

THIS ITEM IS FOR INFORMATION ONLY
(Please note that "Information Only" reports do not require Integrated Impact Assessments, Legal or Finance Comments as no decision is being taken)

Title of meeting:	Governance and Audit and Standards Committee
Subject:	Procurement Management Information
Date of meeting:	25 th September 2020
Report by:	Richard Lock - Acting Procurement Manager
Wards affected:	N/A

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 at the last meeting on 24th July 2020 the base line data used to calculate summary figures is included as the following exempt appendixes:

- EXEMPT - G&A - Procurement MI - App 1 Spend Compliance Aug 20 - 16.09.20
- EXEMPT - G&A - Procurement MI - App 2 Waivers Jun / Jul / Aug 20 - 16.09.20
- EXEMPT - G&A - Procurement MI - App 3 Contract KPIs Jun / Jul / Aug 20 - 16.09.20

The report provides comparison between performance from the last time period reported to the committee on 24th July 2020 which covered March - June 2020 when the council was in the midst of responding to the CVD19 pandemic to the quarter covering June - August 2020 which can be viewed as the early stages of recovery from the pandemic.

Where detail is required by the committee the Procurement Manager will provide this during the committee meeting, however where questions relate to detail included within the

THIS ITEM IS FOR INFORMATION ONLY
(Please note that "Information Only" reports do not require Integrated Impact Assessments, Legal or Finance Comments as no decision is being taken)

exempt appendices responses cannot be provided whilst the public live streaming is in operation.

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 24th July 2020 which covered the month of May 2020 against spend compliance covering the month of August 2020.

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.

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.

Compared to May where the raw system compliance was 64% the raw compliance figure for August is approx. 80%. This is largely due to Procurement requesting the information needed to create contract entries from officers which was not possible prior to the last meeting when resources were still very much focused upon responding to the challenges of the pandemic.

Following adjustment the compliance figure for August is approx. 97% which is identical to the 97% compliance figure reported for May.

THIS ITEM IS FOR INFORMATION ONLY
(Please note that "Information Only" reports do not require Integrated Impact Assessments, Legal or Finance Comments as no decision is being taken)

Procurement will continue to focus upon improving performance in respect of recording contract information by continuing to request this from officers. Procurement will also review the level of information requested for contract entries as unnecessary complications may be a barrier to receiving prompt accurate information from services.

Procurement are continuing to participate within the Fusion project which will greatly improve data recording and retrieval from finance systems. This includes investigating 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**

Directorate	May 2020			August 2020		
	Total £	NC £	C %	Total £	NC £	C %
Adult Services	£284,248	£17,248	94%	£572,280	£42,767	92.5%
Children Families & Education	£1,371,641	£11,181	99%	£1,185,780	£2,879	99%
Corporate Services	£974,288	£46,323	95%	£623,450	£52,237	91.5%
Culture Leisure & Regulatory Services	£105,763	£31,873	70%	£2,991,767	£31,195	89.5%
Executive	£26,588	£1,399	95%	£8,465	£1,351	84%
Finance	£268,822	£27,430	90%	£1,070,121	£9,473	99%
Housing Neighbourhood & Building Services	£1,391,339	£27,714	98%	£3,959,733	£69,685	98%
Portsmouth International Port	£1,021,150	£12,770	99%	£655,752	£0	100%
Public Health	£239,203	£0	100%	£465,164	£0	100%
Regeneration	£444,601	£66,639	85%	£186,423	£41,494	77.5%
Capital schemes	£3,680,519	£47,042	99%	£3,163,848	£92,097	97%
Other				£11,041	£10,000	90.5%
TOTAL	£9,808,168.67	£313,413.39	97%	£12,201,233	£353,177	97%

THIS ITEM IS FOR INFORMATION ONLY
(Please note that "Information Only" reports do not require Integrated Impact Assessments, Legal or Finance Comments as no decision is being taken)

Below is a summary of the nature of the non-compliant spend by service area and assessment of risk by the Procurement Manager. Full details have been made available to the committee in the exempt information which accompanies this report - 'G&A - Procurement MI - App 1 Spend Compliance Aug 20 - 16.09.20'.

Adult Services

Whilst compliance has fallen below the 95% target to 92.5% risk is considered low as the total non-compliant spend is low at £42,767 and spread across a number of suppliers, with no one transaction exceeding the council's tender threshold of £100k by overall order distribution value.

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 which has removed this spend from the non-compliance figure. Waivers are currently being drafted on the basis that this activity is not compatible with standard competitive procurement processes and have been approved in principle.

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.

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

Whilst compliance has fallen below the 95% target to 91.5% risk is considered low as the total non-compliant spend is low at £42,767 and spread across a number of suppliers, with no one transaction exceeding the council's tender threshold of £100k by overall order distribution value.

