

Finance and Resources Committee

2.00pm, Thursday 18 August 2016

Contract and Waiver Management: Update

Item number	7.16
Report number	
Executive	
Wards	All

Executive summary

This report has been developed by Commercial and Procurement Services (“CPS”) in consultation with all service areas and outlines:

- That the onus is on each service area to undertake timely planning on requirements for new contracts including waivers and extensions to existing contracts working in partnership with CPS;
- At Appendix 1 areas where further action by services is required to ensure suitable contracts are put in place for continuity of provision and/or compliance with the Council’s Contract Standing Orders. In some instances these plans may require further detailed reporting to Executive Committees and approval of subsequent waivers or contracts by Finance and Resources Committee.

There will be a continuing need to use the waiver process to allow for those exemptions that procurement law recognises, and also to provide some flexibility which will be required during this period of transformational change.

Commercial and Procurement Services will continue to promote compliant routes to the market both through stakeholder engagement, encouraging services to take a proactive approach to planning their existing and future contract needs. Regular updates will be provided to Council Leadership Team on this work programme and further reports on contract and waiver management and planning will be incorporated into the quarterly Delegated Authority report to committee.

Contract and Waiver Management: Update

Recommendations

The Finance and Resources Committee is asked to:

- 1.1 note that the onus is on each service area to undertake timely planning on requirements for new contracts, and waivers and extensions to existing contracts, working in partnership with CPS;
- 1.2 note Appendix 1 identifies areas where further action by services is required to ensure suitable contracts are put in place for continuity of provision and/or compliance with the Council's Contract Standing Orders;
- 1.3 Note the additional reporting to Executive Committees proposed as detailed at paragraph 3.8;
- 1.4 note the continuing need to use the waiver process to allow for those exemptions that procurement law recognises, and to provide the flexibility required during this period of transformational change;
- 1.5 note that Commercial and Procurement Services has a duty to report instances of non-compliance with the Contract Standing Orders, and will continue to promote compliant routes to the market through stakeholder engagement; and
- 1.6 note that further updates will be incorporated into the quarterly Delegated Authority report to committee.

Background

Management Information

- 2.1 Commercial and Procurement Services are responsible for
 - Supporting service areas in procuring goods, works and services (with a focus on contracts of a value of at least £25,000); and
 - Providing governance, process and oversight for contracting and purchasing (including the Contract Standing Orders)
- 2.2 This includes working with services in relation to:
 - Overall £532.5m of third party spend across the Council during 2015/16;
 - 2,426 live contracts on the Contracts Register;

- 11,427 suppliers, 1267 requisitioners and 761 approvers on the Oracle system; and
- Moving to a new procurement system within the Council's new IT infrastructure.

2.3 Services are responsible for ensuring that their contract information is regularly updated on the Council's Contract Register (accessible through the Orb and publicly). Commercial and Procurement Services also regularly provides a list of expiring contracts and waivers to services for their review in order to assist Directors in fulfilling their responsibilities for all contracts tendered and let by their Directorates. Commercial Partners also work alongside the service management teams and procurement delivery teams as business partners to assist with relationship management and support services with their contract planning.

Waiver and contract reporting

- 2.4 The Council's Contract Standing Orders (CSOs) outline approval thresholds for contracts for goods, works and services. Above certain financial values these require approval by the Finance and Resources Committee. These contracts are approved by the Committee on a case by case basis.
- 2.5 CPS also reports quarterly to the Finance and Resources Committee on contracts awarded under Delegated Authority or through a waiver of the CSOs. In addition to these regular reports, in May 2015 a Contract Planning update report was approved by the Committee, with a further report in January 2016 focussing on waivers over a value of £100,000 (October 2014 to September 2015). This report also outlined the management process for dealing with contracts in more detail.
- 2.6 The Committee has expressed concerns about the number of contracts being awarded through a waiver of CSOs, and CPS have been asked to report in further detail on practical plans to reduce the number of waivers.
- 2.7 A waiver of CSOs to allow a contract to be awarded or extended without some form of competitive tendering may be required in certain circumstances. Each waiver is looked at on its own merits and is only approved if fully justifiable, as these circumstances need to be tightly controlled and scrutinised. The revised CSOs now require a waiver when it is considered to be in the best interests of the Council (those contracts that are legislatively exempt from the rules no longer require a waiver approval). This will ensure further scrutiny and transparency of those waivers arising as a result of poor planning.
- 2.8 There will be a continuing need to use the waiver process to provide interim arrangements and flexibility if absolutely required to ensure continued service delivery for the city of Edinburgh.

