency principles under the TOM specifically to align activity and resources to our corporate outcomes; increase the pace of decision making; achieve cost savings to resolve budget deficit.
6. A Commercial Academy (a suite of bite sized e-learning modules for departmental officers) is being developed alongside updates to guidance documentation and templates to provide assurance that departmental officers are equipped to undertake their own quotation exercises up to £100,000 compliantly and

responsibly. Spend data will also be used to monitor use and to identify further commercial solutions.

### **Current Position (Revisions to the Procurement Code)**

7. The majority of the rules contained in the Code have not changed. Generally, some of the terminology has been updated because of changes to City Corporation governance arrangements as a result of the TOM and the UK's exit from the European Union and resulting changes to UK Procurement practices.
8. A comprehensive list of the proposed changes can be found in Appendix 1.
9. Highlighted in this section of the paper are rules with the major revisions impacting governance or change of process:

<b>Rule</b>	<b>Changes</b>
Procurement Thresholds and Procedures – Rule 15	<ul style="list-style-type: none"> <li>Operational purchasing threshold raised from up to £50,000 to up to £100,000 which will devolve responsibility for purchases under £100,000 to departmental officers.</li> </ul>
Contracts Letting Thresholds – Rule 16	<ul style="list-style-type: none"> <li>The contracts lettings table has been amended to align to the Procurement Thresholds in rule 15. The first row has been amended from £50,000 and below to £100,000 and below. Second row (£50k to £100k threshold) has been removed as it's no longer required.</li> </ul>
Waivers – Rule 25	<ul style="list-style-type: none"> <li>Due to the increase in the Procurement Threshold, the waiver process under £50,000 has been removed with the exception of an “Order outside of a Corporate Contract”.</li> <li>A new rule added that, where applicable, relevant Responsible Procurement commitments should be considered and included in contracts awarded as part of the waiver process.</li> </ul>
Contract Extensions - Rule 30	<ul style="list-style-type: none"> <li>The total contract value threshold has been raised from £50,000 or more to £100,000 or more for officers to undertake a formal review for all contracts extensions where terms allow in conjunction with the Commercial Service. This is in alignment with the changes to the Procurement Thresholds in rule 15.</li> <li>A rule has been added to evaluate Responsible Procurement commitments as part of the contract review.</li> <li>For total contract values at £4m or above, the approval process for using contract extension provisions has been updated so that approval is required from the relevant</li> </ul>

	<p>Category Board and Sub-Committee. However, approval from Finance Committee and Court of Common Council will no longer be required where Court of Common Council has approved the contract extension option as part of the original contract award with a recommendation to authorise the Operational Property and Projects Sub Committee to approve the use of contract extension provisions. This will allow for more efficient decision making whilst still ensuring appropriate Member scrutiny by the Operational Property &amp; Projects Sub Committee.</p>
Contract Termination – Rule 31	<ul style="list-style-type: none"> <li>• The threshold for consulting the Commercial Service and C&amp;CS increased from over £50,000 to over £100,000 to align with the changes to the Procurement Thresholds in rule 15.</li> </ul>
E-invoicing Policy – Rule 45	<ul style="list-style-type: none"> <li>• A new rule confirming that the Corporation’s E-invoicing policy is the preferred method of receiving invoices.</li> </ul>
Responsible Procurement updates – Rules 46-57	<ul style="list-style-type: none"> <li>• Rules amended to ensure departments consider the commitments of the Responsible Procurement Policy when awarding contracts from external frameworks, waivers, extensions, novations and exemptions.</li> <li>• For contracts above £100,000, the minimum weighting for Responsible Procurement has been raised from 10% of the technical envelope to 15% of the overall score including call off contracts from framework agreements. This will apply from 1 September 2022.</li> <li>• Equity and Diversity rules updated so that sectors deemed at high risk for equalities issues must include standard specification wording and should consider evaluating suppliers on active steps taken to embed equity, diversity and inclusion within their business and industry.</li> <li>• Removed requirement to consult with the Social Value Panel which is no longer in operation and the learning from the Panel has been incorporated into the Responsible Procurement bank of questions.</li> <li>• Living Wage rules updated to require officers to ensure relevant suppliers comply with the Living Wage policy and annual uplifts in living wage rates in accordance with the City Corporation Living Wage Policy.</li> <li>• Modern Slavery and Human Rights rules updated to ensure that relevant suppliers abide by not only the Modern Slavery Act but also updates to modern slavery legislation.</li> </ul>

## Current Position (Revisions to Competitive Procurement Exemptions Policy)

10. A new exemption has been introduced for urgent interim accommodation to allow the City Corporation to discharge its statutory homelessness duties under Section 188 Housing Act 1996 and where appropriate other relevant legislation, or discretionary emergency accommodation for vulnerable rough sleepers for a maximum period of 6 months which has been approved by Comptroller and City Solicitors department.
11. Minor amendments have also been proposed to achieve greater clarity on the use of the exemptions. A full list of all the proposed changes can be found in **Appendix 3**. Changes to this internal policy are subject to the approval of the Operation Property & Projects Sub-Committee.

