

Annual Report on Exceptions and Exemptions (Waivers) to Procedure Rules

Report of Cabinet Member for Regulatory, Housing & Health

Lichfield
district council

Date: 25 March 2021

Agenda Item: 7

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Key Decision? NO

Local Ward n/a

Members

**AUDIT &
MEMBER
STANDARDS
COMMITTEE**

1. Executive Summary

- 1.1 To report on the number of Exceptions and Exemptions (Waivers) made in financial year 2019/20 under the Contract Procedure Rules.

2. Recommendations

- 2.1 The Committee is asked to review the Exceptions (Waivers) set out within **APPENDIX A**.

3. Background

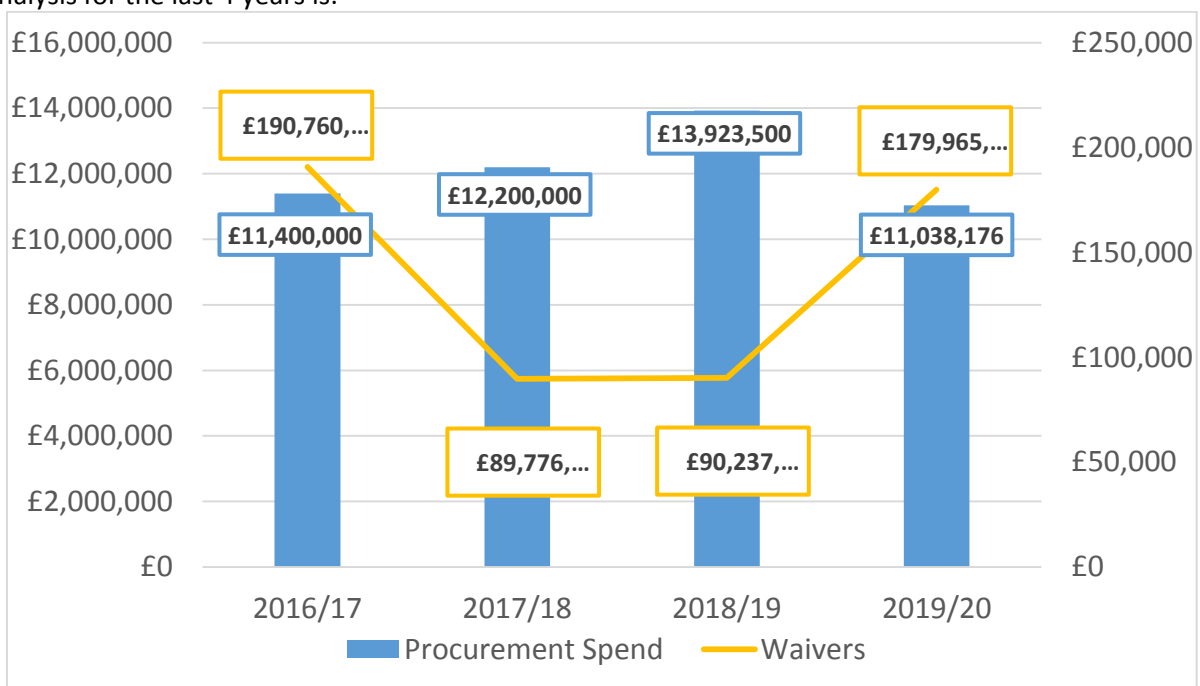
- 3.1 Compliance with our Procedure Rules is essential in order to demonstrate sound financial management of the Council's affairs. There are, however, occasions when an Exception or Exemption (Waiver) may be granted.
- 3.2 The process for granting an Exception or Exemption (Waiver) forms part of the approved Contract Procedure Rules, which are currently being reviewed following the appointment of an in-house procurement team.
- 3.3 However, significant levels of Exception or Exemption (Waiver), without justifiable reasons, could potentially give rise to concerns that the Council was not achieving value for money. To ensure financial standards and probity in this process of granting Exceptions and Exemptions (Waivers) are maintained, an annual report is produced for Audit Committee. 2019/20 reporting has been delayed due to Covid 19 response and 2020/21 reporting will feature much earlier in the work programme for the committee in the next municipal year to redress this.
- 3.4 The Contract Procedure Rules allow us to agree a contract without keeping to one or more of the procurement rules we have agreed to follow in our Constitution. We may grant an exception under conditions set out below. We cannot grant an exception if to do so would mean breaking any laws on public procurement or other relevant legislation, only where this sits outside of the additional measures we have built into our governance processes.
- 3.5 The Chief Executive may grant an exception to these rules using a request for waiver form which is then kept and reported on by the monitoring officer on an annual basis. An application for an exception will not be granted without good reason. A lack of time caused by poor forward planning is not a good reason and so will not be allowed.
- 3.6 Exceptions may be granted in the following circumstances:
- If there is an unexpected emergency involving danger to life or health or serious damage to property, if the goods, work or services are needed more urgently than would be possible if we followed the tender or quotation procedure;
 - If, for technical reasons, the goods, work or services can be bought from only one provider and this can be justified;

- If the proposed contract is an extension or change to the scope of an existing contract with a value (including the change or extension) that is below the relevant EU limit. However, this does not apply if the existing contract provides for an extension;
- If we can achieve value for money by allowing a supplier to complete work already partially undertaken that would cost significantly more to place with an alternative provider;
- If we can achieve value for money by buying used vehicles, equipment or materials;
- To deliver our aims to develop the local economy, without breaking public procurement rules; and
- If we have followed our procurement processes but not yielded sufficient response from the market.

