

Regulatory and Audit Committee

Title:	Standing Orders relating to Contracts- Exemptions and Use of CMA
Date:	January 2015
Author:	Richard Ambrose
Contact officer:	Tricia Hook, Senior Procurement Manager, Tel:01296 383615
Local members affected:	N/A

For press enquiries concerning this report, please contact the media office on 01296 382444

This report provides an updated summary in relation to compliance with the Council's Standing Orders relating to Contracts (CSO) and compliance with the use of the Council's Corporate Contract Management Application (CMA)

The reporting period covers 1st April 2014 until 31st December 2014 in respect of CSO Exemptions and 1st September 2014 until 31st December 2014 in respect of CMA Compliance. The differing reporting periods are due to the fact that the CMA was not implemented until September 2014.

Recommendation

Members are asked to note this report

Summary

1. Exemptions

Background

An earlier report to this Committee on this subject was presented in June 2014 and covered a complete fiscal year from April 2013 until end of March 2014.

The process for managing exemptions was revised in Q3 of the fiscal year 13/14 and therefore it is not possible to directly compare data available at the time of the last report with current information.

In August 2014 Legal Services, working in conjunction with the Chief Internal Auditor, clarified some of their advice in relation to the managing of the exemption process in circumstances where the value of the Contract to be exempted is in excess of the EU Threshold for goods and services (Currently c£173k). As a result of this advice service areas were advised that exemptions for contracts over this value are not permitted, regardless of the type of service in question.

Previously a risk based approach had been adopted in some circumstances, particularly in relation to Part B services.

Part B services are those to which the full weight of the EU Procurement Regulations do not apply and include most social care and Public Health functions.

It is recognised that there will be occasions when a service area does not comply with EU Procurement Regulations and that a Breach will occur. Any such Breach must now be reported to the statutory officers group who will advise on the potential

consequences for the organisation. This report includes information in relation to the breaches that have been reported to date.

Data (Appendix One)

- There were a total of 49 registrations in the first three Quarters of 14/15. This is slightly down on number of registrations requested in the same period last year, however changes to the process as outlined above will have impacted on these figures.
- The lowest value application was £6,000
- The highest value application was in excess of £2million however this was received prior to process change in August 14. A request of this value is no longer allowed to be submitted under the exemption process.
- The total value of exemptions agreed during this period was £8,646,719

Statutory Officer Group

Two potential breaches of EU Regulations have been reported to this group to date. Both were submitted by AFW.

- A contract was awarded to deliver a home to hospital service for one year only with a value of £220k
- A decision has been made to re-negotiate a number of existing contracts to provide sheltered accommodation and homelessness services with an annual value of just under £2million.

Future Shape and changes to CSO

This Committee have agreed a number of Constitutional changes, including raising the Thresholds in CSO in readiness for the organisational changes that will take effect in April 2014. The process for managing future exemption requests will need to be revised again to reflect these changes and these changes in conjunction with the revised advice from Legal should mean that the number of exemption applications will reduce.

2. Contract Management Application (CMA)

Background

The Contract Management Application (CMA) went live in September 2014 and Contract Managers are in the process of uploading contract information into the system. The focus to date has been on Platinum and Gold contracts. The system acts as a central repository for all of the information relating to a contract including the contract documentation, start and end dates, provision for contract extensions, records of management activity, meeting agendas and notes, KPI's and performance activity.

Contracts are segmented according to value and risk into Platinum, Gold, Silver and Bronze. Further information on segmentation is attached as **Appendix Two**.

Once fully populated the system will provide the Council with a complete contract register of all the current arrangements with suppliers. This in turn will allow greater visibility for both Members and Officers of contractual relationships, and how those contracts are performing against agreed KPI's.

The CMA supports the implementation of the Council's Contract Management Framework which provides guidance and structure to create a consistent approach to Contract Management across BCC that can be applied to all external third party relationships.

Data

It is not possible to provide a definitive picture in terms of the extent to which Contract Managers have complied with the requirement to enter details of third party contracts on the system, however the data entered so far can be compared with the data on SAP to provide the following information:

- A total of 1547 contracts have been entered onto the CMA. **Figure (i)** below provides a breakdown of these by segmentation.
- All but two of these do have a named Contract manager assigned to the contract.
- 303 of these do not have an annual value assigned to the contract
- The total annual value of the remaining 1244 contracts is £315,396,947

To date, this fiscal year the Council has spent a total of £175,323,285 with 56 suppliers each of which has been invoiced in excess of £750k. Of these suppliers 41 are appearing on the CMA and 15 are missing.

