

**To the Chair and Members of the
AUDIT COMMITTEE**

FINANCIAL AND PURCHASING & CONTRACT PROCEDURE RULES

EXECUTIVE SUMMARY

1. This Report provides Members with details of Waivers and Breaches to Contract Procedure Rules (C.P.R's) together with instances where Financial Procedure Rules (F.P.R's) have not been followed.
2. It also provides details of an ongoing review of commercial arrangements with suppliers with whom the council spends more than £30,000 per annum.

Since the last report in November 2012 good progress continues to be made in reviewing the arrangements for the procurement of contracts, and as part of this process a number of new breaches have been identified which now require rectification. Details of these plans are provided in summary within this report and in the report's Appendices.

RECOMMENDATIONS

3. To note the information contained in the report, in particular for the reporting of Waivers of C.P.Rs and note actions taken to identify and rectify breaches of C.P.Rs.
4. To consider an update at the November 2013 meeting on C.P.R compliance with suppliers with a spend of over £30,000 per annum and to receive a report on compliance with CPRs relating to new suppliers, this will be after the implementation of the Council ERP system.

BACKGROUND

5. The Financial Procedure Rules (F.P.R.s) and Contract Procedure Rules (C.P.R.s) were approved by Council on 21st July 2011.
6. The Director of Finance and Corporate Services monitors compliance with the above procedures as follows:
 - Updates from the Internal Audit team, detailing the results of audit activity and findings;
 - Update reports from the Corporate Procurement team, detailing any reported waivers of C.P.R.s and instances of breach;
 - Updates from the finance management teams, who are financial advisers to service managers and directorates.

7. The Audit Committee receives regular information and updates to enable them to monitor overall compliance. This is to assist their role in approving the Council's Governance Statement.
8. The transformation of procurement remains a corporate priority and impacts this area directly and continues to strengthen the council's ongoing approach to the management of its suppliers including improved governance arrangements associated with this.

Financial Procedure Rules

9. No breaches of Financial Procedure Rules are reported for the period.

Contract Procedure Rules (C.P.R's)

10. C.P.R.s set various value thresholds at points where commensurate competition should be undertaken by officers to ensure that value for money is being achieved and that all tender opportunities are fairly and appropriately advertised to suppliers.
11. The thresholds within C.P.R.s are set at the Council's discretion as:
 - Under £30,000 – use of an In-house supplier, Council wide Contract (these have been established centrally or nationally for everyone to use), framework agreement or approved list or obtain **three verbal** quotes where the above is not available and record these quotes in writing as evidence;
 - Between £30,000 and EU threshold currently £173,934 (for goods and services) and £4.34m (for works) – use of an in house supplier, council wide contract, framework agreement or approved list or obtain **three written** quotes where the above is not available;
 - Over EU £173,934 (for goods and services) or £4.34m (for works) – use of an In-house supplier, Council wide Contract, framework agreement or carry out an Open, Restricted or Competitive Dialogue Tender procedure. This includes what are known as Part B Services, which generally covers many of the care based services, where the OJEU regulations are less stringent allowing for more flexibility in approach.
12. Whilst the O.J.E.U thresholds are set within legislation and, therefore, cannot be waived, it is recognised that from time to time the discretionary thresholds within C.P.R's may be a barrier to the delivery of services and, therefore, Council officers can request that the C.P.R's are waived in specific instances.

13. This can only be done via a C.P.R. waiver report, which is submitted to Corporate Procurement, Legal Services and Financial Management who also make comment on whether the waiver can be granted in accordance with the exemptions stated in C.P.R.s. The waiver report is then submitted to the Director of Finance and Corporate Services for final approval. The permissible exemptions are:
 - a. the goods, services or works are proprietary in nature (i.e. where only one supplier can supply the product or services);
 - b. the contract is for goods, services or works that are required in circumstances of extreme urgency;
 - c. the circumstances of the proposed procurement are covered by legislative exemptions (whether under E.U. or U.K. law);
 - d. there are other circumstances that are genuinely exceptional.
14. Waivers are an agreed part of the process of procurement to allow for more difficult and extraordinary circumstances.