Non-contracted Spend

- 2.9 Interrogation of the Council's financial records, cross-referenced with the Contract Register, identifies spend against a number of "non-contracted" suppliers. There are instances where a supplier may have been used historically without a contract in place, or following contract expiration. Data cleansing is ongoing, and it is possible that a live contract is in place but not added to the Contract Register (particularly for lower value contracts). Some payments may constitute a grant, lease or payment to another public body.
- 2.10 Significant aggregate spend with non-contracted suppliers presents the risk of breaching procurement legislation, potential legal challenge, and in the absence of competitive procurement, may mean that Best Value is not demonstrable or achieved. CPS uses available management information regarding payments to these suppliers, to consult with services and encourage compliance with the Contract Standing Orders and legislation where possible.

Main report

Service Review

- 3.1 For the purposes of this report, during June 2016 a list of all expiring waivers and contracts and payments to "non-contracted" suppliers was sent to service areas (following internal review by procurement delivery staff). Using feedback received, the listing at Appendix 1 outlines areas where further action is required by services to ensure suitable contracts are put in place for continuity of provision and/or compliance with the Council's Contract Standing Orders.
- 3.2 The appendix excludes contracts that are subject to current procurement process or are already live.
- 3.3 There will continue to be instances where waivers are required and cannot be anticipated, for example when there are new or revised service delivery requirements or the need to deliver a contract in urgent circumstances.

Procurement Strategy

- 3.4 There are a number of areas where CPS will continue to focus support regarding procurement strategy. These include Health and Social Care and Communities and Families, where decisions made may impact on provision of services for the vulnerable and those with complex needs. CPS will work with services to promote coproduction with service users and providers in developing service requirements, although it should be recognised that this requires extra time and resource to achieve.
- 3.5 Due to the introduction of the new 'Light Touch' procurement regime for Health and Social Care contracts, some direct awards to deliver these services may not require the approval of a waiver and CPS encourages services to make early contact in order to explore suitable procurement options. The overall governance

and purchasing process will be kept under review to ensure it continues to meet the needs of Council and the Health and Social Care Partnership with the NHS.

- 3.6 Where assets or ICT systems are being procured, CPS will encourage services to consult with ICT colleagues first and to take into account whole life costs and ensure that that future contract terms and financial value do not limit future opportunities for competitive procurement (for example, for maintenance).
- 3.7 In other areas, there may be merit in aggregating requirements and spend to create contracts that offer better value. Robust procurement strategies can assist in realising significant financial savings and through the Commercial Excellence Programme CPS will continue to support services in realising commercial savings to alleviate resource pressures where possible.

Next Steps

- 3.8 To ensure appropriate levels of scrutiny, as indicated in Appendix 1 in some cases it is suggested that a detailed contract planning report is first sent to the relevant Executive Committee (or where appropriate, the Integrated Joint Board). This report should include action taken to date, current activities and proposed next steps, plus information on consultation with CPS and relevant stakeholders. It should also outline any waiver or contract extension requirements, for referral to the Finance and Resources Committee seeking approval. This will particularly apply in instances:
- where there is a direct award, contract extension or waiver of significant financial value under consideration; and
 - where the Finance and Resources Committee has previously approved a waiver, but following its expiration the need for a further waiver is anticipated.
- 3.9 Commercial and Procurement Services has recently completed an organisational review to include senior post holders who will be heavily involved in stakeholder engagement. It is expected that this operating model will assist in supporting services in their contract scheduling and help services mitigate the requirement for waivers as a result of poor planning.
- 3.10 Information on expiring contracts and waivers will continue to be issued to Directors on a monthly basis, and it is hoped that with improved oversight, there will be less requirement for waivers. CPS also encourages services to set up dedicated boards and/or management meetings to consider procurement and contracts, promote compliance and ensure management information is accurate. This has been endorsed by CLT.
- 3.11 CPS will continue to analyse non-contracted spend and report significant instances to services and if necessary CLT. The introduction of the Council's new Enterprise Resource Planning System in replacement of Oracle will also provide a more detailed picture of the Council's spend with contracted suppliers.
- 3.12 CPS will continue to monitor waiver trends and report to committee. Through the revised Contract Standing Orders and a more proactive approach, it is

anticipated that in the longer term these will reduce in volume. It should be noted that the next report to the Finance and Resources Committee in September regarding contracts and waivers awarded under Delegated Authority will be retrospective, and so there is unlikely to be any change in trend in the short term.

- 3.13 CPS will continue to promote compliant routes to the market through stakeholder engagement. Regular updates will be provided to services on this work programme, and further reports on Contract and Waiver Management and Planning will be incorporated into the quarterly Delegated Authority report to committee.

