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Portsmouth
CITY COUNCIL

Title of meeting: Governance and Audit and Standards Committee
Subject: Procurement Management Information
Date of meeting: 5th November 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 held 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 Sep 21 - 05.11.21
- EXEMPT - G&A - Procurement MI - App 2 Waivers Jul - Oct 21 - 05.11.21
- EXEMPT - G&A - Procurement MI - App 3 Contract KPIs Jul - Oct 21 - 05.11.21

The report provides a performance comparison between the last time period reported to the committee on 16th July 2021 which covered performance over a time period of February - June 2021 with the most recent performance data that could be obtained which covers July - September 2021.

Performance reports usually cover the most recent quarter. The 16th July 2021 report covered a longer time period as the recent election cycle meant that the time between committee meetings had been extended. As at that point the pressures of the pandemic plus the new emerging pressures from Brexit were impacting significantly upon



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procurement and contracting activity. On this basis the Procurement Manager felt it necessary to provide the Committee with data covering an extended time period in order that the Committee could have a view of procurement governance performance in what were exceptional and unprecedented circumstances.

Whilst the pressures of the pandemic and Brexit continue to be felt the Council has generally moved from a position of response to one of recovery, in view of this the reporting periods covered for this Committee meeting have reverted to business as usual quarterly performance reporting.

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

Introduction

The table on the following page provides a comparison of spend compliance from the last report taken verbally to the Committee on 16th July 2021 which covered the month of May 2021 against spend compliance covering the month of September 2021. The report taken on 16th July 2021 was not included within the original document pack sent to the Committee due to issues with extracting the data from the then recently implemented Oracle FUSION system.

Context & Current Process

The Local Government Transparency Code (2015) requires that all contracts with a lifetime value of £5,000 or above are published. The Council monitors and enforces compliance by requiring every purchase order with a distribution value of £5,000 or above is linked to a contract entry which has been raised and published on the Council's InTend system.

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 the 'compliance' definition for this section of the report also includes for approved departures from local constitutional rules and national legislation as set out

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above. The data and analysis provided in this section therefore relates to compliance with the Council's procurement governance processes. Overall compliance with rules and regulations is covered under Section 2 of this report which provides an analysis of contracts awarded via waiver approval within the quarter.

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 processed via Housing, Neighbourhood & Buildings systems, Adult Social Care Controc system, Children's Social Care Mosaic system, CHAPS payments, cheque payments, etc.

Planned Development

Following implementation of the Oracle FUSION system which required significant levels of input from Procurement and full time allocation of 2 key members of the Procurement team work will be undertaken to develop the spend compliance reports in terms of both completeness and content.

Though Procurement's input into the Oracle FUSION project, spend reports on transactions linked to waiver approvals can now be readily obtained. This will allow the Committee to assess compliance performance by overall spend in a much broader sense than is currently being presented. Procurement will seek to develop the expanded report in time for the next Committee meeting.

Work is also required to investigate running reports on spend which is processed via systems other than Oracle FUSION. This will take some time to develop and it may be that due to system / process restrictions that a comparable view of compliance performance may not be fully achievable for all systems, although this will be the aim.

A phased plan will be developed and agreed with the managers who are responsible for the further systems. The first system which will be investigated is the Adult Social Care Controc system where work has already been undertaken to match financial transactions to InTend contract entries.

If possible the spend compliance report will be expanded to include for Controc spend in time for inclusion at the next Committee meeting. Procurement will also aim to bring a draft plan for addressing further systems, although this will be dependent upon engagement from services who may have other priorities.

September 21 Analysis

The detailed report taken from Oracle FUSION is included as exempt 'Appendix 1 - Spend Compliance Sep 21'. This report shows the compliance figures overall, by service and by sub-service area both before and after further review by the Procurement manager.

The 'raw' performance data is reviewed by the Procurement Manager who then removes spend where:



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- It is known that compliance with governance has been addressed but due to admin error the spend was not linked properly to a contract entry
- It is known that compliance with governance has been addressed but a contract entry is required on InTend
- The spend transaction does not fall under the scope of local or wider procurement rules and regulations and / or transparency requirements - e.g. land transactions, S75 agreements, grants, funding arrangements, below £5k transactions, etc.

The exempt Spend Compliance report attached as Appendix 1 provides the Procurement Manager's summary analysis for each transaction which showed as non-compliant from the 'raw' report, whether the transaction has been 'retained' or 'removed' from the adjusted figures and the basis for the classification made.

A summary of the analysis undertaken by service area is included within the data following table. A target of 95% compliance overall and by service following any adjustments made by the Procurement Manager has been set previously by the Committee.

