

# Regulatory and Audit Committee

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<b>Title:</b>	<b>Standing Orders relating to Contracts- Exemptions and Breaches</b>
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This report provides an updated summary in relation to compliance with the Council's Standing Orders relating to Contracts (CSO) and compliance with the Public Procurement Regulations

The reporting period covers 1<sup>st</sup> April 2015 until 30<sup>th</sup> September 2015

## **Recommendation**

Members are asked to note this report

## **Summary**

### **1. Exemptions**

#### **Background**

The Committee has received two earlier reports on this subject, the most recent one being presented in January 2015

This Committee previously agreed a number of Constitutional changes, including raising the Thresholds in CSO in readiness for the organisational changes that took effect in April 2015. The process for managing exemption requests has been revised accordingly.

The Public Procurement Regulations changed in February 2015 and these changes have resulted in additional legal requirements in relation to the advertising of contract opportunities for all services in the European Journal when the value of the contract is in excess of £173k. Previously some services, particularly those relating to social care and public health were excluded from this requirement. It should be noted that in all circumstances an award notice is also required to be published.

It is recognised that there will be occasions when a business unit is not able to fully comply with Public Procurement Regulations and that a Breach will occur. Any such Breach must be reported to the statutory officers who will advise on the potential consequences for the organisation. A guidance note for the reporting of Breaches was issued to the Managing and Finance directors of business units earlier this year and a copy is attached as Appendix Two to this report for information purposes.

#### **Publication of Opportunities and Award Notices**

The Government included in the revised Public Procurement Regulations 2015 the requirement for local authorities to publish contract opportunities, and award notices on Contracts Finder. (Contracts Finder is the registered website used for the publication of all

public sector procurement opportunities in England). This requirement relates to the government's transparency agenda. Failure to comply with these requirements will put the Authority in breach of UK law. Crown Commercial Services (CCS) is currently monitoring LA compliance via mystery shopping.

BCC has been recently been contacted by CCS and asked to explain why three opportunities published locally had not also appeared on Contracts Finder.

CCS are allowing a transition period for full implementation of these requirements and during this time sanctions will be restricted to publishing the names of non-compliant Authorities on UK.Gov website,. However stronger sanctions will be introduced from February 2016, the details of which have not yet been published, but early indications suggest that financial penalties are under consideration.

The requirement to publish opportunities is linked to local CSO and for Buckinghamshire this means that the local threshold of £173k will apply.

The requirement to publish award notices is in accordance with transparency requirements and applies to all contracts with a value of £5k or above.

The procurement team is currently working with the supplier of the Council's e-tendering system (pro-contract) to develop the system to ensure that all opportunities and award notices published on the system will automatically appear on Contracts Finder and will also be communicating these requirements to Business Units internally through the usual communication channels.

### **Data (Appendix One)**

- There were a total of 7 registrations in the first two Quarters of 15/16. This is considerably lower than the number of registrations requested in the same period last year (34), however changes to the process as outlined above will have impacted on these figures.
- During quarters 1 and 2 of the Fiscal Year 15/16
  - The highest value application was £143,797
  - the lowest value application was £47,000
- The total value of exemptions agreed during the Fiscal Year 14/15 was £22,419,938
- For quarters 1 and 2 of the Fiscal Year 15/16 the total value of exemptions agreed is £687,297

### **Breaches**

Two potential breaches of EU Regulations have been reported to the Statutory Officers this year. Both were submitted by CHASC and were as follows:

- The Supporting People contracts for Sheltered Housing comprising nine contracts with an annual contract value of just under £1m
- The Home Options and ABODE contracts with a combined annual value of just over £5,5m

In both cases a compliant tender has since been completed.

In addition the Capital Projects Performance Manager from TEE has identified some compliance issues relating to past appointments of consultants for capital projects. He is now working closely with the Procurement team to ensure future appointments are compliant.

**Fig. 1 - Data Summary**

**Summary of all Exemption to Standing Orders registered during Complete Fiscal Year 2014/15 and Quarters 1-2 of Fiscal Year 15/16**

<b>FY 2014/15</b>	<b>Qtr. 1</b>	<b>Qtr. 2</b>	<b>Qtr. 3</b>	<b>Qtr. 4</b>	<b>Total</b>
Total number. of exemptions registered	12	22	16	9	<b>59</b>
Total number. of exemptions cancelled during process	0	8	3	2	<b>13</b>
Lowest value exemption (excluding cancelled)	£13,000	£6,000	£6,000	£1,285	
Highest value exemption (excluding cancelled)	£2,267,454	£132,000	£2,384,641	£173,000	
Total no. of exemptions raised retrospectively (excluding cancelled)	5	9	9	6	<b>29</b>
Total value of retrospective exemption (excluding cancelled)	£2,903,454	£520,281	£556,626	£426,150	<b>£4,406,511</b>
Total value of exemptions	£4,898,771	£13,764,950	£3,275,362	£480,855	<b>£22,419,938</b>

<b>FY 2015/16</b>	<b>Qtr. 1</b>	<b>Qtr. 2</b>	<b>Total</b>
Total number. of exemptions registered	5	2	<b>7</b>
Total number. of exemptions cancelled during process	1	1	<b>2</b>
Lowest value exemption (excluding cancelled)	£47,000	£50,000	
Highest value exemption (excluding cancelled)	£143,797	£50,000	
Total no. of exemptions raised retrospectively (excluding cancelled)	1	0	<b>1</b>
Total value of retrospective exemption (excluding cancelled )	£70,000	£0	<b>£70,000</b>
Total value of exemptions	£514,797	£172,500	<b>£687,297</b>

