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Title of meeting: Governance and Audit and Standards Committee

Subject: Procurement Management Information

Date of meeting: 16th July 2021

Report by: Richard Lock - 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 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 May 21 (To Follow)
- EXEMPT - G&A - Procurement MI - App 2 Waivers Feb - Jun 21
- EXEMPT - G&A - Procurement MI - App 3 Contract KPIs Feb 21 - Jun 21

*At the point of submitting this report it has not been possible to run a Spend Compliance report following the upgrade of the Oracle system to the cloud based FUSION version. Unfortunately due to the significant pressures on the FUSION team priority has had to be given to addressing critical operational activities rather than to bespoke strategic reporting activities.

Procurement are working with FUSION to address this and if a report can be run and checked a week before the Committee on 16th July this report will be updated and issued to members. If this cannot be achieved the Procurement Manager will provide a situation

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report verbally at the Committee meeting with the update report issued to members following the meeting.

The report provides comparison between performance from the last time period reported to the committee on 5th March 2021, which covered November 2020 - January 2021, to the latest reporting period February - June 2021.

Due to the recent local elections the quarterly cycle of Committee meetings has been pushed out. In view of this the activity reporting period covered within this report covers more than just the last 3 months. Whilst this may make direct comparison between activity quarters slightly more difficult to address it does provide the Committee with complete scrutiny oversight of all activities since the last meeting.

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

SECTION 1 - SPEND COMPLIANCE

TO FOLLOW.

SECTION 2 - CONTRACT AWARD VIA WAIVER

The tables below show a comparison of contracts awarded via direct award waiver between November 20 - January 2021 - as per the report taken to committee on 5th March 2021 - against those awarded via waiver between February - June 2021.

Whilst waivers are to be sought for any significant departure from the council's Contract Procedure Rules (CPRs), the report focuses upon waivers which have constituted a direct award without application of competition to the protocols set out within the Council's CPRs, Best Value framework and, where applicable, the wider statutory Public Contracts Regulations (2015) (PCR).

This approach has been taken because in comparison to other departures from rules direct awards place the Council at highest risk in terms of legal challenge, accusations of bias and demonstrating achievement of best value.

In order to effectively respond to the Covid19 pandemic a higher number of waivers were sought on this basis. This has been due to the need to quickly source essential emergency supplies, services and works on one hand.

However, it is also due to the need to extend contracts outside of the originally advertised term where council and supplier resources were redeployed onto essential response activities or, in the case of some supplier bidding teams, furloughed. There have also been a number of cases where contracts have had to be varied to a point where it can be

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argued that the material scope of the contract has changed in order to continue to provide essential services in different ways and often under varied legal and financial terms.

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 CVD19 pandemic under Regulations 32-2-c) and 72-1-c)-i). 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 common practice across the public sector following the introduction of stringent lockdown measures by central government on 23rd March.

Use of direct awards to extend or vary 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.

Similarly any outside of scope variation should only last as long as is required and on the condition that if the variation is required on a long term basis that a re-tender exercise is likely to be required.

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, continual review of procurement / legal publications on this matter and engagement with QCs who specialise in procurement law cases via attendance of webinars.

The impact of CVD19 in respect of entering into contracts via direct award for supply of good and services required to respond to the pandemic had lessened considerably when the last report was taken in March 21 and has continued to lessen further. This pattern is not fully reflected within the figures reported due to accounting for cumulative spend under previously approved waivers and the decision of the Council to develop services which whilst linked to CVD19 response initially have been continued on a business as usual basis.

However as the impacts of the pandemic continue to manifest there has been a continued need to extend some contracts out of term in order to effectively balance and prioritise limited resources. There are also a number of contracts that will require continued variation outside of scope and although these are low in volume they are high in value.

It should also be noted that the volume and value of contracts subject to direct award on a business as usual basis has increased significantly since the last report, even when taking the 5 month rather than 3 month activity review period into account. Whilst further analysis is required on contracts below £100k which do not require formal approval by Procurement this increase in volume is most probably due to two key factors.



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The first being the ongoing impact of CVD19 and the need to prioritise resource and the second, most likely more driving factor, being the FUSION project to upgrade the Council's finance system. Under the new system there is far greater monitoring and intervention on purchase orders above £5k which are not linked to a contract entry on the InTend contracts register.