REVIEW OF PROCUREMENT ARRANGEMENTS ABOVE £30,000

15. This section of the Report provides Members with details of the ongoing review of procurement arrangements with suppliers above £30,000 per annum.
16. As previously reported, breaches arise from either the aggregation of spend with one supplier going over pre prescribed limits, a complete absence of any identifiable contract, a failure to comply with requirements to obtain adequate competition or an extension of contract beyond its agreed term or lifetime.
17. It is therefore important that steps are taken to ensure breaches are identified, investigated and plans quickly put in place to rectify the position.

A summary report is produced for each breach and detail actions required to be taken, including where necessary the decommissioning of contracts.
18. The Corporate Procurement Team continues to work closely with all Directorates to improve procurement generally, but to also provide assurance that arrangements are robust and compliant with CPR's. Where breaches are identified, they are recorded and appropriate procurement plans are agreed and developed if/where appropriate.
19. Detailed below are highlights of current activity, though a significant amount of additional work is also being undertaken researching other areas too.

Children and Young Peoples Service

20. Significant improvements continue to be made within CYPS to review expenditure, and no new breaches have been identified.

The Corporate Procurement Team continues to work closely with CYPS to ensure formally tendered contracts are in place and forward plans are developed

The Procurement Category Manager regularly attends CYPS team meetings and is part of a multi-disciplinary team ensuring all savings opportunities are fully maximized, for example, reviewing external placements and ensuring new requirements are fully understood before placements are made utilizing framework contracts. Procurement reports are also made available to the Senior CYPS Management Team as required.

Collaboration and sharing information also continues across the Region with Leeds, Wakefield, Bradford, Calderdale, Kirklees, Sheffield and Rotherham

Adults and Communities

21. Significant improvements have also been made within Adults and Communities and no new breaches have been identified.

A good and successful working relationship continues, with Procurement and Commissioning colleagues working collaboratively together to ensure formally tendered contracts are in place and forward plans are developed as required.

Spend information is also available for Senior Managers to review, challenge and validated so action can be taken quickly where required.

Regeneration and Environment

22. Since the last Audit Report further breaches have been identified for Regeneration and Environment and as previously explained, some of this is due to the aggregation of expenditure with the same supplier over a number of years resulting in a breach of CPR's. The detail is shown in Appendix 2.

The Procurement Category Manager for this area is currently updating and agreeing forward plans with the Directorate to address the known breaches. In some cases contractual arrangements have been put in place and where possible and appropriate Framework arrangements are also being considered.

Assisting with this, a member of staff from Regeneration & Environment is part way through a 6 month secondment with the Procurement Team which is working out very well, and has been extremely successful.

Finance and Corporate Services

23. Within Finance and Corporate Services considerable progress has been made in ensuring that contracts are in place and compliant.

The initial focus continues to review supplier and spend data to ensure the contracts register is as up to date as possible.

Spend information has regularly been presented to the Senior Leadership Team which is challenged, reviewed and validated. In view of this, both the quality and content of the data is substantially improving and the Directorate continues to positively and actively work with the Procurement Team to achieve this.

By ensuring accurate and correct information is recorded and shared with Teams, appropriate action can be taken quickly if required.

Improving the Position

24. There is now greater visibility of who is spending what, where and with whom. Contract information is regularly compared to spend analysis and frequently updated with new contract details.

More importantly, the information is now accessible to all Directorates, highlights breaches and non-compliance, is having a positive effect on colleagues involved in the procurement and decision making process and, in most areas has identified savings opportunities by introducing competition.

Now more than ever, the Council is also in a position to share expenditure information with other authorities and collaborate in Regional procurement opportunities.

25. Progress also continues with the aim of recording expenditure for all purchases **over £30k**. Both the quality and content of information in relation to this have substantially improved and all Directorates continue to work with the Procurement Team to achieve this. This is a "live process" and will be used to keep information regularly updated.
26. The new regional tendering and contracts system (called YORtender) was implemented by DMBC in January 2013 and a number of training days took place during December 2012 and February 2013 with a further day planned 6 April 2013.

To date 35 Doncaster Council staff have been trained and a further 57 requests for training have been received by the Corporate Procurement Team. A DMBC User Group has been set up and the first meeting was held 13 February 2013 with another planned for 18 April 2013. Internal communications have been developed to keep all staff updated of progress and to share information and practice.

