

City of London Corporation Committee Report

Committee(s): Projects & Procurement Sub-committee – For Decision Finance Committee – For Decision Court of Common Council	Dated: 09/12/2024 10/12/2024 09/01/2025
Subject: Procurement Code review	Public report: For Decision
This proposal: <ul style="list-style-type: none"> provides business-enabling functions 	Procurement Risk Governance
Does this proposal require extra revenue and/or capital spending?	No
If so, how much?	n/a
What is the source of Funding?	n/a
Has this Funding Source been agreed with the Chamberlain’s Department?	n/a
Report of:	Chamberlain
Report author:	Sue Smith, Policy & Compliance Officer

Summary

This report introduces the upcoming procurement legislation and our plans to manage its impact on our policy on procurement, currently known as the Procurement Code.

It describes some of the challenges experienced by users in applying the current Code and the potential implications for governance and efficiency.

It sets out proposals for addressing both issues. The result of which will be a procurement policy presented in a substantially different, more usable, format. It will be supported by a different approach to the way we document our processes and associated guidance, to facilitate more robust governance and greater transparency.

The update of the Procurement Code will be undertaken in conjunction with the development and delivery of the procurement and contract management improvement plan which is the subject of another item on the agenda.

Recommendation(s)

Members are asked to recommend the below to the Court of Common Council:

1. Approve the development of a new Procurement Policy and supporting framework to replace the existing Procurement Code.
2. Authorise the Chamberlain in consultation with the Chairman and Deputy Chairman, to approve changes to the Procurement Code and supporting framework to align with the new Procurement Act 2023.
3. Approve the temporary increase of the threshold for the approval of procurement options and contract awards by the Court of Common Council to £20m until 31 July 2025 whilst the new Procurement Policy is developed.

Main Report

Background

1. The Procurement Code sets out how we expect our procurement activities to be conducted. It is a public document.
2. The last major review of the Procurement Code was in 2015 to reflect the introduction of the Public Contracts Regulations 2015. Minor revisions and updates have taken place on a six-monthly basis since then to ensure the Code remains in alignment with organisational structural changes and updates to other related policies (such as the Financial Regulations).
3. The latest version was republished in July 2023.

Current Position

4. The Procurement Code is presented in two parts. Part 1 was intended to set out the rules, with Part 2 being the guidance to support practitioners in applying them.
5. Both parts are large, wordy documents which users find difficult to navigate. This means they are reluctant to refer to them, and often they need help in interpreting them. There are examples where:-
 - a. The two parts are not consistent;
 - b. A rule does not apply to all parts of the organisation, or all spend types, but the extent of the exemption is not explicit;
 - c. The wording is not clear or concise and the precise meaning becomes difficult to determine and open to interpretation.
6. Feedback from stakeholders indicates that there are rules which, even with the best will, users have difficulty in complying with due to the issues identified above.. This means that there is a risk that the Corporation's procurement governance and system of internal control is not as robust or as efficient as intended. The new procurement regulations introduce an even greater level of transparency around our decision making and present an opportunity to overhaul the approach to the Procurement Code to further strengthen the organisation's governance framework.
7. The Procurement Code needs to be updated to reflect the upcoming implementation of the Procurement Act 2023 and Procurement Regulations 2024. Following the announcement of a short delay, these are due to go live in February

2025. Officers are therefore seeking authorisation to amend the existing Code to be compliant while the new Procurement Policy is being developed.

Options

8. Minor revisions to comply with the new Procurement Act (2023) - it would be possible to simply change references to the old regulations to the new Act however this would be a missed opportunity to improve the clarity of the Code. This would not support the Commercial Service's improvement approach, strengthen governance arrangements, nor provide an enhanced stakeholder experience through clearer and easier to understand thereby reducing the time spent discussing different interpretations.
9. Update to the existing Procurement Code - In addition to the above option, further minimal modifications could be made to those areas which are not comprehensive or are currently open to interpretation to support enhanced clarity. This option would not improve the perception of the document's ease of use overall and may not increase compliance as a result.
10. Adopt a new Procurement Policy supported by a refreshed governance framework (recommended) - this option would involve extracting the high-level elements of the existing Code to form the basis of a new Procurement Policy. Examples of the best practice to be retained would include current position on competition, transparency and responsible procurement. This policy would form the public document, replacing Part 1 of the current Procurement Code. The remaining content of Part 1, and the entirety of Part 2, would become either documented, standardised processes, or supporting guidance. These would predominantly be hosted on the intranet with consideration given to ensuring accessibility by those outside of the main IT network. Wherever possible and practical, forms and approvals would become electronic versions which will make compliance, and the monitoring and reporting of such, easier for all concerned.