This has meant that visibility of contracting activity, particularly in respect of lower value contracts will have significantly increased and in turn visibility of contracts subject to direct award waivers. Procurement will undertake further analysis to see if this likely hypothesis is correct and, on a proportionate prioritised basis work with services to bring contracting activity into improved levels of compliance.

The impacts of Brexit were beginning to be felt when the last report was taken in March, particularly in respect of Port operations and corresponding impact onto transport networks which is requiring the Council on occasion to have to enter into contracts via waiver in order to maintain critical operations and ensure public safety.

The impact has continued to be felt across the February - June 21 reporting period covered within this report, although the nature of the contracts which have required direct award waivers are required for longer term operational infrastructure rather than for the mitigation of short term immediate impacts. In most cases however there is a PCR 2015 compliance argument on the basis of competition being absent for technical reasons which can be applied.

Waiver Approval Levels

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

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Use of direct award waivers

	Nov 2020 / Dec 2020 / Jan 2021		Feb - June 2021	
Reason for direct award waiver	Number of Contracts	Contract value	Number of Contracts	Contract value
Business as Usual Direct award	44	£3,031,093	133	£10,065,031
Waivers agreed due to Covid-19 (re-tender delay / scope variation)	5	£867,665	13	£23,156,887
Waivers in response to Covid-19 (emergency supplies / services / works)	2	£1,500,000	7	£2,169,067
Waivers in response to and due to Brexit	2	£1,183,323	4	£10,560,050
Total	53	£7,078,841	158	£45,951,035

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 'EXEMPT - G&A - Procurement MI - App 2 Waivers Feb - Jun 21'.

Business as Usual Direct Awards

As above there is a concern with the overall value and volume of direct awards. Although the report covers 5 months rather than the 3 months covered within the report taken in March the increase cannot be attributed to this factor alone.

As stated above it is most likely due to the increase in visibility of overall contracting activity, particularly in respect of below £100k contracts which do not require Procurement approval, achieved as an outcome of the FUSION project although the impact of CVD19 on resource is also likely to be a factor.

This analysis holds weight when compared to the figures presented in the March report when business as usual direct awards for contracts below £100k equated to a total of 35 over a 3 month period whereas for this report over a 5 month the total number of below £100k business as usual waivers is 125.

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After taking the increased levels of below £100k business as usual waivers into consideration there is no significant concerns in respect of the above £100k direct award waivers.

Due to the volume of waiver activity and the increased 5 month reporting period only waivers above the lowest PCR statutory threshold of £189k have been covered below, however the Procurement Manager will be able to provide further information upon request in respect of waivers with a contract value below this threshold.

Whilst the Council can be legally challenged for not following its own constitutional rules via Judicial Review in the Courts the risk of this occurring when compared to risk of challenge for higher value above PCR 2015 threshold contracts is much lower, as is reflected in activity in the Courts.

The process for challenge for below threshold contracts is also not as simple to enact as it is for above threshold contracts and the remedies available to claimants are not as readily accessible, again making challenge risk significantly lower for below threshold contracts.

Supported Living Up To Eight People - The Fir Trees

This waiver is valued at £3.25M and concerns the direct award of a service contract on a 3 + 2 year term for the provision of supported living services at an out of city property owned and managed by the provider.

Finding suitable properties on an economic basis for supported living, especially outside of the city, has proven very difficult as there is a distinct lack of options. The property owner is also a service provider and in order to realise their property investment they are not open currently to another service provider delivering services from this property.

This has meant that in order to effectively fulfil the requirements of vulnerable clients who have struggled living in an urban environment that the Council has had no option than to direct award the service contract element.

The rates that will be charged by the provider have been effectively benchmarked and shown to be competitive providing a level of best value assurance in the absence of competition.

Risk of challenge has been assessed as relatively low by both Procurement and Legal given the scarcity of market options and broad application of PCR 2015 Regulation 32 2 b) ii) which allows for direct award where competition is absent for technical reasons which in this case would be attributed to the service provider owning the property and protecting their commercial interests through restricting market access to the property.

Bird Aware Solent Rangers

This waiver valued at £1,435,195 concerns the direct award to Hampshire County Council for the provision of Bird Aware Solent Rangers. Whilst a waiver is required under Council CPRs the direct award is compliant with PCR 2015 which allows for reciprocal inter-contracting authority trading without competition under Regulation 12-7.

