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**Title of meeting:** Governance and Audit and Standards Committee

**Subject:** Procurement Management Information

**Date of meeting:** 24<sup>th</sup> July 2020

**Report by:** Richard Lock - (Acting) Procurement Manager

**Wards affected:** N/A

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### **1. Requested by**

Governance and Audit and Standards Committee.

### **2. Purpose**

To provide evidence to allow the committee to evaluate the extent that Portsmouth City Council is producing contracts for goods, works and services in a legally compliant value for money basis.

### **3. Information Requested**

The report covers 3 key performance monitoring areas:

- Spend compliance
- Contract award via waiver
- Contract management performance monitoring

At the request of the committee and in view of pressure in resources as a result of the CVD19 pandemic, the report has been significantly streamlined from previous reports to just provide the top level statistics and analysis.

The report focuses upon comparison between performance from the last time period reported to the committee on 3<sup>rd</sup> March 2020 with the latest recent information available in order to highlight any impacts upon performance which could be attributed to the CVD19 pandemic.

Where detail is required by the committee the Procurement Manager will provide this during the committee meeting.

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## **SECTION 1 - SPEND COMPLIANCE**

The table on the following page provides a comparison of spend compliance from the last report taken to the committee on 3<sup>rd</sup> March 2020 which covered the month of September 2019 against spend compliance covering the month of May 2020.

Unfortunately due to a system error a more recent report covering spend in June 2020 could not be run, this is currently being investigated and a further update covering June will be forwarded to the committee as soon as it is available.

Compliance is measured initially by reporting on spend linked to a contract entry which has been raised on the council's InTend system. The presence of a contract entry on the InTend system implies that either:

- The contract has been awarded following a procedure which complies with the council's Contract Procedure Rules (CPRs) and wider statutory Public Contracts Regulations (2015) (PCRs)
- A waiver to depart from requirements set out within the council's CPRs and / or PCRs has been approved by the relevant director, Procurement Manager and / or Procurement Gateway Board as proportionate to the value and risk associated with the contract in question

It should be noted that as compliance is determined by the presence or not of a contract entry which may have been subject to award via waiver which approves departure from CPRs and / or PCRs, 'compliance' in this instance is defined as system compliance rather than constitutional or legal compliance.

It should also be noted that the report does not include for financial transactions from all of the council's systems and solutions. This includes for payments made via purchasing cards, utilities transactions, social care systems, CHAPS payments, cheque payments, etc.

Further analysis and subsequent updating of the report is then undertaken by the Procurement Manager to identify any spend which is actually compliant by virtue of application of competitive process, departure via waiver agreed or to be agreed and valid exemptions. Due to resource pressures this analysis has focused upon spend by individual transaction in excess of £20k which is still some way below the council's tender and director delated authority thresholds of £100k.

A summary of the analysis undertaken by service area is included within the report subsequent to the data table. A target of 95% compliance overall and by service has been set previously by the committee.

Whilst more manual updating has been required in respect of the data taken for May 2020 - the raw system compliance % is 64% - the subsequent adjusted compliance figure has remained high at 97% which is actually higher than the 96% recorded for September 2019.

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The updating has highlighted the need for a level of corrective action in respect of properly recording contracts on InTend, highlighting exempt transactions and processing waivers above that usually encountered signalling a lapse in administration diligence as result of the CVD19 pandemic.

The Procurement Manager will work with services to address this and will continue to feed in requirements to the current Fusion project which will greatly improve data recording and retrieval from finance systems. The Procurement Manager will also investigate how greater compliance data capture can be achieved across all council systems, through both short term workarounds and on a long term basis via the Fusion project.

**Key**

- **NC - Non-compliant**
- **C - Compliant**

	September 2019			May 2020		
Directorate	Total £	NC £	C %	Total £	NC £	C %
Adult Services	£912,361	£15,992	98%	£284,248	£17,248	94%
Children Families and Education	£1,715,974	£376,885	78%	£1,371,641	£11,181	99%
Corporate Services	£552,295	£648	100%	£974,288	£46,323	95%
Culture Leisure and Regulatory Services	£372,172	£9,250	98%	£105,763	£31,873	70%
Executive	£4,994	£4,994	0%	£26,588	£1,399	95%
Finance	£66,082	£0	100%	£268,822	£27,430	90%
Housing Neighbourhood and Building Services	£5,041,435	£62,128	98%	£1,391,339	£27,714	98%
Portsmouth International Port	£318,779	£0	100%	£1,021,150	£12,770	99%
Public Health	£510,134	£0	100%	£239,203	£0	100%
Regeneration	£238,122	£31,860	87%	£444,601	£66,639	85%
Capital schemes	£2,946,417	£9,255	100%	£3,680,519	£47,042	99%
<b>TOTAL</b>	<b>£12,678,764</b>	<b>£510,993</b>	<b>96%</b>	<b>£9,808,168.67</b>	<b>£313,413.39</b>	<b>97%</b>

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### **Adult Services**

Whilst compliance has fallen just below the 95% target to 94% risk is considered low as the total non-compliant spend is low at £17,248 and spread across a number of suppliers, with no one transaction close to the council's tender threshold of £100k.