Approximately a year ago at the Committee meeting held on 20th November 2020 raw compliance was reported at approximately 80%. Since then it has risen steadily due to the work undertaken by Procurement to increase the reporting of contracts on InTend in line with Transparency Code requirements ready for the implementation of new controls with the launch of Oracle FUSION in April 2021 with raw compliance for September 2021 now at 91%.

In further context the raw compliance figure reported for December 2020 in the report taken to Committee on 5th March 2021 was 71% and the figure reported for May 2021 taken to Committee on 16th July 2021 was 92%. This shows the significant improvement that implementation of Oracle FUSION has had on improving visibility of contracts held by the Council.

Beyond complying with Transparency Code this will provide a reliable information base from which future procurement activity pipelines can be developed, the publication of which is now required following central government instruction via a recent Procurement Policy Notes. Production and maintenance of pipelines will also assist the Council in undertaking pro-active strategic best value options review and ensure effective, inclusive implementation of policies concerning topics such as social value, modern slavery, Real Living Wage, etc.

Following adjustment the compliance figure for September 2021 is now at 99% which is the same as the last reported figure of 99% for May 2021 and above the 97% reported for December 2020 and 93% reported for September 2020.

The figures by service area are broken down within the following table, with a summary analysis provided following after and detailed information on transactions included within the exempt Appendix Spend Compliance report.

All services adjusted figures are above the 95% target other than Corporate Services at 70% although it should be noted that this service area's total spend for the month forms a

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fraction of total spend and that transactions concerned are unlikely not pose any significant risks to the Council given the relatively low values involved in the context of overall spend. This is an improvement upon the May 2021 figures which showed 4 services falling below the 95% target.

Key

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

Directorate	May 2021			September 2021		
	Total £	NC £	C %	Total £	NC £	C %
Adult Services	£88,757	£19,390	82%	£479,148	£11,256	98%
Children Families & Education	£83,270	£2,412	97%	£412,974	£729	100%
Corporate Services	£271,059	£65,485	81%	£215,534	£90,465	70%
Culture Leisure & Regulatory Services	£147,811	£41,928	78%	£206,663	£2,383	99%
Executive	£52,169	£27,131	66%	£88,998	£1,979	98%
Finance	£2,175,459	£19,601	99%	£3,456,220	£47,093	99%
Housing Neighbourhood & Building Services	£6,582,549	£28,585	100%	£7,923,989	£22,483	100%
Portsmouth International Port	£2,052,255	£0	100%	£492,284	£0	100%
Public Health	£222,660	£0	100%	£235,110	£0	100%
Regeneration	£3,818,329	£9,434	100%	£7,808,459	£54,756	99%
TOTAL	£15,494,319	£213,967	99%	£22,624,444	£236,594	99%



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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 Sep 21 - 05.11.20'.

Adult Services

No concerns. Some work required to review food supply contracts although all spend is below PCC tender threshold of £100k and significantly below £189k threshold for supplies under Public Contracts Regulations (2015).

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

No concerns. One transaction which requires investigation for 1-1 tuition services although the value falls below the Council's £100k tender threshold.

It should also 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 significant concerns. Whilst the compliance figure of 70% falls significantly short of the 95% target this spread across 11 transactions all of which have a lifetime distribution amount significantly below the Council's tender threshold of £100k. The transactions concerned will be investigated by Procurement who will agree appropriate actions to address transparency and compliance issues with the service.

Culture Leisure and Regulatory Services

No concerns. Only two transactions which both fall significantly below the £100k tender threshold.

Executive

No concerns. Only two transactions which both fall significantly below the £100k tender threshold.

Finance

No significant concerns. 3 transactions which fall within the Council's £100k tender threshold. These transactions whilst raised by Finance relate to CFE spend as do a number of other transactions indicating that the relatively high levels of spend with suppliers for Finance is due to the service processing financial transactions on behalf of other services.

Housing Neighbourhood and Building Services



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No concerns. A number of transactions which all fall below £100k threshold. A number have been subject to previous waiver approvals which may now have expired but require further investigation.

Portsmouth International Port

No concerns. 1 transaction which is significantly below £100k threshold.

Public Health

No concerns. 100% compliant.

Regeneration

Only one area of concern which relates to spend with a consultancy firm who provide a range of services, predominantly for Property, Investment & Development. The distribution value of £822,679 is significantly above the Council's tender threshold of £100k and the statutory PCR 2015 threshold of £189k.

However, a number of compliant procurements and waivers have been approved in relation to this supplier. There are also a range of framework agreements let by other public sector bodies which the Council could access in order to bring transactions with this supplier into compliance.

