

Regulatory and Audit Committee

Title: Contract Standing Orders - Exemptions / Breaches

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Local members affected: N/A

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

Summary

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 the period from 1st April 2016 until 30th September 2016

Recommendation

Members are asked to note this report

Background

The Committee has received three earlier reports on this subject, the most recent one being presented in April 2016

This Committee requested that they be updated at six monthly intervals on this subject.

Summary

1.1 Standing Orders Relating to Contracts, Exemptions and Breaches

Standing Order 7 of the Contract Standing Orders states that all purchases over 25K must be subject to competition.

Standing Order 5 allows an exemption to the requirement for competition and allows a contract to be placed by direct negotiation with one or more suppliers.

Exemptions under this Order, however, cannot be granted if EU Regulations apply i.e. purchases with a value of £164,176 or above. 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 and monitoring officer (statutory officers).

1.1 Data Summary

1.1.1 Exemptions

There were a total of 9 exemptions registered in Quarters 1 and 2 for the Fiscal Year 16/17. This compares to 7 for the same period last year (7).

During Q1 and Q2 of the Fiscal Year 2016/17:

- The highest value application was £160,000
- The lowest value application was £27,500
- 1 exemption was raised retrospectively (Mencap, Wendover Road)
- The total value of exemptions approved was £759,166 a slight increase on the same period for 15/16 (£687,297)
- The average value of an exemption was approximately £88,000
- The average length of an exemption was 10 months.

1.1.2 Breaches to public procurement regulations

Two breaches have been reported to the Statutory Officers in the six month period since the last report.

1.1.2.1 The first breach is in relation to the Prevention Matters Community Practice Workers (CPW) contracts that are due to come to an end on 31 December 2016.

The current contracts ended between March and May 2016. Exemptions were then obtained to put in place arrangements until 31st December 2016. This service is now being extended for a further 6 months whilst Adult Social Care develops the business case for the new Social Work Operating Model which is envisaged to have preventative elements in it. It is anticipated that by April 2017 a decision on the future of the CPW function will be made.

	Exemption Value	Breach Value
○ Carers Bucks	£149,000	£102,000
○ Bucks Mind	£127,000	£117,500

1.1.2.2 The second breach relates to the contract with POhWER for the provision of advocacy and direct payments and which is due to end in March 2017.

In December 2015, CHASC accepted a recommendation that re-commissioning of the POhWER contract be jointly undertaken with contracts for similar services in Community, namely Healthwatch and NHS Complaints. A business case was developed in April 2016 and this business case was approved by CHASC management in May 2016. Following this officer approval, the Cabinet Member for Community Engagement and Public Health withdrew support, identifying that there would be a conflict of interest if a Healthwatch contract was procured and managed by Adult Social Care.

A further business case was subsequently submitted for the re-commissioning of Adult Social Care contracts only. These included advocacy, direct payment and user engagement. This was approved by member key decision on 26th July 2016.

After the key decision was taken, a separate digital improvement project highlighted potential significant savings that could be achieved by a direct payments digital solution. A further business case was developed and approved to bring all direct payments management and advice 'in-house'.

These two changes of commissioning strategy delayed the re-commissioning project.

To achieve full consultation, EU tender of advocacy contract and the approval process, the project plan now indicates that tender award for advocacy cannot be achieved until May 2017. If the contract is awarded to a new provider, a three month handover period will be required which means the new contract would not start until August 17. This will result in a breach of standing orders as the existing contract will have to be extended by 5 months

The value of the breach is £325,540 and consists of:

- Advocacy estimate for 5 months : £114,780

The breach for Direct payments is unknown as the timescales for the DP handover have not been confirmed. The worst case scenario is 5 months.

- Direct Payments estimate for 5 months: £210,760

2. Publication of Opportunities and Award Notices

The Public Procurement Regulations 2015 and the Government's Transparency Agenda require Local Authorities to publish contract opportunities and award notices on Contracts Finder. (Contracts Finder is the website used for the publication of all public sector procurement opportunities in England). Failure to comply will put the Authority in breach of UK law. The Crown Commercial Service is still considering the sanctions that will apply for non-compliance. Currently compliance is being monitored via a mystery shopping approach.