Proposals

11. The overarching procurement policy document will cross refer to related public policies such as our Living Wage Policy and our Modern Slavery Statement, and to the need for compliance with relevant external regulation. This will present a transparent and holistic view to the public, and suppliers, with no references to documents they are unable to see.
12. The new policy will make clear to what extent the various City Corporation functions are covered or exempt from both internal and external regulation.
13. In common with most policies, the majority of content will be static to be reviewed on a periodic basis in line with any City Corporation policy on such things. Details such as financial thresholds, or procedural information, which may be subject to change, will be either included as appendices or by reference to standalone documents.
14. The process and procedural elements of both parts of the current Code will be produced individually for ease of access. This will enable us to standardise and document them making them clearer and more accessible to those who need to use them. This will provide clarity around how the processes support the Policy.

15. To achieve this, contributors from around the organisation will be invited to take part in a review which will address the detail of how procurement projects are managed at a detailed and operational level, and also the governance around approving the projects. Outputs will be aligned with Standing Orders, Delegation of Authority and other relevant policies. (A workshop has already taken place to review the common causes of non-compliant spend and possible solutions.)
16. In contrast with the proposed Policy; the processes, forms, templates and guidance will reflect, in detail, the new requirements of the incoming legislation. As such, they should be reviewed frequently during the first 6-12 months following implementation of the new legislation as we strengthen our understanding of it. Any proposed changes will be done in consultation with relevant stakeholders where necessary.
17. With the delivery of appropriate training, and improved accessibility of the resources, the overall outcome will be greater clarity, leading to increased compliance. All instances of non-compliance should be recorded, whether or not they need pre-approval, to enable us to identify trends and thus weaknesses in either the processes or the behaviours. This will enable corrective action.
18. It is proposed to temporarily increase the threshold for the approval of procurement options and contract awards by the Court of Common Council whilst the new policy is being developed. This would result in an immediate streamlining of the approval process whilst retaining strong Member governance and oversight through both the Projects and Procurement sub-Committee and the Finance Committee. The temporary threshold of £20m would bring the City Corporation into alignment with other Local Authorities. The temporary threshold increase would be in place until 31 July 2025.

Key Data

19. Requests for waivers and contract extensions are a frequent source of frustration for requestors, for assisting Commercial team members, and for Compliance. This is due partly to the lack of understanding about the correct process and also a lack of clarity in the current Code.
20. Table 1 below shows that 2024 has seen an increase in the number of waivers handled to date. There is some inconsistency in the logging, possibly the result of a change in policy in 2022. There are also some for which an update has never been provided. There is no written process which requires the decision to be reported back to the Policy & Compliance Officer.
21. It is difficult to quantify the resource expended however the Policy and Compliance Officer has reported processing over 200 emails relating directly to waiver requests in 3 months. It is estimated that on average it takes 2-3 working days to deal with each waiver request when the total input from relevant officers is calculated. The aim of the proposed changes is to develop the most streamlined and efficient approach through clear processes that are applied consistently across the organisation.

Table 1: Summary of waivers 2022-2024

Row Labels	Category	2024		2023		2022	
		No. waivers	Waiver value	No. waivers	Waiver value	No. waivers	Waiver value
Barbican Centre	Construction & Property Services	1	£151,046				
	Corporate Services					1	£80,000
	Facilities Services	1	£171,807				
Built Environment	Construction & Property Services			1	£123,679		
	Facilities Services			1	£0		
	Fleet	1	£23,914				
Chamberlain's	Corporate Services	1	£175,297				
	IT	1	£23,433				
City Surveyors	Construction & Property Services	5	£721,082			1	£565,710
Col School	Corporate Services					1	£290,077
Commercial Services	Corporate Services					1	£135,000
DCCS	Construction & Property Services	1	£162,000				
	Corporate Services	1	£459,300				
	DCCS	2	£465,825	3	£976,275,000	7	£2,063,208
	IT	1	£416,755				
Guildhall School	Corporate Services					1	£43,316
Town Clerks	Corporate Services	1	£208,970				
Grand Total		16	£2,979,428	5	£976,398,679	12	£3,177,311

Corporate & Strategic Implications

Strategic implications – Having a clear policy statement, and processes designed to support it, will enable us to fulfil the need for compliance with external regulation on procurement and transparency. Making use of electronic communication and automated record-keeping will enable us to do this efficiently.

Financial implications - None

Resource implications – Efficiency savings likely through increased clarity and improved access to supporting resources and guidance.

Legal implications - None

Risk implications – Reduced risk of non-compliant spend resulting from increased clarity.

Equalities implications – None

Climate implications - None

Security implications - None

Conclusion

22. The Procurement Code needs to be updated. Restricting the update to only the regulations will make it difficult for users to understand how to incorporate the new requirements into their activities. It also misses a prime opportunity to address current inconsistencies and other sources of confusion.
23. Restructuring the documents as described, separating policy from process, will make the transition easier for all concerned. Addressing the various areas of confusion, caused directly by a lack of clarity in the documents, will improve compliance and efficiency and ultimately improve the perception of the function.
24. Members are accordingly recommended to authorise the Chamberlain to make the necessary amendments to the Procurement Code and to approve a temporary increase in procurement approval thresholds while a new Procurement Policy is developed.

Appendices

- None

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