**Fig. 2 - 18 month analysis of exemptions applied for under Standing Orders relating to Contracts**

**Complete Fiscal Year 2014/15 and Quarters 1-2 of Fiscal Year 15/16 \*\*Risk data excludes cancelled exemptions**

<b>Summary Complete Fiscal Year 2014/15</b>	<b>Qtr 1</b>	<b>Qtr 2</b>	<b>Qtr 3</b>	<b>Qtr 4</b>	<b>FY 14/15</b>
Total no. of exemptions registered	12	22	16	9	59
Total no. of exemptions cancelled during process	0	8	3	2	13
Total no. of exemptions categorised as Low risk (excludes cancellations)	10	11	13	7	41
Total no. of exemptions categorised as Medium risk (excludes cancellations)	2	2	0	0	4
Total no. of exemptions categorised as High risk	0	0	0	0	0

<b>Summary Fiscal Year 2015/16 - Quarters 1-2</b>	<b>Qtr 1</b>	<b>Qtr 2</b>	<b>Qtr 3</b>	<b>Qtr 4</b>	<b>FY 15/16</b>
Total no. of exemptions registered	5	2			
Total no. of exemptions cancelled during process	1	1			
Total no. of exemptions categorised as Low risk (excludes cancellations)	4	1			
Total no. of exemptions categorised as Medium risk (excludes cancellations)	0	0			
Total no. of exemptions categorised as High risk	0	0			

**Fig.3 - Exemptions by Service Area****Quarters 1-2 of Fiscal Year 15/16***\*\*Risk data excludes cancelled exemptions*

<b>Exemptions to Contract Standing Orders by Service Area (April 2015 - Sept 2015)</b>	<b>Below Threshold</b>	<b>No. Low Risk</b>	<b>No. Med/High Risk</b>
CHASC - Adult Social Care	1	1	0
CHASC - Public health	1	1	0
CYP - Learning, Skills & Prevention	1	1	0
Prevention & Commissioning	0	0	0
TEE - Environment	2	2	0
<b>Totals</b>	<b>5</b>	<b>5</b>	<b>0</b>

## Exemptions and Breaches of Public procurement Regulations

### Guidance Notes

#### Background

Procurement activity within the Council is governed by **Contract Standing Orders (CSO)** and the **Public Procurement Regulations (PPR)**.

CSO are part of the Council's Constitution and, therefore, Officers are required to conduct procurement activity in accordance with these Orders. Timely review of contracts and good forward planning, drawing on the management information in the Contracts Management Application (CMA), should ensure that sufficient time is allowed to carry out procurement exercises in accordance with Standing Orders.

In certain circumstances, it is recognised that it may be appropriate to seek an exemption from the full requirement of CSO and the Council has in place an exemption process that Officers can use to request agreement from a Cabinet Member (and the Chief Finance Officer) to act outside of CSO.

The exemption process can be applied to a procurement process that will result in a contract with **a value of up to £172k**. This is the relevant EU Threshold for the purchase of Goods or Services by Local Authorities in the UK and it is a requirement of the Public Procurement Regulations that procurement activity of this value is subject to a competitive process.

#### In Summary

CSO state that competitive quotations should be sought for purchases with a value of between £25k and £172k. An agreed exemption will allow an Officer to legitimately place an order for a purchase of this value without following a competitive process.

**It is not, however, possible for an Officer to request an exemption if the value of the planned contract is in excess of this figure of £172k.** This is for the following reasons:-

- CSO state that exemptions can only be requested if the value of the planned purchase is below the EU Threshold for Goods and Services;
- The Public Procurement Regulations are a **legal requirement** and it is not possible for either Officers or Members to authorise an action which would result in a process that is not lawful.

**Therefore, a competitive process must be followed if the value of the planned contract is in excess of £172k. Any alternative course of action will result in a breach of the Public procurement Regulations and may lead to a challenge resulting in a financial penalty and a reputational risk.**

#### Breach

If an Officer becomes aware that it may not be possible to comply with the requirement for competition and that a breach may result, then they are required to take immediate advice on the steps to follow and should:

- Consult with the procurement team and/or legal services to establish the legal position and any possible alternative course of action  
**AND**
- Consider the risks associated with delaying the contract award until a competitive process has been followed.  
**AND**
- Advise the Managing Director of the Business Unit of the potential breach and agree a course of action.

If the Business Unit concludes that there is no option but to proceed, then **the S151 Officer and Monitoring Officer (Statutory Officers) must be informed of the potential breach at the earliest possible opportunity** via a report that sets out:

- The reasons for the potential Breach;
- A summary of the advice received from Procurement and/or Legal Services;
- The risks associated with any delay to awarding the contract;
- The planned course of action, including timescales.

The purpose of the report is to **inform** the Statutory Officers and allow them to intervene, if deemed appropriate, before the Breach occurs.

The S151 Officer / Monitoring Officer cannot sanction or agree the proposals. However, they will:

- Consider the risks to the Council arising from the Breach and make an entry on the Corporate Risk Register, if deemed appropriate;
- Seek assurance that appropriate steps are being taken to rectify the situation and that this is being given high priority;
- Require the Business Unit to take steps to prevent similar circumstances reoccurring in the future.

In circumstances where the Breach has already occurred then the Statutory Officers must be informed immediately that Public Procurement Regulations have not been followed. A report should be submitted that also sets out the reasons why the Statutory Officers were not informed of any potential breach earlier.

The Statutory Officers will consider and make recommendations for any further action to be taken following any breach.

The Regulatory and Audit Committee will be informed of all breaches and the Accountable Officers will be expected to attend to explain the reasons for the breach.