

REPORT OF SERVICE DIRECTOR – FINANCE AND PROCUREMENT

FINANCIAL REGULATIONS WAIVERS 2012/13

Purpose of the Report

1. Article 13 of the Council's Constitution contains a number of urgency procedures to enable decisions to be taken quickly in appropriate circumstances. The Constitution requires that the use of these procedures be reported to specified Committees and to the Council. This report fulfils the reporting requirement in respect of Financial Regulations Waivers.

Information and Advice

2. Financial Regulations as they relate to Procurement are intended to ensure that contracts are let in such a way that the Council achieves Best Value and also complies with relevant EU Directives and UK Law one of the main intentions being to ensure that the Council acts in a way that is open, transparent and fair to all suppliers.
3. Waivers from Financial Regulations are not necessarily a bad thing. There can be genuine reasons why this needs to happen. For example, there is an unexpected emergency which has implications for Public Health. In such circumstances, time may be of the essence and preclude getting a number of quotes or running a tender. One purpose of the waiver process is to act as a peer challenge to such requests to ensure they have a valid reason.
4. The waiver process is that a waiver must be signed-off by a Group Manager or above to authorise the use of the budget in this way. Waivers below £100k are reviewed and authorised by the Group Manager Procurement. Waivers above £100k must also be approved by the S151 Officer and Legal.
5. The reasons given for waivers over £25k fall into 4 groups as follows:-

Reason for waiver	Number of waivers	Value of waivers
Specification related	10	£1,431k
Planning related	7	£1,583k
Pilots to determine need/requirement	3	£579k
Call-off from an existing framework contract	2	£169k
TOTAL	22	£3,762k

Further details of these waivers is shown in Appendix 2.

The main reasons for needing waivers are due to a lack of time brought about in many instances by not having adequate planning procedures; and specifications which limit the number of available suppliers to just one (this also is often due to a lack of time to research what is available).

The Council has recently invested in a new tendering and contracting system (Due North). This will enable a contracts register for all Council contracts to be set up and this in turn will allow reminders to be automatically generated when a contract end date is approaching. By setting this trigger far enough in advance, Commissioners will have enough time to ensure that specifications are established and tendering/quote activity is done without the urgency that creates the need for waivers or which limit the number of suppliers available.

6. There are two relevant urgency procedures relating to the Financial Regulations which are detailed below:-

i) Exceptions to the Requirement to Seek Quotations and Tenders.

7. Section 9.3 of the Financial Regulations contains rules for the selection of suppliers including the number of quotations that must be sought (up to a certain level of contract value) after which a tender must be run. Section 9.5.1.1 specifies five categories of exception where the rules for obtaining quotations or running tenders can be suspended. These five categories are:-
 - i. The work to be executed or the goods or materials to be supplied constitute the first valid extension of an existing contract, which has been procured through a Best Value exercise, provided that such an extension has received the necessary budget approval; and does not exceed the value of the original contract or the next value threshold. Contracts must not be extended where the total value will exceed the EU Threshold.
 - ii. The Council is buying from a contract entered into following a proper tendering exercise by a consortium, collaboration, or similar central procurement body, of which the Council is a member and which the Council is authorised to buy from or through.
 - iii. The work to be executed or the goods or materials to be supplied consist of repairs to, or parts for, existing proprietary machinery, where such repairs or parts are specific to that machinery OR upgrades to existing software packages.
 - iv. Works, supplies or services are urgently needed for the immediate protection of life or property, or to maintain the immediate functioning of a public service for which the Council is responsible. In such cases the contract must only last as long as is reasonably necessary to deal with the specific emergency.
 - v. The Corporate Director decides that special circumstances make it appropriate and beneficial to negotiate with a single firm or that a single tender be invited.

This will include occasions when it can be established that there is only a single source available or where the Corporate Director or his/her designate can demonstrate that best value for the Authority can be better achieved by not tendering.

The table below summarises the number of waivers granted in 2012/13 compared to the previous year.

	2012-2013			2011-2012		
Department	£25k or less	> £25k	Total	£25k or less	> £25k	Total
Environment & Resources	10	7	17	11	1	12
Adult Social Care, Health & Public Protection	8	12	20	9	1	10
Children, Families & Cultural Services	2	2	4	6	1	7
Policy Planning & Corporate Services	8	1	9	5	5	10
TOTAL	28	22	50	31	8	39

8. Although the total number of waivers is higher than last year, it is still reduced from previous years (down from a peak of 103 in 2008-2009). The number of low value waivers was lower than last year but there was a significant increase in higher value waivers. This was largely due to ASCHPP (11 more waivers than the previous year) and E&R (6 more than the previous year).

9. The ASCHPP waivers fell into three groups as per the table below.

	ASCHPP Analysis of Waivers over £25,000			
	Extensions to contracts to allow for pilots/consultation	Single source because no other supplier found	Call-off from an external framework	TOTAL
Number of waivers	6	4	2	12
Value of waivers	£1.912m	£212k	£169k	£2.293m
% of total value	83.4%	9.2%	7.4%	100%

10. The other main variance was E&R (6 more high value waivers than the previous year). The analysis of these waivers is shown below.

	E&R Analysis of Waivers over £25,000			
	Extensions to contracts to allow for tender process	Single source because no other supplier found	Insufficient time for a tender	TOTAL
Number of waivers	2	4	1	7
Value of waivers	£177k	£939k	£172k	£1.288m
% of total value	13.7%	72.9%	13.4%	100%

11. In addition there was one waiver received for an exemption to the requirement for three years of accounts in order to set up the vendor on BMS.

12. Appendices 1 to 3 provide more detail for all of these waivers.

ii) Variation, Waiver or Suspension of Financial Regulations.

13. Financial Regulation 1.7 allows the Service Director, Finance & Procurement, after consulting with the Group Manager for Legal Services, to vary, waive or suspend any Regulation. This applies to any Regulation and is not limited to the selection of contractors which is the main focus of this report. During 2012/13, there were no requests. There was one such request in 2011/12 which was not approved.

Other Options Considered

14. This report is for information and noting only.

Reason/s for Recommendation/s

15. To provide information to Members on the Financial Regulations Waivers.

Statutory and Policy Implications

16. This report has been compiled after consideration of implications in respect of finance, the public sector equality duty, human resources, crime and disorder, human rights, the safeguarding of children, sustainability and the environment and those using the service and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

RECOMMENDATION

1. That Members note the waivers from financial regulations in 2012/13.

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For any enquiries about this report please contact:
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Constitutional Comments

17. The proposal in this report is within the remit of the Audit Committee.

Financial Comments (PS 18/11/13)

18. There are no specific financial implications arising from the report. However, the Financial Waivers process itself is an important element of the Council's Financial Regulations, which exist to ensure that public money is safeguarded and that decisions taken by Council officers are lawful and provide value for money for local taxpayers.

Background Papers

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972:

None.

Electoral Division(s) and Member(s) Affected

All