

12 September 2012**Agenda Item:****REPORT OF THE SERVICE DIRECTOR – FINANCE AND PROCUREMENT
FINANCIAL REGULATIONS WAIVERS 2011/12****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 9.5.1.1 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. 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 Finance Group Manager.
 5. During 2011/12, the total number of exceptions granted by the Finance Group Managers was as follows. Comparative figures for the previous year are also provided, although a direct comparison is difficult because a new departmental structure was introduced from 2011/12.

2011/12		2010/11	
Environment & Resources	11	Communities	27
Adult Social Care, Health & Public Protection	9	Adult Social Care & Health	8
Children, Families & Cultural Services	6	Children & Young People	11
Policy Planning & Corporate Services	5	Corporate Services	5
		Chief Executive's	1
Authority Total	31	Authority Total	52

6. The number of waivers has continued to fall following a peak of 103 in 2008/09.
7. In all four departments, most waivers were for specialist knowledge and skills.
8. The largest change was the decrease in waivers in the former Communities department. The decrease was mainly in two areas - equipment & works, and street furniture to match existing schemes. This was partially offset by an increase in waivers for work requiring specialist knowledge and skills, mainly related to flooding and ecological surveys (the Communities department no longer exists and this increase shows in the Environment & Resources department in the above table).

9. The decrease in waivers in the Children, Families & Cultural Services department mainly relates to fewer waivers for specialist knowledge and skills, and specialist publications.
10. The number of waivers in the Adult Social Care, Health & Public Protection department is similar to last year. Last year all were for work requiring specialist knowledge and skills, as were most this year, although two were for the purchase of support to individuals with learning disabilities and mental health problems.
11. The number of waivers in the Policy Planning & Corporate Services department is similar to last year, although there were fewer for IT-related purchases.
12. Appendix 1 analyses these exceptions by the five categories described in paragraph 3 above.
13. For exception category (5), where the expected expenditure is over £25,000, prior approval was also required from the Service Director, Finance & Procurement (represented by the Head of Internal Audit) and the Group Manager for Legal Services.
14. During 2011/12, ten such requests were processed with the following outcomes:-

Requests Received in 2011/12	
Approved	8
Not approved	1
Advice given that a waiver was not required	1

15. This is fewer than in 2010/11, when 18 waiver requests were received, 10 of which were approved. Details of the approved requests are summarised in Appendix 2. Details of the other two are summarised in Appendix 3.

ii) Variation, Waiver or Suspension of Financial Regulations.

16. 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 2011/12, there was one such request, which was not approved, and is summarised in Appendix 4. There was one such request in 2010/11, which was approved.

Statutory and Policy Implications

17. This report has been compiled after consideration of implications in respect of finance, equal opportunities, human resources, crime and disorder, human rights, the safeguarding of children, sustainability and the environment and those using the service. Because this report contains no proposals for action it has no material statutory or policy implications.

RECOMMENDATION

18. That the report be noted.

Paul Simpson
Service Director (Finance and Procurement)

For any enquiries about this report please contact:
John Bailey, Head of Internal Audit.

Constitutional Comments

Financial Comments

Background Papers
None.

Electoral Divisions and Members Affected
All.

Appendix 1

Exceptions to the requirement to seek quotations and tenders for the procurement of goods and services that were approved by the Finance Group Managers during 2011/12. – Financial Regulation 9.5.1.1.1 to 9.5.1.1.5).

	(1)	(2)	(3)	(4)	(5) up to £25k	Total (1) - (5)
Environment & Resources	0	3	3	0	5	11
Adult Social Care, Health & Public Protection	0	1	1	0	7	9
Children, Families & Cultural Services	1	0	0	0	5	6
Policy Planning & Corporate Services	3	0	1	0	1	5
Authority Total	4	4	5	0	18	31

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. 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 & Procurement and the Group Manager for Legal Services during 2011/12 – in descending value order. (Financial Regulation 9.5.1.1.5, where the expected expenditure is over £25,000).

