

**SUBJECT: INTERNAL AUDIT SECTION
CONTRACT PROCEDURE RULES -
EXEMPTIONS**

DIRECTORATE: Resources
MEETING: Governance & Audit Committee
DATE: June 2024
DIVISION/WARDS AFFECTED: All

1. PURPOSE

- 1.1 To consider the adequacy and appropriateness of the exemption process from the Authority's Contract Procedure Rules.
- 1.2 To inform the Governance and Audit Committee of the number of exemptions requested by operational managers and to identify any noncompliance with the process or adverse trends.

2. RECOMMENDATION(S)

- 2.1 That the Governance and Audit Committee accepts and acknowledges the justifications for the exemptions provided by operational officers.
- 2.2 If the justifications are not accepted, then consideration should be given to calling in the respective operational officer and their respective Head of Service to further account for the reasons why they could not comply with the Council's Contract Procedure Rules at the time of the procurement.
- 2.3 That the Governance and Audit Committee receive an updated report in 6 month's time.

3. KEY ISSUES

- 3.1 To ensure compliance with the Council's Contract Procedure Rules in the way goods, works and services are procured on behalf of the Authority.
- 3.2 Reassurance that the exemption process from Contract Procedure Rules is operating as intended by managers procuring goods, works or services on behalf of the Authority.

- 3.3 Some operational managers procuring goods, works and services on behalf of the Authority may not be as familiar with Contract Procedure Rules and the exemption process as they should be.

4. REASONS

- 4.1 Contract Procedure Rules (CPR) were revised and updated in 2020/21 and approved by Council as part of the update of its Constitution in March 2021.
- 4.2 The previous report regarding CPR Exemptions was presented to the Governance & Audit Committee in November 2023.
- 4.3 A number of potential legislative changes with regards to Procurement are being discussed by UK Government and the Senedd which may result in the Councils Contract Procedure Rules requiring an update within the next 12 months.
- 4.4 Previously, managers have been invited to attend a Governance & Audit Committee meeting to explain to Members their reasons for seeking an exemption rather than complying with the Council's Contract Procedure Rules. The Acting Chief Internal Auditor is not recommending that any managers be called in to the Governance and Audit Committee as a result of this report.

5. EXEMPTIONS - Background

- 5.1 Although the Contract Procedure Rules were written to ensure a consistent and fair approach to how officers procure works, goods and services on behalf of the Council, there will be occasions where full compliance may not be appropriate or possible. Provided there is sufficient justification and appropriate approval for not following these rules the policy recognises this.
- 5.2 Management need to ensure that the use of exemptions is proper and they are not being used for convenience or to avoid following CPRs. Exemptions from CPRs are therefore currently administered by Internal Audit, although approvals are given by Heads of Service, Chief Officers and/or Cabinet Members.
- 5.3 As detailed within the previous report to the Governance & Audit Committee, forms are sometimes not returned back to the Internal Audit team after being requested. These exemptions may not have been ultimately needed by the service managers but they may not have notified Internal Audit of this. Despite an extensive exercise, for the previous reporting period, November 2021 to September 2023, 7 forms remain outstanding with service managers and it has not been possible to determine whether or not the correct authorisation procedures had been followed.

- 5.4 It is important to note that this process only captures the exemptions which have been requested via and returned to Internal Audit.
- 5.5 Comprehensive guidance documents and a set of FAQ's are available via the internal MCC Hub for Officers who conduct procurement exercises. This includes specific guidance on Exemptions to the Contract Procurement Rules.
- 5.6 The correct process is as follows:
- Obtain a sequentially numbered exemption form from Internal Audit
 - Record the reason for requesting the exemption on the form
 - Check that Procurement Team are happy with the justification of the exemption
 - Obtain the appropriate level of approval
 - Return the fully signed off and approved form to Internal Audit.

6. EXEMPTIONS - Summary

6.1 EXEMPTIONS – October 2023 – March 2024 [349 - 365] [Appendix 3]

Of the 9 requested exemptions.

- 4 were returned to Internal Audit as required and were correctly authorised
- 1 was authorised by the Head of Service but was missing commentary from Procurement.
- 1 was no longer required after the form was issued
- 3 were not returned to Internal Audit

6.2 The comments of the Acting Chief Internal Auditor regarding the requested exemptions can be seen within the table at Appendix 3. It was pleasing to note that where forms had been returned, these contained appropriate justifications as to why an exemption was required.

