

<b>Committee(s):</b>	<b>Date(s):</b>
Finance	10 December 2013
<b>Subject:</b> Revisions to the City of London's Procurement Regulations December 2013	<b>Public</b>
<b>Report of:</b> Chamberlain	<b>For Decision</b>
<p><b>Summary</b></p> <p>Since the latest edition of the City's Procurement Regulations were approved by members in July 2012, there have been significant changes in the way in which the City organises its procurement, most notably the launch of the new City of London Procurement Service (CLPS) on 2<sup>nd</sup> April 2013.</p> <p>There have also been several important legislative and policy developments which have impacted on significant areas of the City's procurement. These include the City's policies on London Living Wage (LLW), Fraud Awareness and the Employee Code of Conduct, as well the implementation of the Public Services (Social Value) Act 2012.</p> <p>All of these developments require significant revisions to some of the existing Regulations and together with the introduction of some new ones. The Revisions and new Regulations are more than minor technical updates and therefore after consideration and endorsement by this Committee they will need to be approved by the Court of Common Council.</p> <p>In terms of revisions to existing Regulations there are several but the most significant are proposals for adjustments to the approvals thresholds in the following Regulations;</p> <p><b>Regulation 15 – Waivers Approvals</b></p> <p>The new Regulations (section 9) proposes that the Chamberlain be granted delegated authority to waive the provisions of the Procurement Regulations for non-project related procurements from £50,000 to £2m. The existing authority for Chief Officers to waive the provisions of the Regulations for procurements below £50,000 will remain in place. Waivers for high value contracts above £2m will still need to be obtained from Spending Committee, (Projects Sub where appropriate), Finance Committee and Court of Common Council.</p>	

## **Regulation 20 – Contracts Letting Approvals**

The new Regulation propose that revisions are made to the contracts lettings thresholds (section 10) to delegate authority for the Chamberlain to approve the award of non-project related contracts above the EU thresholds in total but up to £2m p.a. Contracts valued above between £2m to and £4m per annum must continue to be reported to Spending and Finance Committees. Very high value contracts above £4m and above must continue to be reported to the relevant Spending Committee, and Finance Committee and the Court of Common Council. The section also makes the point that there are going to be major changes arising from a new EU Procurement Directive which will necessitate major revisions to the City's own thresholds and a further report to Committee in 2014

## **Regulations 42 and 43 – Public Advertising Thresholds for Supplies, Services and Consultancy Contracts**

The new Regulations (sections 16, 17 and 18) contains several revisions to the thresholds for seeking quotations and advertising tenders. The most significant is the proposal that the advertising thresholds for Supplies and Services and Professional Consultancy contracts are increased from the current £50,000 to £100,000. It is felt that the City's advertising threshold for Works contracts should remain unchanged at £400,000. This is still higher than the London borough average but strikes the right balance for the City in terms of transparency and its unique profile in terms of works and construction related expenditure.

In addition to the three key changes to the existing Regulations there are also several new Regulations The proposed new Regulations are designed to address several key organisational, policy and legislative changes since July 2012.

The new regulations include:

- Procurement Codes of Conduct and Conflicts of Interest;
- Use of external consultants and advisors for procurement;
- Roles and responsibilities of officers in the CLPS;
- Improved clarity and terms of reference for the use of framework agreements;
- Governance and the use E-Sourcing and tender management;
- Terms of engagement for the new CLPS Contracts Register;
- London Living Wage; and
- Public Services (Social Value Act) 2012.

## **Recommendation (s)**

Members are asked to:

- Receive and endorse the revised Procurement Regulations for approval by the Court of Common Council

## **Main Report**

### **Background**

1. The City of London's Procurement Regulations in their current format were first introduced in alongside revisions to Standing Orders and approved by the Court of Common Council on 6 October 2011 with "any minor technical adjustments in future being subject to the approval of the Finance Committee". Since then there have been several technical adjustments approved by the Finance Committee with the most recent in July 2012.
2. When the Procurement Regulations were first introduced it was always intended that they be reviewed and revised annually to take account of new developments.