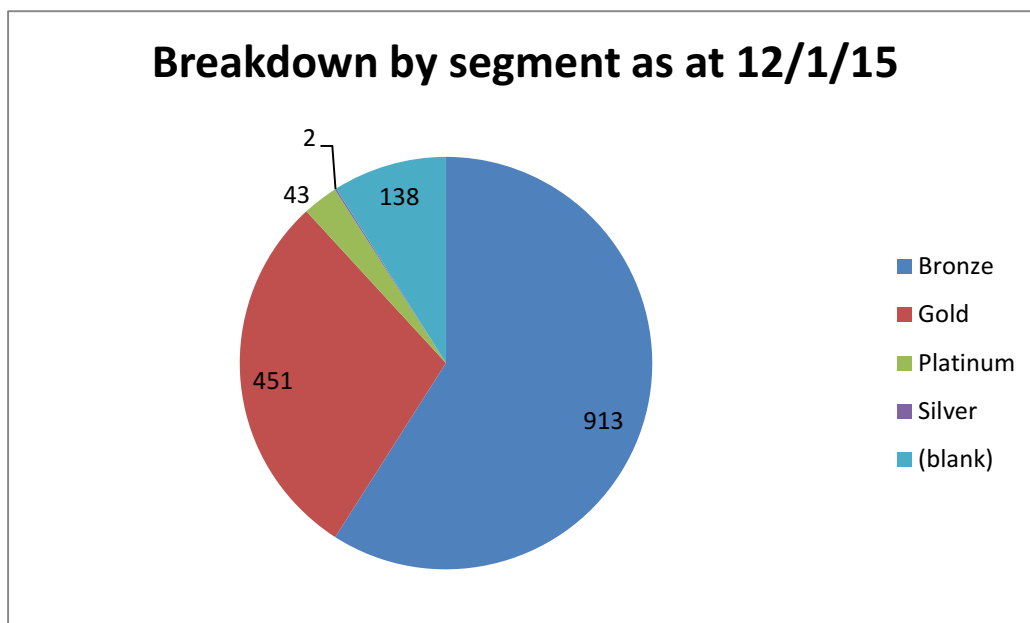


Figure (i)

Of the 15 suppliers missing from the CMA the breakdown by product category is shown in **Figure (ii)** below.

- The value of the spend missing from the system is £23,153,640 and approximately £15 million is construction related.

It should be noted that Contract Managers are not required to enter details of capital expenditure on the system, however the total figure of £315million above does include an element of capital spend.

- Approximately £4million relates to transport contracts.

There is a specific issue relating to these contracts which have been put in place and are being managed by Amey as BCC's managing agent for client transport, however Amey employees do not have access to the CMA system. It was considered, by CYP, not to be appropriate to allow a third party supplier to have access to a database that contains a significant amount of information relating to BCC commercial relationships.

- The remaining £4million relates to social care and public health contracts and the officer leading on the CMA implementation is following up with service areas to ensure the information is uploaded.