Examples of the improved functionality includes:

- The facility to request quotes/"Quick Quotes" helps simplify and automate the process.
 - The system automatically creates information about contracts let using this process, which can be used across the Region to identify collaborative procurement opportunities.
 - Suppliers now register only once on the system and an electronic directory is created for all buyers across the 22 registered Authorities to use.
 - The system enables suppliers to receive and return tender/quote documents electronically and has a full electronic audit trail.
 - Future opportunities to "standardise and simplify" across the Region and do things "one way", for example one version of Supplier Pre-Qualification information which can then be used by all 22 Authorities.
27. The introduction of "Procure 2 Pay" (P2P) will also completely change the way the Council purchases goods and services and therefore it is essential that robust contracts are in place to support procurement when needed.

The implementation of controlled purchasing monitored by a corporate P2P Team with greater visibility of spend analysis and budget management, will help to support the Councils requirement to deliver future savings. Training modules will be developed to reinforce CPR's, outline future "roles and responsibilities" and will be an on-going process which the Corporate Procurement Team will also be heavily involved in.

OPTIONS CONSIDERED

28. For routine reporting of Waivers and Breaches each waiver has been examined for alternative options prior to approval of a waiver.
29. For the review of commercial arrangements as the council has already decided to undertake a transformation of its procurement operation, it was decided that the only appropriate option was to set the review of commercial arrangements over £30,000 within the context of this project. This avoids unnecessary costs and duplication of effort.

REASONS FOR RECOMMENDED OPTION

30. It is clearly important that the Council's Contract Procedure Rules are adhered to and that from a governance and procurement perspective, where breaches are identified a robust corrective plan is put in place to protect the council's commercial interests through contracts.

IMPACT ON THE COUNCIL'S KEY OBJECTIVES

Doncaster Priorities	Implications of this initiative
Creating a strong, connected and inclusive economy	<i>Please see Appendix 1 for an explanation of each waiver.</i>
Developing stronger communities	
Increasing and improving housing	
Protecting and improving all our children's lives	
Improving health and support for independent lives	
Tackling crime and anti-social behaviour	
Creating a cleaner and better environment	

RISKS AND ASSUMPTIONS

31. Each new waiver has been identified in the attached appendices.
32. With regards to the ongoing review of commercial arrangements with suppliers the risks of breach of CPRS potentially exposes the council to reputational, legal and commercial risk. The review and plans arising from it aim to remedy this and mitigate any remaining open risk.

LEGAL IMPLICATIONS

33. There are no specific legal implications arising from this Report. However, Legal Services provide advice and assistance on the specific context of CPR Breaches and Waivers and reviewing existing commercial arrangements.

FINANCIAL IMPLICATIONS

34. There are no specific implications within this report, with regards to waivers reported at Appendix 1 as each waiver or breach is considered on its own merits. Where financial implications arise from the wider review of commercial arrangements with suppliers these will be reviewed on a case by case basis.

CONSULTATION

35. This report has significant implications in terms of the following:

Procurement	✓	Crime & Disorder	
Human Resources		Human Rights & Equalities	
Buildings, Land and Occupiers		Environment & Sustainability	
ICT		Capital Programme	

BACKGROUND PAPERS

36. None

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APPENDICES TO WAIVERS AND BREACH REPORT

1. The attached Appendices detail waivers and breaches since the last report and are presented to ensure transparency and to inform the Audit Committee of the level of investigation that has been undertaken by procurement and the service.

Waivers

2. Attached at Appendix 1 is a list of the C.P.R. waivers that have been agreed since the last report, together with a brief explanation of the reasons for the waiver.
3. These waivers have been reviewed and agreed either by the Assistant Director of Finance and Performance, the Director of Finance and Corporate Services or the Chief Executive (for Finance and Corporate Services Directorate).

Breaches

4. Since the last report information of all new breaches that have so far been identified as a result of the ongoing review are attached at Appendix 2. This information gives details of the individual breaches and presents a rectification / procurement plan to address each breach.