## Options

12. Option 1 (Recommended Option): **Approve the revisions to the Policy documents.** In response to the TOM, a need for efficiency in purchasing was identified. Departmental Officers will be tasked to carry out all purchasing up to £100,000. The terminology will be brought up to date to reflect the UK's exit from the EU and new governance arrangements. The updates to the Responsible Procurement Rules will ensure departments consider the commitments of the Responsible Procurement Policy when awarding contracts as a result of using external frameworks, waivers and exemptions. The proposed changes will ensure operational efficiency and support internal compliance.
13. Option 2: **No change to the Policy documents.** This option is not recommended as it does not support the TOM principles, specifically to "increase the pace of decision making". The terminology in the current Procurement Code does not reflect the new governance arrangements or procurement practices as a result of the UK's exit from the EU. In addition, some of the current Responsible Procurement rules are out of date including the minimum Responsible Procurement weighting.
14. The new Procurement Bill is due to be enacted into UK law in 2023 and will replace the current Public Contracts Regulations 2015. As a result, it is anticipated that further changes may be required and will be considered as part of the next annual review of the Procurement Code.

## Key Data

15. In terms of raising the Operational Purchasing threshold from up to £50,000 to up to £100,000 at which departments can undertake their own quotation process, a review has been undertaken of eight other London Boroughs using a comparison produced by the London Procurement Network. Out of the eight London Boroughs, four London Boroughs use department led procurement for contracts under £100,000; one borough undertakes departmental led procurements below £160,000 and three Boroughs were department led below £50,000.

## **Corporate & Strategic Implications**

**Strategic implications** – The Revisions to both the Procurement Code and the Competitive Procurement Exemptions Policy are aligned with the objectives of the Corporate Plan and the Departmental Business Plan. The use of exemptions in the Competitive Procurement Exemptions Policy does not constitute an exemption from the Procurement Code in its entirety. That is, where an exemption from competitive procurement applies, all parts of the Procurement Code that do not apply to competitive procurement still apply and must be adhered to including considerations around sustainable, ethical and responsible procurement.

**Financial implications** - Option 1 reflects the need for efficiency in purchasing which was identified in the TOM process. Departmental Officers will be tasked to carry out all purchasing up to £100,000. The financial risks to this option will be mitigated through enhanced training including a quote process checklist.

**Resource implications** – Up to £100,000 departmental officers will be able to seek quotations directly from suppliers enabling a more efficient self-service. The Commercial Academy being developed alongside updates to guidance documentation and templates will provide assurance that departmental officers are equipped to undertake their own quotation exercises up to £100,000 compliantly.

**Legal implications** – The changes are in line with the requirements of the Public Contracts Regulations 2015 and the new Procurement Bill due to be enacted into UK law in early 2023. Further changes will be reflected in future reports as required.

**Risk implications** – The raise in the operational purchasing threshold from up to £50,000 to up to £100,000 will devolve responsibility for purchases under £100,000 to departmental officers. However enhanced mandatory training on the use of the Procurement Authorisation Report for contracts up to £100,000 is being developed to enhance officer efficiency and compliance with the Procurement Code. In addition, a quote process checklist will be available for officers for operational purchasing below £100,000 to guide them in completing a competition in line with our procurement requirements.

**Equalities implications** – The revisions to the Procurement Code include an update to our Equity and Diversity rules. Officers are still required to adhere to the Public Sector Equality Duty 2010 as part of procurement activities and consider how social inclusion and under-representation of people with protected characteristics will be addressed as part of procurement and contract management. This requirement has been extended to contractors and their sub-contractors. In addition, a rule has been added to require officers to ensure that where sectors are deemed high risk for equalities issues, standard specification wording must be used and to evaluate suppliers on active steps taken to embed equality, diversity and inclusion within their business.

**Climate implications** – The revisions to **the Procurement Code** include rules relating to climate action. All procurements must consider the targets of the City Corporation's Climate Action Strategy in particular through the purchased goods and services; buildings; transport and climate resilience. When a procurement will result in the use of energy, all officers must seek energy efficient or low carbon solutions.

**Security implications** – Use of the Procurement Authorisation Report by departmental officers for security related contracts up to £100,000 will be approved by the departmental Chief Officer or an Officer with Delegated Authority. All security

related contracts are considered by the Commercial Lead and the Police & Emergency Planning Category Board.

## **Conclusion**

16. The Commercial Service recommend the approval of the changes to the Procurement Code outlined in this report and in Appendix 1 effective from **3 January 2023** to ensure that the Code stays relevant and in alignment with the principles of the TOM.

The Commercial Service also recommends the approval of the changes to the Competitive Procurement Exemptions Policy to support the operational needs of the City Corporation outlined in Appendix 3 to be effective from **26 September 2022**.

## **Appendices**

Appendix 1 – All changes to the Procurement Code

Appendix 2 – Draft Revised Procurement Code Part 1 – January 2023

Appendix 3 – All changes to the Competitive Procurement Exemptions Policy

Appendix 4 – Draft Revised Competitive Procurement Exemptions Policy

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