### **Current Position**

3. Since the latest edition of the City's Procurement Regulations were approved in July 2012, there have been significant changes to the way in which the City organises its procurement, most notably the creation and launch of the new City of London Procurement Service (CLPS) on 2<sup>nd</sup> April 2013.
4. There have also been several important legislative and policy developments which directly impact on significant areas of the City's procurement including the implementation of the Public Services (Social Value) Act 2012 in March 2013 which imposes statutory requirements on the purchase of services above the European Union (EU) procurement thresholds.
5. The City has also introduced a new policy relating to London Living Wage (LLW) in March 2012 which has necessitated important procedural changes to the way in which some services contracts are procured.
6. The current Regulations need to be updated to take account of the changes and make them relevant for the way we work with a centralised procurement service and the delivery of more collaborative, intelligence led procurement strategies such as Category Management.
7. The opportunity has also been taken to review and amend some existing Regulations to ensure they reflect best procurement practice and incorporate suggestions from colleagues in the City regarding operational issues that have arisen since the publication of the current Regulations.

## **Rationale for the revisions to the Regulations**

8. This section of the report outlines the rationale and benefits for the additions and revisions to the Regulations in the order in which they appear in the new draft.
9. A short 2 page summary tabulated version of the rationale for the changes outlined in this report is set out in Appendix 1 to aid ease of reference
10. A clean copy of the proposed new Regulations is provided in Appendix 2 and a copy of the existing Regulations is provided in Appendix 3. The number of changes means that presenting a tracked change version of the regulations would be confusing.

### **Section 1 Overview**

11. The Overview section is largely the same as the current Regulations with the addition of Regulation 1.10 which simply states the Regulations constitute the rules that must be followed when procurement is undertaken in the City. The CLPS will produce further detailed guidance to underpin these Regulations and assist officers in their application which will be published on the City Buyer pages of the City's intranet.

### **Section 2 Codes of Conduct and Conflicts of Interest**

12. These are entirely new Regulations reiterating that the City expects all officers and elected members involved in procurement to behave with the highest levels of probity and integrity.
13. It refers to the appropriate sections of the City's Employee Code of Conduct and Fraud Awareness policy together with the consequences of failing to comply with them and with the Procurement Regulations.
14. There is also a new Regulation which states that any conflict of interest in procurement must be declared to the Chamberlain.
15. The addition of this section will complement the new City policies and assist with mitigating risks associated with the provisions of the Bribery Act 2010.

### **Section 3 Use of external consultants and advisors in procurement**

16. This section consists of some new Regulations designed to set out some clear and consistent ground rules regarding the use of external consultants and advisors in procurement projects.
17. The new Regulations propose that the CLPS is consulted on all procurement consultancy appointments to ensure that best value is being achieved and they are governed by appropriate contract terms.
18. The coordination of such appointments by CLPS will provide greater transparency regarding the use of procurement consultants and will also help to ensure that any potential conflicts of interest that may exist are dealt with in a timely and consistent manner.

### **Sections 4 to 7 Role of the CLPS and its key teams**

19. These new Regulations provide a brief overview and explanation of the key roles and responsibilities of the CLPS and the various key teams within it.

20. Where appropriate the Regulations provide guidance on when officers must engage with the various CLPS teams.

### **Section 8 – Key Aspects of Procurement**

21. Apart from a small number of minor revisions and one new Regulation this section remains substantially the same as the current Regulations.
22. Regulation 8.7 is a new and important addition and confirms the requirement for officers to follow the City's **No PO (Purchase Order) No Pay policy** which requires with some exceptions e.g. utilities, rents and rates that purchase orders must be raised at the point when goods, services and works are ordered.
23. The CLPS has notified all of the City's departments and registered suppliers of the introduction of this policy.
24. The new Regulation will improve procurement compliance and financial discipline within the City, as well as reducing the potential for procurement fraud. It also delivers potential to improve the efficiency and effectiveness of the City's invoice matching and payments processes, speed up payments to suppliers and reduce the resources currently deployed in raising retrospective orders.