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Disaster Recovery for IT Servers

The next highest value waiver at £489,726 concerns direct award to the incumbent IT server disaster recovery provider. Whilst above the statutory PCR threshold of approx. £189k this is not deemed high risk as the direct award has been let via compliant use of an existing framework work agreement established by Central Government procurement arm Crown Commercial Services.

The services are only required on a short term basis whilst the project to move to cloud based servers is implemented. On this occasion due to the short term nature and need to prioritise resource onto the development project competition was not a suitable avenue for letting this contract. In the absence of direct competition best value can be demonstrated by the application of nationally leveraged rates through use of the CCS framework agreement.

Parking Back Office System

The waiver value is £290,000 and is concerned with an extension outside of term for the parking back office system. In order to effectively implement the Clean Air Zone (CAZ) it has been key to ensure that existing infrastructure that the CAZ is to integrate with remains consistent, otherwise delivery may be put at risk which could then put the Council at risk of very significant civil financial penalties.

Whilst there was an intention to review the parking system this was put on hold when IT and Parking resources were reassigned to the CAZ project. The waiver has been granted for 2 years only in which time the CAZ will have been implemented and there will be sufficient time to review and agree the procurement strategy for this system.

Whilst not 100% watertight an argument for compliance on the basis of an unforeseen emergency situation in general accordance with Regulation 32-2-c) could be made. Risk of challenge has been assessed as low by Procurement and Legal.

FFT Aspire Subscription Renewal

Whilst the overall value of the contract is £209,511 this is spread over 17 years. Further analysis on how the contract was let in 2009 is being undertaken by Procurement but on the basis that the direct award has only been requested for 5 years from 2021 - 2026 the current view is that the contract would have been let compliantly. If this is correct the value of the direct award for 5 years is £79,075 based upon a per annum value of £15,815 which is below the PCR threshold of £189k and the Council's advertised tender threshold of £100k as set out in CPRs. Further analysis is required but currently this is not viewed as a high risk waiver.

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

Some concerns as the number and value of waivers has increased. There is still a significant backlog of tenders which were delayed due to the CVD19 pandemic which due

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to resource limitations and need to prioritise other urgent activities - recovery, commercial activities, grant funding applications, etc. - is proving quite difficult to address.

Whilst it is taking longer than would be hoped to bring these contracts back into compliance there is still good momentum and oversight which provides a good level of confidence that these matters are being addressed.

Again due to the level of activity and increased 5 month reporting period only contracts which fall above the lower £189k PCR 2015 statutory threshold have been addressed below.

Single waiver for Day Services contracts (multiple contracts/suppliers)

The way in which these types of services are let was under review and subject to waiver before the CVD19 pandemic hit. This has meant that the cumulative value of direct awards, whilst spread across a number of providers, is high at approx. £7.9M.

Procurement are working directly with Adult Social Care to bring the contracts into compliance with procurement activity scheduled for launch in the Autumn following the end of school summer holidays over which these services are often at their busiest.

All of the contracts will be brought into compliance in a manner which will also provide for increased choice and market innovation by April 2022. Whilst compliance is a key concern risk of challenge is not considered to be high and care needs to be taken not accelerate procurement timescales and process at the expense of realising significant improvements which will benefit vulnerable clients.

Temporary Accommodation Service

Following the 'Everyone in Initiative' launched by Central Government in response to the CVD19 pandemic the Council has undertaken a significant review of the contracts it has in place for homeless and associated services.

This particular contract which has been in place via direct award since 2000 and has a cumulative value up the end of the currently agreed contract term of 31st March 2022 of approx. £6.5M has fallen under this review on both a delivery and compliance basis.

Procurement are actively working with Housing and a procurement strategy is being put in place which will bring the contract into compliance by April 2022. Again whilst compliance is a concern risk of challenge is not considered particularly high especially when the opportunity will be available to the market imminently.

As with the case above care must be taken not to fast track the procurement at the expense of realising benefits which will benefit extremely vulnerable clients.

Leisure, recreation and sporting services management

This approx. £2.8M waiver is concerned with a variation to a contract for the delivery of services across the majority of the Council's portfolio of leisure sites. Prior to the CVD19

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pandemic this contract operated on an income generating basis. However, operations have been hugely impacted which unfortunately has meant that the contract currently operates at a cost to the Council.

The contract was first varied to cover financial year 20-21 with the variation now further extended to cover 21-22. Under the variation the Council will cover a level of costs subject to open book scrutiny and the operator making evidenced endeavour to bring the services back into an income generating model as quickly as possible.