Measures of success

- 4.1 Council contracts let are compliant with Contract Standing Orders and procurement legislation.
- 4.2 The number of waivers of Contract Standing Orders required as a result of poor planning is reduced.
- 4.3 The Council's Contract Register is kept updated by services and management information is comprehensive and accurate.
- 4.4 Best Value is both demonstrable and achieved

Financial impact

- 5.1 Through robust procurement strategy and proactive management of contract cycles, and aggregating spend and carrying out competitive procurement where appropriate, this should help minimise financial waste and achieve Best Value for Council contracts.

Risk, policy, compliance and governance impact

- 6.1 The Council is going through a significant period of change due to the current Transformation Programme. This has presented some risks with regards contract management and procurement planning, as contract owners have left the Council and directorates take on new service responsibilities and their associated contracts. This has presented some difficulties for CPS in determining revised contract management roles, but it is anticipated that this will settle in the longer term. This will be mitigated by intensifying engagement with stakeholders and supporting services with relevant management information to help with planning.
- 6.2 Due to the significant volumes of activity and numbers of stakeholders involved in purchasing and procuring goods, services and works (see paragraph 2.2), CPS relies on services to provide accurate information through their Contract

Register entries and request for procurement assistance. To mitigate against any risks in this area, data is reviewed for accuracy and reliability in consultation with services.

- 6.3 A waiver denotes a departure from the CSOs. There may be an increased risk if the Council has departed from EU requirements. However, each waiver is scrutinised on its own merits in this context, and is only approved if justifiable given the circumstances or permitted in accordance with EU obligations.
- 6.4 Co-production resource and timescales will need to be factored in to overall timescales for services to re-procure contracts.

Equalities impact

- 7.1 There are no equalities impacts directly arising as a result of this report.

Sustainability impact

- 8.1 There are no sustainability impacts directly arising as a result of this report.

Consultation and engagement

- 9.1 Service areas have been consulted on their expiring contracts, waivers and suppliers in the collation of this report. On an ongoing basis, the CSOs outline the appropriate measures of consultation and approval that must be sought from officers or committee for each waiver, dependent on the expected value.

Background reading / external references

[http://www.edinburgh.gov.uk/download/meetings/id/46991/item_712 -
_council_contracts_-_planning_update](http://www.edinburgh.gov.uk/download/meetings/id/46991/item_712_-_council_contracts_-_planning_update)

[http://www.edinburgh.gov.uk/download/meetings/id/49409/item_719 -
_council_contracts_planning_update_-_review_of_waivers_over_100000](http://www.edinburgh.gov.uk/download/meetings/id/49409/item_719_-_council_contracts_planning_update_-_review_of_waivers_over_100000)

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Links

Coalition pledges	P30: Continue to maintain a sound financial position including long term financial planning
Council priorities	CO25: The Council has efficient and effective services that deliver objectives
Single Outcome Agreement	
Appendices	Appendix 1 – Waivers for approval

Appendix 1 – Waivers for Approval – as at 14 July 2016

Service Area	Contract Name	Description	Supplier	Contract End Date	Contract Value	Background	Reporting Requirements
Strategy & Insight (Chief Executive's Office)	Various	Support for (Scottish Parliament election and European Referendum) including logistics, catering, ICT and AV, power supply, signage and site management	Various	30/06/2016	Various (between approx £4,000 to £40,000)	The service has contacted CPS to develop a procurement strategy for forthcoming elections that will mitigate the requirement for individual waivers where possible. In the interim further waivers may be required should an election or referendum be called before procurement process is completed.	
City Strategy and Economy	Mini Competition for Consultancy Support for the Edinburgh and South East Scotland City Deal	Mini Competition for Consultancy Support for the Edinburgh and South East Scotland City Deal Utilising Consultancy One Corporate Financial and Financial Strategy (Lot 4.1) Framework Agreement	Ernst and Young LLP	31/07/2016	£712,500	This contract to support development of the Edinburgh and South East Scotland City Deal was previously competitively tendered as a Pre-Approved Project, and extended by Director approval. Costs are borne across participating local authorities. Consultancy support for this phase is expected to conclude by the end of August. The service will be required to work with CPS to specify any requirements for future phases and appropriate procurement strategy. Should continuation with the existing supplier be deemed in the Council's best interests, a waiver will be required to put in place any revised contractual arrangements.	
Communities and Families	Complex Needs Contract	Support for children and young people with complex disabilities, social, emotional and behavioural needs	Various	Ongoing	Approx £1,000,000 per annum	Community and Families work with some children and young people with complex disabilities, social, emotional and behavioural needs and additional support needs that sometimes cannot be resourced within currently contracted services. Often specialist services and placements need to	It is proposed that the service presents a report regarding the Complex Needs contract to the relevant Executive Committee (see paragraph 3.8). This report shall then

