



Report to Audit & Governance Committee

Date:	25th January 2022
Title:	Contract Procedure Rules – Waivers & Breaches
Relevant councillor(s):	N/A
Author:	Cael Sendell-Price JP, Head of Strategic Procurement
Ward(s) affected:	N/A
Recommendations:	Members are asked to note this report and the work of the Strategic Procurement Team

Summary

This report provides an updated summary in relation to compliance with the Council's Contract Procedure Rules (CPR's) and compliance with the Public Contracts Regulations 2015.

The Committee have received previous reports on this subject, the last presented on 28th July 2021 which covered the last 6 months of the financial year 20/21. This report is a six-month update and covers the first 6 months of financial year 21/22.

The reporting period covers the following period:

- **April 2021 until 30th September 2021**

1. Background

The Council, as a public body when undertaking procurement exercises and awarding contracts, must comply with the Public Contracts Regulations 2015. The Regulations place a great deal of restrictions on the Council in how it is permitted to run procurement exercises and in some cases the Council could be sued by bidders for not following these Regulations.

It should be noted, that it is the relevant service area/ directorate that are responsible for undertaking procurement exercises and the management of contracts, not the procurement team. The procurement team develop the corporate policy, support high risk/value procurement exercises and provide training on procurement & contract management.

2. Contract Procedure Rules relating to Contracts, Waivers and Breaches

Rules 6.31 to 6.37 state that all purchases over £25K must be subject to competition. Where the estimated whole life cost of a contract is:

Up to and including £25,000 for Goods, Services and Works:	A minimum of 1 written quotation is required. This can be a written confirmation by an officer of an oral quotation. Where possible local suppliers should be given the opportunity to bid.
Over £25,000 and up to the <u>Procurement Threshold</u> for Goods & Services (including the Light Touch Regime):	A minimum of 3 written quotations requested. Where possible local suppliers should be given the opportunity to bid.
Over £25,000 and up to the <u>Procurement Threshold</u> for Works:	A minimum of 4 written tenders requested. Where possible local suppliers should be given the opportunity to bid.
Relevant <u>Procurement Threshold</u> and over:	Full Tender Process or compliant Framework Agreement.

Table 1: Internal Thresholds

Rule 6.18 allows a Waiver to the requirement for competition and allows a contract to be placed by direct negotiation with one supplier. This needs to be agreed and documented in advance. Waivers under this Rule, however, cannot be granted if over the relevant Procurement Thresholds.

➤ The goods and services threshold is **£189,330**.

➤ The Light Touch Regime (LTR) threshold is **£663,540**.

This is a Procurement regime for social and other specific services including:-

- Health, social and related contracts
- Administrative social, educational, healthcare & cultural services
- Hotel and restaurant services
- Legal services
- Other administrative services and government services
- Provision of services to the community

➤ The works threshold is **£4,733,252**.

If a direct award is made which is above this threshold (if a legal alternative such as a Framework is not used) a breach has occurred, and officers are obliged to report this to the S151 Officer and Monitoring Officer (statutory officers). In some instances, there may be legal permitted changes within the Public Contracts Regulations 2015.

3. Waivers

Service areas can complete waiver forms to waive internal rules, but not contracts that are subject to the Procurement Regulations such as contracts over the legal procurement threshold. Service areas must demonstrate in advance why a waiver is needed and must include evidence to prove this is best value. The Procurement team carries out commercial assessments on all waivers using a risk-based approach. Legal and financial input is requested when appropriate.

Waivers are signed off by sign off by:

1. S151 Officer (delegated to the Head of Strategic Procurement);
2. Relevant Corporate Director;
3. Relevant Cabinet Member.

The main factors considered in how the risk rating is arrived at include:

- The value of the contract and previous spend on the contract.
- Reasons for the Waiver.
- Any risks associated with the supplier.
- Whether the marketplace is prone to challenge.
- The requirement is a one-time requirement.
- There is an on-going requirement, but a compliant procurement process is underway or substantially planned.
- Possible reputational damage.

Waiver summary Q1-2 FY 21/22

There were a total number of 38 Waivers registered in this 6-month period.

➤ Quarter 1

- There were 19 completed Waivers.
- The total value of Waivers approved during this period was £7,122,371.82.
- The highest value Waiver was for £4,257,160.00. This was for the CAMHS contract - Provision of Targeted Tier 2, and Specialist Tier 3, a modification permissible under Regulation 72.
- The lowest value Waiver was for £17,160.

➤ Quarter 2

- There were 13 completed Waivers.
- The total value of Waivers approved during this period was £1,429,726.
- The highest value Waiver was for £600,000. This was for the Managed Discharge to Assess Domiciliary Care Services - which falls under Light Touch Regime threshold £663,800

- The lowest value Waiver was for £7,917.

It should be noted, that waivers are not negative. They are a tool for the Council to get a quick solution at best value and are subject to a high level of assurance.

4. Breaches to Public Contracts Regulations 2015

One breach has been reported to the Statutory Officers in the period since the last report. Please see Confidential Appendix 1 for the full report which has been drafted by the relevant service area. This report shall be presented by an officer from the service area.

5. Publication of Opportunities and Award Notices

The Public Contracts Regulations 2015 require Local Authorities to publish contract opportunities and award notices on the Government website Contracts Finder where the value is above their own quotation threshold.