However, it should be noted that as stated previously these figures do not include for payments made to social care providers which are processed via the Controc system.

### **Children, Families & Education**

Compliance has increased through further analysis of payments made for out of area educational services (£742,671) and fostering services (£115,967) which has removed this spend from the non-compliance figure.

As stated to the committee previously the services in question are sourced from specialist niche suppliers, often subject to user decisive user choice, in the case of educational services are often sourced from fellow public sector bodies and are all classed as services which fall under the light touch regime - the value for which is approx. £589k.

The Procurement manager will work with the service to complete the required governance documentation and ensure that contract entries are raised on the InTend system.

However, it should be noted that as stated previously these figures do not include for payments made to some children's social care providers which are processed via the Mosaic system.

### **Corporate Services**

No concerns.

### **Culture Leisure and Regulatory Services**

Whilst compliance is significantly below the % target at only 70% compliance risk is still considered low as non-compliant spend is only £31,873 and is spread across a range of suppliers.

### **Executive**

No concerns.

### **Finance**

Whilst compliance has fallen below target at 90% risk is considered low as non-conforming spend is only £27,430 and is spread across a number of suppliers.

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### **Housing Neighbourhood and Building Services**

No concerns. However, it should be noted that payments to utilities providers managed on behalf of the council by this service are not included, they are however known by the Procurement manager to be compliant in this area of spend.

### **Portsmouth International Port**

No concerns.

### **Public Health**

No concerns.

### **Regeneration**

Whilst the compliance target has not been met risk is considered low as non-compliant spend is only £66,639 and is spread across a number of suppliers.

## **SECTION 2 - CONTRACT AWARD VIA WAIVER**

The tables below show a comparison of contracts awarded via waiver in July / August / September 2019 as per the report taken to committee on 3<sup>rd</sup> March 2020 against those awarded via waiver for April / May / June 2020.

Whilst waivers are to be sought for any significant departure from the council's CPRs the report focuses upon waivers which have constituted a direct award without application of competition to the protocols set out within the CPRs and wider statutory PCR's.

In order to effectively respond to the Covid19 pandemic a higher number of waivers have been sought on this basis. This has been due in one hand to quickly source essential emergency supplies and services, but also to extend contracts outside of specified terms where council and supplier resources that would have run or responded to re-tendering processes were redeployed onto essential response activities or, in the case of some supplier bidding teams, furloughed.

There is clear provision within the PCRs to allow for direct award and contract variations in order to respond to genuine emergency situations such as the Covid19 pandemic. The Cabinet Office issued a Procurement Policy Note (PPN 01/20) on 18<sup>th</sup> March 2020 to remind public sector bodies of the flexibilities allowed for within PCRs already and as such did not introduce any new policy on this basis.

Whilst lack of resource is not usually allowed for as a valid reason to delay re-tendering processes via direct award to the incumbent supplier it is of the opinion of the Procurement Manager that this has in effect become the norm across the public sector following the introduction of stringent lockdown measures by central government on 23<sup>rd</sup> March.

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This opinion is informed by continual peer review with procurement managers who represent a large number of county and unitary councils on the Central Buying Consortium, direct discussion with Cabinet Office, feedback from suppliers and engagement with QCs who specialise in procurement law cases via a number of webinars.

Use of direct awards to extend contracts on this basis is viewed as low risk in terms of potential for challenge as long as the term of the direct award is proportionate to the time required to run an effective re-tender and is not unnecessarily long to the point where it can be construed as creating an artificial barrier to competition.

Under the CPRs waivers can be approved by:

- Director including for Assistant Directors given delegated authority by the Director - up to £100k
- Procurement manager - up to £1M
- Procurement Gateway Board - above £1M

In order to respond efficiently and effectively the Procurement Manager agreed in conjunction with Legal and Audit on 1<sup>st</sup> April 2020 via email that the waiver and extension could be streamlined to effective summary rationale without full completion of standard forms where the need for the waiver could be directly linked to the impact of the Covid19 pandemic. This was on the condition that key approvals from the Director / AD, Procurement, Legal and Finance were still obtained and recorded.

The Procurement Manager also delegated approval of waivers on a procurement basis to the IT Category Manager / Assistant Procurement Manager at a limit of £500k and to Procurement Professional at a limit of £250k. It is the intention of the Procurement Manager to maintain these delegations for business as usual authorisations in the future.

