



TO: Audit & Governance Committee

FROM: Head of Legal and Procurement

DATE: 18 March 2024

PORTFOLIOS AFFECTED: All

WARDS AFFECTED: All

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

1. PURPOSE

Further to previous reports on this matter, to update Committee Members on waivers from the Contract and Procurement Procedure Rules.

2. RECOMMENDATIONS

- The Committee is asked to note the contents of the report.

3. BACKGROUND

Under Rule 13 of the Council's Contract and 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.

In June 2023, a report to this committee highlighted that in the previous year 89 waivers were approved and that this number was significantly higher than previous years. It was therefore agreed that this matter remain under review and that further reports would be brought back to this committee.

4. RATIONALE

The use of waivers from Contract and Procurement Procedure Rules should be the exception not the rule. That said, there are legitimate circumstances where waivers are necessary to ensure that service delivery continues.

Officers are aware of issues in other Councils where excessive and inappropriate use of waivers can be an indication of wider governance issues. Acknowledging this, action is therefore being taken to address and reduce the number of waivers. Given the Council's 'starting' position on this matter, and recognising the capacity constraints that exist, it is likely that the efforts to reduce the number of waivers will take some time to resolve.

5. KEY ISSUES

The previous report to this Committee indicated that 89 waivers were approved in 2022/23.

Since then, the Head of Legal and Procurement has been engaging with all Departments highlighting the high volume of waivers and challenging some of the common reasons put forward for waivers.

Up to the end of January 2024, 47 waivers had been approved in the 2023/24 financial year compared with 64 in the same period in the 23/24 financial year. This does indicate some reduction in the volume of waivers and that Officers are being more pro-active in planning for procurement activity. Equally, work to update the Council's Contracts Register is in an advanced stage and will provide the forward-looking intelligence.

For 2023/24, the number of waivers is likely to increase by the end of the financial year as there is a significant number of contracts and commissioned services identified within the People portfolio which require procurement exercises to be undertaken imminently and there is not currently sufficient capacity to undertake them all. This is in part a consequence of the Covid Pandemic, where no capacity existed to undertake procurement processes (hence waivers were issued in those instances) and latterly has been impacted by a complete restructuring of the Commissioning (for Adults and Childrens Services) function.

The Head of Legal and Procurement is working with the Strategic Director – Adults and Health, the Strategic Director Finance and Resources and the Head of Commissioning to agree a plan for these contracts; given current capacity, commissioning capability and a desire to ensure that the services procured reflect properly the needs of the Council (and indeed, residents), it is inevitable that some of these contracts will need waivers to extend current arrangements to allow time to re-procure in a way that delivers the best service and one that represents improved value for money. This may result in up to an additional 20 waivers.

The average value of contract waived reduced slightly to £101k (from £103k) and the median value of contracts waived increased slightly to was £34k (from £32k). These figures remain largely similar and reflects that the significant majority of waivers are for contracts of relatively low value where we would normally obtain 3 quotes via the Chest.

To put these matters into context, so far in this financial year 120 contracts have been awarded via the Chest e-tendering system with an average value of £507k (and a total value of £61m). In addition, there has been at least 15 contracts awarded by the Procurement team through approved external frameworks.

6. POLICY IMPLICATIONS

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

7. FINANCIAL IMPLICATIONS

There are no financial implications arising directly from the contents of this report. 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