The situation the Council and its operator face is one which has been repeated across the country with many other local authorities faring worse than the Council. In view of this risk of challenge is considered very low by both Legal and Procurement currently, although this will be subject to change as this market area recovers making this contract more attractive to other operators.

Procurement and Legal are working directly with Culture to provide contract management support and will continue to scrutinise market risk although it is hoped that significant variation beyond this financial year will not be required.

Lifts Partnering Maintenance Term Contract - Housing and Landlord Stock

This contract could not be tendered during the pandemic as planned as obtaining effective competition would have required significant levels of site access for bidders which would have put residents at risk. Also as this market relies upon delivery of new installation and refurbishment projects which were largely put on hold staff who would have prepared bids and overseen delivery of these types of projects were put on furlough which again would have significantly impacted competition.

Procurement are working directly with Housing to bring the contract into compliance. The contract has been compliantly advertised and applications have been received and assessed. Tenders will be sought over Summer / Autumn 21 with a compliant contract due to commence on 1st April 2022.

Risk of challenge was considered to be low at point of waiver approval and will only have reduced following effective launch of the procurement process which will bring the contract into compliance.

Pyramids management contract

As per the wider leisure contract referred to above this contract has also been significantly impacted by the pandemic. The issues, variation, mitigation and risks are largely the same as for the wider contract. The value of the waiver is approximately £1.35M and is due to both variation of scope and expiry of the advertised contract term.

There is an option to bring this contract into the wider contract on a compliant basis. This will form the Council's strategy once the wider contract has been brought back into a steady operating model. Risk of challenge is again considered to be low in view of broad market conditions and the unique challenges posed by the building.

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Deed to underwrite annual turnover (Provision of Towage Service at Portsmouth International Port)

In order to deliver effective operations the Port entered into a concession agreement with an operator to provide 2 dedicated towage vessels (tugs) based at the Port. This allows the Port to offer a high resilience service to commercial ferry, freight and cruise operators which if not in place would impact berthing and associated income significantly.

Due to the pandemic sailings has significantly reduced although they are now beginning to recover. In order to maintain operations at the Port during this difficult period the operator required underwriting of some direct costs to avoid permanent closure of operations which would have significantly impacted on the Port's ability to retain existing and attract new commercial operators.

Whilst the total underwriting value could theoretically be as high as £1.1M over the 1 year term of the variation it is anticipated to be far less than this. Whilst the contract is held by the Port / Council any costs underwritten will be shared on a 50 / 50 basis with Portaco.

In the absence of competition best value has been sought by working with the operator to reduce its direct cost base on an open book basis. The Council will only pay for evidenced costs on an open book basis and the operator is under a legal commitment to minimise costs and drive income.

The market for this type of service is extremely limited and the Port has historically struggled to secure an operator on a committed economic basis. As such risk of challenge is considered to be low.

However, subject to market conditions and resource capacity which has been impacted at the Port by Brexit, a procurement process will be undertaken in Autumn 2021 to bring the contract back into compliance.

Waiver for Supported Living due to delayed call-offs

The above waiver applies to a contract which been due for re-tender but were put on hold whilst Adult Social Care and its supply basis responded to the pandemic. Procurement are working directly with Adult Social Care to agree and resource a re-tender programme for the contract which will bring it into compliance within the next 18 months, ideally faster.

Risk of challenge is considered to be relatively low given the current market conditions and practice by local authorities.

Internal Refurbishment of Existing Building - Phase 1 - Cliffdale Academy

This approx. £600k direct award relates to essential extension works at the above school which were delayed due to the impact of CVD19. When CVD19 first impacted the Council, like all of other public sector bodies, prioritised keeping works going on active sites and put planned projects on hold as the guidelines from Central Government at this point were dynamic and evolving.

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The works at this school will provide essential facilities for higher needs pupils which if not addressed by the start of the next school year in September 21 would mean that the Council would incur significant costs associated with out of area placements and the pupils would face increased travel times and other forms of disruption.

The contract has been awarded to a contractor who has consistently competitively won Council work which has been delivered to a high standard. In the absence of competition best value is being tested via the contractor applying rates from previously tendered works and working with the Council on an open book partnership basis. All costs have been subject to scrutiny and sign off by experienced Quantity Surveyors employed by the Council.

Due to timescales it has been impossible to run a compliant competitive exercise. Whilst a number of national framework agreements exist that allow for direct award access this would be at significant additional cost to the Council as these frameworks generally have larger tier 1 contractors on them which carry large overheads.