### **Section 9 - Waivers**

25. The waivers section in the current Regulations for procurements is designed for the City's old devolved procurement structure and obliges officers who wish to be granted waivers for procurements from £50,000 to £2m to obtain authorisation from their spending committee and Projects Sub-Committee for contracts let as part of projects.
26. The new section retains the existing waivers thresholds but proposes that the Chamberlain be granted delegated authority to waive the provisions of the Procurement Regulations for non-project related procurements from £50,000 to £2m.
27. Authority for projects related waivers between these thresholds will continue to reside with the Projects Sub-Committee.
28. The existing authority for Chief Officers to waive the provisions of the Regulations for procurements below £50,000 will remain in place. However, officers instructing CLPS to undertake procurements which rely on a Chief Officers waiver will be expected to provide written evidence that the waiver has been granted.
29. It is recognised that waivers must only be sought and authorised in exceptional circumstances, where sound operational and commercial reasons exist. For that reason the new Regulations oblige the Chamberlain to provide a retrospective report for the Finance Committee summarising all waivers sought and granted in the previous quarter.
30. Waivers for high value contracts above £2m will still need to be obtained from Spending Committee, (Projects Sub where appropriate), Finance Committee and Court of Common Council.

31. These adjustments will reduce the number of committee reports being presented to members for waivers for relatively low risk low value procurements which constitute the greater number of such reports.
32. The Chamberlain will also be provided with greater authority to utilise the capacity and expertise of the CLPS to scrutinise, reject, or approve waiver applications and be in a better position to provide a corporate overview of waivers to members to facilitate more strategic analysis and decision making.
33. The new Regulations make clear that it is unlawful for officers or members to waive the provisions of the EU procurement directives for procurements carried out in the City's capacity as a local or Police authority.

### **Section 10 - Contracts Letting**

34. The format of this section is largely the same as the existing Regulations. There are some proposed adjustments to the thresholds intended to provide a greater level of delegated authority to the Chamberlain and to reduce the number of committee reports presented to members for relatively low value low risk contracts.
35. In accordance with the existing Regulations, there is no requirement to report to committee for contracts below EU thresholds, currently £174,000 for Supplies and Services contracts.
36. As with the waivers thresholds, it is proposed that revisions are made to the contracts lettings thresholds to delegate authority for the Chamberlain to approve the award of non-project related contracts above the EU thresholds in total but up to £2m p.a.
37. It should be noted that some of the approval thresholds in the Regulations are tied to the prevailing EU thresholds, The current EU threshold for Supplies and Services contracts is £173,934 (at 1 November 2013). Historically, the thresholds have been adjusted by the EU in January every two years and the adjustments were relatively modest as they were based on the prevailing Pound Euro exchange rate for €200,000. However, a new EU Procurement Directive has been agreed in October 2013 and will be implemented into UK law in 2014. At the time of writing the date of implementation has yet to be decided. This will increase the current EU thresholds significantly to as much as £700,000 and consequently the City's own procurement thresholds will also need to be revised when the new directive is implemented. These revisions will necessitate further Committee approval during 2014.
38. Contracts valued between £2m and £4m per annum must continue to be reported to Spending and Finance Committees.
39. Very high value contracts above £4m and above must continue to be reported to the relevant Spending Committee, Finance Committee and the Court of Common Council.
40. Officers requiring contracts awards to be approved by the Chamberlain will still be obliged to submit a formal report via the Chairman of the most appropriate CLPS Category Board and the Chamberlain will be obliged to submit a summary report of all contract awards to the Finance Committee in the previous quarter.

41. When exercising delegated authority, the Chamberlain may, in exceptional circumstances, refer decisions to the Finance Committee. This may include but not be limited to sensitive issues such as conflicts of interest, significant alternation to front line service provision, staffing matters, London Living Wage or other such matters arising from procurement strategies or contracts awards.
42. In addition to reducing the number of committee reports, it is anticipated that the new thresholds will reduce the time taken by CLPS officers to award lower value contracts and increase the capacity of senior officers and members to concentrate on more complex procurements.

