

Committee:	Date:
Strategic Resources Group (for decision)	9 February 2018
Summit Group (for decision)	27 February 2018
Chief Officers Group (for information)	12 March 2018
Establishment Committee (for information)	9 April 2018
Finance Committee (for information)	10 April 2018
Subject:	Public
Eradication of Procurement Code Breach Waivers (Retrospective waivers)	
Report of:	For Information
The Chamberlain	
Report author:	
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Summary

Finance Committee on receipt of the annual waivers report in July 2017 challenged City Procurement and Chief Officers to eradicate the use of retrospective waivers across the City. The following paper outlines the proactive and reactive steps proposed to meet that objective with a thorough communications campaign including the rebranding of retrospective waivers to 'Procurement Code Breaches' and a list of newly introduced sanctions aimed to be a deterrent as well as introducing a transparent method of correcting behaviours and investigating non-compliant incidents.

Recommendation

- Members are asked to note the planned 'Waiver Danger' communications campaign and the introduction of sanctions outlined in paragraph 12 for when a Procurement Code Breach waiver (formally retrospective waiver) is required effective 1 April 2018.

Main Report

Background

1. A waiver is a document that is used to seek approval not to follow the City Corporation's standard competitive procurement process. There are a number of compliant reasons for a waiver to be granted in exceptional circumstances provided the appropriate authorisation is obtained.
2. A Procurement Code Breach waiver is a non-compliant purchase that has not been managed by City Procurement; has not followed our Procurement Code or Standing Orders; and in certain cases, may breach the Public Contracts Regulations 2015. Its purpose is to allow the City to pay its contractual obligations and record the spend as non-compliant.
3. Members have asked City Procurement and Chief Officers to work together to eradicate the use of Procurement Code Breach waivers across the City Corporation.

Proactive Steps – Communication Campaign and Reporting

4. As recommended by Finance Committee, the Annual Waivers Report 2016/17 was circulated to all spend committees for information to Members.
5. The urgent process to approve waivers has been brought in line with the urgent committee process so all waivers over £50,000 will be brought to the relevant spend committee or signed off by the Town Clerk in consultation with the chairman and deputy chairman of the spend committee.
6. In FY 2017/18, City Procurement requested an audit of how waivers are processed by City Procurement. A number of recommendations have been proposed to the Audit and Risk sub-committee including the recommendation of another non-compliant waiver reason, 'Poor Operational Planning', which will be used from 1 April 2018.
7. City Procurement propose to rebrand retrospective waivers as 'Procurement Code Breaches' to heighten the language used when referring to these waivers drawing parallels to the risk posed by their use. As with 'Poor Operational Planning', 'Procurement Code Breach' will be introduced as a reason on the waiver form. This is to provide continuity in reporting.
8. City Procurement propose a communications campaign – 'Waiver Danger' – as a reminder to the City Corporation the relevant rules in the Procurement Code around waivers and specifically the risks of using Procurement Code Breach waivers. This campaign will run in a similar style to other successful messages sent by City Procurement such as No PO No Pay. It will feature on the new intranet pages, Police/Barbican intranets, sent out as email reminders, cascaded down through City Procurement's departmental liaisons, be featured at category boards, and marketed throughout the Guildhall complex.
9. City Procurement will continue to provide quarterly reports to relevant managers throughout the City Corporation and Finance Committee as part of the City Procurement quarterly update, so Members have over sight.
10. City Procurement will work with Corporate Human Resources to include a section in the induction pack for members of staff with buying responsibilities highlighting the Procurement Code and where to find information about buying at the City Corporation.
11. An annual email will go to chief officers and officers with delegated authority as a reminder of what a waiver is, the risks of Procurement Code Breach waivers, their role in approving waivers, and who to speak to in City Procurement if they have questions.

Reactive Steps - Recommended Sanctions

12. In conjunction with Corporate Human Resources, City Procurement will introduce the following sanctions as consequence for any officer who requires a Procurement Code Breach waiver after the 'Waiver Danger' campaign:

Below OJEU Thresholds

1	1 st Procurement Code Breach	Email reminder to requestor and line manager/ Chief Officer about the risks of retrospective waivers and information on the compliant route to market
2	2 nd Procurement Code Breach	Email reminder to requestor and line manager/ Chief Officer about the risks of retrospective waivers and information on the compliant route to market and obligatory waiver training course
3	3 rd + Procurement Code Breach	Formal letter from Commercial Director for City Procurement to the relevant Chief Officer regarding the Officer's conduct. The Chief Officer will take active consideration for further steps including disciplinary procedure .

Above OJEU Thresholds

4	1 st Procurement Code Breach	Compliance review & referral to Internal Audit. Depending on outcome this may be considered under disciplinary procedure
5	2 nd + Procurement Code Breach	Compliance review & referral to Internal Audit. Depending on outcome this may be considered under disciplinary procedure

13. Each non-compliant waiver will be considered on its merits with the appropriate action taken in agreement with the Chief Officer of the department responsible.

Conclusion

14. Members are asked to note the proactive and reactive steps being introduced in the new financial year by City Procurement and Human Resources to eradicate the use of Procurement Code Breach waivers. The communications campaign to educate the business and the new sanctions as deterrents/consequences should minimise their future use across the City and mitigate the risks posed by their continued use.

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