Service Area	Contract Name	Description	Supplier	Contract End Date	Contract Value	Background	Reporting Requirements
						be made at short notice due to a crisis at home or in their care placement. . The service areas are currently working with procurement to develop a Complex Needs contract to ensure there is a specification in place to cover this need estimated to be £1M per annum.	be referred to the Finance and Resources Committee for approval of any waiver requirements as appropriate.
Communities and Families	My Adventure	Support Service for vulnerable children attending City of Edinburgh educational establishments.	My Adventure	31 March 2016	£82,959	<p>There is a need for a Systemic Support Service for vulnerable children attending City of Edinburgh educational establishments. Currently these services are provided by four third sector providers, Children 1st, Barnardo's, Canongate Youth Project and My Adventure (£82,959).</p> <p>Extensions were agreed to the first three contracts at Committee in March 2016. Procurement planning has begun to develop a single specification for all current and future service needs. My Adventure provides a range of educational programmes and qualifications for young people at risk of school exclusion and poor attendance. In order to enable the best value outcome, it is proposed to include all of the above within a single programme, allowing a comprehensive review, consultation with all stakeholders and service specification development to be undertaken. To enable this, it would be necessary to extend the contract with My Adventure to cover period of 1 April 2016</p>	It is proposed that the service presents a report regarding Systemic Support Services to the relevant Executive Committee (see paragraph 3.8). This report shall then be referred to the Finance and Resources Committee for approval of any waiver requirements as appropriate.

Service Area	Contract Name	Description	Supplier	Contract End Date	Contract Value	Background	Reporting Requirements
						to 31 March 2018 at a value of £165,918 which would harmonise the extension end dates to 31st March 2018 for these contracts.	
Communities and Families	Children 1st	Support Service for vulnerable children attending City of Edinburgh educational establishments.	Children 1st	30 September 2017	£203,600	See summary for My Adventure above. Previously extended at F&R Committee in March 2016 for an 18 month period from 1 April 2016 to 30 September 2017. This contract would require an extension of £67,866.67 until 31 March 2018 should a waiver be deemed in the Council's best interests.	As above.
Communities and Families	Barnardo's	Support Service for vulnerable children attending City of Edinburgh educational establishments.	Barnardo's	31 March 2018	£808,932	See summary for My Adventure above. Already extended at F&R Committee in March 2016 from 1 April 2016 to 31 March 2018.	
Communities and Families	Canongate Youth Project	Waiver 687 - Support Service for vulnerable children attending City of Edinburgh educational establishments.	Canongate Youth Project	31 March 2017	£40,000	See summary for My Adventure above. Previously extended by waiver approved under delegated authority from 23 February 2016 to 31 March 2017. This contract would require an extension of £40,000 until 31 March 2018 should a waiver be deemed in the Council's best interests.	As above.
Communities and Families	Barnardo's Intensive Behaviour Support Service (BIBSS)	Support to Children and Young People: Disability; intensive early intervention support	Barnardo's Intensive Behaviour Support Service (BIBSS)	31 October 2016	£44,750	Currently six month contract by Direct Award approved by waiver under Delegated Authority for 1 April – 31 October 2016. This was previously delivered through a pilot, and a review of the service and procurement strategy is currently underway. Due to current resourcing pressures a waiver of a value of	Waiver form to be completed for consideration.

Service Area	Contract Name	Description	Supplier	Contract End Date	Contract Value	Background	Reporting Requirements
						£44,750 until 31 March 2017 would allow further time for detailed consideration and review.	
Communities and Families	Independent Care Placement, Residential and Day School Contracts	Direct Award of Independent Care Placement, Residential and Day School Contracts	Various	Ongoing	Approx £1,000,000 per annum	In addition to the Direct Award of independent care placements, residential and day school contracts approved at F&R in March 2016, there continues to be a requirement to use a number of other Scottish and English providers for placements, often at short notice and/or due to the need to match individuals into specialist care. An extension is required to a value of £1,500,000 to cover this spend and align with the existing waiver approved by Committee to March 2018. The service will require to work with CPS to develop procurement strategy, aggregating spend and putting in place contracts through competitive procedure where possible.	It is proposed that the service presents a report regarding additional Placement contracts to the relevant Executive Committee (see paragraph 3.8). This report shall then be referred to the Finance and Resources Committee for approval of any waiver requirements as appropriate.
Health and Social Care Partnership	Waverley Care - Milestone House Respite Service	Short Break (Care Home - Blood Borne Virus)	Waverley Care	31/10/2016	£932,816	A review is underway which is likely to alter the service specification. This work is expected to identify a preferred way forward in 2017. An extension of £1,111,954 until 31 October 2018 is currently under consideration, with the contract requiring to be let for one year with an option to extend for a further year.	It is proposed that the service presents a report regarding the Respite Service to the relevant Executive Committee (see paragraph 3.8). This report shall then be referred to the Finance and Resources Committee for approval of any waiver requirements as

