

Audit and Governance Committee

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| Date of Meeting: | 9 th March 2023 |
| Report Title: | Contract Procedure Rules |
| Report of: | Alex Thompson, Director of Finance and Customer Services - S151 Officer |
| Report Reference No: | AG/25/21-22 |
| 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 November 2022 to the 31st January 2023.

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 November Audit and Governance Committee is 6 (consisting of 4 waivers, 2 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.

3. Recommendation/s

That the Audit and Governance Committee:

- 3.1. Notes the reason for 4 waivers approved between 1st November 2022 and 31st January 2023 (22 in total in 2022/23).

- 3.2. Note the reason for 2 non-adherences between 1st November 2022 and 31st January 2023 (3 in total in 2022/23).
- 3.3. Notes that the Finance Sub-Committee, on the 8th March 2023, 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 November 2022 to the 31st January 2023, (22 waivers and 3 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

| | 2016-2017 | 2017-2018 | 2018-2019 | 2019-2020 | 2020-2021 | 2021-2022 | April 2022 – January 2023 |
|----------------|-----------|-----------|-----------|-----------|-----------|-----------|---------------------------|
| Waivers | | | | | | | |
| | 40 | 20 | 16 | 17 | 25 | 37 | 22 |

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. So far this year 13 of the waivers approved have been care related.

6.3 So far during 2022 – 2023 financial year there have been 110 procurements (these include tenders, request for quotations above £25k and call offs from frameworks) with 529 contracts awarded.

Table 2: Non-Adherences

| | 2016-2017 | 2017-2018 | 2018-2019 | 2019 - 2020 | 2020-2021 | 2021-2022 | April 2022 - January 2023 |
|----------------------|-----------|-----------|-----------|-------------|-----------|-----------|---------------------------|
| Non-Adherence | | | | | | | |
| | 33 | 10 | 5 | 1 | 3 | 3 | 3 |

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.

| 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. |