Unfortunately the reporting tool on the e-tendering system that was due to be released by the system provider in the last quarter has been delayed until January 2017. This tool will enable Procurement to set up and run tailored reports.

We are therefore unable to provide accurate data for breaches in this area.

There have been no Mystery Shopping cases about the Council in the last 6 months.

Fig. 1 - Data summary

Summary of all Exemption to Standing Orders registered during Complete Fiscal Year 2015/16 and Q1 & 2 2016/17

FY 2015/16	Qtr. 1	Qtr. 2	Qtr.3	Qtr. 4	Total
Total number. of exemptions registered	5	2	5	10	22
Total number. of exemptions cancelled during process	1	1	0	2	4
Lowest value exemption (excluding cancelled)	£47,000	£50,000	£10,000	£35,963	
Highest value exemption (excluding cancelled)	£143,797	£50,000	£324,311	£120,000	
Total no. of exemptions raised retrospectively (excluding cancelled)	1	0	0	4	5
Total value of retrospective exemptions (excluding cancelled)	£70,000	£0	£0	£200,163	£270,163
Total value of exemptions	£514,797	£172,500	£558,868	£982,891	£2,229,056

Q1 & 2 FY 2016/17	Qtr. 1	Qtr. 2			
Total number of exemptions registered	4	5			9
Total number. of exemptions cancelled during process	0	0			0
Lowest value exemption (excluding cancelled)	£100,000	£27,500			
Highest value exemption (excluding cancelled)	£120,000	£160,000			
Total no. of exemptions raised retrospectively (excluding cancelled)	0	1			1
Total value of retrospective exemptions (excluding cancelled)	£0	£92,000			
Total value of exemptions	£287,333	£471,833			

Fig. 2 - Analysis of exemptions applied for under Standing Orders relating to Contracts

Complete Fiscal Year 2015/16 and Q1 & 2 2016/17

Summary Complete Fiscal Year 2015/16	Qtr. 1	Qtr. 2	Qtr. 3	Qtr. 4	FY 15/16
Total no. of exemptions registered	5	2	5	10	22
Total no. of exemptions cancelled during process	1	1	0	2	4
Total no. of exemptions categorised as Low risk (excludes cancellations)	4	1	4	5	14
Total no. of exemptions categorised as Medium risk (excludes cancellations)	0	0	1	3	4
Total no. of exemptions categorised as High risk	0	0	0	0	0

Q1 & 2 FY 2016/17	Qtr. 1	Qtr. 2			FY 16/17
Total no. of exemptions registered	4	5			9
Total no. of exemptions cancelled during process	0	0			0
Total no. of exemptions categorised as Low risk (excludes cancellations)	3	3			6
Total no. of exemptions categorised as Medium risk (excludes cancellations)	1	2			3
Total no. of exemptions categorised as High risk	0	0			0

Fig.3 - Exemptions by Service Area

Complete Fiscal Year 15/16 (excludes cancelled Exemptions) and Q1 & 2 2016/17

Exemptions to Contract Standing Orders by Service Area (April 2015 - March 2016)	No.	No. Low / Medium Risk	No. High Risk
BSP	6	5	1
CHASC - Adult Social Care	1	1	0
CHASC - Communities	2	2	0
CHASC - Public health	2	3	0
CYP - Learning, Skills & Prevention	4	4	0
TEE - Environment	2	2	0
Totals	17	17	1

Exemptions to Contract Standing Orders by Service Area Q1&Q2 (April 2016 - September 2016)	No.	No. Low / Medium Risk	No. High Risk
CHASC - Communities	3	3	0
CHASC - Operations	1	1	0
CHASC - Public Health	1	1	0
CHASC - Strategic Commissioning	1	1	0
HQ - People & Organisational Development	1	1	0
TEE - Environment	1	1	0
TEE - Public Transport	1	1	0
Totals	9	9	0