

Cheltenham Borough Council
Council – 25th February 2016
Revision to Contract Rules

Accountable member	Councillor Colin Hay - Chairman Constitution Working Group
Accountable officer	Mark Sheldon
Ward(s) affected	None
Key/Significant Decision	No
Executive summary	<p>At its meeting on 14th December 2015, the council approved an updated set of contract rules which was common to all 2020 vision partner councils.</p> <p>The contract rules included the requirement for a bond or a parent company guarantee for contracts over £1,000,000.00.</p> <p>In practice, the need for a bond or guarantee can be negated by holding back retention sums and making staged payments i.e. only for actual work that has been undertaken. Also, the requirement for a bond can be difficult and costly to obtain and it is not always necessary to obtain a bond in order to protect the council. As such, it is proposed that there is a revision to the Contract Rules to provide a practical and workable solution to the awarding of high value contracts which provides flexibility in the use of bonds/guarantees. This revision will allow the section 151 Officer, in consultation with the council's Solicitor, to decide that a bond/guarantee is not appropriate in the circumstances of a particular contract.</p>
Recommendations	1. Contract rule 19.1 to be amended as per paragraph 1.5.

Financial implications	<p>As outlined in the report.</p> <p>The use of bonds is not always considered an appropriate mechanism to protect the council and is often an unnecessary (expense) because the risk is small/acceptable for the reasons outlined in the report.</p> <p>Contact officer: Paul Jones, paul.jones@cheltenham.gov.uk, 01242 775154</p>
Legal implications	<p>As outlined in the report</p> <p>Contact officer: Peter Lewis, peter.lewis@tewkesbury.gov.uk, 01242</p>
HR implications (including learning and organisational development)	<p>All staff will need to be trained and briefed on the new processes.</p> <p>Contact officer: Julie McCarthy, julie.mccarthy@cheltenham.gov.uk, 01242 264355</p>

Key risks	See risk assessment at Appendix 1.
Corporate and community plan Implications	None
Environmental and climate change implications	None arising from this report
Property/Asset Implications	None arising from this report

1 Background

- 1.1 At its meeting on 14th December 2015, the council approved an updated set of contract rules which was common to all 2020 vision partner councils.
- 1.2 The contract rules included the requirement for a bond or a parent company guarantee for contracts over £1,000,000.00.
- 1.3 In practice, the need for a bond is negated by holding back retention sums and making staged payments i.e. only for actual work that has been undertaken.
- 1.4 Insurance companies often only deal with large performance bond portfolios as opposed to one off cases and, as such, it is often problematic obtaining a bond for council contracts. So, the requirement for a bond, which can be difficult and costly to obtain, is not always considered to be a valuable mechanism to protect the council. As such, is proposed that there is a revision to the contract rules to provide a practical and workable solution to the awarding of high value contracts which provides flexibility in the use of bonds.
- 1.5 As such, it is proposed that the current contract rule 19.1 which is currently worded as:

Bonds or Parent Company Guarantee will be required on all works contracts above £1,000,000 or for a contract of a lesser value if considered appropriate by the Section 151 Officer following consultation with the council's Solicitor.

Be reworded as follows:

A Bond or Parent Company Guarantee will be required on all works contracts above £1,000,000 unless considered inappropriate by the Section 151 Officer following consultation with the council's Solicitor"

- 1.6 The current discretion for the s151 Officer to determine whether or not a bond/guarantee should be provided for a contract of £1,000,000 or less in value will be retained.

2 Reasons for recommendations

- 2.1 As outlined above.

3 Alternative options considered

- 3.1 As outlined above

4 Consultation and feedback

4.1 The council's constitutional working group have been consulted on the proposal.

5 Performance management – monitoring and review

5.1 The GOSS client officer Group will be alerted to any issues with the application of the contract rules.

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Appendices	1. Risk Assessment
Background information	1. Contract rules December 2015.

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
CR1	If the removal of the requirement for a bond for all high value contract is not mitigated by other contract management measures, there may be an increased financial risk exposure to the council	Mark Sheldon	15/2/16	5	2	10	Reduce	Ensure that sound contact management principles are applied i.e. use of retention sums and payment on account for works completed only.	On going	Paul Jones S151 Officer	
<p>Explanatory notes</p> <p>Impact – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical)</p> <p>Likelihood – how likely is it that the risk will occur on a scale of 1-6 (1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability)</p> <p>Control - Either: Reduce / Accept / Transfer to 3rd party / Close</p>											