

REPORT OF SERVICE DIRECTOR – FINANCE AND PROCUREMENT**FINANCIAL REGULATIONS WAIVERS 2013/14****Purpose of the Report**

1. Part 5 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 can be expedited in a number of situations. 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. A Waiver request must be signed off by a Group Manager, prior to being reviewed by the Group Manager – Procurement. All waivers must then seek prior approval from the Section 151 officer and the Group Manager for Legal and Democratic Services.
5. The reasons given for waivers over £25k fall into 5 groups as follows:-

Reason for waiver	Number of waivers	Value of waivers
Specification related	9	£580k
Planning related	5	£26,986m

Pilots to determine need/requirement	1	£494k
Call-off from an existing framework contract	2	£71k
Monopoly supplier	5	£486k
TOTAL	22	£28,617m

Further details of these waivers are shown in Appendix 2.

The main reasons for needing waivers are due to changes in planning procedures and specifications which limit the number of available suppliers to just one

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 2013/14 compared to the previous year.

Department	2013-2014			2012-2013		
	£25k or less	> £25k	Total	£25k or less	> £25k	Total
Environment & Resources	4	7	11	10	7	17
Adult Social Care, Health & Public Protection	1	2	3	8	12	20
Children, Families & Cultural Services	5	9	14	2	2	4
Policy Planning & Corporate Services	2	1	3	8	1	9
Public Health	1	3	4	0	0	0
TOTAL	13	22	35	28	22	50

8. The total number of waivers is significantly lower than last year and continues the downward trend from a peak of 103 in 2008-2009. The number of high value waivers is the same as last year but there was a significant reduction in low value waivers. This includes the addition of four waivers for Public Health which means the like-for-like comparison with the previous year is even better.
9. The largest number of high value waivers was for CFCS and these fell into three groups as shown in the table below. To meet the departments commissioning responsibility, future procurement planning is underway

	CFCS Analysis of Waivers over £25,000
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	Specification related	Planning related	Pilots to determine requirements	Call-off from existing framework	Monopoly supplier	TOTAL
Number of waivers	2	3	1	2	1	9
Value of waivers	£124k	£696k	£494k	£71k	£40k	£1,425m
% of total value	8.7%	48.9%	34.7%	4.9%	2.8%	100%

10. Another contributor of high value waivers was E&R (same number as the previous year). The analysis of these waivers is shown below.

	E&R Analysis of Waivers over £25,000					
	Specification related	Planning related	Pilots to determine requirements	Call-off from existing framework	Monopoly supplier	TOTAL
Number of waivers	4	1	0	0	2	7
Value of waivers	£253k	£290k	0	0	£358k	£901k
% of total value	28.1%	32.1%	0	0	39.8%	100%

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

12. A significant contributor to the increase value of the waivers received in 2013-14 is that of Public Health, whilst only 4 requests have been received in this period 1 was for a figure of £26m this relates to an agreement to the extension of a number of Public Health Service and NHS Associate Contracts for 2014/15 following the novation of Public Health to the Local Authority in April 2013. To meet the departments commissioning responsibility, future procurement planning is underway.

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 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 2013/14, there were three requests. Two were to waive the requirement to have a performance bond for Public Health contracts as this did not represent good value for money and one was for the services of a consultant to support a plan for waste PFI. There were no requests in 2012/13.

Statutory and Policy Implications

14. 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 of the Audit Committee note the Financial Regulations Waivers 2013/14

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For any enquiries about this report please contact:

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Constitutional Comments

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

Financial Comments (SEM 26/08/14)

16. 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

None

Electoral Division(s) and Member(s) Affected

All