



Report of the Head of Commercial Services

Governance and Audit Committee – 5 June 2024

Audit Report on Waivers 2023/24

Purpose:	To provide the Committee with an update and further information regarding the audit report on Waivers.
Policy Framework:	The Council Constitution and its Contract Procedure Rules (CPR), and relevant statutory obligations including the UK Public Contract Regulations 2015.
Recommendation(s):	It is recommended that the progress made in the action plan be noted.
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1. Introduction

- 1.1 An internal audit of 'Waivers' has been completed and an assurance level of moderate given.
- 1.2 The term 'waivers' applies to a situation where a Council Service Area / department wishes to 'waive' the option of open procurement (or the use of a procurement framework) and instead direct award a contract to a specific supplier. Such matters are set out in the Council's Constitution, specifically in the 'contract procedure rules', which provide the governance framework for the spend of Council's funds with suppliers and service providers.
- 1.3 The Council regularly reviews compliance with the contract procedures rules through its audit work, but this was the first time an audit had been undertaken specifically focused on waivers. This audit was requested by

me as an extension of the standard audit programme to provide further insight into compliance with CPRs and was suggested as part of the annual consultation on its programme that Audit undertakes.

1.4 The Authority may consider the use waivers for a number of reasons including (as per CPR and in line with the UK Public Contract Regulations):

where an offer has been made to the market by the Council using the Procurement Process, but where no quotations or tenders have been submitted, or where those that have been submitted are disqualified through the evaluation procedure. In this circumstance an exception can only be granted where the original terms of the proposed contract are not substantially altered;

the goods, services or works can only be provided by a particular contractor for reasons that are technical, or connected with the protection of exclusive rights;

extreme urgency brought about by events unforeseeable by the Council;

where the products involved are manufactured purely for the purpose of research, experimentation, study or development:

for supplies quoted and purchased on a commodity market;

where a design competition is run where the rules of that competition require the contract to be awarded to one or more of the successful candidates, provided that all successful candidates are invited to negotiate;

in relation to time limited grant funding from an external body, where the time limitations will not allow a competitive procurement process to be completed and where the grant conditions allow this;

for the purchase of supplies on particularly advantageous terms from a supplier that is definitely winding up its business activities, or from the receivers or liquidators of a bankruptcy, an arrangement with creditors or similar procedure;

where delay attributable to the quotation or tendering process would, in the estimation of the Responsible Officer concerned, create or increase danger to life or limb;

where relevant UK legislation not otherwise referred to in CPR permits.

1.5 Directors have reviewed the waivers highlighted by Audit and are happy that their use is appropriate while acknowledging that improvements are required to reflect the individual circumstances noted and overall compliance.

1.6 With regard to the focus of the auditor's report -

when undertaking spend via a waiver process within CPRs the requesting Service Area retains an obligation to:

- complete a Supplier Questionnaire to assess the proposed supplier
- check the supplier's insurance coverage, and
- ensure that a signed contract is put in place

1.7 Audit undertook a review of waivers and sought evidence of the actions noted in 1.4. by reviewing a sample of fifteen waivers

the Committee will have reviewed the Auditor's report on this matter which provides full detail of the auditor's analysis.

2 **Audit outcomes and next steps**

2.1 The auditor's report highlights four risks:

Waiver applications should be submitted in advance of any expenditure being incurred, with exceptions allowed for emergency requirements	Medium Risk (MR)
Appropriate Supplier Suitability checks should be undertaken for all Waivers.	LR
It should be confirmed that the supplier has appropriate and valid insurance in place at the start of a contract, and throughout its duration.	MR
A contract should be prepared and signed by the required and appropriate parties for all Waiver applications.	HR

2.2 The risks noted in 2.1 have been reviewed by senior management including the responsible Directors and Heads of Services, and their implementation agreed and confirmed as per the auditor's report. In addition at the request of the Chief Executive sessions have taken place at CMT and with all Heads of Service.

2.3 With regard to the individual contract issues noted in the auditor's report, these have been reviewed by the relevant Service Area with further information provided in appendix A - table 1 for the Social Services Directorate and table 2 for the Place Directorate.

2.4 Also, and in addition to the actions noted in 2.2. and 2.3, subsidiary actions have been developed, which will also contribute to improvement in this area and these are contained below in Section 3.

