

Report



Meeting **AUDIT COMMITTEE**

date **26 JULY 2011**

agenda item number

REPORT OF THE SERVICE DIRECTOR (FINANCE)

FINANCIAL REGULATIONS WAIVERS 2010/11

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. 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.

3. Section 9.3 of the Financial Regulations contains rules for the selection of contractors, including the number of quotations and tenders that must be sought. Section 9.5.2.1 specifies five categories of exception where the rules for obtaining quotations and tenders can be suspended. These are set out below:-

- (1) 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 in 9.3.2. Contracts must not be extended where the total value will exceed the EU threshold.
- (2) 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.

- (3) 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.
 - (4) 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.
 - (5) 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.
4. Exceptions (1) to (4) above, and those in (5) up to £25,000, can be approved by the relevant department's Financial Services Group Manager.
 5. During 2010/11, the total number of exceptions granted by the Financial Services Group Managers was as follows. Comparative figures for the previous year are also provided.

	<u>10/11</u>	<u>09/10</u>
Adult Social Care & Health	8	9
Children & Young People	11	23
Communities	27	22
Corporate Services	5	8
Chief Executive's	<u>1</u>	<u>2</u>
Authority Total	52	64

6. The number of waivers has continued to fall following a peak of 103 in 2008/09.
7. Only the Communities department had an increase, which was mainly in two areas: for equipment & works, and for street furniture to match existing schemes. This was partially offset by a reduction in waivers for work requiring specialist knowledge and skills.
8. The reduction in waivers in the Children & Young People's department mainly relates to fewer waivers for specialists to assist with the provision of public services, and no waivers for other research, consultancy or IT related purchases.

9. The number of waivers in the Adult Social Care & Health is similar to last year. This year all were for work requiring specialist knowledge and skills, mostly for new initiatives, whereas last year most were for the purchase of support to individuals with learning disabilities and mental health problems.
10. The reduction in waivers in the Corporate Services department is due to fewer for IT-related purchases, mainly computer software. The number of waivers in the Chief Executive's departments continues to be low.
11. Appendix 1 analyses these exceptions by the five categories allowed by the financial regulations.
12. For exception category (5), where the expected expenditure is over £25,000, prior approval must also be obtained from the Service Director, Finance (represented by the Head of Service, Audit and Investments) and the Service Director, Legal and Democratic Services.
13. During 2010/11, 18 such requests were processed with the following outcomes:-

Requests Received in 2010/11

Approved	10
Refused	2
Advice given to help the waiver to be assessed within the department without referral to internal audit and legal services	3
Advice given that a waiver was not required	2
Request withdrawn by the department	1

14. This is a similar number of waiver requests compared with 2009/10, when 21 waiver requests were received, 10 of which were approved. Details of the approved requests are summarised in Appendix 2.

ii) Variation, Waiver or Suspension of Financial Regulations.

15. Financial Regulation 1.8 allows the Service Director, Finance, after consulting with the Service Director, Legal and Democratic 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 2010/11, there was one such request, which is summarised in Appendix 3. There were no such requests in 2009/10.

Statutory and Policy Implications

16. This report has been compiled after consideration of implications in respect of finance, equal opportunities, personnel, Crime and Disorder

and those using the service. Where such implications are material, they have been described in the text of the report.

Recommendation

17. That the report be noted.

**PAUL SIMPSON
SERVICE DIRECTOR (FINANCE)**

Background Papers Available for Inspection

None

Appendix 1

Exceptions to the requirement to seek quotations and tenders for the procurement of goods and services that were approved by the Financial Services Group Managers during 2010/11. – see 9.5.2.1 (1) to (5) below.

Waiver Requests Approved in 2010/11	(1)	(2)	(3)	(4)	(5) up to £25k	Total (1) - (5)
Adult Social Care & Health	2	2	1	0	3	8
Children & Young People	2	1	0	1	7	11
Communities	0	1	2	1	23	27
Corporate Services	3	1	1	0	0	5
Chief Executive's	0	0	0	0	1	1
Authority Total	7	5	4	2	34	52

9.5.2.1 Allowed Exceptions

- (1) 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 in 9.3.2. Contracts must not be extended where the total value will exceed the EU threshold.
- (2) 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.
- (3) 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.
- (4) 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.
- (5) 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.