Risk of challenge is also mitigated by virtue of the statutory threshold for works under PCR 2015 falling at a significantly higher value at £4.7M.

Internal Refurbishment of Existing Building - Penhale Infant School

Whilst the value of £303,104 and school is different to the Cliffdale waiver summarised above the overall basis for the waiver, contracting approach and risk analysis is largely identical albeit with a different choice of contractor these works

Personal Protective Equipment and Clothing - 2016 - 2020

Due to the very significant impact of the pandemic upon the PPE market and the use of this contract as a pilot case for testing advanced e-catalogue functionality of the FUSION system an above threshold direct award waiver to a total value of £293k based upon higher level demand estimates has been approved for this contract.

In order to secure competitive pricing from what is still a relatively market the provider has been awarded a contract that will run until 31st March 2022. A longer period to bring the contract into compliance will also be advantageous in the event that there is a change in supplier as a significant lead in period for implementing e-catalogues, agreeing logos, agreeing corporate products, communicating with numerous client services, etc. will be required.

Procurement are working on this procurement process directly and there should be no issues with bringing the contract into compliance on a best value basis by the expiry date of the waiver approved contract term.

Specialist Holiday Playscheme (Holiday Playscheme for Children with Disabilities)

The service was due to be put out for re-tender prior to the pandemic but was put on hold in which time the plans for the service have changed significantly as new ways of

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approaching service delivery have emerged as a result of working within the significant constraints posed by the pandemic.

Procurement are supporting directly on the procurement process to bring the contract back into compliance by September 2022 in a manner which realises the innovative ways of working identified under the review.

The value of the waiver at £254,520 is above the Council's own tender threshold as stated within CPRs but falls significantly below the higher statutory threshold under PCR 2015 of approx. £663k which applies to services which fall under the light touch regime.

Due to the contract falling below statutory threshold and the Council's clear intention to put the contract out to open tender in early 2022 risk of challenge is considered to be low by Procurement and Legal.

In the absence of competition a level of best value assurance is provided by the high level of performance from the operator and their focus on flexible partnership working. Summary benchmarking has also been undertaken against schemes run by other local authorities which has shown a good level of operational performance and competitive pricing in respect of the Council's contract.

Edbaston & Tipton House - Landlords Electrical Heating Distribution Remedial Works-2021

Due to a wider project to replace the heating system at this high rise residential property being put on hold due to the pandemic urgent works were required to address failures with the current system.

The works are time critical as they must be completed during the warmer months when the heating system is shut down, otherwise residents could be left without heating over the autumn and winter period. Due to this there was not sufficient to undertake an advertised competitive procurement process.

The contractor appointed to undertake the work was the previous term contractor who undertook similar works at the property under a competitively tendered open book contract. The contractor has honoured the rates applied to these prior works and worked to the same open book protocol to build up the agreed contract sum of £242,416.

The rates and costs have benchmarked against those secured from other contractors under competitive conditions have been shown to be competitive. In view of this a good level of assurance can be provided in respect of meeting best value obligations.

As the contract is classed as a works contract it also falls significantly below the higher £4.7M statutory PCR 2015 threshold. The current market is also very busy in respect of electrical project works with the Council sometimes struggling to obtain 3 tender submissions from competitive exercises. In view of both of these factors risk of challenge is considered to be low.

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

No significant concerns. Whilst the number and value of waivers is higher than in the previous March report the volume is still significantly less than the number of CVD19 response waivers reported in the first 9 months of the pandemic. This is due to:

- Build up of buffer PPE stock in the previous quarter meaning that further high volume orders have not been required and a move towards central government supply through PPE portal
- 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

The waivers that have been approved on this basis within the reporting period relate to initiatives which the Council has decided to continue with as it moves its strategy from response to recovery.

Again due to the level of activity and increased 5 month reporting period only contracts which fall above the lower £189k PCR 2015 statutory threshold have been addressed below.

DWP Covid Support Grant - Holiday food voucher, free school meal voucher and discretionary voucher schemes

The Department of Work & Pensions notified the Council that it would be extending the Covid Winter Grant Scheme to 16th April 2021 in March leaving the Council with no time to undertake any level of compliant procurement process. As such an existing direct award waiver was extended in value and term to ensure that funding was secured in order to provide ongoing critical support to vulnerable families.

