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Title of meeting: Governance and Audit and Standards Committee

Subject: Procurement Management Information

Date of meeting: 21 January 2022

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 Dec 21 10.01.22
- EXEMPT G&A Procurement MI App 2 Waivers Nov Dec 21 10.01.22
- EXEMPT G&A Procurement MI App 3 Contract KPIs Oct Dec 21 10.01.22

The report provides a performance comparison between the last time period reported to the committee on 5th November 2021 which analysed performance over a time period of July - October 2021.

Whilst we generally try to cover performance by quarter to allow for effective comparison on this occasion we are only able to the latest two month period of November - December 2021 due to the timings of the Governance, Audit & Standards Committee meetings.

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Whilst the pressures of the pandemic and Brexit continue to be felt the Council has again further moved from a position of response to one of recovery, as shown within the comparisons made within this report.

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 to Committee on 5th November 2021 which covered the month of September 2021 against spend compliance covering the month of December 2021.

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 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,

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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 has now begin 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 has also begun 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 is being actively 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 analysis of 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.

December 21 Analysis

The detailed report taken from Oracle FUSION is included as exempt 'Appendix 1 - Spend Compliance Dec 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:

- 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.

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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.

Raw compliance has dropped by a significant margin from 91% reported for September 21 and 92% reported in July 21 to 77% for December 21. However, as shown in the service by service narrative analysis which follows this has been driven by one transaction of approx. £4.6M which relates to a significant construction contract which was let compliantly via a pre-existing national framework agreement but for which a contract entry has not been raised on the InTend system.

When this one transaction is addressed compliance for December 21 equates to 99% which is the same adjusted figure reported for both July and November 21.

Following adjustment the compliance figure for December 2021 is now at 99% which is the same as the figure reported at the last two Committee meetings.

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 Executive at 91%. It should be noted that this service areas total non-compliant spend of £62,921 for the month forms a fraction of total spend for the month of £28,388,444. Furthermore the transactions concerned are unlikely to pose any level of market challenge or best value risk to the Council given the relatively low values involved.

<u>Key</u>

- NC Non-compliant
- C Compliant

	September 2021			Decembe	er 2021	
Directorate	Total £	NC £	C %	Total £	NC £	C %
Adult Services	£479,148	£11,256	98%	£825,147.05	£3,431	100%
Children Families & Education	£412,974	£729	100%	£285,820	£3,233	99%

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Corporate Services	£215,534	£90,465	70%	£452,511.89	£18,339	96%
Culture Leisure & Regulatory Services	£206,663	£2,383	99%	£190,684.48	£9,589	95%
Executive	£88,998	£1,979	98%	£62,921	£6,458	91%
Finance	£3,456,220	£47,093	99%	£3,041,380.09	£13,563	100%
Housing Neighbourhood & Building Services	£7,923,989	£22,483	100%	£6,302,136.83	£3,498	100%
Portsmouth International Port	£492,284	£0	100%	£6,027,747	£48,279	99%
Public Health	£235,110	£0	100%	£57,351	£0	100%
Regeneration	£7,808,459	£54,756	99%	£4,958,520.48	£1,809	100%
TOTAL	£22,624,444	£236,594	99%	£28,231,967	£156,477	99%

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. All non-compliant transactions fall significantly below the Council's tender threshold of £100k and significantly below £189k threshold for supplies and priority services under Public Contracts Regulations (2015) relevant at December 2021.

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.

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Corporate Services

No concerns. All 11 non-compliant transactions fall significantly below the Council's tender threshold of £100k and significantly below £189k threshold for supplies and priority services under Public Contracts Regulations (2015) relevant at December 2021.

Culture Leisure and Regulatory Services

No concerns. All 4 non-compliant transactions fall significantly below the Council's tender threshold of £100k and significantly below £189k threshold for supplies and priority services under Public Contracts Regulations (2015) relevant at December 2021.

The highest value non-compliant transaction which has a yearly distribution amount of £46,000 is linked to a lease arrangement and therefore may not be covered by procurement regulations although further investigation is required.

Executive

No concerns. Whilst at 91% the 95% performance target has been missed the 3 non-compliant transactions fall significantly below the Council's tender threshold of £100k and significantly below £189k threshold for supplies and priority services under Public Contracts Regulations (2015) relevant at December 2021.

Finance

No concerns. 2 transactions relate to out of area school placements which fall under light touch regime which has a significantly higher statutory advertising threshold of £663,540 and often cannot be effectively tendered due to urgency, high needs, supplier capacity and end user preference.

2 other transactions relate to specific legal services which are likely to fall outside of full application of the Public Contracts Regulations (2015) and in any event fall significantly below the Council's tender threshold of £100k and the higher statutory threshold which applies to light touch regime services which generally encompasses legal services.