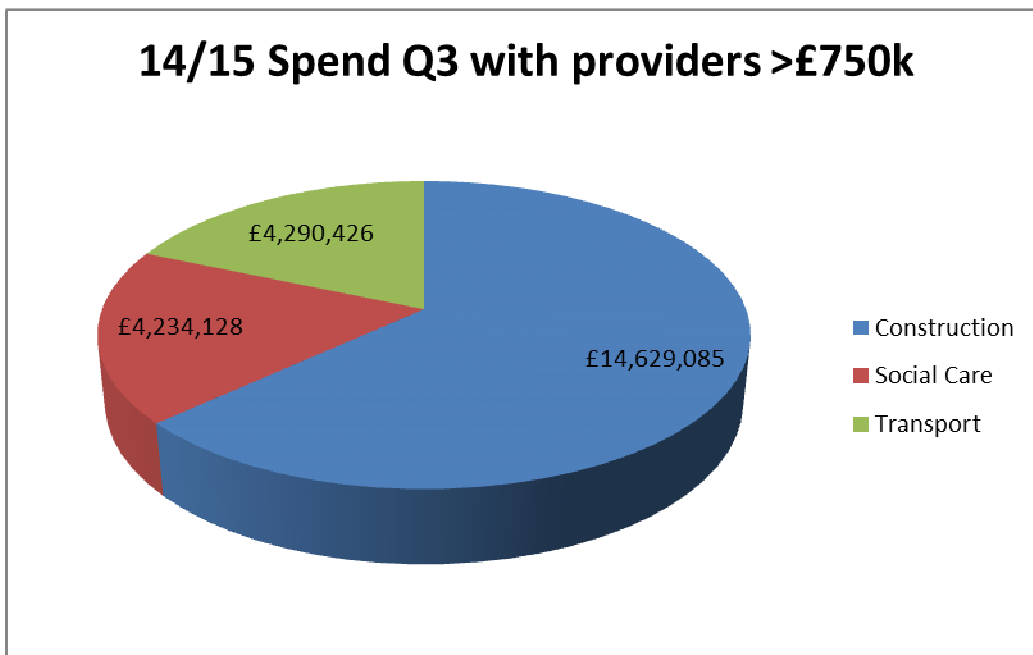


Figure (ii)

Other implications/issues

None

Feedback from consultation, Local Area Forums and Local Member views (if relevant)

N/A

Background Papers

None

Appendix 1

Fig. 1 - Data Summary

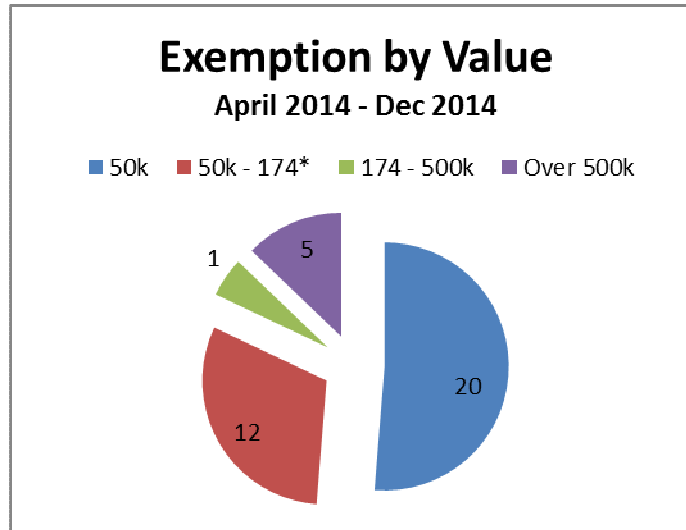
	Qtr. 1	Qtr. 2	Qtr. 3	Total
Total number. of exemptions registered	12	23	14	49
Total number. of exemptions cancelled during process	0	8	3	11
Lowest value exemption	£13,000	£6,000	£6,000	£25,000
Highest value exemption (excluding cancelled exemptions)	£1,000,000	£2,384,641	£147,000	£3,531,641
Total no. of exemptions raised retrospectively (excluding cancelled exemptions)	5	9	9	23
Total value of retrospective exemption (excluding cancelled exemptions)	£2,903,454	£520,281	£406,626	£3,830,361
Total value of exemptions	£4,898,771	£3,174,322	£573,626	£8,646,719

Appendix 1

Fig. 2 - April 2014 - Dec 2014 Exemptions by value (* EU Threshold)

