



Report to Audit & Governance Committee

Date:	28th July 2021
Title:	Contract Procedure Rules – Waivers & Breaches
Relevant councillor(s):	Cllr John Chilver
Author:	Cael Sendell-Price JP, Head of Strategic Procurement
Ward(s) affected:	All
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 Committee have received previous reports on this subject, the last presented on 18th November 2020 which covered the first 6-months of the year. This report is a six-month update and covers the last 6 months of financial year 20-21.

The reporting period covers the following period:

- **1st October 2020 until 30th March 2021**

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 are 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 <u>Procurement Threshold</u> 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 <u>Procurement Threshold</u> for Works:	A minimum of 4 written tenders requested. Where possible local suppliers should be given the opportunity to bid.
Over the relevant <u>Procurement Threshold</u>:	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 supplier. This needs to be agreed and documented in advance. 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 Regime (LTR) threshold is **£663,540**.

This is a Procurement regime for social and other specific services including:-

- Health, social and related contracts
- Administrative social, educational, healthcare & cultural services
- Hotel and restaurant services
- Legal services
- Other administrative services and government services
- Provision of services to the community

➤ 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 contracts that are subject to the Procurement Regulations such as contracts over the legal procurement

threshold. Service areas must demonstrate in advance why a waiver is needed and must include evidence to prove 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 Member.

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 Waiver.
- 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 Q3-4 FY 20/21

There were a total number of 38 Waivers registered in this 6-month period.

➤ Quarter 3

- There were 15 completed Waivers.
- The total value of Waivers approved during this period was £1,547,597.
- The highest value Waiver was for £175,817.
- The lowest value Waiver was for £16,413.

➤ Quarter 4

- There were 23 completed Waivers.
- The total value of Waivers approved during this period was £10,034,181.
- The highest value Waiver was for £564,6576 – this was for the Integrated Children & Young Peoples therapy service which falls under Light Touch Regime threshold £663,800
- The lowest value Waiver was for £18,320.

It should be noted, that waivers are not negative. They are a tool for the Council to get a quick solution at best value and are subject to a high level of assurance.

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 Cabinet Office monitors potential breaches raised by suppliers via a Procurement Review Service (previously the Mystery Shopping Service). Procurement Review Service will contract public bodies to investigate any potential breach and ask for any evidence. The Procurement Review Service shall then make a ruling on the proposed course of action including any lessons for the future. The council has not been subjected to any investigation by the Crown Commercial Service for this period.

6. Procurement & Contract Management Training

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. This level of training is above what most Councils provide.

Summary Procurement/SRM training sessions 1st April 2020 – 31st March 2021

<i>Training Sessions</i>	<i>Number of Officers trained</i>
<i>Understanding Procurement training</i>	182
<i>ProContract e-Sourcing Tender portal training</i>	72
<i>Contract Management Development training</i>	61
<i>Contract Management Application (CMA) training</i>	119
<i>Modern Slavery in the Supply Chain training</i>	107
<i>Best Practice Self-Assessment training</i>	44
<i>TOTAL</i>	585

7. Procurement Legislation Changes

A recent Green Paper on the future transformation of public sector procurement was recently released by Central Government. The Queen's Speech stated that the Procurement Bill will be laid in parliament in September 2021. There are a high-level number of proposed changes to procedures, processes, and reporting of public procurement. However, there are very limited changes to how bidders must be treated. Bidders, regardless of size or locations within the UK must be treated fairly and equally. It should be noted the current details on changes is very thin. When we have further detailed information on the changes full training will be provided by the Procurement Team to the rest of the Council.

Fig. 1 - Data summary

Summary of all Waivers registered during Q1 - Q4 2020/21

Summary FY 2020/21	Qtr. 1	Qtr. 2	Qtr. 3	Qtr. 4	Total
Total number of Waivers registered	15	15	15	23	68
Lowest value Waiver	£37,000	£31,450	£16,413	£18,320	
Highest value Waiver	*£3,644,487	**£652,402	£175,817	***£564,6576	
Total number of Waivers raised	2	3	6	11	22
Total value of retrospective waivers	£121,500	£793,012	£582,614	£2,958,360	£4,455,486
Total value of all waivers	£6,561,659	£1,609,376	£1,547,597	£10,034,181	£19,752,813

* 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

*** Integrated Children & Young Peoples therapy service falls under LTR threshold £663,800

Fig. 2 - Waivers by Risk

Summary of all Waivers registered during Q1 - Q4 2020/21

Summary FY 2020/21	Qtr. 1	Qtr. 2	Qtr. 3	Qtr. 4	Total
Total no. of Waivers registered	15	15	15	23	68
Total no. of Waivers categorised as Low risk	11	9	14	20	54
Total no. of Waivers categorised as Medium risk	4	6	1	3	14
Total no. of Waivers categorised as High risk	0	0	0	0	0

Fig.3 - Waivers by Service Area

Summary of all Waivers registered Q1 - Q4 FY 2020/21

Waivers to CPR's by Service Area Summary FY 2020/21	No. Low / Medium Risk	No. High Risk
AHH - Integrated Commissioning	12	
AHH - Public Health	1	
CS - Achievement & Learning	1	
CS - Care Services	1	
CS - Children in Care Services	1	
CS - Education	2	
CS - Family Support Service	1	
CS - Virtual School	1	
COMM - Client Transport	1	
COMM - Communities	1	
COMM - Highways & Technical Services	2	
COMM - Leisure	1	
COMM - Libraries	1	
COMM - Parking Services	3	
COMM - Regulatory Services	2	
COMM - Transport Services	5	
DCE - Electoral Services	1	
DEC - Information Management	1	
DCE - Localities & Strategic Partnerships	2	
DEC - Policy Team	1	
DCE - Service Improvement	1	
PGS - Economic Growth & Regeneration	3	
PGS - Energy & Resources	1	
PGS - Facilities Management	1	
PGS - Leisure	1	
PGS - Major Projects	2	
PGC - Planning & Environment	1	
PGS - Property & Assets	4	
PGS - Strategic Environment	1	
PGS - Strategic Transport & Infrastructure	1	
RES - Business Assurance	1	
RES - Business Operations	2	
RES - Finance Operations	2	
RES - HR & OD	1	
RES - Procurement	1	
RES - Ratings & Recovery	1	
RES - Revenues & Benefits	3	
Totals	68	