



TO: Audit & Governance Committee

FROM: Head of Legal and Procurement

DATE: 27 June 2023

PORTFOLIOS AFFECTED: All

WARDS AFFECTED: All

TITLE OF REPORT: **Waivers from Contract and Procurement Procedure Rules**

1. PURPOSE

To inform Committee Members of the volume of waivers from the Contract and Procurement Procedure Rules

2. RECOMMENDATIONS

The Committee is asked to:

- Note the contents of the report
- Agree the frequency and content for future reports

3. BACKGROUND

Under rule 13 of the Council's Contract Procurement Procedure Rules waivers from those rules are permitted for specific reasons set out in the rules.

In 2022 the Contracts and Procurement Team introduced a digital system for submitting and recording waivers using Microsoft Forms, Lists and Power Automate. Waivers are submitted by completing a form on Microsoft Forms. An automated workflow records this on a central list and notifies the Head of Legal and Procurement who completes sections advising on legal implications and makes a recommendation. The waiver is then automatically sent to the relevant director to make a decision. Once they make the decision this is automatically recorded on the list. The officer who submitted the waiver is provided an automatic update email of progress at each stage.

A Power Bi dashboard based on that List for the last financial year is contained at Appendix A.

4. RATIONALE

Officers are aware of issues in other Councils where excessive and inappropriate use of waivers can be an indication of wider governance issues. As part of the committee's role to oversee the annual governance process and the arrangements to secure value for money it was felt that it was appropriate for this report to be brought to this committee to show that the Council does have an appropriate system in place, and for the committee to discuss and agree the oversight it wishes to have.

5. KEY ISSUES

89 waivers were approved in 2022/23. This is higher than previous years which were typically around about 60 per year. This could be down to the new automated process being easier to use and track than the previous version so departments are more willing to use the process. It may also be partially down to increased engagement with departments highlighting the need for compliance with Contract and Procurement Procedure Rules including the use of waivers where appropriate. However there is a risk that a culture of waivers being the easy option emerging. The Head of Legal and Procurement is therefore highlighting to Extended Leadership the importance of the competitive process and advice on how to avoid the need for waivers in the future.

The average value of contract waived was high at £103k but this was impacted by having to extend a number of high value Public Health and Adult Social Care contracts whilst procurement exercises and reviews took place. The median value of contracts waived was £32k which is more typical of waivers received.

There were a variety of reasons for waivers but some common recurring themes were:

- As mentioned above a number of high value contracts in Public Health and Adult Social Care needed additional time to allow procurements and reviews of arrangements to take place. This was in part impacted by capacity in the respective teams.
- A number of times funding was bid for but then once confirmation of funding was received there was little time to conduct procurement exercises and deliver the project, necessitating a waiver. Departments have been advised that in future they should commence procurement in advance of confirmation so they are ready to go when confirmation is received.
- Agency staffing has been the subject of a number of waivers with the contract with Reed not able to meet needs. Procurement team will review this and look to procure an alternative.

So far in this in this financial year there has been 15 waivers down from 19 in the same period last year which indicates numbers may be coming down slightly and could indicate that procurement exercises recommended by the Head of Legal and Procurement on previous waivers are now being implemented.

Following on from this report the Head of Legal and Procurement will be contacting Extended Leadership to highlight the importance of following procurement procedures and to emphasise that waivers should be the exception.

6. POLICY IMPLICATIONS

Compliance with Contract Procurement Procedure Rules helps to deliver the Council's Procurement Strategy and Social Value Policy.

7. FINANCIAL IMPLICATIONS

Ensuring contracts are procured effectively is key for delivering value

for money.

8. LEGAL IMPLICATIONS

The rules and waiver process are designed to ensure compliance with Public Contracts Regulations 2015. The Head of Legal and Procurement comments on any legal implications of any waiver request.

9. RESOURCE IMPLICATIONS

There are no resource implications arising as a result of this report.

10. EQUALITY & HEALTH IMPLICATIONS

There are no equality or health implications arising as a result of this report.

11. STATEMENT OF COMPLIANCE

The recommendations in this report are made further to advice from the Monitoring Officer. The Section 151 Officer has confirmed that they do not incur unlawful expenditure. They are also compliant with equality legislation and an equality analysis and impact assessment has been considered. The recommendations reflect the core principles of good governance set out in the Council's Code of Corporate Governance.

12. CONSULTATIONS

Directors

Contact Officer: Chris Bradley, Head of Legal and Procurement

Background Papers: Contract Procurement Procedure Rules

Appendix A



