

# Procurement Waivers 2023/24 Year End Report

<b>Governance and Audit Committee</b>	24 July 2024
<b>By</b>	Chris Blundell, Director of Corporate Services and Section 151 Officer
<b>Cabinet Portfolio</b>	Cllr Rob Yates, Cabinet Member for Finance, Procurement and Risk
<b>Key Decision</b>	No
<b>Decision classification</b>	Unrestricted
<b>Ward:</b>	All Wards

## Purpose of the Report

This is the fifth of the ongoing regular update reports to the committee on the council's use of waivers to its Contract Standing Orders (CSOs). The purpose of the report is to provide the committee with oversight of the application of waivers to the council's contract standing orders have been raised, setting out the number of instances and the rationales for the decisions taken by officers.

## Recommendation(s):

The committee notes the report.

### 1. Summary of Reasons

- 1.1 This is the fifth of the ongoing regular update reports to the committee on the council's use of waivers to its Contract Standing Orders (CSOs).

The council's purchasing decisions and processes are important because the money involved is public money. The council's CSOs provide a structure within which purchasing decisions are made and implemented and contain the core obligations that all officers who are in a position of spending the Council's money must follow.

## 2. Background

2.1 The council's purchasing decisions and processes are important because the money involved is public money and the council has a responsibility to ensure value for money is achieved.

The council's CSOs provide a structure within which purchasing decisions are made and implemented and contain the core obligations that all officers who are in a position of spending the Council's money must follow. CSOs are the minimum requirements all officers should follow, providing protection to the council, officers and members, and which form part of the Council's Constitution.

CSOs apply to all contracts the council enters with the following exceptions:

- Employment contracts
- Acquisition or rental of land, buildings or other property
- Arbitration or conciliation
- Retention of legal councils and appointment of expert witnesses in legal proceedings
- Service Level Agreements setting out funding arrangement to voluntary bodies

## 3. General Principles Applying to All Contracts

3.1 There is a general presumption in favour of competition and that contracts will be put out to competitive quote/tender when they are of an estimated value of £25,000 and above. This is to ensure that the Council uses its resources efficiently, purchases quality goods, services and works, safeguards its reputation from any implication of dishonesty or corruption and is able to demonstrate principles of sustainability, efficiency, whole life costing and cost savings.

3.2 All contract opportunities with a value over £30,000 and above including VAT must be published on the government's 'Contracts Finder' portal (<https://www.gov.uk/contracts-finder>), unless there is a clear justified need not to do so. Subsequent awards over this value must also be published. Contracts in excess of £140,000 are also published on the Kent Business Portal ([www.kentbusinessportal.org.uk](http://www.kentbusinessportal.org.uk)).

3.3 The tables below set out the procurement route to be used depending on the value of the contract without VAT.

**Table 1: Goods, Supplies and Services contracts**

Value	Procurement Method
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Below £25,000	Local CSO rules apply - At least one quote in advance - Consideration to be given to suitably qualified Thanet/Supplier/s, if available.
25,000 to 49,999.99	Local CSO rules apply - At least three quotes in advance – Consideration to be given to suitably qualified Thanet Supplier/s, if available.
£50,000 - £139,999.99	Local CSO rules apply - At least three written quotes in advance, using the Council's Invitation to Quote documents or electronic method agreed with Procurement - Consideration to be given to suitably qualified Thanet/Supplier/s, if available.  Published on Contracts Finder
£140,000 - £179,085.99	Local CSO rules apply - At least three written tenders in advance, using the council's Invitation to Tender documents with advertisement by public notice.  Published on Contracts Finder, and the Kent Business Portal
£179,086.00 and above	PCR2015 & CSOs apply - Full competitive process using the Council's invitation to Tender documents following advertisement in the FTS for suppliers  Published on Find a Tender Services (FTS), Contracts Finder and the Kent Business Portal