### **Section 11 – Increases in Contract Value**

43. There are no revisions to this section which remains the same as the current Regulations

### **Sections 12 to 14 – Framework Agreements, Access Agreements and Due Diligence**

44. These sections are a mixture of old and new Regulations and are designed to explain the importance and benefits of framework agreements to the delivery of the City's procurement strategy.
45. The creation and usage of legally compliant frameworks particularly when the City collaborates with and uses frameworks awarded by other public bodies, is complex and requires high levels of technical and commercial expertise to mitigate risk and ensure best value. Consequently, the Regulations now place a mandatory obligation on officers to consult with both the CLPS and Comptroller and City Solicitor's (C&CS) at appropriate stages before frameworks can be used.
46. To ensure that officers consider and address all potential issues new Regulations are proposed to ensure that a formal due diligence procedure, designed by the CLPS and C&CS, is undertaken.

### **Sections 15 to 18 Procurement Thresholds for Supplies and Services, Professional Consultancy and Works contracts**

48. This section contains several revisions to the procurement thresholds.
49. Perhaps the most significant is the proposal that the advertising thresholds for Supplies and Services and Professional Consultancy contracts are increased from the current £50,000 to £100,000.
50. There are several reasons for this proposal, the first and most obvious is that the current threshold was first introduced in 2009 and consequently is due to be refreshed.
51. A benchmark review of the Procurement Regulations of 10 neighbouring London boroughs the information from which was utilised to inform this report indicates that the majority had an advertising threshold at or in excess of £100,000.

52. There are significant benefits to increasing the thresholds, the main one being that it provides officers with greater flexibility in the creation of tender and quotations lists particularly with regard to meeting the City's policy of inviting local suppliers, SME's and social enterprises, or new and innovative entrants to the marketplace.
53. It is felt that the City's advertising threshold for Works contracts should remain unchanged at £400,000. This is still higher than the London borough average but strikes the right balance for the City in terms of transparency and its unique requirements; however the opportunity has been taken to propose that some of the Works thresholds for minor purchases below £400,000 be increased to provide officers with slightly more flexibility. Similar revisions have been made to some of the minor thresholds for Supplies and Services contracts.
54. The other revision worthy of note is the inclusion at all below advertising thresholds of the obligation for officers to invite at least one of either a local supplier, SME or Social Enterprise. Thus bringing the Regulations into line with the City's Responsible Procurement Strategy.

### **Section 19 – E-sourcing**

55. This is a new section of the Regulations proposed to explain and clarify the key regulatory ground rules to be followed by officers for the operation of Pro Contract the City's e-sourcing application. It is used to conduct the City's Invitations to Tender (ITT's) and Requests for Quotations (RFQ's) especially those above City's and EU advertising thresholds.
56. The Regulations confirm that the system is managed and operated by the CLPS Sourcing Support team including the opening of tenders, systems development and the management of system users.
57. The new Regulations also propose mandatory rules for the management and opening of tenders which are designed to implement the key recommendations of a recent Internal Audit Report on Contract Tendering and Due Diligence published in June 2013.

### **Section 20 – Contracts Register**

58. These are proposed new Regulations confirming that the CLPS now maintains a Contracts Register on behalf of the City. The Contracts Register includes key details of all contracts awarded by the City including award and expiry dates, contract title, values, renewal dates and responsible officers.
59. The Regulations confirm that the Contracts Register is maintained by CLPS and that all officers including departmental contracts managers are obliged to register every contract award and provide CLPS with updates of any substantive changes.
60. The Contracts Register will become an increasingly important tool in improving the City's procurement and contracts management, facilitating improved planning, arrangements for contracts renewals, internal and external collaboration, auditing and in meeting the City's transparency obligations.



