



Report to Audit & Governance Committee

Date:	5 th July 2023
Reference number:	N/A
Title:	Contract Procedure Rules – Waivers & Breaches
Cabinet Member(s):	Cabinet Member for Accessible Housing and Resources
Contact officer:	Simon Davis, Head of Strategic Procurement
Ward(s) affected:	None specific
Recommendations:	(i) Note this report and the work of the Strategic Procurement Team.
Reason for decision:	Not applicable

1. *Executive summary*

- 1.1 This report provides a quarterly summary in relation to compliance with the Council's Contract Procedure Rules (CPR's), compliance with the Public Contracts Regulations 2015 as well as summarising waivers and breaches.

2. *Background*

- 2.1 The last report to Audit & Governance was presented on 1st February 2023 and covered the period of 1st October 2022 until 31st December 2022, the third quarter of financial year 22-23. This report covers the fourth quarter, January to March 2023. The Council is subject to Procurement Legislation when entering into contracts with suppliers. These laws must be followed regardless of the types of goods, services or works.

3. **Contract Procedure Rules relating to Contracts, Waivers and Breaches**

- 3.1 The Contract Procedure Rules (CPRs) state that Corporate Directors are responsible for procurement exercises and contract management activities. This responsibility is then delegated to Service Directors and Heads of Service through formal schemes of delegation.
- 3.2 The Procurement & SRM Team provide a monthly report of all contracts on CMA that are coming up for renewal over a 2-year timescale. This is reported to the directorate budget boards as part of a monthly Procurement to ensure that there is transparency of the pipeline of contracts that are coming up for renewal, allowing sufficient time to consider the approach to the market and ensuring that the procurement process is adequately resourced by directorates. As well as the pipeline of contracts; general contract information, the level of completeness of CMA and purchasing card spend is reported for each directorate to the relevant budget board.
- 3.3 In addition to this, a quarterly update report of all contracts over £50k due to expire within the next 18 months is sent to Contract Managers, which the team pro-actively follow up to ensure appropriate action is being taken.
- 3.4 When a waiver is requested, service areas are required to complete mandatory actions to reduce the risk of future waivers and breaches. Compliance checking is undertaken to ensure these actions are followed up and that those members of staff involved in purchasing activity are both adequately trained and ensuring contracts are up to date.
- 3.5 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:

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

Table1: Internal Thresholds – All thresholds now include VAT

3.6 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 legal procurement thresholds shown below.

£213,477	The goods and services threshold
£5,336,937	The works threshold
£663,540	The Light Touch Regime (LTR) threshold (This is a procurement regime for social and other specific services such as social care; education services; healthcare)

Table 2: Relevant Legal Procurement Thresholds effective Jan 2022 (including VAT)

3.7 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 legally permitted changes within the Public Contracts Regulations 2015, for instance to cover emergency provisions.



4. Waivers Summary January 2023 – March 2023

	QUARTER 4 - 22/23		
	NO. REGISTERED	WAIVER VALUE	WAIVER RISK RATING
ADULTS & HEALTH			
Adult Social Care	1	£65,000.00	Medium
Integrated Commissioning	1	£119,229.00	Medium
Integrated Commissioning	1	£1,244,275.00	Medium
ADULTS & HEALTH Total	3	£1,428,504.00	
CHILDRENS SERVICES			
Adoption Services	1	£404,400.00	Medium
Integrated Commissioning	1	£1,460,779.00	Medium
CHILDRENS SERVICES Total	2	£1,865,179.00	
COMMUNITIES			
Licensing	1	£40,000.00	Low
North Waste Collection and Street Scene	1	£72,000.00	Low
COMMUNITIES Total	2	£112,000.00	
DEPUTY CHIEF EXECUTIVE			
	0	0	N/A
DEPUTY CHIEF EXECUTIVE Total	0	£0.00	
PLANNING, GROWTH & SUSTAINABILITY			
Economic Growth & Regeneration	1	£103,872.00	Low
Housing and Regulatory Services	1	£90,420.00	Low
Housing and Regulatory Services	1	£104,550.00	Low
Housing and Regulatory Services	1	£1,154,475.00	Medium
Property & Assets	1	£39,000.00	Low
Property & Assets	1	£42,000.00	Low
Strategic Flood Management	1	£52,919.00	Low
Strategic Flood Management	1	£89,855.00	Low
Strategic Transport & Infrastructure	1	£180,000.00	Low
PLANNING, GROWTH & SUSTAINABILITY Total	9	£1,857,091.00	
RESOURCES			
Revenues & Benefits	1	£110,400.00	Low
RESOURCES Total	1	£110,400.00	
GRAND TOTAL	17	£5,373,174.00	Low 11 Medium 6