In addition, the Local Government Transparency Code 2015 requires all contracts with a value of £5K and higher to be published. The Council meets this requirement and uploads all contracts to its internal Contract Management Application (CMA) to ensure it has oversight and governance on all procured contracts.

The Cabinet Office monitors potential breaches raised by suppliers via a Procurement Review Service (previously the Mystery Shopping Service). Procurement Review Service will contract public bodies to investigate any potential breach and ask for any evidence. The Procurement Review Service shall then make a ruling on the proposed course of action including any lessons for the future. The council has not been subjected to any investigation by the Crown Commercial Service for this period.

6. Procurement & Contract Management Training

One of the newest issues of bringing together 5 Councils will be the procurement & contract management culture of relevant services areas/directorates. In order to develop a new positive culture and ensure a high level of assurance the Procurement team provides training on several areas listed below. This level of training is above what most Councils provide.

Summary Procurement/SRM training sessions 1st April 2020 – 30th September 2021

Training Sessions	Number of Officers trained
Understanding Procurement training	227
ProContract e-Sourcing Tender portal training	113

Contract Management Development training	77
Contract Management Application (CMA) training	153
Modern Slavery in the Supply Chain training	123
Best Practice Self-Assessment training	56

Table 2: Procurement Training Sessions

7. Procurement Legislation Changes

A recent Green Paper on the future transformation of public sector procurement was recently released by Central Government. The Cabinet Office has recently confirmed that there will not be a change in Procurement Legislation until 2023. When we have further detailed information on the changes full training will be provided by the Procurement Team to the rest of the Council.

8. External Procurement threshold changes from 1st January

New public sector procurement thresholds will come into force on 1st January 2022.

From the 1st of January 2022 the procurement thresholds will be changed to the values in table 3. These thresholds new thresholds due to membership of the World Trade Organisation must now include VAT.

The revised financial thresholds will apply to all public procurements under the Public Contracts Regulations 2015 (PCR 2015) and the Concession Contract Regulations 2016 (CCR 2016).

Type of Contract	Previous Threshold (excluding VAT)	Threshold (including VAT) from 1 st January 2022	Threshold (if VAT does not apply) from 1 st January 2022
Goods & Services	£189,330	£213,477	£177,898
Works	£4,733,252	£5,336,937	£4,447,448
Light Touch Regime for Health and Social services	£663,540	£663,540	£552,950

Table 3: New External Procurement Thresholds

9. Data Tables

Summary of all Waivers registered during Q1 – Q2 2021/22

Summary FY 2021/22	Qtr. 1	Qtr. 2	Qtr. 3	Qtr. 4	Total
Total number of Waivers registered	19	13			32
Lowest value Waiver	£17,160	£7,917			£25,077
Highest value Waiver	*£4,257,160	**£600,000			0
Total number of Waivers raised retrospectively	9	4			13
Total value of retrospective	£1,313,162	£299,053			£1,612,215
Total value of all waivers processed	£7,122,372	£1,429,726			£8,552,098

Table 4: Summary of all Waivers registered during Q1 – Q2 2021/22

**Provision of Targeted Tier 2, and Specialist Tier 3, CAMHS Buckinghamshire (Public Health Services - Primary Care) - permissible under Reg 72 of PCR's*

***Integrated Commissioning - Managed Discharge to Assess Domiciliary Care Services - permissible under Reg 72 of PCR's*

Summary of all Waivers registered during Q1 – Q2 2021/22

Summary FY 2021/22	Qtr. 1	Qtr. 2	Qtr. 3	Qtr. 4	Total
Total no. of Waivers registered	19	13			32
Total no. of Waivers categorised as Low risk	18	12			30
Total no. of Waivers categorised as Medium risk	*1	**1			2
Total no. of Waivers categorised as High risk					

Table 5: Summary of all Waivers registered during Q1 – Q2 2021/22

**Targeted Tier 2, and Specialist Tier 3, Child and Adolescent Mental Health Services - permissible under Reg 72 of PCR's - High value medium risk*

*** Routewise - Low value, implementation scheduled 18 months later than expected*

Summary of all Waivers registered Q1 – Q2 FY 2021/22

Waivers to CPR's by Service Area Summary FY 2021/22	No. Low / Medium Risk	No. High Risk
A&H - Integrated Commissioning	4	
COMM - Leisure	1	
COMM - Libraries	1	
COMM - Licensing	1	
COMM - Sports, Leisure & Culture	1	
CS - Childrens Social Care	1	
CS - Education	1	
CS - Equalities & School Improvement	2	
CS - Integrated Commissioning	1	
DCE - Legal & Democratic Services	1	
PGS - Aylesbury Garden Town	2	
PGS - Business Improvement & Parking Services	1	
PGS - Economic Growth & Regeneration	2	
PGS - Estates	1	
PGS - Planning & Enforcement	1	
PGS – Planning & Environment	1	
PGS - Property & Assets	3	
PGS - Strategic Transport & Infrastructure	1	
PGS - Transport Strategy	1	
RES - HR & OD	2	
RES - HR Payroll	1	
RES - Ratings & Recovery	1	
RES - Revenues & Benefits	1	
Totals	32	

Table 6 - Waivers by Service Area