3.7 When reviewing Exceptions and Exemptions (Waivers) granted during 2018/19 members of the committee requested inclusion of the rationale in the reported log, which has been added in to the appendix.

3.8 The level of Exceptions and Exemptions (Waivers) granted during 2019/20 totalling approximately £179,965.25 (as advice to support the purchase of Imperial Retail Park was not used, otherwise the total would have been £278,465.25) is shown in summary at **APPENDIX A** of this report.

3.9 Trend analysis for the last 4 years is:



Alternative Options	None. Members are being informed of the use of waivers already granted to enable timely procurement as specified in our Contract Procedure Rules.
Consultation	Any issues are considered at the time the Waiver is granted.
Financial Implications	The Council procured goods and services during 2019/20 with a total value of £ £11,038,176.23 . The majority of procurement activity 98.3% (99.3% in 2017/18 and 99.3% in 2018/19) has been procured using routes where a Head of Service or Manager has determined that they are compliant with the requirements of the Contract Procedure Rules.
Contribution to the Delivery of the Strategic Plan	The Procedure Rules are a significant contributor towards the demonstration of best value, and ensuring competition in the award of contracts. Any significant level of expenditure not within the Procedure Rules could potentially be construed as not having demonstrated best value.

Equality, Diversity and Human Rights Implications	Any issues are considered at the time the Waiver is granted.
Crime & Safety Issues	Any issues are considered at the time the Waiver is granted.
Environmental Impact	Any issues are considered at the time the Waiver is granted.

GDPR/Privacy Impact Assessment	None however we do ask all contractors to comply with the Data Protection Act 2018.
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	Risk Description	How We Manage It	Severity of Risk (RYG)
A	Adherence to Contract Procedure Rules (CPR's) is needed to show achievement of value for money and the sound use of public funds. Non adherence, without justifiable reasons, potentially exposes the Council to inefficient use of public funds and accusations of improper actions.	All officers have been trained in procurement and our CPR's. Specialist procurement advice is temporarily available in-house, whilst a permanent solution is being sought. Internal Audit Review.	Green – Tolerable Likelihood – Green Impact - Yellow
B	Breach of EU procurement regulations	All officers have been trained in procurement. Specialist procurement advice is temporarily available in-house, whilst a permanent solution is being sought.	Yellow – Material Likelihood – Green Impact - Red

Background documents PART 4 - RULES OF PROCEDURE (lichfielddc.gov.uk) - Financial Procedure Rules & Contract Procedure Rules
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Relevant web links FOR DECISION/FOR INFORMATION (lichfielddc.gov.uk)
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APPENDIX A

Title of Contract/ Framework Agreement	Description of Goods/Works/ Services	Name of Proposed Provider, if known	Duration and Value of Contract	Rationale for Waiver	Signed off date
Training for Company Directors	Accredited training for company directors	Institute of Directors (IoD)	1 year - Up to £25k	Qualification Required – only provider.	01.05.2019
Merchant Acquiring Contracts	Review/benchmark the current arrangements and provide advice on the options available for securing cost savings	Focus on Banking	One-off - £3,500	One-off limited providers	01.07.2019
Lichfield District Local Plan – Compliance with Habitat Regulations	To prepare Appropriate Assessments for each stage in the preparation and submission of the Local Plan and any subsequent modifications.	Footprint Ecology	September 2019 - February 2022. Value: £9,893 (will be divided up per stage of Local Plan Review)	Continuation of previous contract, awareness of issues and therefore best value.	20.08.2019
Provision of temporary toilets Birmingham Road site	Provision of toilets and servicing for 3 year period from December 2019	Healthmatic Ltd	3 years from Dec 2019	Only respondent to quotes who could provide the additional servicing needs.	05.09.2019
Development Support – Community Lottery	Development support 1. Member and Officer on-boarding 2. Delivery of your business case and business plan 3. Delivery of a cabinet/council report to secure authorisation 4. Completion of your licence application 5. Good cause on-boarding and launch of ticket sales	Aylesbury Borough Council	£5k one-off	Limited providers insufficient alternative quotes.	20.08.2019

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Lichfield District Local Plan – legal instruction	Counsel review of draft plan and supporting evidence base to inform May 2020 consultation.	QC No. 5 Chambers	LDC's Local Plan Review is to be submitted for Examination by 2021. Value: £10,000	Continuation of prior advice and awareness of issues. Therefore best value.	29.10.2019
Local Government Accounting Technical Support Service	Technical support for Local Authority Accounting	Ichabod Industries Limited	One Year £1,350	Limited providers insufficient alternative quotes.	02.12.2019
Advise and Support in Purchasing Imperial Retail Park	Advising Agent for Property Acquisition	Jones Valerio Ltd	Works £4,511,413 + Goods & Services £181,302	Agent that bought forward the opportunity. Timescales did not allow for further procurement work to undertake due diligence of potential acquisition.	13.12.2019
Private Water Supply Analysis	Statutory analysis of 5 private water supplies (rechargeable to the customer)	ALS Environmental Ltd Torrington Avenue Coventry CV4 9GU	£3602.25 + VAT	No frameworks available and limited market providers - interim solution to meet statutory obligations whilst sourcing contract.	11.12.2019