Table 3: Summary of Waivers for Q4 2022/23

4.1 Table 3 above shows the number of contract waivers granted in the last quarter to March 2023. The total value of £5.373m represents 1.3% of the Councils 2022/23

revenue spend, excluding payroll, grant payments to 3rd parties and non-contract spend. Appendix 1 sets out the number of waivers and contract values over the last four quarters to analyse any trends over the last 12-month period. The Procurement Team is continuing to work closely with Directorates in 2023 through their monthly Budget Boards with a more granular level of data including the forward-looking procurement pipeline timelines, so that we can encourage better planning and procurement preparation and facilitate a reduction in the number of waivers coming through.

4.2 The high value waivers were in respect of:

Adults & Health - Homes for Living / Options for Support (Hightown Housing Association):

This waiver has enabled 2 interim service contracts to be put in place, both of which fall under the Light Touch Regime (LTR) threshold. LTR is a specific set of rules which apply to health care, social care, education, cultural and certain other services defined in the Procurement Regulations. The interim contracts have been put in place for a short period only (until August 2023 and November 2023 respectively) to enable the fully compliant procurement process of the long-term solution to be completed.

Childrens Services – Children and Young People’s Integrated Therapy Services (Buckinghamshire NHS Healthcare Trust):

This is a co-commissioned service with Health and as such decisions have taken longer than originally planned during the procurement process leading to the need to extend the existing contract for a period of 3 months to the end of December 2023 to enable the procurement process to be fully completed.

Planning Growth & Sustainability - Temporary Accommodation (Garden Court Hotel):

The waiver has been requested due to the lack of competition that meets the location and volume requirements to meet the significant current demand. Other major facilities in the area have been approached by the service and all three declined to provide the service. The service is working hard to deliver alternative temporary accommodation requirements but will take time to deliver and alternative approaches to secure short-term provision are being explored.

5. ***Breaches to Public Contracts Regulations 2015***

5.1 No breaches have been reported to the Statutory Officers in the period since the last report.



- 5.2 At the Audit and Governance meeting in July a request was made for the actions Procurement had taken on incidences of past breaches. This was presented to the Committee at its meeting on 1st February 2023.

6. *Publication of Opportunities and Award Notices*

- 6.1 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'.
- 6.2 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.
- 6.3 The Cabinet Office monitors potential breaches raised by suppliers via a Procurement Review Service (previously the Mystery Shopper 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.

7. *Procurement & Contract Management Training*

- 7.1 An additional 83 training sessions have been attended in Q4 2022/23 bringing the 2022/23 total so far to 341 and a cumulative total since 1st April 2020 to 1,479.
- 7.2 We also developed and launched a new 'Tender Process' module in March which encompasses an overview of the regulations and things to consider; the tender documents; tendering timeline; step-by-step review of the Open Procedure.



Training Courses	FY 20/21	FY 21/22	FY 22/23
Understanding Procurement	182	176	115
Understanding G-Cloud (launched April 2022)	0	0	31
Tender process (launched March 2023)	0	0	11
Pro-Contract e-Sourcing Tender portal	91	66	55
Modern Slavery in the Supply Chain training	108	32	43
Contract Management Development (CMD)	61	103	52
Contract Management Application (CMA)	119	72	74
Best Practice Self-Assessment training	44	21	23
Total	605	470	404

Table 4: Summary of Procurement & SRM training to 31st March 2023

8. Procurement Legislation Changes

8.1 In May 2022 the Procurement Bill was published in Parliament. CMT received a previous update in June on the proposed Bill. The proposed date for the Bill to clear the legislative process is Spring 2024. Procurement have established a project in readiness that will be rolled out once the Bill is finalised and updates on progress and deliverables will be given.

9. Next steps and review

9.1 Regular updates are provided to Audit and Governance Committee on procurement waivers and breaches.

10. Background papers

10.1 None.

11. Your questions and views (for key decisions)

11.1 If you have any questions about the matters contained in this report, please get in touch with the author of this report. If you have any views that you would like the cabinet member to consider, please inform the democratic services team. This can be done by email to democracy@buckinghamshire.gov.uk.