## **Sections 21 to 25 – Responsible Procurement, Local Procurement Directive, Community Benefits, Public Services (Social Value) Act 2012 and London Living Wage**

61. Procuring responsibly in ways which positively impact the environment and social wellbeing of the City and its neighbours is a crucial measure of the effectiveness of not just the City's procurement but the organisation as a whole.
62. These sections are a mixture of existing and new Regulations designed to ensure that officers comply with and implement the City's various policies with regard to responsible procurement as well as the statutory obligation to comply with the provisions of the Public Services (Social Value) Act 2012.
63. The Responsible Procurement Section 21 has been expanded with the proposed addition of two new Regulations.
64. The first requires officers to insert a section in all contracts lettings reports outlining the responsible procurement benefits of the recommended contract award and how these contribute to the City's strategic objectives and how progress on delivery will be reported.
65. The second addition confirms the formal role of responsible procurement experts from the City's Economic Development Office (EDO) and Town Clerks Policy teams who work closely with CLPS and senior departmental officers as members of the various Category Boards in shaping procurement strategies to ensure that opportunities are taken to implement the City's policy in every major procurement project.
66. The sections on Local Procurement and Community Benefits clauses remain unchanged as they are both successful well established policies.
67. The most significant additions to the Responsible Procurement sections include new Regulations Section 24 on the Public Services (Social Value) Act 2012 which requires the City to formally consider social value for all services contracts above the EU tender thresholds.
68. There is also a new Section 25 on London Living Wage (LLW) explaining and obliging officers to comply with the City's LLW's policy approved by Court of Common Council in March 2012.
69. The new Regulations acknowledge that implementing the Public Services (Social Value) Act 2012 and LLW in procurement is complex and requires specialist expertise and consequently they both oblige officers to consult with and, in most cases, provide that the CLPS will undertake all procurements with Social Value or LLW implications.

## **Section 26 – Contracts procured by third parties**

70. This section makes clear that the Procurement Regulations shall not apply to those contracts procured by a third party and then assigned to the City following the acquisition by the City of long leasehold interests. Such contracts will be handled directly by the City Surveyor who shall ensure in consultation with the Comptroller and City Solicitor that the required due

diligence on the contracts is undertaken on any contracts which are to be assigned or novated to the City following the completion of the commercial transaction.

### **Corporate and Strategic Implications**

71. It is envisaged that there will be no additional costs to the City in adopting and implementing the new Regulations which can be accommodated within the existing resources of the Chamberlain's department.
72. The new Regulations will have a positive impact on the delivery of key strategic objectives and themes in both the City's Corporate Plan 2013-17 and The City Together Strategy 2008 - 2014.
73. In terms of the Corporate Plan the new Regulations will support key policy priorities KPP2 "*Maintaining the quality of our public services whilst reducing our expenditure and improving our efficiency a key part of which is the establishment of the CLPS.*"
74. The new Regulations in emphasising the importance of Responsible Procurement and in particular the City's support for the London Living Wage and Public Services (Social Value) Act 2012 will support KPP4 "*Maximising opportunities and benefits afforded by our role in supporting London's communities.*"
75. The policy priorities in KPP4 particularly with regard to environmental wellbeing are Corporate Responsibility and are key themes in the City Together Strategy 2008 – 2014. The new Regulations are designed to improve the performance of the City's procurement in that regard.

### **Conclusions**

76. The creation of the CLPS and the implementation of a new approach to procurement is one of the most significant organisational transformation projects undertaken by the City in recent years. The transformation has introduced a new service and new ways of working and enhanced levels of collaboration across the City that are required to help maintain the quality of services at the same time as reducing expenditure.
77. As the profile of procurement has risen it is also expected to make a significant contribution to achievement of the City's wider strategic objectives particularly in relation to sustainability and corporate responsibility and this is has been reflected in the City's own policy initiatives in areas such as London Living Wage and legislation such as the Public Services (Social Value) Act 2012.
78. All of these themes are reflected in the new Procurement Regulations. There has been extensive consultation on the proposed changes (including a Chief and Senior Officers Masterclass on 11 November 2013) which are designed to facilitate improved and efficient services, as well as greater collaboration both within the City and with our suppliers and neighbouring communities

### **Appendices**

79. The revisions to the existing Regulations are significant and are summarised in the following Appendices to this report;

Appendix 1 – New Draft Regulations January 2014

Appendix 2 – Current Regulations July 2012

Appendix 3 – Summary Rationale for additions and revisions to the Regulations

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