

Regulatory and Audit Committee

Title:	Contract Standing Orders - Exemptions / Breaches
Date:	14 th June 2017
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Local members affected:	N/A

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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 October 2016 until 31st March 2017

Recommendation

Members are asked to note this report

Background

The Committee has received four earlier reports on this subject, the most recent one being presented in November 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) at the earliest opportunity (and well in advance of the actual breach

happening) setting out the reasons for the potential breach, a summary of the advice received from procurement/legal, the risks associated with any delay and the planned course of action including timescales. This allows the s151 and monitoring officer the opportunity to intervene if deemed appropriate.

1.1.1 Exemptions Agreed by Procurement

During Quarters 3 & 4 Financial Year 16/17

- There were a total of 9 exemptions during quarters 3 and 4 for Financial Year 16/17 (15 in the same period last year)
- The highest value application was £150,000
- The lowest application was £30,912
- The total value of exemptions approved was £449,208 compared to £1,541,719 in the same period last year

During the complete Financial Year 2016/17:

There were a total of 18 exemptions registered during the complete Financial Year 16/17. This is the same total of 18 (22 exemptions 4 of which were cancelled) for the complete Fiscal Year 15/16.

- The total value of exemptions approved was £1,208,374, a significant reduction on the previous Financial Year 15/16 (£2,229,056)
- The average value of an exemption was approximately £77,500
- The average length of an exemption was 9 months

1.1.2 Breaches to public procurement regulations

The details of any breaches have been included in the confidential Appendix Two.

1.1.3 Actions to Reduce Exemptions and Breaches

Although the number and value of exemptions has decreased during the 2016/17 financial year, Managing Directors and commissioning Directors are committed to reducing the number further and ensuring that commissioners and contract managers are aware that exemptions and breaches are taken seriously and should be avoided. The Procurement team send quarterly reports to contract managers and commissioners highlighting those contracts that are due to expire within the following 18 months. This allows plenty of time for planning the re-procurement of those contracts.

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 Government 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.

From November 2016 until March 2017 the Contract Award facility on the Government's Contracts Finder website has not been operational and therefore it has not been possible to place award notices or report on award notice compliance.

The reporting tool on the e-tendering system that was due to be released by the system provider in January 2017 has also been delayed. It is only now in user acceptance testing stage. This tool will enable Procurement to set up and run tailored reports.

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