6.3 However, out of 9 forms issued 3 have not yet been returned. The respective offers were contacted on a number of occasions prior to writing this report to ascertain their current status but no properly completed and authorised form has yet been received by Internal Audit. These were all within the same service area and this has been raised with the respective Chief Officer. We were informed that for each of these, they were for an extension of an existing contract. This extension has already taken place, without the necessary approval being demonstrated in accordance with the Councils Contract Procedure Rules. These are detailed within Appendix 3 (No's. 447, 448, 449).

8. RESOURCE IMPLICATIONS

None.

9. CONSULTEES

Deputy Chief Executive & Chief Officer Resources

10. BACKGROUND PAPERS

Internal Audit CPR Exemption Logs

11. AUTHOR AND CONTACT DETAILS

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AUDIT COMMITTEE JUNE 2024

CONTRACT PROCEDURE RULES - EXEMPTIONS

APPENDIX 1

Contract Procedure Rules Exemption Forms Log

| | | Period | Exemption Ref | No' of exemption requests | Cumulative |
|-----------|---------------|-------------------------------|---------------|---------------------------|------------|
| Report 1 | January 2011 | April 2009 to 31 Aug 2010 | 1 – 41 | 41 | 41 |
| Report 2 | November 2012 | September 2010 to August 2011 | 42 – 60 | 19 | 60 |
| | | September 2011 to August 2012 | 61 – 92 | 32 | 92 |
| Report 3 | May 2013 | September 2012 to March 2013 | 93 – 102 | 10 | 102 |
| Report 4 | December 2013 | April 2013 to October 2013 | 103 - 117 | 15 | 117 |
| Report 5 | July 2014 | November 2103 to May 2014 | 118 - 132 | 15 | 132 |
| Report 6 | December 2014 | June 2014 to October 2014 | 133 - 141 | 9 | 141 |
| Report 7 | July 2015 | November 2014 to May 2015 | 142 - 174 | 33 | 174 |
| Report 8 | December 2015 | June 2015 to October 2015 | 174 - 179 | 5 | 179 |
| Report 9 | June 2016 | November 2015 to May 2016 | 180 - 194 | 15 | 194 |
| Report 10 | December 2016 | June 2016 to October 2016 | 195 - 207 | 13 | 207 |
| Report 11 | November 2017 | November 2016 to May 2017 | 208 - 222 | 15 | 222 |
| Report 12 | November 2018 | June 2017 to October 2017 | 223 - 246 | 24 | 246 |
| | | November 2017 to May 2018 | 247 - 259 | 13 | 259 |
| Report 13 | July 2019 | June 2018 to October 2018 | 260 - 272 | 13 | 272 |
| | | November 2018 to May 2019 | 273 - 280 | 8 | 280 |
| Report 14 | May 2021 | June 2019 to October 2019 | 281 - 291 | 11 | 291 |
| | | November 2019 to May 2020 | 292 - 300 | 9 | 300 |
| | | June 2020 to October 2020 | 301 - 312 | 12 | 312 |

| | | | | | |
|-----------|---------------------------|---|-----------|----|-----|
| Report 15 | June 2021 | November 2020 to April 2021 | 313 - 333 | 21 | 333 |
| | | May 2021 to October 2021 | 334 - 348 | 15 | 348 |
| Report 16 | October 2023 | November 2021 to March 2022 * 5 month period | 349 - 365 | 17 | 365 |
| | | April 2022 to September 2022 | 366 - 397 | 32 | 397 |
| | | October 2023 to March 2023 | 398 - 420 | 23 | 420 |
| | | April 2023 to September 2023 | 421 - 440 | 20 | 440 |
| Report 17 | May 2024 (this report) | October 2023 to March 2024 | 441 - 449 | 9 | 449 |

APPENDIX 2

EXTRACT FROM CONTRACT PROCEDURE RULES

4. Exempt Contracts

The following contracts are exempt from the requirements of Contract Procedure Rules:

- a) contracts of employment which make an individual a direct employee of the Council (this exemption does not extend to the recruitment of agency staff)
- b) contracts relating solely to the disposal or acquisition of an interest in land and property.
- c) Contracts for the execution of mandatory works by statutory undertakers, such as utilities providers.
- d) use of the Council's in-house services
- e) individual care packages or education placements where it is considered in the Council's interest or the Council is required to meet obligations under relevant legislation
- f) orders placed under a corporate framework arrangement or contract arranged for the Council by the Strategic Procurement Manager.
- g) unconditional grants by the Council
- h) In a genuine emergency threatening public health, injury to persons or serious and immediate damage to property, an Authorised Officer can take any necessary action to alleviate the threat. This power is limited to the alleviation of the threat and does not extend to any Works beyond what is strictly essential.

