

Audit and Governance Committee

Date of Meeting:	29 th September 2022
Report Title:	Contract Procedure Rules
Report of:	Alex Thompson, Director of Finance and Customer Services - S151 Officer
Report Reference No:	AG/25/21- 22 & AG/26/21- 22
Ward(s) Affected:	All

1. Purpose of Report

1.1. The purpose of this report is to provide an update to the Audit and Governance Committee on the number of cases where, and reasons why, procurement activity has required the use of waivers and/or non-adherences (WARNs). The report covers cases from 1st June 2022 to the 31st August 2022.

2. Executive Summary

2.1. The approved WARNs are published retrospectively for information to the next appropriate Audit and Governance Committee. The total number of WARNs to be presented to the September Audit and Governance Committee is 7 (consisting of 7 waivers, 0 non-adherences).

2.2. All WARNs will be presented to the Audit and Governance Committee without any information redacted. However, they will be presented in Part 2 of the Committee as they may contain commercially sensitive information and/or Officer Details.

2.3. The Finance Sub Committee responsibilities include an oversight of Procurement. To manage these responsibilities the Finance Sub Committee requested that a Procurement Working Group was established to review several completed procurements and to report their finding back to the Committee. The working group included 3 elected members from the Sub Committee, 1 Procurement and 1 Legal Officer. The Group met during August and fed back to the Committee in September.

3. Recommendation/s

That the Audit and Governance Committee:

- 3.1. Notes the reason for 7 waivers approved between 1st June 2022 and 31st August 2022 (13 in total in 2022/23).
- 3.2. Notes that the Finance Sub-Committee, on the 7th September 2022, has reviewed the Waivers for this period as part of their responsibility for the pipeline of procurement activity.

4. Reasons for Recommendation/s

- 4.1. The Audit and Governance Committee has an assurance role in overseeing governance arrangements within the Council. The Committee exercises this role in relation to the Council's Contract Procedure Rules (CPRs) by having oversight of the WARN process. The CPRs promote good procurement and commissioning practice, transparency, and clear public accountability.
- 4.2. In introducing the Committee system of governance, from May 2021, Council has allocated responsibility for the procurement pipeline to the Finance Sub-Committee. As such that sub-committee will receive reports on procurement activity, such as contracts awarded, contracts to be advertised, waivers and processes for significant procurement decisions.
- 4.3. WARNs cover Waivers which are pre-approved variations from the Contract Procedure Rules, and these form part of the procurement process. Non-Adherence recognises instances where CPRs have not been followed. As such the Audit & Governance Committee can seek assurance from the Finance Sub-Committee that procurement process has followed an appropriate approval process.

5. Other Options Considered

- 5.1. N/A

6. Background

- 6.1. All WARNs approved in the period between Audit and Governance Committees will be presented to the next Committee meeting. This report contains all WARNs approved from the 1st June 2022 to the 31st August 2022, (13 waivers and 1 non adherences).

The WARN process records the following:

- Waivers to the Contract Procedure Rules – These are agreed waivers in accordance with the Contract Procedure Rules, Chapter 3, Part 5. Section 7.1-7.4.
- Non-Adherence to the Contract Procedure Rules – This is a breach of the Contract Procedure Rules in accordance with Chapter 3, Part 5. Section 7.5 - 7.12.

Waivers are a compliant part of the Contract Procedure Rules and are used where there is a genuine business case to direct award without the need for competition.

Table 1: Waiver's

Waivers	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022	April – August 2022
	40	20	16	17	25	37	13

6.2 The number of waivers has increased in the past two years because of COVID and the impacts it has had on the care market.

Table 2: Non-Adherences

Non-Adherence	2016-2017	2017-2018	2018-2019	2019 - 2020	2020-2021	2021-2022	April - August 2022
	33	10	5	1	3	3	1

6.3 The Finance Sub Committee has responsibility for the oversight of Procurement. To manage these responsibilities the Sub Committee requested that a working group was established to review past procurement projects and report observation back to the Sub Committee.

6.4 The Finance Sub Committee approved the Terms of Reference for the Procurement Working Group in July 2022. The group met during August to review a number of procurements to provide the Sub Committee with assurance that the procurement projects followed the Contract Procedure Rules, complied with the Public Contract Regulations 2015 and achieved value for money.

The feedback and minutes from the Finance Sub Committee on the 7th September.

