

Board/Committee:	Full Council
Date of meeting:	7 th February 2024
Title:	Procurement Waiver/Exemptions Update
Author:	Deputy Chief Executive, Head of Benefits, Procurement & Insurance
Status:	For Noting

Purpose

This report details the “Waiver/Exemptions” authorised since the revision of the Councils Contract Procedure Rules which were approved by the Standards and Audit Board on 17/11/22 and ratified by full Council on 22/12/22 when an undertaking was made to report such Waivers/Exemptions to Board on a regular basis.

Recommendation

That the Board note the Waivers/Exemptions made in accordance with the Council Contract Procedure Rules for the period 1st January 2023 to 31st December 2024 attached as Appendix 1 to this report.

1.0 Background

1.1 On the 17/11/22 the Standards and Audit Board approved the Councils revised Contract Procedure Rules (CPR’s) which were then ratified at full Council on the 14/12/22.

1.2 The Council CPRs appear within the Council’s Constitution at Part 4 Schedule 13. These were comprehensively re-drafted in 2022 to ensure compliance with new and revised legislation and in accordance with the Council’s general duty to pursue continuous improvement in process.

1.3 The CPR’s follow the same order as previous versions, taking the relevant considerations in the order that they are likely to apply to the process:

- Section 1 – scope of Contract Procedure Rules
- Section 2 – common requirements
- Section 3 – conducting procurement
- Section 4 – contract and other formalities
- Section 5 – contract management

Importantly, there is more detailed guidance within the CPRs for Officers to provide assistance of what should be considered at each stage of the process, and, at the end of the new CPRs, there are appendices that set out further specific guidance on particular areas such as business ethics, confidentiality and data protection; as well as a glossary and summary flowchart.

1.4 The CPRs clarified the process whereby Waivers/Exemptions from the rules can be agreed at an appropriate level without needing to revert to approval from one of the Council’s Boards. This enables the Council to run its procurement business in a more efficient manner but will not prevent appropriate reporting to the relevant Council Board for Council projects and

procurements.

Section 4.1, 4.2 and 4.3 confirm the arrangements for such exemptions/waivers:

. 4. EXEMPTIONS and COLLABORATIVE ARRANGEMENTS

4.1 “The Council and its Boards have power to waive any requirements within these CPRs for specific projects, taking into account the value, nature of the requirement and urgency as set out in Para 4.2 below.

4.2 Where the value is below the FTS Threshold, an exemption can be agreed by a Chief Officer in consultation with the Borough Solicitor (with the exception of a procurement of less than £5000, which can be agreed by the relevant Section Head and Head of Procurement). This approval will require at least **one** of the following:

- evidence of urgency (which means normal time limits cannot be met)
- un-foreseeability (which is outside the control of the Council or could result in disruption to Council services);
- quantifiable and significant cost and efficiency savings can be achieved through seeking an alternative route;
- evidence the Council would otherwise be exposed to immediate and significant financial, legal or reputational risk that has been identified in the relevant risk register;
- only one supplier is objectively able to provide the works, services or goods (supplies) in question, for example, where the supplier has exclusive Intellectual Property, artistic or other rights, is a monopoly or where the goods bought are for re-sale (in which case the exemption **must** relate to the number of Quotes / Tenders that are sought);
- additional or new goods (supplies), services or works are required which, through unforeseen circumstances, were not included in an existing Council Contract and are necessary for the completion of the Contract and/or cannot be carried out separately;
- new goods (supplies), services or works are required which are a repetition of goods (supplies), services or works carried out under the original Contract, provided they are required within 1 year of the original Contract.
- goods are required as a partial replacement for or in addition to existing goods or installations and obtaining them from another Supplier would result in incompatibility or disproportional technical difficulties in operation or maintenance.

4.3 Where an exemption is sought for a Relevant Contract that is above the FTS Threshold/ Regulated by the PCR15, a direct award may only be made exceptionally in the following circumstances:

- the procurement is exempt under Regulation 10 or 14 PCR15;
- the procurement can be awarded in accordance with Regulation 32 PCR15 such that :
- an Open or Restricted procedure has been advertised, and no suitable

responses were received;

- When strictly necessary, for reasons of extreme urgency, brought about by events unforeseeable to the Council, which make the timescales for an Open or Restricted procedure or competitive procedure with negotiations cannot be complied with;
- Only one Supplier is objectively able to provide the goods (supplies), services or works in question, for example where the supplier has exclusive Intellectual Property, artistic or other rights or competition is absent for technical reasons;;
- In the case of goods (supplies) Contracts:
 - The goods are for research purposes only,
 - The goods are in addition to goods already supplied by an existing Supplier, to replace or be used alongside the original goods, and where a change of supplier would mean the new products would be incompatible with the existing ones, or where this would cause dis-proportionate technical difficulties in operation and maintenance;
 - For supplies purchased on a commodity market,
 - For the purchase of supplies on “particularly advantageous” terms, specifically where a supplier is being wound up by a liquidator, or similar;
- new works or services are required which are a repetition of works or services carried out under the original Contract, provided they are required within 3 years of the original Contract and the conditions under which this will be used and awarded are fully disclosed when the original Contract is procured

In these instances, the exemption must be approved by a Chief Officer, based on an assessment of risk; a report with appropriate justifications must then be taken to the next Policy and Organisation Board to support the action taken.”

2.0 Report

2.1 Revision of the CPR’s in 2022 and the subsequent amended processes are now working well across Council Sections. Training sessions have been well attended to ensure all staff understand and follow necessary process and procedure and this has been reflected positively in a recent Internal Audit report.

2.2 As part of the revised CPR’s, the process to enable a waiver or exemption to the CPR’s was simplified and this report is to update Members on the Waivers that have been approved since the revisions.

2.3 The following Waiver approval process is in place:

- All Waivers must be submitted on the Waiver form which is signed

by the relevant Section Head and submitted to the Procurement Team. This is accompanied with a relevant business case for the procurement and any relevant documentation and is securely held on the Proactis system for future audit and inspection.

- Waivers below £5000 are approved by the Section Head and Deputy Chief Executive, Head of Benefits, Procurement & Insurance in accordance with procurement in accordance with 4.2 of the CPR's.
- Waivers above £5k but below the FTS Threshold are authorised by a Chief Officer in consultation with the Borough Solicitor in accordance with 4.2 of the CPR's.

For administrative ease delegated approval from the Chief Executive, Borough Treasurer and Borough Solicitor has been given to the Deputy Chief Executive, Head of Benefits, Procurement & Insurance to authorise Waivers below £50k.

3.0 Risk Assessment

3.1 The revision of the Councils CPR's and subsequent revised processes has ensured that risk against challenge is mitigated when correct legal process is not followed.

4.0 Conclusion

Members are asked to note the Waivers as detailed in Appendix 1 of this report.

Financial Services comments:	<i>Contained within the report</i>
Legal Services comments:	<i>Contained within the report</i>
Equality and Diversity:	N/A
Climate Change implications:	N/A
Crime and Disorder:	N/A
Service Improvement Plan implications:	Revised procedures reduce administrative burden, improving service delivery.
Corporate Plan:	Contributes to the corporate strategy to deliver effective services
Risk Assessment:	Included within report
Background Papers:	https://www.gosport.gov.uk/constitution Standards and Audit report 17/11/22 Revised and updated CPR report to Council 22.12.22
Appendices:	Appendix 1- Waivers approved between 1/1/23 to 31/12/23
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