

AUDIT SCRUTINY COMMITTEE

CHAIRMAN: Cllr Chris Clarence

DATE: 13 December 2018

REPORT OF: Interim Corporate Procurement Officer / Audit Manager

SUBJECT: Procedure for Waiving the Contract Procedure Rules

PART I

RECOMMENDATION

To note the report.

1. PURPOSE

- 1.1 To provide members with information on the process for waiving the Contract Procedure Rules (CPR).

2. BACKGROUND

- 2.1 In response to members' request for information on the waiver process, this report provides an explanation of the waiver procedure, and an outline of the controls in place to ensure it is properly applied.

3. FINANCIAL INSTRUCTIONS and CONTRACT RULES

- 3.1 The Financial Instructions provide the framework for managing the Council's financial affairs and include rules on all aspects of finance including spending. They were reviewed and approved by the Audit Scrutiny Committee in December 2017 and by full Council in January 2018.
- 3.2 The Contract Procedure Rules sit alongside the Financial Instruction and sets out how procurement activity will be conducted by the Council and outlines the specific rules for tendering and letting of contracts.
- 3.3 They are both included in the Council's [Constitution](#) Part 3 - Rules of Procedure.

4. THE SPENDING THRESHOLDS

- 4.1 The CPR sets out the procurement activity required, dependent upon the value of the goods, works or services to be procured and the duration over which those purchases will be required.

- 4.2 For example, a contract which is required over three years with an option to extend for a further two years, with an annual spend of £20,000, will be estimated to have a value of £100,000. This procurement would be subject to tender by advertisement.

Item Value ex VAT	Quotations/Tendering for Goods and Services
Up to £7,500	A minimum of one <i>Quotation</i> , but good practice to seek most favourable prices and terms, having regard to the Council's Procurement Strategy.
£7,501 - £50,000	A minimum of three written <i>Quotations</i> .
£50,001 – EU Threshold	<i>Invitation to Tender</i> by advertisement.
Above EU Threshold	EU Procedure or, where this does not apply, <i>Invitation to Tender</i> by advertisement.

5. PROCUREMENT PROCESSES

5.1 Request for Quotations (RFQs)

- 5.1.1 RFQs are used for low value procurement activity, the council has established the limit of £50,000 for obtaining quotations. Activity up to £7,500 is conducted by officers making purchases by:

- sourcing via the internet;
- making use of electronic catalogues;
- obtaining quotations through email for one off or ad hoc requirements.

- 5.1.2 Officers who require quotations above £7,500 are encouraged to use the e-tendering portal: www.supplyingthesouthwest.gov.uk. Suppliers can be pre-selected to participate, allowing the use of local suppliers and SMEs. Alternatively if more appropriate, the opportunity can be widely advertised.

- 5.1.3 There is an RFQ template which officers can use for purchases above £7,500, which is a lighter touch than the tendering paperwork required and therefore, aims to encourage participating from SME suppliers. In addition the terms and conditions for goods and services are also more light touch. The document still sets out the evaluation methodology and scoring criteria along with any quality questions and pricing schedule.

- 5.1.4 Officers are required to conduct due diligence checks with the aid of finance conducting a financial check on their selected supplier.

5.2 Tendering

- 5.2.1 Tendering procedures are more rigorous and this is reflected in the level of information and detail required from participating suppliers. The same electronic tendering portal is used, so that suppliers only have to sign up once. The procurement documents are more extensive along with the response required.

6. WAIVER PROCEDURE

6.1 On occasion it may be necessary for officers to not conduct their procurement activity as set out in the CPR. When this occurs officers are required to request a waiver and they must justify their proposal to not adhere to the CPR.

6.2 In addition a waiver may be necessary because of an unforeseeable emergency involving immediate risk to persons, property or serious disruption to Council services.

Criteria is defined as:

- **Life or Death** – Is there a significant chance that the life or health of officers, members or the public will be put at real risk?
- **Increased Cost / Loss of Income** – Will the Council incur significant avoidable costs or lose significant income (significant shall be taken to mean material in the sense that it is either material to the project, the service or the Council)?
- **Limited Markets** – Would the Council be wasting its time obtaining quotations as supply of the product or service is demonstrably restricted to one or few businesses?
- **Urgent Action Required** – Would the Council be criticised for failing to act promptly?

6.3 The internal process for managing waivers:

Where an officer considers they have reason to request the content of the CPR be waived, they shall first inform and obtain the approval of their immediate line manager using a waiver form. At the meeting between the officer and their manager, the circumstances surrounding the request must be discussed. A proposal as to the course of action to be taken will then be agreed and recorded.

The officer and manager will have to satisfy the Internal Auditor and Procurement Officer that:

- At least one of the basic principles as set out above has been met;
- They have been provided with adequate evidence in support of the request;
- The officer and their manager have had due regard to the risks to the Council of the action they propose;
- A decision to waive the Contract Procedure Rules would be in the best interests of the Council.

The Auditor will record these details and may request evidence in support of any claims made, e.g. copies of documents, discussions with third parties, inspection etc.

The Auditor, in consultation with the Procurement Officer will then give their opinion and record this on the waiver form. Should they consider that any action or inaction by an officer or their line manager has given rise to the need to now consider waiving the rules, e.g. it was left too late to tender, they will record this on their record of advice given.

Once the view of the Procurement Officer and Internal Audit has been obtained, the appropriate Managing Director and / or Head of Service will sign to authorise the waiver, unless a 'Key Decision' is required, i.e. those in respect of revenue spending over £50,000 and capital spending over £125,000. Such decisions must be referred back to the Executive Committee as must any decision which may have a significant effect on communities, i.e. effecting over 2,000 residents.

If a decision is urgently required the Managing Director is empowered to make a decision in consultation with the Leader and Deputy Leader. The decision will be recorded in accordance with the Council's Constitution, to enable it to be retrospectively reported to the following meeting of the Executive Committee. Internal Audit will be notified of the outcome.

7. ANALYSIS OF WAIVERS

- 7.1 Some analysis of waivers which were requested in the financial period 2017-18 has been carried out and the results indicate that the request for waivers focuses around three themes:
- 7.2 The ongoing use of expertise / additional works to existing arrangement – whereby some work or knowledge has already been obtained by a contractor or consultant and the officer wishes to extend the remit of the service provided to incorporate an additional piece of work. In these cases the original appointment of the supplier was subject to a competitive procurement activity, which determined the supplier provided best value for money.
- 7.3 Sole source – waivers which have been raised by officers who have limited or no choice of options in regards to who can provide the goods or services.
- 7.4 In the financial period 2018-19 we have also seen examples of waivers being requested where officers failed to appropriately calculate the value of their procurement and used an incorrect process. On both occasions the procurement was competitively procured as an RFQ, with the successful suppliers evidencing value for money. On these occasions procurement and audit took a pragmatic approach where the decision to allow a waiver was supported rather than re-procuring using a tender process. On both occasions the full value was below the EU threshold.

8. RECOMMENDATION

- 8.1 For members to note the report.

Lucy Ford – Interim Corporate Procurement Officer
Sue Heath – Audit Manager

Wards affected	<i>N/A</i>
Contact for any more information	<i>Lucy Ford – Procurement Officer – 01626 215120</i>
Background Papers (For Part I reports only)	<i>N</i>
In Forward Plan	<i>N</i>
In Audit Scrutiny Work Programme	<i>N</i>