Waiver Ref	Requesting Department	Value	Description of Contract	Summary of Decision
931	PPCS	£225k	Carers Federation. Hosting the Local Involvement Network (LINK).	National government policy is to replace the LINKs with Local HealthWatch. The existing contract for hosting the LINK had a clause for extension for up to 2 years, from 1 April 2011 to 31 March 2013. An extension for one year was recommended by the national Department for Health. The replacement of the LINKs was delayed by another year, and we considered it appropriate to extend the contract for a further year to 31 March 2013.
923	E&R	£183k	Airedale Ltd. Air conditioning (cooling) equipment for data centre refurbishment.	This work was part of a contract which had been awarded competitively under the OJEU-advertised construction framework agreement. However, a subcontractor was unwilling to accept the risk of not being paid by the main contractor for manufacturing the equipment. The waiver allowed the council to contract directly with the subcontractor. Legal services provided advice to ensure that the main contractor remained responsible for the delivery of the equipment, and is financially stable.
929	ASCH&PP	£92k	Condico. Joint Improvement Partnership redesign organisational	The East Midland Joint Improvement Partnership (hosted by this Council) obtained funding from the East Midlands Regional Improvement & Efficiency Partnership (RIEP) for this work to be carried out at councils in the region beyond Nottinghamshire and Leicestershire where the consultant has already delivered significant cost savings and efficiencies. The business case approved by the RIEP clearly indicated that it was to be the work of the same consultant. It was almost certain that the funding would be forfeited if not used for this purpose.
922	PPCS	£70k	Ipsos MORI. Consultations.	Ipsos MORI was originally procured through an OJEU tendered contract which ended in July 2011. This waiver would allow the arrangements to

continue for 2 years, and use the existing panel of 8,000 residents, whilst the department considered carrying out these consultations in-house, instead of using an external agency.

Appendix 2 (continued)

Waiver Ref	Requesting Department	Value	Description of Contract	Summary of Decision
926	PPCS	£50k	Campbell Design Ltd: Bandstand at Kingsway Park, Kirkby in Ashfield.	We did not initially approve this waiver which was requested on the basis that the park users' representatives wanted this £50,000 bandstand to match existing installations in the park which cost £16,500 and were procured by another organisation through an unknown level of competition. At our request, the department obtained quotations from the two most suitable alternative providers, which demonstrated that the preferred bandstand was cheaper.
927	PPCS	£38k	Attain. Interim Team Manager, Procurement Centre.	Advertising (internal and external) had been unsuccessful. The post was to be re-advertised, and this proposal was to provide interim cover in the meantime, for 25 weeks. The preferred provider had been compared to a large number of alternatives and offered a competitive rate.
935	CFCS	£36k	Yellow Bus Events. Queens Diamond Jubilee event at National Water Sports Centre.	Contractors would require 12 weeks to plan and organise the event, and there was insufficient time for a competitive procurement exercise following the decision by the Council Leader to relocate this high profile (and relatively unique) event to the National Water Sports Centre. On this occasion the waiver was approved by the Service Director, Finance & Procurement (the section 151 officer) instead of the Head of Internal Audit.
930	PPCS	£30k	Local Futures. On-line data and mapping services.	This purchase was for data and mapping services that provide detailed knowledge of local areas to assist with research, decision making and reporting. Continuity of service with the current provider was the best value option currently available. The use of existing systems would allow cost savings in data loading and reporting, and the use of an already populated asset management map. The Corporate Procurement team reviewed the market and found no better alternative.

Appendix 3

Applications for waivers from seeking quotations and tenders which were not approved.

Waiver Ref	Requesting Department	Value	Description of Contract	Summary of Decision
<u>Not approved</u>				
925	E&R	£30k	Savills. Auction for sale of County Council properties.	Before a waiver is submitted to internal audit and legal services, it requires the approval of the Head of Procurement. In this case, the Head of Procurement requested advice from legal services. The advice given was: (i) It appeared that the auction had already taken place. Waivers are not given retrospectively. (ii) We would have recommended that the department obtain evidence from the two most suitable other auctioneers, to support its view that their fees would have been higher. (iii) For the future, it would be appropriate to establish a tendered framework agreement for auctioneers (and estate agents) to be called off when required.
<u>Advice given that a waiver was not required</u>				
921	CFCS	£165k	Balfour Beatty Workplace. Sensory & Wildlife Garden at St Giles School, Retford.	This work was to be awarded to an existing contractor. Our enquiries identified that a waiver was not required because the contractor had already carried out a sufficiently competitive process to find a subcontractor to do the work. Legal services provided advice on how to add this work into the existing contract.

Appendix 4

Applications for waivers of other financial regulations which were not approved (submitted under Financial Regulation 1.7).

Waiver Ref	Requesting Department	Value	Financial Regulation Waived	Details
<u>Not approved</u>				
928	ASCH&PP	£750k	10.1.3	<u>Advance payments for residential care</u> Financial regulation 10.1.3 disallows payments in advance for goods and services. This was a request to waive this regulation to allow three suppliers of residential care to be paid 6 months in advance. Discounts averaging 3% (£46,000 a year) were offered on such advance payments. The waiver was refused because it placed at risk £750,000 of Council funds. We said that we would reconsider this if a stronger case was made, but the waiver was not resubmitted.