**Table 2: Works Contracts**

<b>Value</b>	<b>Procurement Method</b>
Below £25,000	Local CSO rules apply - At least one quote in advance - Consideration to be given to suitably qualified Thanet/Supplier/s, if available.
25,000 to 49,999.99	Local CSO rules apply - At least three quotes in advance – Consideration to be given to suitably qualified Thanet Supplier/s, if available.
£50,000 - £139,999.99	Local CSO rules apply - At least three written quotes in advance, using the Council's Invitation to Quote documents or electronic method agreed with Procurement - Consideration to be given to suitably qualified Thanet/Supplier/s, if available.  Published on Contracts Finder
£140,000 - £4,447,173.99	Local CSO rules apply - At least three written tenders in advance, using the council's Invitation to Tender documents with advertisement by public notice.  Published on Contracts Finder, and the Kent Business Portal
£4,447,174.00 and above	PCR2015 & CSOs apply - Full competitive process using the Council's invitation to Tender documents following FTS advertisement

**Table 3: Service/Works Concession Contracts**

Value	Procurement Method
Below £25,000	Local CSO rules apply - At least one quote in advance - Consideration to be given to suitably qualified Thanet/Supplier/s, if available
25,000 to 49,999.99	Local CSO rules apply - At least three quotes in advance – Consideration to be given to suitably qualified Thanet Supplier/s, if available.
£50,000 - £139,999.99	Local CSO rules apply - At least three written quotes in advance, sourced and receipted electronically using Council's e-procurement system - Consideration to be given to suitably qualified Thanet/Supplier/s, if available  Published on Contracts Finder
£140,000 - £4,447,173.99	Local CSO rules apply - At least three written tenders in advance, using the council's e-procurement system with advertisement by public notice  Published on Contracts Finder, and the Kent Business Portal
£4,447,174.00 and above	Concession Contracts Regulation 2016 (ccr2016) apply - full competitive process using the Council's e-procurement system following FTS advertisement  Published on Find a Tender Service (FTS), Contracts Finder and the Kent Business Portal

3.4 The council is also able to utilise Purchasing Schemes such as framework agreements, Dynamic Purchasing systems and other similar arrangements, such as the Government eMarketplace as an alternative and compliant route to procuring from the market.

3.5 As a minimum, all contracts of a value of £50,000 or more shall include clauses which set out:

- The works, supplies (goods), services, material, matters or things to be carried out or supplied
- Specify the price to be paid, the estimated price or the basis on which the price is to be calculated
- The time within which the contract is to be performed
- Quality requirements and/or standards that must be met
- Requirements on the contractor to hold and maintain appropriate insurance
- Adequate contract management and audit provisions
- What happens in the event that the contractor fails to comply with its contractual obligations (in whole or in part)

- A duty on the contractor to comply with all relevant legislative requirements and discharge of obligations under said legislation.

## 4. Waivers

- 4.1 The requirement for the Council to conduct a competitive purchasing process for contracts of £25,000 or more can be waived under certain circumstances.
- 4.2 This arises when officers request to waiver some of the council's CSOs in order to progress a purchase that is deemed in the best interest of the public or service for reasons such as, however, not limited to:
- Where a full competitive exercise is not able to be carried out for particular justifiable reasons,
  - where a competitive process was carried out, however, less than three Quote/Tenders were achieved, in order to progress the award of a contract the Council's T&C are not able to be used.

Other circumstances requiring a waiver could be:

- where Legal advice has been sought for contracts of 140k and above and it has been determined that due to the nature of the agreement being used,
  - it would not be best served for the contract or framework arrangement to be executed as a deed under the Council's common seal,
  - or where a Tender Opening is not being undertaken due to the need for a direct award process.
- 4.3 CSO 12 sets out the provisions under which a waiver must be complied with, ensuring a clear decision has been made, for what reason and by whom. For example:
- where contracts are below Public Contract Regulations 2015 (PCR) threshold and the work, supply or service is required as a matter of urgency and a delay would be likely to lead to financial loss, personal injury or damage to property,
  - Where the work is of a specialist nature, the skill of the contractor is of primary importance, and the supply market has been tested and found to be limited
  - At the discretion of the relevant Director who may proceed in a manner most expedient to the efficient management of the service/Council with reasons recorded in writing.
- 4.4 For a full list of justified circumstances, please refer to **Appendix 1**.

