

Birmingham City Council

Report to Cabinet

Date: 8th November 2022



Subject: Quarterly Assurance Update
(Period 3 - June 2022 to end of September 2022)
Procurement and Contract Governance Rules

Report of: Rebecca Hellard – Director of Council Management

Relevant Cabinet Member: Councillor Mosquito – Finance and Resources

Relevant O &S Chair(s): Councillor Akhlaq Ahmed – Resources

Report author: Steve Sandercock – Assistant Director (Procurement)

Are specific wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s):		
Is this a key decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, add Forward Plan Reference:		
Is the decision eligible for call-in?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, provide exempt information paragraph number or reason if confidential:		

1 Executive Summary

- 1.1 This report provides a quarterly update of actions in compliance with the Council's Constitution and the related Contract Standing Orders around Procurement and Contract Governance Rules.
- 1.2 Full details around decisions taken through application of the Waiver Procedure, Negotiated Process and Emergency Process and where a breach of the application of the Rules has occurred are listed in Appendix 1.

- 1.3 In summary for this previous quarter there have been the following:
- 1.4 6 waivers to the total value of £1.08m, with the primary grounds for seeking a Waiver Procedure of:
- Efficiency / expediency in relation to process (3)
 - Time constraints beyond the control of the Council (2)
 - Avoidance of reputational damage (1)
- 1.5 Within the table in Appendix 1 it also requests for noting for transparency purposes 7 cases identified where the Rules were not followed as set out and therefore being categorised as a breach total value of £1.628m.
- 1.6 12 negotiated processes approved to the total value of £920k
- 1.7 1 emergency process authorised to support the Private Sector Landlord temporary access solution.
- 1.8 In addition, in line with the Planned Procurement Activity Reports there were 18 projects submitted in the accompanying period to the total estimated value of £45,189,967.34.

2 Recommendations

- 2.1 Cabinet notes the report and accompanying information.

3 Background

- 3.1 In line with the Council's Constitution, the Procurement and Contract Governance Rules (the Rules) set out a requirement for a quarterly assurance report to be presented to Cabinet on related decisions undertaken.
- 3.2 The aim of the report is to promote transparency and accountability in connection with how the Council undertakes its procurement and commercial activity along with providing Members with assurance on both the overall governance and actions being carried out.
- 3.3 Members are reminded that as set out within the Rules there are permitted compliant activities allowed in how the Rules are applied, this includes:
- i. The option to apply a waiver the Rules where it is satisfied that it is justified and legal to do so as set out in the Waiver Procedure to the Rules,
 - ii. The option to undertake an emergency process where the reasons are not attributable to any act or omission by the Council and where a genuine emergency exists and a contract cannot be awarded based on a competitive tender or following the Rules,
 - iii. The option to conduct a negotiated contract without competition in line with set criteria within the Rules.

- 3.4 In addition, the Rules state that compliance is deemed mandatory and is an essential part of the overall Constitution of the Council. However, it is recognised in situations whereby strict compliance with the Rules has not happened these are to be recorded as a breach to the Rules.
- 3.5 Appendix 1 of this report provides high level details on the decisions taken around the following:
- i. Waivers,
 - ii. Emergency Process,
 - iii. Negotiated Procedure,
 - iv. Breaches.
- 3.6 Members are also reminded that in addition to the details set out in this report, a monthly Planned Procurement Activity Report (PPAR) is presented to Cabinet outlining forthcoming procurement activity.
- 3.7 Whilst not a means of mitigation it should further be noted that the quarterly reporting of such matters as set out in this report are new to the Constitutional governance framework of the Council and as a result it will in the cases of breaches include some activities which have occurred prior to the adoption of the new Rules.

4 Options considered and Recommended Proposal

- 4.1 The report and accompanying information is for noting purposes only.

5 Consultation

- 5.1 None

6 Risk Management

- 6.1 Compliance with the Council's Constitution is vital in respect of providing reputational confidence around how the Council operates as well as regulatory compliance, e.g. Public Contract Regulations 2015.
- 6.2 Reporting details of assurance is one part of recognising activities being carried out both assisting in monitoring effectiveness of trend compliance and aiding lessons learnt.

7 Compliance Issues:

7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

- 7.1.1 This report sets out details of actions in compliance with the Council's Constitution and the related Contract Standing Orders around Procurement and Contract Governance Rules.

7.1.2 The procedural aspects of Waivers, Negotiated Procedures and Emergency Process are set out within the Rules and any specific areas where compliance has not occurred in line with the Rules is captured within this report as a breach.

7.2 Legal Implications

7.2.1 None arising from the recommendations in this report

7.3 Financial Implications

7.3.1 None arising from the recommendations in this report

7.4 Procurement Implications (if required)

7.4.1 The primary procurement implications set out with this report is to highlight assurance to the Procurement and Contract Governance Rules.

7.4.2 It is important to note that applications of waivers, emergency process and negotiated procedure are complaint mechanisms to use in line with the Constitution, in respect breaches is the area which the Council should seek to avoid. Regular reporting will be important to both understand trends but also highlight issues and lessons learnt.

7.5 Human Resources Implications (if required)

7.5.1 None related to this report

7.6 Public Sector Equality Duty

7.6.1 None related to this report

8 Appendices

8.1 Appendix 1 – Quarterly Assurance Update Table

9 Background Documents

9.1 Procurement and Contract Governance Rules –

https://www.birmingham.gov.uk/downloads/file/13655/part_d_constitution