Culture Leisure and Regulatory Services

Whilst compliance is significantly below the 95% target at 89% compliance risk is still considered low as non-compliant spend is only £31,873 and is spread across a range of suppliers. Only one transaction has an overall order distribution value in excess of £100k which is for Solent Cultural Enterprises -- the trust which operates the Guildhall. Whilst the relationship between the council and the trust should be recorded via contract entry the contract itself is not non-compliant in respect of application of the wider Public Contracts Regulations (2015).



THIS ITEM IS FOR INFORMATION ONLY
(Please note that "Information Only" reports do not require Integrated Impact Assessments, Legal or Finance Comments as no decision is being taken)

Executive

No concerns. Below 95% target but the single non-compliant transaction has an order distribution value significantly below the council's £100k tender threshold.

Finance

No concerns.

Housing Neighbourhood and Building Services

No significant concerns.

Some non-compliant transaction have a distribution order value which is close to the £100k tender threshold with one set at exactly £100k for the use of a surveyor for property valuations. This is the only transaction which requires further investigation as for all others above £50k by distribution procurement processes to bring the contracts into full compliance are being actively planned, although some have been delayed due to strain on resources from the pandemic.

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

No significant concerns. Whilst the compliance target has been missed and is currently at 77.5% the total value of non-compliant transactions is only £41,494 and is spread across a number of suppliers.

However, one transaction has a distribution order value of £150k which is for the appointment of an interim asset manager at Lakeside. This is not considered high risk as the value is still below the £189k statutory threshold as per Public Contracts Regulations (2015). The Procurement manager will engage with the relevant service officer to put a waiver in place and put a plan in place for bringing the contract into compliance.

Capital Schemes & Other

No concerns.

THIS ITEM IS FOR INFORMATION ONLY
(Please note that "Information Only" reports do not require Integrated Impact Assessments, Legal or Finance Comments as no decision is being taken)

SECTION 2 - CONTRACT AWARD VIA WAIVER

The tables below show a comparison of contracts awarded via waiver in March / April / May / June 2020 as per the report taken to committee on 24th July 2020 against those awarded via waiver for June / July / August 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, services and works, 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 18th 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 23rd March.

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 1st April 2020 via email that the waiver and extension could be streamlined to effective summary rationale without full completion of standard

THIS ITEM IS FOR INFORMATION ONLY
(Please note that "Information Only" reports do not require Integrated Impact Assessments, Legal or Finance Comments as no decision is being taken)



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 direct award waivers in March / April / May / June 2020

Reason for direct award waiver	Number of Contracts	Contract value
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
Total	92	£8,304,201

Use of direct award waivers in June / July / August 2020

Reason for direct award waiver	Number of Contracts	Contract value
Business as Usual Direct award	20	£8,935,594
Waivers agreed due to Covid-19 (re-tender delay)	2	£467,000
Waivers in response to Covid-19 (emergency supplies / services)	41	£659,947
Total	63	£10,062,541

Below is a summary level analysis undertaken by the Procurement Manager. Full details have been made available to the committee in the exempt information which accompanies this report - 'G&A - Procurement MI - App 2 Waivers Jun / Jul / Aug 20 - 16.09.20'.

THIS ITEM IS FOR INFORMATION ONLY
(Please note that "Information Only" reports do not require Integrated Impact Assessments, Legal or Finance Comments as no decision is being taken)

Business as Usual Direct Awards

No significant concerns. The figures have been skewed significantly via the award of an out of term extension to Biffa for delivery of domestic waste collection services. A further 2 to 2 ½ year extension outside of the advertised term to a value of £8.25M has been granted by Procurement Gateway Board.

The rationale for the waiver is as follows:

This extension will enable the council to understand fully the impacts of the Environment Bill (explained in detail below) that is currently progressing through Parliament and carry out an effective procurement process that delivers a service that is aligned to that, further to this:

- The council are awaiting the outcomes of the consultation in relation to the waste and resources strategy. This is important as the Environment Bill is likely to legislate for separate food waste collections, consistency of materials collected, deposit return scheme, and extended producer responsibility. It may also stipulate which materials should be collected for recycling and make reference to collections models and frequency. These outcomes would impact the design of collection rounds and make it difficult to design the requirements of the domestic waste collection contract to align with those outcomes.
- The council is currently piloting food waste collections - the second food waste trial will be rolled out in September 2020 with a view to rolling this out city wide from 1 October 2021. This decision is yet to be taken and is linked to a number of other strategic projects related to the Waste Disposal Service contract and waste collections going forward.
- Waste Collections strategy - the administration is committed to reducing waste and improving recycling and as such has made changes to the refuse collection system (2018 - introduced wheeled bins and 3 standard bin bag allowance) and is now trialling separate food waste collections. The council needs to consider an improvement to the range of materials that can be collected at the kerbside (other plastics, cartons, glass). This strategy and design is intrinsically linked to provision of infrastructure to process these materials. There are a number of different permutations for the collection and disposal of these waste streams, dependent upon decisions made about the infrastructure and the outcomes of the Environment Bill. .
- Waste Disposal Service Contract - as a unitary authority, the Council is also the disposal authority and is currently working with partners on a number of strategic projects.
- The new MRF would replace the existing two MRFs provided under the WDSC. The cases for both of these projects have some dependence on the outcome of the consultations of the Environment Bill and will inform the strategic direction of waste collection and disposal going forward. These issues particularly influence collection round design and vehicle requirements.