Whilst the total cumulative value of the waiver is approx. £845k the value associated with the extension to waiver granted in this period equates to £266,171 with the remaining value previously awarded to cover the Christmas and February half term holiday periods.

Due to all local authorities being placed in the same position in respect of timescales the majority of contracts across the country are likely to have been via direct awards. This is reflected by practice across the Central Buying Consortium councils which the Council is also a member of.

It should also be noted that the vast majority of the funds are allocated directly to client recipients with the supplier taking a small consideration which even as a proportion of the higher cumulative value is significantly less than the Council's £100k tender threshold.

Procurement are working directly to assist with bringing the contract into compliance following allocation of further funding by DWP to cover the summer holiday period. A compliant direct award to the existing provider via a Crown Commercial Services

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framework agreement launched in April 21 is currently being processed which will mean that further waivers are unlikely to be required in the future.

Internal Alterations at The Registry and Elm Grove establishments

The contract concerns a direct award for time critical works required to make two recently acquired properties suitable for housing vulnerable homeless clients with complex needs.

As part of the 'Everyone in Initiative' the Council secured funding from MHCLG which was used to secure accommodation from hotels for homeless clients. In order to provide a long term option for ongoing delivery on a resilient economic basis the Council acquired two properties to provide sleeping accommodation to those clients who had previously been housed in the temporary hotel accommodation.

In order to avoid a gap in service provision for these vulnerable clients the works needed to be undertaken on an urgent basis which would not allow for competitive tendering timescales. Further to this MHCLG had also made £200k worth of funding available for the works which needed to be spent within a very short time period. Without accelerating timescales via direct award the Council would have to find the entirety of the £500k contract itself.

A level of best value assurance can be provided by the selection of a highly competitive local contractor with a strong delivery track record. All costs have been built up on an open book basis and have been subject to application of agreed rates secured with the contractor via previous competitive exercises.

As the contract is classed as a works contract it also falls significantly below the higher £4.7M statutory PCR 2015 threshold. The current market is also very busy in respect of works of this nature with the Council sometimes struggling to obtain 3 tender submissions from competitive exercises. In view of both of these factors risk of challenge is considered to be low.

Security - Rough Sleeping Pathway

When the Council secured accommodation from hotels to provide a response to the 'Everyone in Initiative' the hotel providers sourced security services to help safeguard the welfare of the vulnerable clients, hotel staff and neighbouring community.

In order to provide critical service continuity when the Council began to accommodate these clients within its own acquired accommodation the same security provider was secured via a direct award waiver.

The value of the waiver equates to £270k which whilst above the Council's £100k tender threshold is significantly below the higher £663k statutory CPR 2015 threshold for light-touch regime services under which security services are classified. There has also been a significant increase in demand for security services due to the pandemic which has largely been sustain even as restrictions are lifted. In view of these two factors risk of challenged is considered to be low.

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Portsmouth
CITY COUNCIL

M365 Programme Management

Further information required before an analysis of rationale and risk can be undertaken. The Procurement Manager will undertake this and provide a verbal update backed up by an updated written report at the committee meeting.

Waivers in response to Brexit (emergency supplies / services / works)

No significant concerns despite the high values associated with the waivers as there are string urgency and market restriction arguments to justify the direct awards made. Again due to the level of activity and increased 5 month reporting period only contracts which fall above the lower £189k PCR 2015 statutory threshold have been addressed below.

Provision of Stevedoring and Refrigeration Services for Portsmouth International Port's Border Control Post

Following the exit of the UK from the EU increased border controls are now legally required to ensure that goods entering the country via the Port are properly checked and reported upon. This has meant significant investment in infrastructure and associated services under very short timescales and often within an emerging ambiguous framework.

The allocation of funding from Central Government via the Port Investment Fund has also been subject to very short timescales making the application of compliant competitive tendering processes almost impossible.

The Port has engaged the operator on the basis of their existing presence on the site and site land interests which if not made available to the Port would effectively make the operation of the Border Control Post impossible. On this basis undertaking a competitive procurement process is not a viable option as the operator will only make the land available on the basis of being awarded the associated service contract which is the subject of the waiver.

As the operator will need to invest in new plant and machinery a 5 year term has been agreed to allow for economic asset depreciation. A shorter term contract would come at a significantly higher cost to the Council on this basis.