“At its meeting on 6th July 2022, the Sub-Committee had appointed a working group comprising Councillors Councillor S Carter, J Clowes and N Mannion to review several completed procurements and report back to the Sub-Committee. The working group had met on 5th August, with Councillor Mannion acting as chair. Councillor Mannion reported that the working group had considered an overview of the current procurement process, preparations for changes required by new legislation currently going through Parliament,

and a close look at a small range of varied procurement exercises. The quality and clarity of the process was seen to be very good, with consistent application and compliance across the authority. The group was also satisfied that the lessons learned were being accepted and that preparation for the forthcoming post-Brexit changes were well understood and implemented. The working group felt that there would be potential value in holding another such review at a future date. Councillor Clowes added that any changes to the procurement process would need to be reflected in the Constitution”.

7. Consultation and Engagement

7.1 Consultation and engagement have been undertaken with Cheshire East Council staff who have a role within Commission, Procuring and Contract Managing goods, services or works for the Council.

8. Implications

8.1. Legal

8.1.1. All employees must ensure that they use any Council or other public funds entrusted to them through their job role in a responsible and lawful manner.

8.1.2. Employees must also seek to ensure value for money and take care to avoid the risk of legal challenge to the Council in relation to the use of its financial resources. The Council’s Officer Delegations, Finance and Contract Procedure Rules and Operating Procedures must, therefore, be followed at all times. Waivers are a compliant procurement route within the Rules and oversight of their use forms part of the Finance Sub Committee’s oversight and management functions.

8.1.3. The Audit & Governance Committee will receive reports on all WARNs as part of their assurance role.

8.1.4. The continued reporting of Waivers to the Audit & Governance Committee will provide assurance on both the operation of the Rules and the oversight and management of a compliant process which seeks value for money but does mean that contracts are awarded without competition.

8.2. Finance

8.2.1. The Council’s Constitution Finance Procedure Rule 2.11; Chapter 3 - Part 4: Section 2 explains that the Corporate Leadership Team (CLT) are responsible for working within their respective budget limits and to utilise resources allocated to them in the most efficient, effective and economic way. This is supported by effective commissioning, procurement processes and appropriate contract management.

8.2.2. Along with comments from Procurement and Legal Officers, Finance Officers are invited to make comments in respect of each WARN, to help ensure Finance Procedure Rules are adhered to in this regard. The comments of Finance Officers focus on whether the Service: has identified sufficient existing budget to cover the proposal; and has also considered

8.3. Policy

8.3.1. N/A

8.4. Equality

8.4.1. All Cheshire East Council contracts have a clause stating “the supplier shall perform its obligations under the Contract in accordance with all applicable equality Law and the Council’s equality and diversity policy as provided to the Supplier from time to time”

8.5. Human Resources

8.5.1. There are no direct implications for human resources.

8.6. Risk Management

8.6.1. The focus is the risk that processes are not complied with, which increases the likelihood of legal challenge causing financial and reputational risk to the Council. This includes procurement processes.

8.7. Rural Communities

8.7.1. There are no direct implications for rural communities.

8.8. Children and Young People/Cared for Children

8.8.1. There are no direct implications for children and young people.

8.9. Public Health

8.9.1. There are no direct implications for public health.

8.10. Climate Change

8.10.1. There are no direct implications for climate change.

9. Ward Members Affected

9.1. N/A

9.2. N/A

Access to Information

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Appendices:	Appendix 1 Part 2 items
Background Papers:	

Appendix 1

CPR WAIVERS – CATEGORIES FOR INTERNAL REPORTING

Category Ref	Ref Description
A	Genuine Emergency - which warrant an exception to the requirements of competition
B	Specialist Education or Social Care Requirements
C	Genuine Unique Provider - e.g. from one source or contractor, where no reasonably satisfactory alternative is available.
F	No valid tender bids received; therefore, direct award can be substantiated
G	Lack of Planning
H	Any other valid general circumstances up to the EU threshold
I	No time to undertake a tendering exercise, therefore extension necessary to avoid non-provision of deliverables
J	Procurement from any other source would be uneconomic at this time
K	Added value being offered by the Provider(s)
L	Extension is best option as highlighted in request form
D	Compatibility with an existing installation and procurement from any other source would be uneconomic given the investment in previous infrastructure
V	Covid-19 Exemption
E	In-depth Knowledge, skills and capability of project/services already in existence with consultants/providers carrying out related activity – therefore procuring new consultants/skills would be uneconomic given the investment in previous, related work.