**Note these figures are excluding cancelled Exemptions*

50k	20
50k - 174*	12
174 - 500k	1
Over 500k	5
Total	38



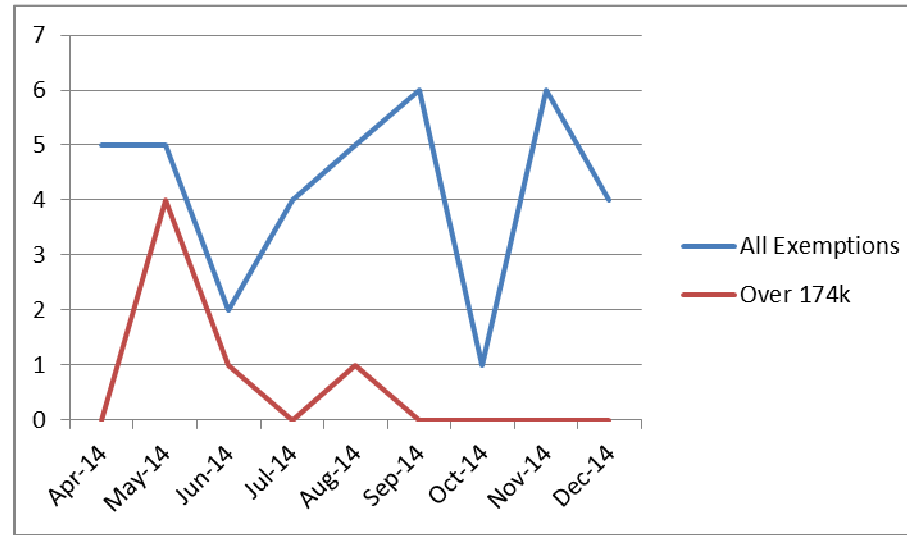
Appendix 1

Fig 3 All Exemptions - Trend

No. Exemptions Registered in FY 2014

** Note these figures are excluding cancelled Exemptions*

	All Exemptions	Over 174k
Apr-14	5	0
May-14	5	4
Jun-14	2	1
Jul-14	4	0
Aug-14	5	1
Sep-14	6	0
Oct-14	1	0
Nov-14	6	0
Dec-14	4	0
Total	38	6



Appendix 1

Fig 4: * Note these figures are excluding cancelled Exemptions

Exemptions to Contract Standing Orders by Service Area (April 2014 - Dec 201)	Below Threshold	Above Threshold	No. Med/High
AFW Commissioning and Service Improvement	0	1	0
AFW Culture and Learning	0	0	0
AFW Service Provision	2	0	0
CYP Children and Families	4	1	0
CYP Learning, Skills and Prevention	4	2	0
CBE Localities and Safer Communities	6	0	0
CBE Place	6	1	0
RBT Customer Contact and Business Support	0	0	0
RBT Finance and Commercial Services	1	0	0
RBT Human Resources	1	0	0
RBT Legal and Democratic Services	0	0	0
RBT Service Transformation	0	0	0
RBT Support Services	0	0	0
Policy, Performance and Communications	1	0	0
Public Health	8	0	0
Totals	33	5	0

Appendix 1

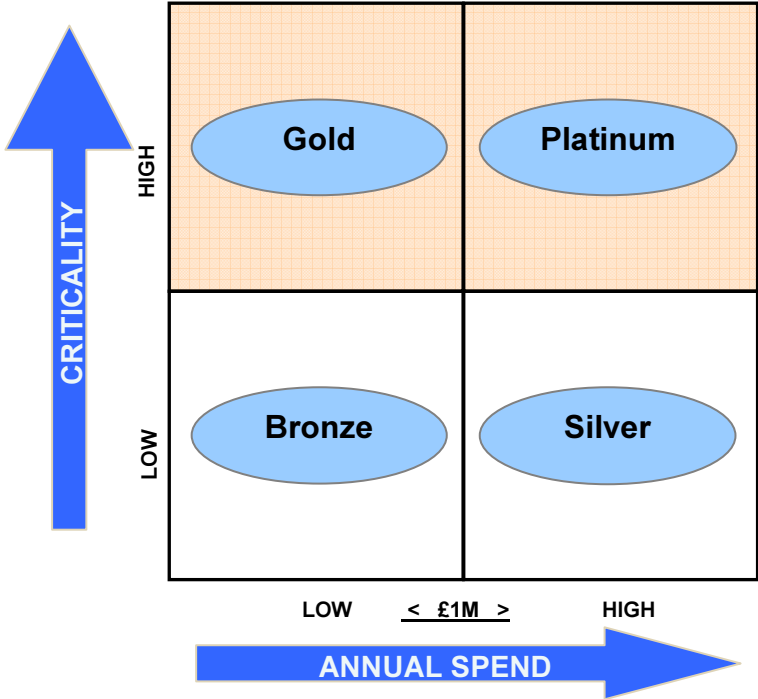
Figure 5 - Exemption Analysis and Data Extract

12 month analysis of exemptions applied for under Standing Orders relating to Contracts

Fiscal Year 2014 - Quarters 1-3 * *Note these figures are excluding cancelled Exemptions*

