



## Report to Audit & Governance Committee

<b>Date:</b>	<b>28<sup>th</sup> July 2022</b>
<b>Title:</b>	<b>Contract Procedure Rules – Waivers &amp; Breaches</b>
<b>Relevant councillor(s):</b>	N/A
<b>Author:</b>	<b>Cael Sendell-Price JP, Head of Strategic Procurement</b>
<b>Ward(s) affected:</b>	N/A
<b>Recommendations:</b>	<b>Members are asked to note this report and the work of the Strategic Procurement Team</b>

### Summary

1.1 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. as well as summarising waivers and breaches. It also provides a quick summary of the current procurement culture and relevant updates for the Council.

- Pages 1-8 Main report
- Confidential Appendix 1 - Breach reports

1.2 The Committee have received previous reports on this subject, the last presented on 25<sup>th</sup> January 2022 which covered the first 6 months of the financial year 21/22. This report is a six-month update and covers the last 6 months of financial year 21/22.

The reporting period covers the following period:

**1<sup>st</sup> October 2021 until 31st March 2022**

## 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

The CPRs state that Corporate Directors are responsible for procurement exercises and Contract management activities. This responsibility is then delegated to Service Directors & Heads of Service. Rules 6.31 to 6.37 state that all purchases over £25K (inc.VAT) must be subject to competition. Where the estimated whole life cost of a contract is:

<b>Up to and including £25,000 for Goods, Services and Works:</b>	A minimum of <b>1 written quotation</b> 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.
<b>Over £25,000 and up to the <a href="#">Procurement Threshold</a> for Goods &amp; Services (including the Light Touch Regime):</b>	A minimum of <b>3 written quotations</b> requested. Where possible local suppliers should be given the opportunity to bid.
<b>Over £25,000 and up to the <a href="#">Procurement Threshold</a> for Works:</b>	A minimum of <b>4 written tenders</b> requested. Where possible local suppliers should be given the opportunity to bid.
<b>Relevant <a href="#">Procurement Threshold</a> and over:</b>	Full Tender Process or compliant Framework Agreement.

**Table 1: Internal Thresholds - All thresholds now include VAT**

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 **£213,477**.
- 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 **£5,336,937**.

If a direct award is made which is above the relevant procurement threshold (if a legal alternative such as a Framework is not used) or a contract has rolled on after its end date then 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. Relevant Corporate Director;
3. 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 21/22**

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

➤ **Quarter 3**

- There were 10 completed Waivers.
- The total value of Waivers approved during this period was £15,174,748.
- The highest value Waiver was for £13,606,899. This was for The Aylesbury Grid Reinforcement project (capital programme). The advice from external legal is that this falls under the Utilities Contracts Regulations 2016 and that we can rely on Regulation 34 as an exemption
- The lowest value Waiver was for £12,124.

#### ➤ Quarter 4

- There were 20 completed Waivers.
- The total value of Waivers approved during this period was £2,380,412.
- The highest value Waiver was for £908,733. This was for the Pensions Administration System – which is permissible under the requirements of Regulation 72
- The lowest value Waiver was for £4,826.

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**

Three breaches have 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. This report shall be presented by an officer from the 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. Over the relevant legal procurement threshold these must be advertised on the 'Find a Tender Service'.

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 contact 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 Cabinet Office' Procurement Review 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.

**6.1** An additional **190** training sessions have been attended in Q4 2021/22 bringing the cumulative total since 1<sup>st</sup> April 2020 to **1093**.

**Summary no. of officers trained in Procurement/SRM training sessions 1<sup>st</sup> April 2020 – 31<sup>st</sup> March 2022**

Training Courses	F/Y 20/21	F/Y 21/22
Understanding Procurement training	182	176
Pro-Contract e-Sourcing Tender portal training	91	66
Contract Management Development training	61	32
Contract Management Application (CMA) training	119	103
Modern Slavery in the Supply Chain training	108	90
Best Practice Self-Assessment training	44	21
<b>Total</b>	<b>605</b>	<b>488</b>

**Table 2: Procurement & Contract Management Training Sessions**

## 7. Data Tables

**Summary of all Waivers registered during Q3 – Q4 2021/22**

Summary FY 2021/22	Qtr. 3	Qtr. 4	Total
Total number of Waivers registered	10	20	30
Lowest value Waiver	£12,124	£4,826	£16,950
Highest value Waiver	*£13,606,899	£908,733	0
Total number of Waivers raised retrospectively	2	8	10

Total value of retrospective waivers	£71,014	£559,094	<b>£630,108</b>
<b>Total value of all waivers processed</b>	<b>£15,174,748</b>	<b>£2,380,412</b>	<b>£17,555,160</b>

**Table 3: Summary of all Waivers registered during Q3 – Q4 2021/22**

\* The Aylesbury Grid Reinforcement project is part of the Housing Infrastructure Fund programme and is an approved scheme in the capital programme. The costs of the project of refunded from the Housing Infrastructure Fund via a claim to Homes England. The advice from external legal is that this falls under the Utilities Contracts Regulations 2016 and that we can rely on Regulation 34 as an exemption

