

Regulatory and Audit Committee

Title:	Contract Standing Orders - Exemptions / Breaches
Date:	27 February 2020
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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 Contracts Regulations 2015

The reporting period covers the following periods:

- 1st April 2018 until 31st March 2019
- 1st April 2019 until 31st December 2019

Recommendation

Members are asked to note this report.

1. Background

The Committee have received previous reports on this subject, the last presented on 30th July 2019.

2. 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:

- The goods and services threshold was £181,302. From January 2020 the threshold is £189,330.
- The light touch threshold was £615,278. From January 2020 the threshold for light touch is £663,540.
- The works threshold was £4,551,413. From January 2020 the EU threshold for works 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 and monitoring officer (statutory officers). In some instances there may be legal permitted changes within the Public Contracts Regulations 2015 which fall out of scope from these reporting requirements.

3. Exemptions

Procurement carries out commercial assessments on all exemptions using a risk-based approach. Legal and financial input is requested when appropriate.

Any exemption which exceeds £50k must have a financial assessment by the Head of Finance of the particular Business Unit.

All exemptions are assessed by the S151 Officer. For an exemption below 50K this is delegated to the Procurement team.

For exemptions over £50k the final sign off is provided by the Head of Procurement, Executive Director for that Business Unit and by the Cabinet Member or Portfolio Holder.

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 exemption e.g. only one supplier able to deliver, disruption to service
- Any risks associated with the particular 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

Impact of the unitary decision

The procurement teams from all 5 authorities have analysed all current contracts in order to seek opportunities for harmonisation and cost savings. In order to align dates and contract options, where necessary exemptions have been allowed which is reflected in the increased numbers of exemptions processed in this period.

Exemptions summary complete F/Y 18/19

- There were 14 completed exemptions.
- The total value of exemptions approved during 18/19 is £1,141,181.
- The highest value exemption was for £388,392. This related to a social care contract and legal advised that although this was in excess of the thresholds set out by CSO it was not a breach of EU thresholds (social care services have a threshold of £615,278 and therefore this was treated as an exemption and not a breach.
- The lowest value exemption was for £15,630

Exemption summary Quarters 1-3 F/Y 19/20

- There were 25 completed exemptions which is far higher than 9 for the same period in 18/19, this is due to the work on the unitary programme.
- The total value of exemptions approved during this period is £2,996,821.
- The highest value exemption was for *£492,676. This relates to a social care contract for Home from Hospital which falls under the social care services threshold of £615,278 and therefore treated as an exemption.
- The lowest value exemption was for £20,000.

Please see Appendix one, figures 1, 2 and 3 for a breakdown of these exemptions.

4. Breaches to Public Contracts Regulations 2015

Three breaches have been reported to the Statutory Officers in the period since the last report. Please see Confidential Appendix 2 for the full report.

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 Government Transparency Agenda requires all contracts with a value of 5K and higher to be published.

The Crown Commercial Service (CCS) is still considering the sanctions that will apply for non-compliance with these requirements. Currently CCS is monitoring these areas via a Procurement Review Service (previously the Mystery Shopping Service).

BCC meets these 2 requirements by including a 'Contract Award' step in the e-sourcing system for all 5K contracts which then publishes the Contract Notice electronically to ensure compliance.

Other LA's have adopted a different approach e.g. publishing details of 5K + contracts on their own webpages. There is no standard approach to meeting these requirements which allows comparisons or any benchmarking with other Authorities. The different quotation thresholds that Authorities use also make comparisons difficult.

For the period 1st April 2019 – 31st December 2019 a total of 651 projects were started in ProContract and approximately 78% have a completed award notice on Contracts Finder.

Quarterly reports are issued to officers to remind them to complete this step and these reports are also sent to the Business Unit Finance Head of Procurement.

The Council have been reviewed by the Procurement Review Service for a procurement exercise carried out by IT. A bidder complained to the Procurement Review Service and the Council was investigated. The Procurement Review Service ruled in the Council's favour and held that the Council had acted fairly and legally. There were therefore no grounds for the bidder's complaint.