The transactions concerned will be investigated by Procurement who will agree appropriate actions to address transparency and compliance issues with the service.

SECTION 2 - CONTRACT AWARD VIA WAIVER

The tables below show a comparison of contracts awarded via direct award waiver between February - June 2021 as reported at the Committee meeting on 16th July 2021 with those awarded via direct award waiver between July - October 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.

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In order to effectively respond to the Covid19 pandemic a higher number of waivers were sought on this basis. This was 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.

In the last quarter the impact of CVD19 in respect of entering into new / extending existing contracts has now lessened significantly. The number of direct award waivers processed which relate to providing an effective response to the pressures of Brexit have also reduced significantly within the last reporting quarter.

The lessening of the immediate impacts from the pandemic and Brexit have reduced the total value of direct award waivers approved within the last quarter by a significant amount with the figures now starting to approach pre-pandemic 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

Use of direct award waivers

Reason for direct award waiver	February - June 2021		July - October 2021	
	No. of Contracts	Contract Value	No. of Contracts	Contract Value
Business as Usual Direct award	133	£10,065,031	97	£5,863,920
Waivers agreed due to Covid-19 (re-tender delay / scope variation)	13	£23,156,887	2	£317,500
Waivers in response to Covid-19 (emergency supplies / services / works)	7	£2,169,067	0	£0
Waivers in response to and due to Brexit	4	£10,560,050	1	£30,000
Total	158	£45,951,035	100	£6,214,420

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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 Jul - Oct 21 - 05.11.21'.

High Value (Above £189k) Direct Award Waiver Summary Analysis

No significant concerns.

Legal Support - LXP & City Centre

A waiver with a value of £665,697 for legal support associated with advice on the city centre development and Tipner West / Lennox Point projects relates to cumulative spend since the contract was entered into in September 2016. Whilst the waiver entry states direct award the contract was actually procured compliantly via a mini-competition from a Crown Commercial Services framework agreement. It appears that this contract entry has been misclassified and should not show on the waiver report although further investigation may be required.

Mountbatten Centre - Capital Investment Works

A waiver with a value of £567,061 for capital investment works at the Mountbatten Centre also appears to have been incorrectly classified. The supplier who has been awarded the contract is already party to a significant term service contract with the Council for repairs and maintenance. The term service contract has been compliantly procured and allows for compliant direct award of significant project works subject to application of tendered rates and open book costing.

Electric Vehicle Charging Points

Two waivers with a value of £499,279 and £308,106 for the installation of electric vehicle charging points has also been incorrectly classified as the contracts which concern the same supplier have been let via compliant direct award from a Hampshire County Council framework agreement. Best value has been assured via application of competitively tendered rates secured at framework level by Hampshire.

NB - Adjusted Figures

The combined value of what are most likely to be misclassified waivers equates to £2,040,143 which when deducted from the total direct award waiver value of £6,214,420 gives a total direct award waiver figure for the quarter of £4,174,277. This adjusted figure is similar to the pre-pandemic figures reported to the Committee previously.

Tipton & Edgbaston House - Electrical Heating Works

A waiver with a value of £242,500 for the delivery of urgent electrical heating distribution remedial works at Tipton & Edgbaston House, Somerstown was awarded to a previous term service provider to the Council for electrical works. The works which require access to HRA resident properties could not be undertaken safely whilst lockdown restrictions

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were in place. The works needed to be undertaken on a time of the essence basis over the summer months to ensure that residents had access to reliable heating in the coming colder months.

Best value has been assured through the contractor working to rates which applied to the competitively tendered contract they previously held with the Council. Whilst the works are above the Council's tender threshold they fall significantly below the higher statutory PCR 2015 for works of approx. £4.7M. There is also a strong case for exemption in line with regulatory principles on the basis of the urgent nature of the works which could not be effectively procured and delivered under a streamlined competitive procurement process.

UNIX System Support & Maintenance

A waiver with a value of £189,417 has been awarded for the provision of critical services required to support the Council's data centre and other Council hosted IT services. Due to the significant pressure IT have been under to provide an effective response to the pandemic and move to cloud based solutions priority could not be given to undertaking a full procurement for these services.

The contract term has been limited to the 36 months of support likely to be required whilst applications are migrated. Whilst a few procurement process was not undertaken best value has been assured via the seeking of quotations from other providers against which the contracted supplier has compared favourably.

The contract falls only just above the statutory PCR 2015 threshold for services of £189,330 and relates to the delivery of niche technical services. Risk of challenge is therefore deemed to be low and will be further mitigated by publication of a Contract Award Notice which will time out any challenges from any aggrieved suppliers after 30 calendar days.

