



Waivers of the Contract Procedure Rules

City of York Council

Internal Audit Report 2017/18

Business Unit: Customer and Corporate Services Directorate
Responsible Officer: Director of Customer & Corporate Services
Service Manager: Corporate Finance & Commercial Procurement Manager
Date Issued: 3 May 2018
Status: Final
Reference: 19080/030

	P1	P2	P3
Actions	0	0	3
Overall Audit Opinion	High Assurance		

Summary and Overall Conclusions

Introduction

Where it is not possible to comply in full with the council's Contract Procedure Rules (CPRs) for procurements of £5k and over they are able to be waived subject to the request meeting certain criteria outlined in the CPRs and to it receiving the approval of the Chief Finance Officer (Director of Customer and Corporate Services). Waiver requests are reviewed by professionals in Finance, Commercial Procurement and Legal Services before receiving final approval to ensure that there has been robust challenge and that the grounds to waive the CPRs are valid.

In 2016/17, a total of 49 waivers were approved with a combined value of £11.7m. As at the end of quarter three 2017/18, a total of 48 waivers had been approved with a combined value of £3.8m. Data on the number and value of waivers are reported periodically to the Governance, Risk & Assurance Group to raise awareness and identify potential areas for improvement.

Objectives and Scope of the Audit

The purpose of this audit was to provide assurance to management that procedures and controls within the system ensure that:

- Waivers are completed and authorised in accordance with the CPRs
- The terms of waivers are adhered to
- Adequate arrangements are in place for the recording and monitoring of waiver information

Key Findings

The controls in place within Commercial Procurement to oversee, coordinate and monitor the waiver process were found to be appropriate and functioning effectively.

The council's standard waiver form had been used for all waiver requests reviewed, with comments from Finance, Commercial Procurement and Legal Services having been routinely received. The level of challenge provided to the requests was generally very good and the required endorsements and approvals were consistently in place. However, a CPR compliance issue was observed whereby officer decisions for contract awards with a value of over £100k that had been secured by a waiver had not been published on the Council and Democracy website. Some areas for improvement, not significant to the effectiveness of the control environment, were also identified and these have been communicated to the service separately.

No notable issues were observed with adherence to the terms of the waivers granted. The level of expenditure relative to that agreed through the waiver was reasonable, being mainly lower than or exactly as quoted in the request and where expenditure did exceed that quoted this was less than £5k, to which the waiver provisions of the CPRs do not apply. Furthermore, it was found that the council had taken a compliant route to market, had brought service delivery in-house or had agreed a further waiver (and only where necessary) on expiration of the waiver by which the original procurement was approved.

The format and content of the waiver register is such that it fulfils the requirements of the CPRs. Final versions of waiver forms, alongside the endorsements, approvals and important related correspondence, were available on Documentum in all instances to evidence adherence to the process. Waiver information captured by the register had been fully translated onto the contracts register and, more generally, the waiver monitoring controls in place were found to have been consistently applied and provide an effective means of ensuring compliance with the CPRs for future procurements.

Overall Conclusions

It was found that the arrangements for managing risk were very good. An effective control environment appears to be in operation. Our overall opinion of the controls within the system at the time of the audit was that they provided High Assurance.

1 Recording of over £100k contract awards on the officer decision log

Issue/Control Weakness

Waivers approved which involve procurements of over £100k in value are not routinely recorded on the officer decision log.

Risk

Failure to comply with the requirements of the council's CPRs in respect of over £100k contract awards.

Findings

Rule 16.3.5 of the CPRs (December 2017) requires that all proposed contract awards over £100k are recorded on the officer decision log on the mod.gov system (the council's 'Council and Democracy' website) unless it is an extension in accordance with the terms of the original contract or a non-material change under the Public Contract Regulations. Only one of three contract awards of over £100k secured by way of a waiver during the period of interest had been recorded on the officer decision log. It is, however, recognised that this is a broader CPR compliance issue which is the responsibility of the decision taker and is not strictly part of the waiver process. Nonetheless, it is an issue which warrants the attention of management.

Agreed Action 1.1

The requirement for all contract awards of over £100k to be recorded on the officer decision log will be incorporated into planned decision making training.

Priority

3

Responsible Officer

Corporate Finance &
Commercial
Procurement Manager

Timescale

October 2018

Agreed Action 1.2

The requirement for all contract awards of over £100k to be recorded on the officer decision log will be reinforced as part of monthly procurement training.

Priority

3

Responsible Officer

Corporate Finance &
Commercial
Procurement Manager

Timescale

Implemented

Agreed Action 1.3

Legal Services and Commercial Procurement officers will be instructed to remind staff leading a procurement exercise that decisions must be logged appropriately.

Priority

3

Responsible Officer

Corporate Finance &
Commercial
Procurement Manager

Timescale

Implemented

Audit Opinions and Priorities for Actions

Audit Opinions

Audit work is based on sampling transactions to test the operation of systems. It cannot guarantee the elimination of fraud or error. Our opinion is based on the risks we identify at the time of the audit.

Our overall audit opinion is based on 5 grades of opinion, as set out below.

Opinion	Assessment of internal control
High Assurance	Overall, very good management of risk. An effective control environment appears to be in operation.
Substantial Assurance	Overall, good management of risk with few weaknesses identified. An effective control environment is in operation but there is scope for further improvement in the areas identified.
Reasonable Assurance	Overall, satisfactory management of risk with a number of weaknesses identified. An acceptable control environment is in operation but there are a number of improvements that could be made.
Limited Assurance	Overall, poor management of risk with significant control weaknesses in key areas and major improvements required before an effective control environment will be in operation.
No Assurance	Overall, there is a fundamental failure in control and risks are not being effectively managed. A number of key areas require substantial improvement to protect the system from error and abuse.

Priorities for Actions

Priority 1	A fundamental system weakness, which presents unacceptable risk to the system objectives and requires urgent attention by management.
Priority 2	A significant system weakness, whose impact or frequency presents risks to the system objectives, which needs to be addressed by management.
Priority 3	The system objectives are not exposed to significant risk, but the issue merits attention by management.

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