The remaining 2 non-compliant transactions fall significantly below the Council's tender threshold of £100k and significantly below £189k threshold for supplies and priority services under Public Contracts Regulations (2015) relevant at December 2021.

Housing Neighbourhood and Building Services

No concerns. 1 transaction has a yearly distribution value of £450k and relates to securing of hotel rooms for placement of priority homeless individuals. This arrangement has been sourced compliantly via a Council Dynamic Purchasing System and has been removed from the non-compliant figures.

2 further below £100k transactions have also been removed from the non-compliant figures where compliant contracts or waivers have been approved. The remaining non-compliant transactions fall significantly below the Council's tender threshold of £100k and

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significantly below £189k threshold for supplies and priority services under Public Contracts Regulations (2015) relevant at December 2021.

Portsmouth International Port

No concerns. 1 transaction with a distribution value of £4,638,177 relating to construction of the new Border Control Post facilities which significantly skews the service and overall performance figures has been removed from the non-compliant figures as the contract was sourced compliantly from a national framework agreement although a contract entry is still required on InTend.

The remaining non-compliant transactions fall significantly below the Council's tender threshold of £100k and significantly below £189k threshold for supplies and priority services under Public Contracts Regulations (2015) relevant at December 2021.

Public Health

No concerns. 100% compliant.

Regeneration

No concerns. 1 transaction with a distribution value of £10,197,895 relating to construction works at Dunsbury Park has been removed from the non-compliant figures as the contract was sourced compliantly from a national framework agreement although a contract entry is still required on InTend.

A further transaction with a distribution value of £177,964 which relates to cost consultancy associated with Dunsbury Park has also been removed from the non-compliant figures as again this has been compliantly sourced from a national framework agreement.

One transaction with a distribution value of £20k has been removed from the non-compliant figures as the contract which is concerned with home to school transport has been sourced compliantly via a Council Dynamic Purchasing System.

The remaining non-compliant transactions fall significantly below the Council's tender threshold of £100k and significantly below £189k threshold for supplies and priority services under Public Contracts Regulations (2015) relevant at December 2021.

SECTION 2 - CONTRACT AWARD VIA WAIVER

The tables below show a comparison of contracts awarded via direct award waiver between July - October 2021 as reported at the Committee meeting on 5th November 2021 with those awarded via direct award waiver between November - December 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,

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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 had been 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 retendering processes were redeployed onto essential response activities or, in the case of some supplier bidding teams, furloughed.

In the last 2 months the impact of CVD19 in respect of entering into new / extending existing contracts has again 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 over the last 2 months.

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 roughly in line with those reported before the pandemic.

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

	July - October 2021		November - December 2021			
Reason for direct award waiver	No. of Contracts	Contract Value	No. of Contracts	Contract Value		
Business as Usual Direct award	97	£5,863,920	60	£2,194,860		
Waivers agreed due to Covid-19 (re- tender delay / scope variation)	2	£317,500	0	£0		

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Waivers in response to Covid-19 (emergency supplies / services / works)	0	£0	2	£190,258
Waivers in response to and due to Brexit		£30,000	1	£40,000
Total	100	£6,214,420	100	£2,425,118

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 Nov - Dec 21 - 10.01.22'.

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

No significant concerns.

Core infrastructure grant funding

A waiver with a value of £218,836.00 was awarded for Infrastructure funding to support HIVE Portsmouth. An overarching waiver covers strategic grant payments to HIVE as approved by cabinet in March 2020 as part of the strategic partnership agreement between Portsmouth City Council and HIVE. The agreement is for grant funding to the HIVE of £109,418 per annum for 2 years would flow through PCC whilst the CCG seek to become a party to the strategic partnership agreement / MOU between PCC and HIVE.

It should be noted that the allocation of grant funding, particularly in relation to allocation of funding on a strategic grant basis, does not generally fall within the scope of the Public Contracts Regulations (2015) but is covered by the Council's Contract Procedure Rules via the Grantway process which has been waived. The strategic MOU with HIVE has also been subject to significantly publicised, as such the risk of any market challenge arising and subsequently having any chance of success is deemed to be very low.

Wide Area Network (WAN) renewal

A waiver with a value of £234,784.00 for the Council's Wide Area Network was awarded to the incumbent supplier to ensure continuity of service. This service was due to be transferred to MLL Ltd as part of the Local Full Fibre Network contract, however delays to the implementation of the full fibre network has meant that some connections were not completed in time. A total of 38 network services had to be extended in order that key IT services can continue to operate, without this new contract staff would be unable to access Internet based services or access Council systems while working at home or from Council sites.

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Further Waivers

A further 4 waivers were approved from November to December which exceed the Council's own tender threshold of £100k but do not exceed the statutory approx. £189k PCR 2015 threshold which applies for priority services and supplies contracts. These are listed within the exempt 'Appendix 2 - Waivers Nov - Dec 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 constitutional rules and only depart from them by exception. 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.