## 5. Relevant Issues

### 5.1 Waivers in 2023/24 (April to March)

5.1.1 Table 3 below summarises the Council's approved Waivers for 2023/2024:

**Table 3: Waivers 2023/24**

Department / Directorate	No. Approved Waivers for April to March 2023/24			No. Rejected Waivers for April to March 2023/24	Total no. of Waivers received for April to March 2023/24
	Below £100k	£100k and above	Total		
Chief Executive	1	0	1	0	1
Corporate Services	11	0	11	1	12
Environment	6	5	11	3	14
Place	7	1	8	6	14
<b>Total Number of Waivers</b>	<b>25</b>	<b>6</b>	<b>31</b>	<b>10</b>	<b>41</b>

*For purposes of analysis, the thresholds refer to below 100k and above 100k, which were in line with the CSOs thresholds applicable during the November 2023 to March 2024 period and are not reflective of the thresholds shown in Table 1 at 3.3 above. Future reports from April 2024 onwards, will refer to the new threshold of £140k.*

5.1.2 There have been 41 Waiver applications received for the 2023/2024, April to March 2024 period. Of the waivers received 31 were approved. The majority of Waiver applications continued to be under the 100K threshold (as per CSO thresholds applied at the time). For the same period of time in 2022/2023 46 Waiver applications were received. Of the waivers received, 45 were approved, with 40 being below the 100k threshold. In comparison, this is 14 fewer waivers approved overall in 2023/2024. A copy of the Waiver Application can be seen in **Appendix 2**.

5.1.3 During the April 2024 to March 2024 period, reasons for waivers have included where the Council Standard Clauses have not been able to be used; either where a compliant framework would not permit inclusion or for ICT related purchases, where only one supplier could provide the full requirements, unforeseen additional requirements identified during the contract and the majority of Waivers approved

were where it was considered that a direct award was in the best interests of the management of the service/Council; for cost-saving reasons, complexities of the project or where the risk of not achieving the requirement by a specific deadline would significantly impact the Council's internal services.

- 5.1.4 Of the 10 Waiver applications rejected, these were rejected on the basis of being considered non-compliant with CSOs and the Financial Procedure Rules (FPRs). Advice was given for each rejected waiver on how to mitigate the same circumstances occurring in the future. The number of rejected waivers has increased in 2023/2024, however, 6 of the rejected waivers were for a previously related requirement and initially deemed one contract, which was being considered to be split out, and therefore submitted for 6 separate contracts, increasing the number of waiver applications received.
- 5.1.5 A detailed list of 2023/2024 waivers can be seen in **Appendix 3** and a breakdown of Nature of Waiver Categories can be seen in **Appendix 4**.

## **6. Ongoing Objectives**

- 6.1 The next refresh of CSOs anticipated to go to Cabinet in September 2024, prior to the implementation of the new Procurement Regulations on 28 October 2024.

With the information currently available, the implementation of the Procurement Act 2023 and increased transparency notices required under the Act, is likely to impact the below threshold contracts more significantly, therefore, changes to the limits for below threshold contracts will continue to be considered for the next refresh. Engagement will be undertaken with key stakeholders again, which will include the waiver process. The Project Management Framework adopted by the Council for the development, delivery and post-implementation considerations of projects will also be taken into consideration.

- 6.2 As advised in the last report, one of the other amendments being considered that may assist the Council streamline its internal processes is the amendment to wording surrounding the Standard Clauses inclusion for Purchasing Schemes (Frameworks). There are a number of Frameworks the Council uses, which do not allow provision for additional Terms and Conditions to be applied. In these circumstances the Council would not be able to include its own Standard Clauses and comply with its own CSOs requirements, without waiving this requirement. In consultation with Procurement and Legal, where the Council is prevented from including its own standard Clauses within a Framework Agreement, it has been proposed to amend the CSOs wording to acknowledge this as a valid circumstance outside of the Council's control and would therefore, not require a Waiver to be submitted. This suggested amendment will be applied to the next CSOs refresh in September 2024 and is anticipated to reduce the number of waivers received.

