

Waivers – When do we use them and why

The use of the waiver function is an important facility that, when used appropriately, allows the council to achieve best value and efficiencies from its Contract Standing Orders and therefore supports achieving value for money through procurement processes

Under CSOs 20.3 & 20.4, Directors have delegated powers to waive CSOs in relation to contracts with an estimated contract value of less than £75,000 and over £75,000 following consultation with the chair of the relevant committee and the Head of Procurement.

The Corporate Procurement Team continually promotes best procurement practice across the council and utilises various innovative approaches which are allowed for within CSOs and without the need for a waiver e.g. increasing the use of consortium contracts and frameworks. The authority currently has circa £90 million of annual spend procured through collaborative arrangements. As part of this process, it is sometimes necessary to provide for short term extensions to existing contracts, which allows alignment with joint or regional procurements.

The introduction of a Procurement pipeline (Forward Plan) some years back provided advanced insight into the needs of service areas throughout the authority. The aim of the Forward Plan is to provide early intervention from Procurement, Legal and Finance with the ultimate aim of significantly reducing the need to authorise Waivers. The Forward Plan has brought about a number of improvements within the authority.

Primarily, it has served to improve the level of compliance to Contract Standing Orders but in addition it has created a significant increase in the level of procurement activity as spend data has identified areas of non-compliance and compelled services to prioritise capacity to procure services.

Additionally, it is often the case that national and local policy and financial changes require alternative action to be taken. Services such as Social Care, Homelessness, Public Health and Family, Children & Learning are constantly evolving which necessitates service reviews, re-designs and re-commissioning, often meaning that waivers are a sensible option to extend current service contracts to allow these processes, including appropriate consultation, to take place.

Occasionally an emergency will dictate the need for a waiver. This can happen, for example, where vital equipment unexpectedly fails a safety inspection and a repair is either not possible or would not be economically viable. A prolonged tender process would leave the authority without a service and therefore a waiver enables continuity of service.

There are a number of Waivers raised for specialist services or staff where the market may be extremely restricted and as such a Waiver process is deemed to be the most effective and efficient method of award.

Each Waiver is populated with reason codes which allows statistical analysis of requests. These are:

1. Insufficient Tenders / Did not accept lowest bid
2. Award with no tender process – Consultant
3. Award with no tender process – Contractor
4. Award with no tender process – Supplier
5. Specialist
6. Urgent award – Consultant

7. Urgent award – Contractor
8. Urgent award – Supplier
9. Other

A stringent process of approvals is required for a Waiver request to be accepted (especially in excess of £75,000). The description / business case will include a confirmation that value for money has been considered, and an explanation of how the waiver provides best value. It will also explain how the waiver contract sum has been calculated, and break down contract values for each supplier covered by the waiver.

Proposed savings through using a waiver should be included; this will be on the basis that as no Procurement process is undertaken a provider should pass on any financial benefit in the contract value

The requestor will consult with the relevant Procurement Business Partner who will provide the Procurement implications.

Financial and Legal implications will be completed by the relevant officers. Once this is complete, the Executive Director for the relevant service will consult with the Lead Member prior to authorising. Only when this entire process is complete will the Head of Procurement authorise award of contract.