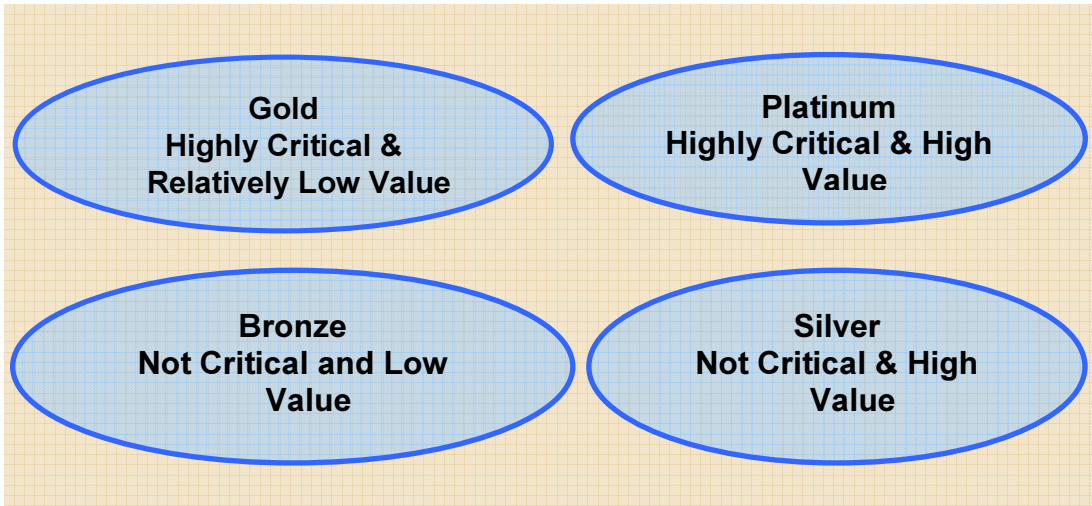
Summary	Qtr1	Qtr2	Qtr3	Qtr4	FY 14/15
Total no. of exemptions registered	12	23	14		
Total no. of exemptions cancelled during process	0	8	3		
Total no. of exemptions categorised as Low risk	10	13	11		
Total no. of exemptions categorised as Low/Medium risk	2	2	0		
Total no. of exemptions categorised as High risk	0	0	0		

Contract Segmentation



Contract Segmentation of 'High Spend Contracts, i.e. >£1m per annum, indicates these contracts are categorised as either 'Platinum' or 'Silver'

Contract Segmentation of 'High Criticality Contracts, i.e. contract failure or disruption will have a significant impact from a political, regulatory, financial and reputational perspective, often complex and high risk, indicates these contracts are categorised as either 'Platinum' or 'Gold'



Contract Segmentation

Level of Criticality	Definition	Examples
HIGH	<ul style="list-style-type: none"> <input type="checkbox"/> Contractual failure, errors or disruption could have over a £100k impact and the impact has public / customer or market visibility <input type="checkbox"/> Supplier could cause regulatory, political or legal issues for BCC <input type="checkbox"/> Contract is key to a core BCC service function or provides a product that is critical to BCC' operation <input type="checkbox"/> Developing market and / or limited alternative suppliers in the market place <input type="checkbox"/> Complex and costly exercise to exit contract (planned or unplanned) <input type="checkbox"/> Contractual service or product could cause a violation of Sustainability principles such as human rights, diversity, service integrity, or environmental impact 	<ul style="list-style-type: none"> <input type="checkbox"/> Long term contract for provision of residential care (e.g. Fremantle, Heritage, etc) <input type="checkbox"/> Consolidated contract for regional provision of domiciliary (e.g. Plan Care, Prime Care, Westminster Care, Seva Care) <input type="checkbox"/> Major outsource or PFI contracts (e.g. Ringway Jacobs) <input type="checkbox"/> IT service supporting critical infrastructure / service delivery (e.g. Capita Business Services Ltd)
LOW	<ul style="list-style-type: none"> <input type="checkbox"/> Contractual failure, errors or disruption will have less than a £100k impact and the impact has negligible public / customer or market visibility <input type="checkbox"/> Supplier would not cause any regulatory, political or legal issues for BCC <input type="checkbox"/> Contract would have no bearing on a core BCC service function nor provide a product that is critical to BCC' operation <input type="checkbox"/> Established market with numerous alternative suppliers <input type="checkbox"/> Contract exit (planned or unplanned) is routine and at modest cost <input type="checkbox"/> Contractual service or product would not cause a violation of Sustainability principles like human rights, diversity, service integrity, or environmental impact 	<ul style="list-style-type: none"> <input type="checkbox"/> IT hardware / software (unless supporting critical infrastructure or service delivery) <input type="checkbox"/> Contracts for spot purchase of residential or domiciliary care <input type="checkbox"/> Stationery <input type="checkbox"/> Catering <input type="checkbox"/> Ad-hoc transport <input type="checkbox"/> General maintenance / supplies contracts <input type="checkbox"/> Consultancy services