THIS ITEM IS FOR INFORMATION ONLY
(Please note that "Information Only" reports do not require Integrated Impact Assessments, Legal or Finance Comments as no decision is being taken)



Risk assessment has been informed by direct market testing with leading market suppliers who had no issues with the proposed extension and would rather bid for the contract in the future with a higher degree of specification certainty.

An OJEU Contract Award Notice was issued following approval in order to transparently inform the market of the Council's intentions and time out period for challenges. To date no enquiries have been received regarding the notice and none are expected.

As stated in the notice a formal procurement process to retender the contract will be undertaken in accordance with the following programme:

- Issue OJEU Contract Notice & SSQ - April 2021
- Establish dialogue shortlist - June 2021
- Commencement of dialogue stages - September 2021
- Contract Award - September 2022
- Mobilisation commencement - October 2022
- New service commencement - October 2023

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

No significant concerns and the number and value of waivers has decreased significantly. One waiver in this category is to the value of £416k and is concerned with the extension in scope of a compliantly procured school expansion contract to include for additional road and highways infrastructure works not originally included which whilst requiring a waiver under Council Contract Procedure Rules is fully compliant with the wider provisions for variation of contracts under the Public Contracts Regulations (2015).

There is still a significant backlog of tenders which were delayed due to the CVD19 pandemic, particularly in Adult Social Care and Children's Social Care where resources were reassigned to deal with the immediate impacts of the pandemic. Waivers to extend contracts were approved in the previous quarter however further direct award extensions to some contracts may be required in the coming quarter 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. Whilst the number of waivers is still high the value has decreased significantly. This is due to:

- Build up of buffer PPE stock in the previous quarter meaning that further high volume orders have not been required
- Demand for food supply to shielded and vulnerable individuals reducing as restrictions have been removed and normal supply has resumed
- IT equipment and licenses required to enable home working infrastructure were purchased in the previous quarter and will not require renewal for some time

THIS ITEM IS FOR INFORMATION ONLY
(Please note that "Information Only" reports do not require Integrated Impact Assessments, Legal or Finance Comments as no decision is being taken)

- Waivers for placing non-statutory homeless within hotels has reduced as better longer term alternatives have become available which can be contracted for compliantly without the need for further waivers

It is expected that the requirement CVD19 response waivers will further reduce over the next quarter although there will still be some demand.

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	
• <u>Gold:</u>	Outstanding performance
• <u>Green:</u>	Performing to standard
• <u>Amber:</u>	Some areas of improvement required
• <u>Red:</u>	Failing to perform
• <u>Expired KPI:</u>	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
• <u>KPI never scored:</u>	a schedule is in place, but there have been no KPI scores for the contract
• <u>KPI not yet due:</u>	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)
• <u>No KPI scheduled:</u>	no KPI instances have been scheduled.

KPI performance for June / July / August 2020 is as follows:

	Value of Contracts		Number of Contracts	
RED	£0	0.00%	0	0.00%
AMBER	£37,323,250	1.93%	17	1.90%
GREEN	£1,263,725,864	65.36%	260	29.12%
GOLD	£19,690,019	1.02%	34	3.81%
KPI never scored	£147,227,339	7.61%	136	15.23%
NO KPI scheduled	£178,673,810	9.24%	157	17.58%
NOT YET DUE	£38,123,275	1.97%	182	20.38%
KPI expired	£248,806,777	12.87%	107	11.98%
Grand Total	£1,933,570,334	100.00%	893	100.00%

THIS ITEM IS FOR INFORMATION ONLY
(Please note that "Information Only" reports do not
require Integrated Impact Assessments, Legal or
Finance Comments as no decision is being taken)

Below is a summary level analysis undertaken by the Procurement Manager. Full details have been made available to the committee in the exempt information which accompanies this report - 'G&A - Procurement MI - App 3 Contract KPIs Jun / Jul / Aug 20 - 16.09.20'.

There are no red status contracts but there are a number of contracts which are amber and require improvement. Whilst this number has increased it is still relatively low in terms of both value and volume. However Procurement will find out why these contracts are not performing to full standard, support the relevant contract managers and update the committee.

What is of more concern are the number of contracts where the KPI has never been scored or has not been scored for some time. Procurement focus has been on bringing raw spend compliance up by gaining better visibility of contracts.

Over the next quarter work will be undertaken to ensure that contract performance is better reported on across all contracts by contacting the relevant contract managers and offering support.

Work will also be undertaken to begin reviewing the corporate KPI model to ensure that a relevant, proportionate approach is taken which will in turn increase take up and produce timely, accurate and comparative results.

.....
Signed by Richard Lock - (Acting) Procurement Manager