



Report to Audit & Governance Committee

Date: 18th November 2020
Title: Contract Procedure Rules – Waivers & Breaches
Author: Cael Sendell-Price JP

Recommendations: Members are asked to note this report and the work of the Strategic Procurement Team

Summary

This report provides an updated summary in relation to compliance with the Council's Contract Procedure Rules (CPR's) and compliance with the Public Contracts Regulations 2015.

The reporting period covers the following period:

- 1st April 2020 until 30th September 2020

1. Background

The Council as a public body when undertaking procurement exercises and awarding contracts must comply with the Public Contracts Regulations 2015. The Regulations place a great deal of restrictions on the Council in how it is permitted to run procurement exercises and in some cases the Council could be sued by bidders for not following these Regulations.

It should be noted, that it is the relevant service area/ directorate that is responsible for undertaking procurement exercises and the management of contracts, not the procurement team. The procurement team develop the corporate policy, support high risk/value procurement exercises and provide training on procurement & contract management

2. Contract Procedure Rules relating to Contracts, Waivers and Breaches

Rules 6.31 to 6.37 state that all purchases over £25K must be subject to competition. Where the estimated whole life cost of a contract is:

£25,000 or less for Goods, Services and Works:	A minimum of 1 written quotation is required. This can be a written confirmation by an officer of an oral quotation. Where possible local suppliers should be given the opportunity to bid.
Between £25,001 and Procurement Threshold for Goods & Services:	A minimum of 3 written quotations requested. Where possible local suppliers should be given the opportunity to bid.
Between £25,001 and Procurement Threshold for Works:	A minimum of 4 written tenders requested. Where possible local suppliers should be given the opportunity to bid.
Over the relevant Procurement Threshold:	Full Tender Process or compliant Framework Agreement.

Rule 6.18 allows a Waiver to the requirement for competition and allows a contract to be placed by direct negotiation with one or more suppliers.

Waivers under this Rule, however, cannot be granted if over the relevant Procurement Thresholds.

- The goods and services threshold is £189,330.
- The light touch threshold £663,540.
- The works threshold 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 Officer and Monitoring Officer (statutory officers). In some instances, there may be legal permitted changes within the Public Contracts Regulations 2015.

3. Waivers

Service areas can complete waiver forms to waive internal rules, but not Procurement Law. Service areas must demonstrate why a waiver is needed and must include why this is best value. The Procurement team carries out commercial assessments on all waivers using a risk-based approach. Legal and financial input is requested when appropriate.

Waivers are signed off by sign off by:

1. S151 Officer (delegated to the Head of Strategic Procurement)
2. Monitoring Officer (delegated to the Head of Strategic Procurement)
3. Relevant Corporate Director
4. Relevant Cabinet 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
- Any risks associated with the 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

Waiver summary Quarters 1 & 2 FY 20/21

- There were 30 completed Waivers
- The total value of Waivers approved during this period is £8,165,786.
- The highest value Waiver was for £3,644,487. This related to a social care contract for Integrated Community equipment. Legal advised that although this was in excess of the thresholds set out by CPRs this contract falls under Reg 72 of PCR 2015 and therefore extension was permissible. Regulation 72 provides number of permitted modification of contracts for certain reasons. In the instance above, the impact due to COVID19.
- The lowest value Waiver was for £31,450

4. Breaches to Public Contracts Regulations 2015

One breach has been reported to the Statutory Officers in the period since the last report. Please see Confidential Appendix 1 for the full report which has been drafted by the relevant service area.

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 Local Government Transparency Code 2015 requires all contracts with a value of 5K and higher to be published. The Council meets this requirement and uploads all contracts to its internal Contract Management Application (CMA) to ensure it has oversight and governance on all procured contracts.

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).

The Council was investigated by the Procurement Review Service in June 2020. A company alleged that the Council had not complied with the Public Contracts Regulations 2015 when awarding a contract to a supplier. The Procurement Review Service requested information from the Council on how the procurement was conducted. The Procurement Review Service found that the Council has acted within the Regulations and had considered best value, the complaint was therefore not upheld. One of the newest issues of bringing together 5 Councils will be the procurement & contract management culture of relevant services areas/directorates. In order to develop a new positive culture and ensure a high level of assurance the Procurement team provides training on several areas listed below.

<i>Training sessions</i>	<i>No. of Officers trained</i>
<i>Introduction to Procurement training</i>	<i>152</i>
<i>Contract Management training</i>	<i>99</i>
<i>Contract Management Application (CMA) & E-Sourcing/Tender Portal training</i>	<i>60</i>
<i>Modern Slavery in the Supply Chain training</i>	<i>75</i>

Fig. 1 - Data summary

Summary of all Waivers registered during Q1-Q2 2020/21

Summary FY 2020/21	Qtr. 1	Qtr. 2	Qtr. 3	Qtr. 4	Total
Total number of Waivers registered	16	16			32
Total number of Waivers cancelled during process	1	1			2
Lowest value Waiver	£37,000	£31,450			
Highest value Waiver	*£3,644,487	**£652,402			
Total number of Waivers raised retrospectively	2	3			5
Total value of retrospective waivers	£121,500	£793,012			£914,512
Total value of all waivers	£6,561,659	£1,614,376			£8,165,786

* AHH - Integrated Community Equipment - NRS Healthcare. Legal advised that this contract falls under Reg 72 of PCR 2015 and therefore extension is permissible

**Childrens services - Alternative Education Provision for SEN and Excluded Pupils, Progress to Excellence falls under LTR threshold £663,800

Fig. 2 - Waivers by Risk

Summary of all Waivers registered during Q1-Q2 2020/21

Summary FY 2020/21	Qtr. 1	Qtr. 2	Qtr. 3	Qtr. 4	Total
Total no. of Waivers registered	16	16			32
Total no. of Waivers cancelled during process	1	1			2
Total no. of Waivers categorised as Low risk	11	8			19
Total no. of Waivers categorised as Medium risk	4	6			10
Total no. of Waivers categorised as High risk	0	0			0

Fig.3 - Waivers by Service Area

Summary of all Waivers registered Q1–2 FY 2020/21

Waivers to CPR's by Service Area Q1-2 2020/21	No. Low / Medium Risk	No. High Risk
AHH - Integrated Commissioning	6	
AHH - Public Health	1	
CS - Education	2	
CS - Family Support Service	1	
COMM - Highways & Technical Services	1	
COMM - Parking Services	1	
COMM - Regulatory Services	2	
COMM - Transport Services	5	
DCE - Localities & Strategic	1	
DCE - Service Improvement	1	
PGS - Facilities Management	1	
PGS - Major Projects	1	
PGS - Property & Assets	1	
RES - Business Assurance	1	
RES - Finance Operations	1	
RES - Procurement	1	
RES - Ratings & Recovery	1	
RES - Revenues & Benefits	2	
Total	30	