SECTION 3 - CONTRACT MANAGEMENT PERFORMANCE MONITORING

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

Key

Gold: Outstanding performanceGreen: 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:

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	Jul - Sep 21				Oct - Dec 21			
	Value of Con	tracts	Number of Contracts		Value of Contracts		Number of Contracts	
RED	£87,200	0.00%	3	0.15%	£0	0.00%	1	0.08%
AMBER	£12,075,114	0.21%	18	0.92%	£7,231,729	0.14%	16	1.29%
GREEN	£558,289,938	9.78%	279	14.27%	£488,540,392	9.58%	204	16.45%
GOLD	£43,043,352	0.75%	74	3.79%	£24,045,781	0.47%	47	3.79%
KPI never scored	£256,595,936	4.50%	320	16.37%	£264,991,519	5.19%	227	18.31%
NO KPI scheduled	£3,222,452,945	56.45%	615	31.46%	£3,202,670,069	62.78%	519	41.85%
NOT YET DUE	£467,869,143	8.20%	288	14.73%	£1,114,125,883	21.84%	226	18.23%
KPI expired	£1,147,634,413	20.11%	358	18.31%	£0	0.00%	1	0.08%
Grand Total	£5,708,048,041	100.00%	1955	100.00%	£5,101,605,373	100.00%	1240	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

Concession - Culture & Leisure Catering Sites 2021: Mill Lane Car Park

Site operations significantly disrupted by pandemic meaning that both contracts were terminated before completion of term. However, it should be noted that the majority of the issues were due to impacts of the pandemic rather than in relation to any fault by the supplier. As such whilst the KPI has been scored red this would not create a barrier to the supplier bidding for future opportunities with the Council.

Amber Status Contracts

Supply of Pilot Boat Service For Portsmouth Competent Harbour Authority

The lower score reflected a number of incidents when the Contractor was unable to supply a pilot boat. An alternative supply was sourced for these few occurrences and a meeting took place to discuss with the contractor. Issues have now been resolved and supply has returned to normal levels. Contract value per annum is £131,000.

Education Management System (EMS)

Awaiting response from contract manager. The system provision is currently being retendered with bids due back on 4th February 2022 and award of new contract targeted at 29th March 2022. Contract value per annum is £107,013.

Software Licence and Support for Scala

The lower score reflected a slower response than normal to communications sent to the supplier. This was largely due to the impact of the pandemic on staffing levels etc. and response times have since improved. Contract value per annum is £12,771.

Collection and Disposal of Hygiene Waste - International Port

The lower score reflected issues with the maintenance of the alcohol gel dispensers and a missed collection. Discussions took place with the contract manager and the maintenance and missed collection has since been completed. Contract value per annum is £9,500.

Vending Provision at the Hard Interchange Information Pod

Significantly impacted by pandemic. Income has been impacted but it is not the fault of the supplier and the contract should really have been scored as green on this basis.

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Approved Mental Health Professional Team Specialist Advice

Scores entered incorrectly, should be classified as green status performance. Contract value per annum is £3,900.

External Decoration to two semi-detached houses - Serpentine Road, Leigh Park area

Works delivered to a good standard and below tendered sum. Minor delay of 1 week and some issues in respect of obtaining required documentation on time has meant that contract performance has slightly dipped below green however no significant concerns have been raised. Contract value is £62,220.

Early Years Practitioner L2 & Educator L3 Apprenticeships

Some issues with timescales being missed and communication which have since been addressed therefore no ongoing concerns. Contract value per annum is £15,000.

Network Services

Awaiting response from contract manager. Contract value per annum is £390,000

Concession - Culture & Leisure Catering Sites 2021 (July-Sep): Duisburg Way

Site operations significantly disrupted by pandemic meaning that both contracts were terminated before completion of term. However, it should be noted that the majority of the issues were due to impacts of the pandemic rather than in relation to any fault by the supplier. As such whilst the KPI has been scored amber this would not create a barrier to the supplier bidding for future opportunities with the Council.

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.

Due to the significant number of critical activities that will role will support this post has now been removed from the savings proposals. The recruitment process will be reactivated in January 2022 with a target of having this post filled by the end of the financial year.

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.

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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.

A simplified single KPI with 0-5 scoring criteria has been developed and has been successfully piloted on the Council's Primary Contractor Framework Agreement. Procurement will target disbanding the current KPI system and replacing with the simplified flexible model over the first half of 2022.

Concerns remain in respect of the number of contracts where the KPI has never been scored or has not been scored for some time. Procurement will prioritise ensuring that performance data is recorded for the Council's identified higher value / higher risk contracts now using the current KPI model and will then target addressing medium value / lower risk contracts on a phased basis in line with the rollout of the simplified KPI model over the first half of 2022.

Signed by Richard Lock - (Acting) Procurement M	anager