Whilst the value of the contract at £2M is significantly above the statutory service PCR 2015 service threshold of £189k there is a strong argument for application of PCR 2015 Regulation 32 2 b) ii) which allows for direct award where competition is absent for technical reasons, which in this case is associated with unique property interests.

On this basis whilst the value of the direct award is significant risk of challenge is not considered to be high and is outweighed by the extreme operational and commercial risks that the Port would be exposed to if this service is not provided.

Best value assurance will be provided through the open book partnership working with only very limited margins being applied.

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Terminal Operating System

Following the exit of the UK from the European Union HMRC have instructed UK ports that they must have additional control measures in place under the 'Border Operating Model' which will require the implementation of new systems and processes under very short timescales.

The Port require a new Terminal Operating System which can comply with the new requirements immediately on an 'off the shelf' basis, particularly in respect of 'Roll on Roll Off' freight. The market options available for such a system are very limited with the majority of systems only able to provide solutions for containerised freight.

The transport of freight within the Port is subject to movement across both Port and Portaco land and systems. In order to provide a robust compliant audit trail it is vital that both parties use a consistent system. Portaco has handled rest of the world freight from outside of the EU for some time and as such has existing systems and processes in place which it is happy with and would not wish to change.

In view of this the Port has taken the decision to enter into contract with the same system provider via direct award. As the value of the contract is £380,050 over the initial term it exceeds the statutory £189k. However a broad compliance argument for application of PCR 2015 Regulation 32 2 b) ii) which allows for direct award where competition is absent for technical reasons, which in this case is the need to adopt the same system Portaco have in place.

Best value assurance has been broadly provided by securing rates on the same basis as Portaco which have been benchmarked against rates which other suppliers charge for similar systems.

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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 on against the following criteria:

Key

- Gold: Outstanding performance
- Green: Performing to standard
- Amber: Some areas of improvement required
- Red: Failing to perform
- KPI expired: 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 is as follows:

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	Current KPI Status of all contracts up to Jan 2021				Current KPI Status of all contracts up to June 2021			
	Value of Contracts		Number of Contracts		Value of Contracts		Number of Contracts	
RED	£103,000	0.00%	2	0.15%	£87,200	0.00%	2	0.12%
AMBER	£32,909,822	1.47%	19	1.42%	£6,855,204	0.23%	12	0.71%
GREEN	£414,562,229	18.55%	285	21.30%	£575,363,094	19.63%	255	15.01%
GOLD	£33,912,973	1.52%	54	4.04%	£27,783,988	0.95%	67	3.94%
KPI never scored	£154,829,522	6.93%	220	16.44%	£244,005,230	8.33%	310	18.25%
No KPI scheduled	£269,863,940	12.08%	341	25.49%	£442,172,737	15.09%	461	27.13%
KPI not yet due	£157,274,213	7.04%	182	13.60%	£471,872,310	16.10%	245	14.42%
KPI expired	£1,171,226,036	52.41%	235	17.56%	£1,162,689,970	39.67%	347	20.42%
Grand Total	£2,234,681,735	100.00%	133	100.00%	£2,930,829,733	100.00%	169	100.00%

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 - 'EXEMPT - G&A - Procurement MI - App 3 Contract KPIs Feb 21 - Jun 21'.

There are 2 red status contracts. One concerns a relatively low value waste collection contract where service was interrupted due to Covid restrictions. The contract manager felt that adequate arrangements were not put in place to overcome the disruptions, but following a resolution meeting with the supplier, normal service levels are now expected to resume. The other red status contract was an urgent order of laptops at the start of the pandemic. The equipment arrived broken and had to be sent back. The issue has now been resolved, but the contract manager has declined to use the services of this particular supplier again.

The number of contracts which currently have an Amber KPI status is 12, which is an improvement on the last reporting period where 19 contracts had an Amber KPI score. More notably, the value of contracts which have an Amber KPI status has improved significantly, from £32.9m at the end of Jan 2021 to £6.9m at the end of June 2021. This is mainly due to one very high value contract progressing to a Green status, which reflects the continuing work of Procurement and contract managers to remedy the performance of this strategic contract.

Still of concern is the number of contracts where the KPI has never been scored or has not been scored for some time. The recruitment process for a Contract Management Business Partner is ongoing, and once this role has been fulfilled, work on reviewing the corporate

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KPI model can continue. Our ultimate goal is to build a relevant, proportionate KPI model that promotes take-up and produces timely, accurate and comparative results.

.....
Signed by Richard Lock - Procurement Manager