Service Area	Contract Name	Description	Supplier	Contract End Date	Contract Value	Background	Reporting Requirements
							appropriate.
Health and Social Care Partnership	Partners in Advocacy - OP&PD (Older People and Physical Disabilities) Partners in Advocacy - LD (Learning Disabilities) Advocard - MH (Mental Health)		Partners in Advocacy - OP&PD Partners in Advocacy - LD Advocard	30/11/2016	£766,102 £574,461 £2,807,550	Procurement has commenced, but an extension is required until 30 June 2017 to allow for extended coproduction with providers and service users, and subsequent completion of procurement process. The NHS has committed £191,922 in addition to the Council contribution of £278,252.	It is proposed that the service presents a report regarding Advocacy Services to the relevant Executive Committee (see paragraph 3.8). This report shall then be referred to the Finance and Resources Committee for approval of any waiver requirements as appropriate.
Health and Social Care Partnership	Mental Health Services	F&R 26 November 2015 7.11 extension approved for Mental Health and Wellbeing contracts	Various	31/03/2017	£1,945,543	Co-production for the Mental Health services redesign is in progress and an extension may be required of a value of £908,848 until 31 October 2017, to allow for this process to be completed. Models for procurement are currently being explored by service in consultation with the IJB and CPS. A report outlining recommendations will be considered by the IJB.	It is proposed that the service presents a report regarding Mental Health Services to the relevant Executive Committee (see paragraph 3.8). This report shall then be referred to the Finance and Resources Committee for approval of any waiver requirements as appropriate.
Planning and Transport (Place)	Roseburn to Union Canal Cycleway	Consultant for the Roseburn to Union Canal Cycleway	WSP UK Ltd	31/12/2015	£499,723	CPS understands that there has been an increase in cost and timescale on this project (to 31/12/2018). Any requirements for reprocurement or a waiver needs to be identified by the	It is proposed that the service presents a report regarding this consultancy to the relevant Executive

Service Area	Contract Name	Description	Supplier	Contract End Date	Contract Value	Background	Reporting Requirements
						service.	Committee (see paragraph 3.8). This report shall then be referred to the Finance and Resources Committee for approval of any waiver requirements as appropriate.
Customer (Resources)	Printing	Printing of resources	Taskforce Finishing and Handling Ltd		£62,402.19	The Service and CPS are currently undertaking a strategic review of print requirements. In the mean time an extension is may be required to cover continued use of this supplier at a value of £60,000 until 31/03/2017. Any waiver requirement could be approved under Delegated Authority.	Waiver form to be completed for consideration.
Human Resources (Resources)	Various courses to enable CEC staff to manage (1) conflict and aggression from service users/members of the public in the course of their employment and (2) manual handling training requirements	1. Conflict resolution with Positive Outcomes	Maybo Ltd	30/09/2016	£35,700	The learning and development function within the Council has now been integrated into a council-wide Learning and Development team within Human Resources. Learning and Development is a mix of internal and external provision. The Learning and Development Manager has committed to developing a new Training Framework and this will avoid the need for quick quotes and waivers in the financial year 2017/18. In the meantime, an extension may be required for the external requirements listed, at a value of £234,050 until 31 May 2017.	Waiver form to be completed for consideration.
		2. Managing Violence and Aggression Training	Calm Training	31/10/2016	£33,350		
		3. CALM theory and Physical Intervention Skills	Calm Training	30/11/2015	£40,000		
		4. Manual handling training	Physicare	29/12/2016	£247,250		

Service Area	Contract Name	Description	Supplier	Contract End Date	Contract Value	Background	Reporting Requirements
Resources (various service area)	Specialist Recruitment Services	10 current waivers	Various recruitment agencies	Various dates up to 31/01/2017	£451,165	The Council's current agency supplier has had difficulty in sourcing candidates for specialist roles. The agency contract is currently being retendered with an anticipated award date in early 2017, and a waiver may be required for up to £250,000 until 31/01/2017 to meet operational needs. This is to provide for any further specialist posts that the Council's current agency supplier is unable to fill.	Waiver form to be completed for consideration.