Further Waivers

A further 9 waivers were approved in the quarter which exceed the Council's tender threshold of £100k but do not exceed the statutory approx. £189k PCR 2015 threshold which applies for services and supplies contracts. Below £100k but above £50k a further 22 waivers were approved within the quarter. These are listed within the exempt 'Appendix 2 - Waivers July - Oct 21' report.

These awards do not pose any significant level of risk to the Council in terms of challenge from aggrieved suppliers although there is a duty under Local Government Act that the Council should abide by the constitutional rules it voluntarily imposes upon itself. Whilst unlikely an aggrieved supplier could request a judicial review through the courts on this basis.

Due to the request by the Committee to the Procurement Manager to endeavour to shorten the overall length of this content analysis of below PCR 2015 threshold waivers has been omitted from this summary analysis session although the Procurement Manager will provide further information to the Committee regarding further waivers upon request.

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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
- 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 the last quarter compared to the quarter reported at the last Committee meeting is as follows:

	Nov 20 - Jan 21				Jul - Sep 21			
	Value of Contracts		Number of Contracts		Value of Contracts		Number of Contracts	
RED	£103,000	0.00%	2	0.15%	£87,200	0.00%	3	0.15%
AMBER	£32,909,822	1.47%	19	1.42%	£12,075,114	0.21%	18	0.92%
GREEN	£33,912,973	1.52%	54	4.04%	£558,289,938	9.78%	279	14.27%
GOLD	£414,562,229	18.55%	285	21.30%	£43,043,352	0.75%	74	3.79%
KPI never scored	£154,829,522	6.93%	220	16.44%	£256,595,936	4.50%	320	16.37%
NO KPI scheduled	£269,863,940	12.08%	341	25.49%	£3,222,452,945	56.45%	615	31.46%
NOT YET DUE	£157,274,213	7.04%	182	13.60%	£467,869,143	8.20%	288	14.73%
KPI expired	£1,171,226,036	52.41%	235	17.56%	£1,147,634,413	20.11%	358	18.31%
Grand Total	£2,234,681,735	100.00%	1338	100.00%	£5,708,048,041	100.00%	1955	100.00%

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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 Jul-Sep 21 - 05.11.21'.

Red Status Contracts

Collection and Disposal of Hygiene Waste - International Port

Issues with missed collections and incorrect Port contact details shared with the supplier. An improvement plan has been agreed with the supplier. Total contract value is £44k.

Amber Status Contracts

Provision of Building Cleaning Services at Portsmouth International Port

Issues with missed cleaning tasks and timekeeping. Improvement plan out in place with supplier and issues have now been effectively rectified. Total contract value is £1,587,201.

Learning Management System - CPD Online

Scores entered incorrectly, should be classified as green status performance. Total contract value is £74k

Provision of apprenticeship training in accountancy at level 2 & 4

Lack of flexibility from provider to accommodate specific apprentice needs. A more flexible specification will be used when the contract is re-procured next year. Whilst there is frustration from the service it may be that the provider has been scored too low as they are performing the contract to specification. Total contract value is £150k.

Planning Consultancy Services - Portsmouth International Port

Scores entered incorrectly, should be classified as green status performance. Total contract value is £42.4k

John Marshall Court - Scooter Room

Scores entered incorrectly, should be classified as gold status performance. Total contract value is approx. 73k

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Management Support and power supply

Scores entered incorrectly, should be classified as green status performance. Total contract value is £99k.

Port Infrastructure Principle Designer

Scores entered incorrectly, should be classified as green status performance. Total contract value is approx. £81k.

Provision of Port Security Services

Awaiting response from contract manager.

KPIs Not Scored / Not Scheduled / Expired

Significant concern remains in respect of overall KPI reporting which shows that high levels of contracting activity by both volume and value are not being reported on. Procurement resource which has been previously allocated on a full time basis to the implementation of Oracle FUSION will be assigned to undertake a detailed analysis of this issue.

This work has not previously progressed since the last report taken to Committee due to recruitment of dedicated contract management resource by Procurement being put on hold whilst the Council undertakes a saving review for the coming financial year budget setting process.

Procurement will target completion of an initial analysis and performance reporting improvement for high value / long term contracts in time for the next Committee meeting. Subject to resource commitments and progression of the suspended recruitment to the contract management post Procurement will also seek to progress work on simplifying the KPI reporting processes which are currently in place and may be presenting a barrier to reporting on contract delivery performance by services.

What is still 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.

Work was due to be undertaken to address this however this has stalled due to Procurement losing the Contract Management Business Partner and a recruitment process again being required.

Prior to the Contract Management Business Partner leaving work had been 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.

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Signed by Richard Lock - (Acting) Procurement Manager