Appendix 1

Approved Contract Procedure Rule Waivers

Department	Value	Reason
R&E CPR/12/11/0005V2	£97,500	<p>A request was received to appoint the original M&E Facilities Management Company for an initial 3 month period to carry out Statutory and Selected non Statutory M&E maintenance to ensure required compliance. This initial 3 months will allow time to develop a schedule of works and specification for future tender requirements.</p> <p>During this time, the Contractor and DMBC Technical Services will also review the specialist contractor maintenance agreements and evaluate the role of the in house Facilities Management Team with regarding competences and capacity to carry out the required work.</p> <p>A full twelve month M&E maintenance plan will then be put together detailing the roles and responsibilities of the contractor and the in house services. Once the plan is agreed an EU procurement will be carried out for a 5 year contract period. It is anticipated this will take approximately 9 months to complete.</p> <p>A contract waiver is therefore required from 1st Jan 2013 to 31st Dec 2013 and the estimated value of this is approximately £97,500.</p>
F&CS CPR/13/01/0001	£6127	<p>An urgent waiver was required for the transfer of bespoke storage units from the Council House to the interim Records Management Store at Copley House. The cost of uninstalling, moving, and re-installing the storage units - approximately £6,127.00.</p> <p>This cost is to be covered by capital funds and the waiver is required to allow the work to be carried out by the original contractor.</p>
F&CS CPR/13/02/0001	£70.000	<p>A waiver is requested to continue with the provision of the Internal Audit Service contract with the Councils existing provider.</p> <p>The incumbent supplier has been providing the service since April 2010 and in order to achieve continuity and maintain the benefits of the partnership (including annual savings to DMBC of circa £37k); it is proposed to re-negotiate the existing service.</p> <p>An ODR also exists which provides more details, including options considered and value for money demonstrated.</p>

Department	Value	Reason						
F&CS CPR/13/01/0004	£ 167,241	<p>In March 2011 (pursuant to Contract Waiver dated 1st December 2008), the Council entered into a 2 year contract with a preferred supplier for VME Supernova licensing and maintenance.</p> <p>A key decision within the ICT Strategy (2011-2014) is a reduction in the number of systems used by the Council, including the decommissioning of out-dated mainframe technology.</p> <p>Although essential council systems, including Council Tax and Benefits, HR and Payroll have moved from the Mainframe to new technologies, there is still a requirement for the Mainframe, as other existing systems require these servers.</p> <p>Therefore, there is a requirement to extend the Mainframe licencing and support services for a further 9 months until 31st December 2013 (and further decommissioning services), to allow remaining council systems and printing services to move to new technologies.</p> <p>The Council therefore needs to enter into a new contract for the period 1 April 2013 - 31 December 2013 with the existing supplier and seeks approval for a contract waiver to allow the extension of existing services and the addition of new services.</p>						
A&C CPR/13/02/0003	£156,058	<p>The Department for Work and Pension's (DWP) is abolishing a number of discretionary elements of the Social Fund (Community Care Grants and Crisis Loans for living expenses) with effect from 31 March 2013 and transferring funding to Councils from 1 April 2013.</p> <p>Doncaster Council is developing a Local Assistance Scheme that will replace some elements of the Social Fund that the DWP will no longer administer however it is not possible to establish an in-house system to administer all aspects of the new Scheme by 1st April 2013.</p> <p>There is limited provision within the external provider market and DMBC has undertaken some market testing and identified a preferred supplier capable of delivering DMBC's requirement within the timescales required.</p> <p>A waiver is required to enable the award of a 1 year contract as follows:</p> <table data-bbox="584 1742 1037 1883"> <tr> <td>Set-up costs</td> <td>£ 50,888</td> </tr> <tr> <td>Year 1 running costs</td> <td>£105,970</td> </tr> <tr> <td>Total costs</td> <td>£156,058</td> </tr> </table> <p>During 2013/2014 DMBC will monitor how the Scheme is working and use the information gathered to develop a local solution (possibly with third sector organisations) to deliver an alternative scheme from 1st April 2014.</p>	Set-up costs	£ 50,888	Year 1 running costs	£105,970	Total costs	£156,058
Set-up costs	£ 50,888							
Year 1 running costs	£105,970							
Total costs	£156,058							