**Use of waivers in Q3 (July / August / September) 2019:**

Reason for waiver	Number of contracts	Contract value
Direct award	44	£1,601,453
Not obtaining 3 bids	8	£179,903
Insufficient time	4	£340,043
Single source	4	£137,100
Emergency	1	£10,000
Not advertising the opportunity	1	£31,510
<b>Total</b>	<b>62</b> (56% of all contracts awarded in Q3)	<b>£2,300,009</b> (6% of all contracts awarded in Q3)

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**Use of direct award waivers in March / April / May / June 2020**

<b>Reason for direct award waiver</b>	<b>Number of Contracts</b>	<b>Contract value</b>
Business as Usual Direct award	21	£923,026
Waivers agreed due to Covid-19 (re-tender delay)	25	£3,563,166
Waivers in response to Covid-19 (emergency supplies / services)	45	£3,818,009
<b>Total</b>	<b>92</b>	<b>£8,304,201</b>

Below is a summary level analysis undertaken by the Procurement Manager. Further details can be provided to the committee at the meeting.

**Business as Usual Direct Awards**

No significant concerns. Only 1 direct award contract is in excess of the PCR relevant of threshold of £189k for provision of services at £242,961 which upon review is not in breach of PCR requirements as in this case competition can be argued as being technically absent. 1 other contract is above the council's CPR tendering threshold £100k at £110,698 but again the waiver was approved by the Procurement Manager on the basis of competition being technically absent.

**Waivers agreed due to Covid-19 (re-tender delay)**

No significant concerns. All predominantly linked to social care and other services required to support the vulnerable where continuation of supply must be a priority outcome. The majority of direct awards are for a year or less with only 4 contracts subject to a direct award of more than 1 year but no more than 18 months for 3 of them and 2 years for 1.

The Procurement Manager is working with services to develop realistic re-tendering programmes. This may require further direct awards to some contracts so that programmes can be staggered in view of ongoing resource pressures for the council and suppliers alike.

**Waivers in response to Covid-19 (emergency supplies / services)**

No significant concerns. All waivers are fully justified and fall within the emergency response definitions set out within PCRs. The waivers are concerned with spend on IT equipment to support home working, PPE, food for sheltered individuals, hotel accommodation for non-statutory homeless and outpatient discharge facilities.

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The need for emergency direct awards is reducing and is expected to reduce further due to effective build up of PPE stock, easing of lockdown restriction in respect of shielded individuals and reduction in one off IT equipment spend. There will however still be an increased need for direct award waivers on this basis over the next quarter which may still require streamlined governance.

### **SECTION 3 - CONTRACT MANAGEMENT PERFORMANCE MONITORING**

Contract management performance is monitored at summary level by application of a set of standard KPIs which are scored and reported on via the InTend system. Contracts are reported are on against the following criteria:

**Key**

- Gold: Outstanding performance
- Green: Performing to standard
- Amber: Some areas of improvement required
- Red: Failing to perform
- Expired KPI: a schedule is in place, and at least one KPI score has been recorded, but there has been no KPI scoring in the last 12 months
- KPI never scored: a schedule is in place, but there have been no KPI scores for the contract
- KPI not yet due: a schedule is in place, but KPI scores are not due yet. This includes contracts where KPIs are overdue by less than 3 months (grace period)
- No KPI scheduled: no KPI instances have been scheduled.

KPI performance for April, May and June 2020 is as follows:

	<b>Value of Contracts</b>	<b>Number of Contracts</b>
RED	£72,000 / 0.11%	1 / 0.5%
AMBER	£408,405 / 0.66%	4 / 2.07%
GREEN	£14,113,428 / 23%	71 / 36.8%
GOLD	£10,066,151 / 16%	9 / 4.7%
KPI never scored	£18,362,496 / 30%	50 / 26%
NO KPI scheduled	£1,861,960 / 3.03%	15 / 7.8%
NOT YET DUE	£1,287,830 / 2.10%	22 / 11.4%
KPI expired	£15,213,494 / 24.8%	21 / 10.9%
<b>Grand Total</b>	<b>£61,385,764</b>	<b>193</b>

Further detail on individual contracts can be provided by the Procurement manager to the committee at the meeting. In respect of the 1 contract which is shown as RED the performance issues were resolved and the contract has since expired. There are a large number of contracts where KPIs have not been scored and / or have not been kept up to



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date - 71 / 36.9%. Further analysis is required to understand if this has been due to impact on resources from the Covid19 pandemic however this number / percentage is representative of previous reports taken to the committee on this metric. The Procurement Manager will undertake further analysis and work with services to bring the monitoring up to date.

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Signed by Richard Lock - (Acting) Procurement Manager