Fig. 1 - Data summary**Summary of all Exemption to Standing Orders registered during Complete Fiscal Year 18/19 and Q1-Q3 2019/20**

Summary FY 2018/19	Qtr. 1	Qtr. 2	Qtr. 3	Qtr. 4	Total
Total number. of exemptions registered	4	3	3	5	15
Total number. of exemptions cancelled during process	1	0	0	0	1
Lowest value exemption	£43,500	£50,000	£16,250	£15,630	
Highest value exemption	£388,392*	£175,875	£100,250	£81,265	
Total no. of exemptions raised retrospectively	1	2	1	1	5
Total value of retrospective exemptions	£45,000	£102,950	£44,000	£15,630	
Total value of all exemptions	£476,892	£278,825	£164,500	£220,964	£1,141,181

*Legal advised that although this was in excess of the thresholds set out by CSO it was not a breach of EU thresholds (social care services have a threshold of £615,278 and therefore this was treated as an exemption and not a breach)

Summary FY 2019/20	Qtr. 1	Qtr. 2	Qtr. 3	Qtr. 4	Total
Total number. of exemptions registered	6	12	8		26
Total number. of exemptions cancelled during process	0	1	0		1
Lowest value exemption	£41,688	£40,000	£20,000		
Highest value exemption	£378,996*	£492,676**	£150,000		
Total no. of exemptions raised retrospectively	1	2	2		5
Total value of retrospective exemptions	£41,688	£134,000	£166,143		£341,831
Total value of all exemptions	£815,448	£1,525,158	£656,215		£2,996,821

* CHILDREN'S SERVICES - Progress to Excellence falls under £615,278 threshold for Social and other specific services (Light Touch Regime)

** CHASC - Home from hospital service falls under £615,278 threshold for social care contracts

Fig. 2 - Exemptions by Risk

Exemptions are assessed by Procurement, S151 Monitoring Officer and where required Finance and Legal.

Summary of all Exemption to Standing Orders registered during Complete Fiscal Year 18/19 and Q1-Q3 2019/20

Summary Complete Fiscal Year 2018/19	Qtr. 1	Qtr. 2	Qtr. 3	Qtr. 4	Total
Total no. of exemptions registered	4	3	3	5	15
Total no. of exemptions cancelled during process	1	0	0	0	1
Total no. of exemptions categorised as Low risk (excludes cancellations)	3	3	3	2	11
Total no. of exemptions categorised as Medium risk (excludes cancellations)	0	0	0	3	3
Total no. of exemptions categorised as High risk	0	0	0	0	0

Summary Fiscal Year 2019/20	Qtr. 1	Qtr. 2	Qtr. 3	Qtr. 4	Total
Total no. of exemptions registered	6	12	8		26
Total no. of exemptions cancelled during process	0	1	0		1
Total no. of exemptions categorised as Low risk (excludes cancellations)	5	10	7		22
Total no. of exemptions categorised as Medium risk (excludes cancellations)	1	1	1		3
Total no. of exemptions categorised as High risk	0	0	0		0

Fig.3 - Exemptions by Service Area**Complete Fiscal Year 2018/19 and complete Q1 – 3 FY 2019/20 (excludes cancelled Exemptions)**

Exemptions to Contract Standing Orders by Service Area (April 2018 – March 2019)	No. Low / Medium Risk	No. High Risk
CHASC - Strategic Commissioning	1	
CHASC - Transformation	1	
CHILDREN'S SERVICES - School commissioning	1	
CSCL - Children's Strategic Commissioning	1	
RESOURCES - Facilities Management	1	
RESOURCES - Finance Operations	2	
RESOURCES - Learning, Skills & Prevention	1	
RESOURCES - Procurement	1	
TEE - Client Transport	2	
TEE - Energy	1	
TEE - Environment	1	
TEE - Waste Management	1	
TOTAL	14	0

Exemptions to Contract Standing Orders by Service Area Q1-Q3 2019-20	No. Low / Medium Risk	No. High Risk
CHASC - Direct Care & Support Services	1	
CHASC - Integrated Commissioning	2	
CHASC - Quality, Standards & Performance	1	
CHASC - Strategic Commissioning	1	
CHILDREN'S SERVICES - Children in Care Commissioning	1	
CHILDREN'S SERVICES - Education	1	
RESOURCES - Business Assurance	1	
RESOURCES - Communications	1	
RESOURCES - Customer	3	
RESOURCES - HR & OD Consultancy	2	
RESOURCES - Legal Services	1	
RESOURCES - Pensions & Investments	1	
RESOURCES - Property & Assets	1	
RESOURCES - Property FM	2	
RESOURCES - Property Services	1	
RESOURCES - Technology Services	2	
TEE - Business Improvement	1	
TEE - Strategic Planning & Infrastructure	1	
TEE - Waste Management	1	
TOTAL	25	