An exemption form does not need to be completed for any of the reasons stated in clause 4.

5. Exemption Process

- a) In exceptional circumstances an Authorised Officer can request an exemption from the Council's Contract Procedure Rules. No exemption will be considered where the value of such action exceeds the EU procurement thresholds or any subsequent UK Government threshold. Approval has to be obtained in the first instance by the completion of the "Request for Exemption from Compliance with the Contract Procedure Rules", which can be obtained from Internal Audit.

- b) Where approval has been granted Contract Procedure Rules shall not apply to the following:
 - I. Purchase by auction or works of art-artists
 - II. Single tender action where a single contractor or a proprietary item or service of a special character is required and justified.
 - III. Extensions of existing contracts where the extension is in accordance with the terms & conditions, specification, rates and/or prices of the original Contract award and where provision for the extension was provided for in the original contract notice.
 - IV. Extensions of consultancy contracts (where the combined original value and extension value do not exceed any EU/UK thresholds), where continuation of Services is deemed necessary, and where the particular knowledge and understanding of the requirement is intrinsically linked to the supplier, and no suitable supplier could undertake the work without undue delay or additional/further cost.

Poor planning or insufficient time is not justification for seeking an exemption.

39. Contract Extension

- c) Where the terms of the contract and the original procurement exercise do not expressly provide for an extension, the contract may only be extended in exceptional circumstances, where legislation permits and value for money issues

have been addressed. Such decisions will be made by the relevant Authorised Officer, Internal Audit & the Strategic Procurement Manager.

APPENDIX 3

EXEMPTIONS – October 2023 to March 2024 [441 - 449]

| No | Requester | Details / comment | Estimated Contract Value | Service Area | Date Issued | Correctly Completed & Authorised | Date Returned to Internal Audit | Reason for Exemption | Chief Internal Auditor Comments |
|-----|-----------|--|--------------------------|--------------|-------------|----------------------------------|---------------------------------|----------------------|--|
| 441 | RD | Animal Breeding Trading Standards Project Team - additional modules to system. | £75k | C&P | 04/10/23 | Yes | 17/10/23 | CPR 5 b) II | The reason for an extension to the original contract was justified within the report. |
| 442 | JH | SIMS / ESS migration | n/a | CYP | 16/10/23 | n/a | n/a | n/a | The exemption request was cancelled as it was not required. |
| 443 | RC | Works relating to the miniature railway | £15k | MonLife | 09/11/23 | Yes | 04/05/24 | CPR 5 b) II | This was a retrospective approval. The report justifies the exemption request and demonstrates that attempts had been made to secure alternative quotes. |
| 444 | DB | Art Project | £16k | MonLife | 11/12/23 | Yes | 02/04/24 | CPR 5 b) II | The use of a specialist supplier was justified within the report. |
| 445 | NV-B | Pobl - Hereford Road | £170k | SCH | 19/01/24 | Yes | 04/10/24 | CPR 5 b) II | Justification was provided within the report detailing why an exemption was appropriate. |
| 446 | CP | Replacement Weather Station | £25k | C&P | 20/02/24 | No | 03/07/24 | CPR 5 b) II | No comments had been included on the form from Procurement. The report justifies the use of the supplier. |
| 447 | CT | Retrospective approval of Gully Cleaning Contract Extension | £600k | C&P | 27/02/24 | | | | No paperwork has been returned. This was looking for a retrospective approval. |
| 448 | LC | Abergavenny green waste for one/two months | £70k | C&P | 12/03/24 | | | | No paperwork has been returned. The contract has been extended. |
| 449 | LC | Print waste for up to six months | £370k | C&P | 12/03/24 | | | | No paperwork has been returned. The contract has been extended. |