3 Further actions arising from the Audit report on waivers:

3.1 Legal Services to now track contracts valued at £140K+ for sealing

Action – this has been introduced into the process flow for waivers applications.

3.2 The Council moves to up-front provision of due diligence documents, i.e. the proposed supplier's summary of insurance cover and a completed supplier suitability questionnaire are presented at the time of waiver application - **where possible** - thus ensuring due diligence is undertaken

Action – this will be provided as an option in the waiver application process.

3.3 Should a waiver applicant wish to move away from standard process they should flag such change at the time of the waiver application for agreement, including for example where a Service Area wishes to rely upon documents (such as a supplier questionnaire) that may have been used in other live procurement activity.

Action – a new field has been introduced in the waiver application process to capture the above scenario and provide an opportunity for further analysis.

3.4 CPR compliance to be monitored via the annual appraisal process

Action – this has been reviewed and agreed by senior officers

3.5 where any new decision-making processes related to waivers is being put in place by a Service Area then this is reviewed with Commercial Services to ensure coherence with the contract procedure rules.

Action – such changes will be reviewed prior to implementation to ensure coherence with CPR / the Council Constitution

3.6 Contract management to be further reviewed / there is a need to develop a contract management framework.

Action – this work to be further reviewed with a view to further articulating the responsibilities of contract managers and providing appropriate training

3.7 Directors and their HoS to review with their Services areas where there may be either a
- knowledge gap in terms of the product and service required, or
- any contract management / capacity issues

Action – this action has been reviewed and agreed by senior officers.

- 3.8 Consideration to be given to whether a pool of contractors can be placed on stand-by for emergency requirements - the Council could then for example create a framework that could accommodate such needs

Action – further research to be conducted on this matter to identify if such a solution is required / would add-value.

- 3.9 Arrangements for agency workers to be further reviewed in the Social Services area, as the Council is working with multiple agency providers, with a view to creating a framework for this activity.

Action – this review and work has commenced.

- 3.10 Further consideration to be given to waiver criteria

Action – initial consultation has taken place with CMT and senior officers with agreement on the audit report's recommendations and the subsidiary actions noted above. This is to ensure that the current waiver criteria contained within the contract procedure rules remain fit for purpose, this review will be completed over the next 6 months in line with 3.11 below.

- 3.11 Commercial Services to work with Services across the Council to prepare for the arrival of new procurement legislation

Action - new UK and new Welsh Government procurement regulations are to be implemented at the end of 2024 – and one element of this is a new requirement to publish contract award notices for all spend valued at £25,000+ on the Welsh Government's Sell2Wales website and this will mean increased obligations in this regard.

4. Integrated Assessment Implications

- 4.1 The Council is subject to the Equality Act (Public Sector Equality Duty and the socio-economic duty), the Well-being of Future Generations (Wales) Act 2015 and the Welsh Language (Wales) Measure, and must in the exercise of their functions, have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Acts.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.
- Deliver better outcomes for those people who experience socio-economic disadvantage.
- Consider opportunities for people to use the Welsh language.
- Treat the Welsh language no less favourably than English.
- Ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs.

- 4.2 The Well-being of Future Generations (Wales) Act 2015 mandates that public bodies in Wales must carry out sustainable development. Sustainable development means the process of improving the economic, social, environmental and cultural well-being of Wales by taking action, in accordance with the sustainable development principle, aimed at achieving the 'well-being goals'.
- 4.3 The Council's Integrated Impact Assessment (IIA) process ensures we have paid due regard to the above. It also takes into account other key issues and priorities, such as poverty and social exclusion, community cohesion, carers, the United Nations Convention on the Rights of the Child (UNCRC) and Welsh language.
- 4.4 An IIA screening form has been completed and there are no impacts arising from the publication of this report which provides information for the Governance and Audit Committee - the form is included as Appendix B.

5. Financial Implications

- 5.1 There are no direct financial implications associated with this report.

6. Legal Implications

- 6.1 There are no direct legal implications associated with this report.

Background Papers: None.

Appendices:

- Appendix A Swansea Council Management Action Plan Waivers 2023/24.
Appendix B IIA Screening Form.