**Summary of all Waivers registered during Q3 – Q4 2021/22**

Summary FY 2021/22	Qtr. 1	Qtr. 2	Qtr. 3	Qtr. 4	Total
Total no. of Waivers registered			10	20	<b>30</b>
Total no. of Waivers categorised as Low risk			8	17	<b>25</b>
Total no. of Waivers categorised as Medium risk			**1	3	<b>4</b>
Total no. of Waivers categorised as High risk			***1	0	<b>1</b>

**Table 4: Summary of all Waivers registered during Q3 – Q4 2021/22**

\*Targeted Tier 2, and Specialist Tier 3, Child and Adolescent Mental Health Services - permissible under Reg 72 of PCR's - High value medium risk

\*\* Routewise - Low value, implementation scheduled 18 months later than expected

**Summary of all Waivers registered Q3 – Q4 FY 2021/22**

Waivers to CPR's by Service Area Summary FY 2021/22	No. Low / Medium Risk	No. High Risk
A&H - Integrated Commissioning	4	
COMM - Leisure	1	
COMM - Libraries	1	
COMM - Licensing	1	
COMM - Sports, Leisure & Culture	1	
CS - Childrens Social Care	1	
CS - Education	1	
CS - Equalities & School Improvement	2	
CS - Integrated Commissioning	1	
DCE - Legal & Democratic Services	1	
PGS - Aylesbury Garden Town	2	
PGS - Business Improvement & Parking Services	1	
PGS - Economic Growth & Regeneration	2	
PGS - Estates	1	
PGS - Planning & Enforcement	1	

PGS – Planning & Environment	1	
PGS - Property & Assets	3	
PGS - Strategic Transport & Infrastructure	1	
PGS - Transport Strategy	1	
RES - HR & OD	2	
RES - HR Payroll	1	
RES - Ratings & Recovery	1	
RES - Revenues & Benefits	1	
<b>Totals</b>	<b>32</b>	

**Table 5 - Waivers by Service Area**

## 8. Procurement Legislation Changes

8.1 In May 2022 the Procurement Bill was published in Parliament. Whilst there will be no changes until mid-2023 at the earliest there will be some changes to definitions and processes, such as:

- Key principles which are to be followed through every procurement moving forward will be:
  - a. **Public good:** Supporting the delivery of strategic national priorities including economic, social, ethical, environmental interests and public safety.
  - b. **Value for money:** Enabling whole life blend of costs to be factored into the evaluation process.
  - c. **Transparency:** Accountability for spending public money, anti-corruption and effectiveness.
  - d. **Integrity:** Promoting good management, prevention of misconduct, fraud and corruption.
  - e. **Fair treatment of suppliers:** Ensuring impartial decision making without conflicts of interest.
  - f. **Non-discrimination:** Protecting suppliers from discriminatory behaviour by buyers.
- The current six procurement procedures (open, restricted, competitive dialogue, competitive procedure with negotiation, innovation partnership, competitive procedure without prior publication) will be reduced and replaced with three procedures:
  1. **Flexible procedure** that gives buyers the chance to design a procedure that suits the specific requirements of the contract (provided it adheres to the public procurement principles).
  2. **Open procedure** for simple off-the-shelf purchases
  3. **Limited tendering procedure** that buyers can use in certain circumstances, such as in a crisis or extreme urgency.

- Creation of a new dynamic purchasing system (Dynamic Markets) that may be used for all types of procurement (not just commonly used goods and services). This would replace DPS (dynamic purchasing system) and QS (qualification system).
- Framework agreements - new options including an 'open framework' with multiple joining points and a maximum term of 8 years
- Increased transparency requirements by adopting an Open contracting approach. Systematic gathering and publication of all information/documents in a usable form which covers all phases of a procurement.
- Requirement to disclose redacted evaluation documentation.
- Requirement to publish new contract notices for above threshold procurements. New requirement to publish contract amendment notices.
- A new exclusions framework will be provided, simplifying the current rules around mandatory and voluntary exclusions of suppliers. There will be a centrally-managed debarment list managed by a new Procurement Review Unit in the Cabinet Office
- The term MEAT (most economically advantageous tender) will be replaced by MAT (most advantageous tender) to reinforce the message that value for money is not the only consideration when deciding to whom to award a contract.

8.2 There will also be a change to healthcare related procurements that will be exempt from the main procurement rules but will follow a different supplier selection regime. There is limited information on this change currently. It should be note that this only applies to health, and not to social care.

## **9. Procurement GoAwards**

9.1 The Procurement team were shortlisted for two awards last year and this year were shortlisted for the following four awards, which highlights the great work the team does for the Council:

- Procurement Team of the Year - Other Organisations.
- Best Procurement Delivery – Other Organisations.
- Continuous Improvement Award.
- Individual Achievement of the Year Award – Cael Sendell-Price.