- 6.3 With the [Procurement Act 2023](#) coming into force on 28 October 2024 training sessions have and continue to be attended by Procurement, Legal, Heads of Service for these areas and the Section 151 Officer on what the Council is being introduced under the new Regulations. The information received from the government is evolving and therefore, not all information is currently available to the Council. With the information available, the teams are continuing to work together to ensure the Council is prepared for the change in regulations and the impact on the Council's processes going forward on current and future contracts/purchases. What is clear is that there is a noticeable change in the number of Notices that will be required to be published for above and below threshold contracts and this is anticipated to impact both process and the resources to support. Further updates will be provided when more information becomes available and how this could affect the Waiver application process.

## **7. Alternative Options**

- 7.1 The recommended option is for the Committee to note the report. Alternatively, the Governance & Audit Committee may decide not to do this and advise the reason(s) why.

## **8. Consultation**

- 8.1 No consultation required

## **9. Corporate Implications**

### **9.1 Finance and Resources**

- 9.1.1 As detailed within the body of the report

### **9.2 Legal and Constitutional**

- 9.2.1 Local Government procurement is governed by the Public Contracts Regulations 2015 and Concessions Contracts Regulations 2016.

The Local Government (Transparency Requirements) (England) Regulations 2015 require additional contracting information to be published beyond the legislative requirements of the Public Contracts Regulations 2015 and Concessions Contracts Regulations 2016.

### **10.3 Council Policies and Priorities**

- 10.3.1 The overriding procurement policy requirement is that all public procurement must be based on value for money, defined as "the best mix of quality and effectiveness for the least outlay over the period of use of the goods or services bought". The Waiver process is part of the Council's Contract Standing Orders and therefore, directly related to the importance of the Council's purchasing decisions and processes and



the responsibility to ensure value for money is achieved as it is using public money and therefore, looks to consider in each purchase the Corporate Priorities where applicable:

- To keep our district safe and clean
- To deliver the housing we need
- To protect our environment
- To create a thriving place
- To work efficiently for you

## **10.4 Risk**

10.4.1 The Waiver process takes into consideration the Risks presented by the Responsible Officer, Directors, Procurement, Legal, Finance, in consultation with the Risk and Insurance Team where advice is needed, in regard to any risks that have been identified during the Risk Management process. The mechanism is solely dependent on the risk mechanism that sits behind the score and risk presented and, in many occasions the waiver is the mechanism to mitigate the risk presented.

## **10.5 Climate Change and Biodiversity**

10.5.1 There are no environmental and climate implications that will be generated by the recommendations or advice presented in this report. Under the Waiver process a Procurement Initiation Form is required to be submitted, which enables for Climate Changes considerations to be taken in account where possible in line with the Council's Climate Change Strategy and applied to the purchase being made, whether it is via a direct award or competitive process undertaken. The extent to which climate change considerations can be applied, will be dependent on the nature of the purchase being made and route to market being chosen.

## **11. Equality, Equity and Diversity Implications**

11.1 There are no equity and equalities implications arising directly from this report, but the Council needs to retain a strong focus and understanding on issues of diversity amongst the local community and ensure service delivery matches these.

## **12. Crime and Disorder Implications and Community impact**

12.1 No implications or impact identified.

## **13. Subject History**

13.1

## **Annexes**

Appendix 1 - CSO 12 Waivers extract

Appendix 2 - CSO Waiver Application

Appendix 3 - Detailed list of 2023/2024 Waivers

Appendix 4 - Category of Waivers 2023/2024 (April to November)

## **Background Papers**

- *No Background Papers applicable*

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**Report Sign Off / Signed off by / Date sent / Date signed off / Initials**

**Legal** *Ingrid Brown (Head of Legal and Democracy & Monitoring Officer)*

**Finance** *Not applicable*