Department	Value	Reason
A&C CPR/13/03/0002	£61,000	<p>An existing Supporting People Service (providing housing related support to service users with mental health needs) was re-tendered in November 2012 and the incumbent provider declined to submit a tender for the service.</p> <p>The new service was awarded to a preferred supplier with a contract start date 1 April 2013.</p> <p>The new supplier has applied for Admitted Body Status to the Local Government Pension Scheme and there is a period of time required for this application to be processed to ensure staff have continuity of benefits and the Local Government Pension Scheme.</p> <p>The existing Provider and the new Provider are both in agreement that a period of contract extension is required to ensure a smooth and effective transition of staff and services.</p> <p>Approval for a contract waiver to allow the extension of existing services is therefore requested.</p>

REPORTED BREACHES OF CONTRACT PROCEDURE RULES

Regeneration & Environment as at March 2013

EXECUTIVE SUMMARY

1. Construction Services Commissioners and the Corporate Procurement Team are undergoing a review of the status of existing supplier relationships, to establish and rectify situations of non-compliance with DMBC Corporate Procurement Rules (CPRs).

This report highlights the findings of a breach of Contract Procedure Rules with a background description as to the situation of non-compliance together with a Rectification Plan going forward.

RECOMMENDATIONS

2. Managers are requested to note the situation of non-compliance with CPR's and support the Procurement Plan proposed.

Author: Marie Milner, Interim Category Manager, Regeneration & Environment

Regeneration and Environment: Current Forward Plan for rectification of Breaches

Supplier / Contractor	Description	Aggregated Breach Value	Period of Breach	Asst Director	Planned new Service Start Date	Procurement Status
R&E 1	Asbestos Remediation and Removal Works (no contract in place)	£228,415		D Wilkinson	1 st Oct 2013	New OJEU Framework Procurement now underway
R&E 2	Asbestos Survey & Analysis (no contract in place)	£29,819		D Wilkinson	1 st Oct 2013	New OJEU Framework Procurement now underway
R&E 3	Vibration Testing and New Tools	£50,000		D Wilkinson	2013	Tender Preparation for Tools in Progress
R&E 4	Service Maintenance of Lifts	£16,000.00		D Wilkinson	2013	Service in Breach - No Contract
R&E 5	Maintenance of Changing Tables & Patient Hoist	£2,700		D Wilkinson	2013	Service in Breach - No Contract
R&E 6	Control of Legionella - Social Services	£40,000.00		D Wilkinson	2013	Service in Breach - No Contract
R&E 7	Control of Legionella - Education	£32,000		D Wilkinson	2013	Service in Breach - No Contract
R&E 8	Stage Lighting	£23,000		D Wilkinson	2013	Service in Breach - No Contract
R&E 9	Fire Alarm & Emergency Lighting Installations - Residential	£17,000		D Wilkinson	2013/14	Service in Breach - No Contract
R&E 10	Chimney Cleaning	£13,000.00		D Wilkinson	2013/14	Service in Breach - No Contract
R&E 11	Chimney Inspections	£1,200.00		D Wilkinson	2013/14	Service in Breach - No Contract
R&E 12	Service and Maintenance of Public Clocks	£2,800.00		D Wilkinson	2013/14	Service in Breach - No Contract
R&E 13	Service & Maintenance of Pressurisation Units	£5,000		D Wilkinson	2013/14	Service in Breach - No Contract

Regeneration and Environment: Current Forward Plan for rectification of Breaches

Supplier / Contractor	Description	Aggregated Breach Value	Period of Breach	Asst Director	Planned new Service Start Date	Procurement Status
R&E 14	Annual Testing of the Workshop Dust & Fume Extraction Equipment	£5,300.00		D Wilkinson	2014/15	Service in Breach - No Contract
R&E 15	Fume Cupboards & LEV	£5,300		D Wilkinson	2014/15	Service in Breach - No Contract
R&E 16	Compressor Maintenance	£3,600.00		D Wilkinson	2014/15	No Maintenance Agreement
R&E 17	Small Tools	£23,000		D Wilkinson	2013	Service in Breach - No Contract
R&E 18	Grounds Maintenance Tools	£20,000.00		D Wilkinson	2013	Service in Breach - No Contract
R&E 19	Vibration Testing and New Tools	£50,000		D Wilkinson	2013/14	Service in Breach - No Contract
Total of new identified breaches		£568,134.00				