Appendix 2

Exceptions to the requirement to seek quotations and tenders for the procurement of goods and services that were approved by the Service Director, Finance and the Service Director, Legal and Democratic Services during 2010/11 – in descending value order. (Financial Regulation 9.5.2.1.5, where the expected expenditure is over £25,000; or Financial Regulation 1.8).

Waiver Ref	Requesting Department	Value	Description of Contract	Summary of Decision
916	Communities	£145k	Digital red traffic light safety cameras.	Only one supplier of these cameras is approved by the Home Office.
920	Communities	£90k	Study to identify possible enhancements to the Nottingham to Newark railway line.	The work was awarded to Network Rail. As the route's owner it had detailed knowledge of the route's timetables, capacity and limitations, and would be unlikely to come up with impractical proposals, which it would have to implement.
919	Culture (merged with Children & Young People)	£80k	Weed boat for the National Water Sports Centre.	Sport England offered £40,000 funding on 10 February 2011, which had to be spent by 31 March 2011, so the timescales did not make a tendering exercise practical. Extensive research was carried out to identify the best option.
909	Children & Young People	£69k	Temporary classroom at Leen Mills Primary School, Hucknall.	The classroom was funded by the developers of a nearby housing estate (as required by section 106 of the Town & Country Planning Act). It was needed by the new school year, to meet increasing pupil numbers. A delay in receiving the funding, which was confirmed on 18 August 2010, had caused an urgency. The cost of the chosen product was similar to those selected through recent tendering exercises. It also had extra energy efficiency advantages such as solar panels.
905	Corporate Services	£60k	Project Management training.	The contractor was one of 18 tenderers in November 2009, but went into administration in June 2010. So we approved the award of a contract to the second best contractor in the tendering exercise, at the same prices it originally tendered.

Appendix 2 (continued)

Exceptions to the requirement to seek quotations and tenders for the procurement of goods and services that were approved by the Service Director, Finance and the Service Director, Legal and Democratic Services during 2010/11 – in descending value order.

Waiver Ref	Requesting Department	Value	Description of Contract	Summary of Decision
906	Children & Young People	£56k	Arts Supports Service database.	This arrangement actually involved no payment. The Arts Service uses a database which is owned by the contractor, and has been developed and maintained by the contractor for 6 years, whilst in place at the County Council. The contractor offered a further 3 years development and maintenance at no cost, but valued at £56,000, in return for which the Council allowed the contractor to market the database as 'developed in partnership with Nottinghamshire County Council.'
901	Corporate Services	£47k	Business process management software.	For this level of expenditure the financial regulations state that three tenders should be invited. In this case, five quotations had been obtained, and we considered that best value had already been achieved.
910	Communities	£45k	Trial of bus-activated traffic light priority equipment in West Bridgford.	We approved the use of the supplier of equipment already installed on Nottingham City Transport buses. This was on condition that if the trial led to the department introducing such schemes more widely, further purchases must be tendered in compliance with financial regulations and EU procurement rules.
918	Adult Social Care & Health	£40k	Mencap carers service.	We approved the use of the existing provider for a further year from April 2011 because a shortage of time did not practically allow for a tendering exercise. The delay was because funding was not known until October 2010, when it was reduced from £110k to £40k, and then the department had to determine which services to continue. The waiver was approved on the condition that further provision is purchased competitively.
914	Children & Young People	£28k	Software licences for equipment used by pupils with visual impairments.	For this level of expenditure the financial regulations state that three tenders should be invited. The department had done a significant amount of work to identify alternatives, and found three products, two of which had been used in the past and found to be inferior to the preferred product, which is currently being used in schools. We accepted that the time and cost of a tendering exercise would not be worthwhile.

Appendix 3

Waivers of other financial regulations approved by the Service Director, Finance, after consulting with the Service Director, Legal and Democratic Services, in 2010/11 (in accordance with Financial Regulation 1.8).

Waiver Ref	Requesting Department	Value	Financial Regulation Waived	Details
904	Children & Young People	£61k	3.3.3.1.3	Financial regulation 3.3.3.1.3 requires that grants over £50,000 made to external bodies are authorised by Cabinet. Due to an oversight, a grant to the Nottinghamshire Schools Council for Sport (NSCS) was not reported to Cabinet. The NSCS facilitates school sports associations in which over 26,000 pupils and 1,400 teachers participate across the County and Nottingham City, which also makes a grant. To enable its activities to continue, we waived this financial regulation so that this grant could be made, subject to the condition that it was authorised by the relevant Cabinet Member.