

# MUNICIPAL YEAR 2017/2018 REPORT NO. 82

## MEETING TITLE AND DATE:

Audit & Risk Management Committee

Date: 1<sup>st</sup> November 2017

## Report of:

Executive Director of Finance, Resources & Customer Services

Agenda – Part: 1

Item: 8

Subject: Contract Waiver Monitoring and Procurement Spend 16/17

Wards:

Cabinet Member consulted: NONE

Contact officer and telephone number:

Claire Reilly, Head of Procurement & Commissioning Corporate Markets Ext: 3532

Paul Vernham, Head of the Hub Procurement & Commissioning

## 1. EXECUTIVE SUMMARY

All Councils are required to have in place a set of rules which govern and control the procurement & contracting policies of the Council. Enfield Council meets this requirement through its Contract Procedure Rules (CPRs) which are contained within the Constitution.

Officers may request waivers to the CPRs where it is not practical or possible to procure in accordance with the standard Rules. This report provides a summary of contract waivers issued in accordance with the Council's Contract Procedure Rules for the period May 2016 to September 2017, and demonstrates the continued reduction in numbers.

This report provides information related to procurement spend in 2016/17.

## 2. RECOMMENDATIONS

To note and consider the contract waivers in the reporting period.

To note the reduction in the number of waivers over the past 12 months this continues a downward trend.

To note procurement spend in 2016/17.

## 3. BACKGROUND

- 3.1 The Council may only contract with external parties within the legal framework for local authority procurement i.e. in accordance with the UK Public Contracts Regulations 2015 (as amended), the Council's Contract Procedure Rules (s135 of the Local Government Act 1972), the general duty to obtain Best Value (Local Government Act 1999) and the European Treaty principles of transparency, non-discrimination of providers in member states and equality of treatment.

- 3.2 There are occasions where it is not practical or possible to procure contracts in accordance with the standard contract procedures. In such instances officers may request a waiver to the Rules, the procedure for which is included at Appendix 1. The approval of such waivers ensures compliance with the Contract Procedure Rules.
- 3.3 Appendix 2 provides a summary of each of the waivers. It should be noted that for the purposes of this report the full supporting documentation behind each waiver has not been provided but is available for further inspection if required.
- 3.4 Procurement & Commissioning Hub Operations Team report the number of Waivers issued per month to the Council's Procurement & Commissioning Review Board.
- 3.5 It should be noted that waivers cannot contravene EU and UK procurement legislation.
- 3.6 The number of waivers for the period May 2016 to September 2017 is 4, representing a total contract value of £221,505.
- 3.7 Overall the number of waivers has decreased by 82% since May 2016, with a reduction in total contract value of 81%. Since September 2015 this is a decrease of 92% and total contract value of 96%.
- 3.8 An analysis of the waivers by department is as follows:

	Extension to allow service remodelling	Extension to facilitate full procurement	Specialist provider /Skills	Urgency	Other	Value of contracts waived
<b>CEX</b>	0	0	1	0	0	£38,000
<b>ENV</b>	0	0	0	0	0	£0
<b>FRCS</b>	0	0	2	0	0	£171,505
<b>HHASC</b>	0	0	0	0	0	£
<b>SCS</b>	1	0	0	0	0	£12,000
<b>Total</b>	<b>1</b>	<b>0</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>£221,505</b>

- 3.9 The highest value waiver of £160k was in FRCS for a year's contract to provide required SQL and Oracle support.
- 3.10 The main reasons for needing a waiver were due to needing an extension to allow for a more planned approach to procurement or a need for specialist services or provider.
- 3.11 The reduction in use of waivers may be attributed to:
- a) Stronger enforcement of the Contract Procedure Rules looking for procurement options to encourage procurement to demonstrate Best Value.

- b) The mandated use of London Tenders Portal, the Council's e-tendering tool, has reduced the opportunity for non-compliance as the workflow within the system mirrors the Contract Procedure Rules.

### **3.12 Procurement Spend 2016/2017**

3.12.1 Appendix 4 provides information in respect of procurement spend in 2016/17 for services, goods and works, showing spend by category, top 50 suppliers, SME and local spend.

3.12.2 The spend profile is typical for a tier 1 Local Authority with the main spend categories being People and Place. Spend with Small to Medium Enterprises stands at £151m equating to 39.16%, and local spend £117m equating to 30.35%. The CPRs requires officers to get quotes from local suppliers where possible so, subject to best value considerations.

## **4. ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 There are no alternative options to consider as the Council is required to monitor waivers from the Contract Procedure Rules.

## **5. REASONS FOR RECOMMENDATIONS**

- 5.1 To maintain the Committee's awareness of the improvements in compliance and provide Members with an opportunity to reflect on the impact this has on the Council's use of resources.

## **6. COMMENTS OF THE DIRECTOR OF FINANCE AND CORPORATE RESOURCES AND OTHER DEPARTMENTS**

### **6.1 Financial Implications**

There are no specific financial implications arising from this report.

### **6.2 Legal Implications**

The Council is required under the Local Government Act 2000 to have a Constitution, as part of that constitution the Council has the Contract Procedure Rules, which reflect applicable, current legislation such as The Public Contracts Regulations 2015. The Procurement & Commissioning Hub plays a pivotal role in ensuring compliance and works closely with Legal Services to ensure Officers within the Council are aware and understand their requirements with regards to procurement under the Contract Procedure Rules.

It is important to continue to have monitoring and reporting lines of this nature, especially since under the Localism Act 2011 any breach of EU rules could lead to fines being imposed on the Council directly if found to be in breach. It is therefore important to monitor waivers to ensure that they do not breach EU rules, putting the Council at risk of EU fines.

### **6.3 Property Implications**

There are no property implications.

## **7. Key Risks**

The Procurement and Commissioning Hub provides advice, guidance and support to officers in the Council to mitigate the likelihood of challenges being made against the Council for anti-competitive practices, which helps protect the Council's reputation. This is especially important in a climate of increased challenge in UK courts and the EU Commission.

The reporting of waivers is also key in terms of the Council's commitment to transparency with regards the use of public money.

Approval of such waivers helps ensure compliance with the Council's Contract Procedure Rules.

## **8 IMPACT ON COUNCIL PRIORITIES**

### **Fairness for All**

The Waiver procedure ensures:

- That procurement processes are appropriate to the scale and risk involved so that they are not unduly onerous.
- Our procurement processes are open, fair and transparent.

## **9. PERFORMANCE MANAGEMENT IMPLICATIONS**

The analysis of waiver requests assists the Procurement & Commissioning Hub in identifying areas where additional procurement support may be required.

The CPRs ensure that procurement is carried out in a way that complies with all legislation and ensures that best value is achieved. Consequently, this will support the delivery of excellent services by the borough since it will ensure that the goods and services are procured in an effective manner.

## **Background Papers**

Appendix 1 – Waiver Procedure

Appendix 2 – Waivers issued May 2016 to September 2017

Appendix 3 - Procurement Spend 2016/17

## Appendix 1 – Waiver Procedure (extracted from Contract Procedure Rules January 2015)

### Application & Waiver of the Rules

- 1.11 These Rules apply to all contracts for Supplies, Works or Services entered into by or on behalf of the Council, except where waiver of all or part of the Rules is approved. Waivers should only be sought in exceptional circumstances given the general presumption that competition is the best way to demonstrate best value (see Rule 4.1) in accordance with the tendering processes identified against the thresholds set out in Rule 7.2. The Council must comply with the requirements of the EU Procurement regime, in particular the Public Contract Regulations (“the Regulations”) as it is not possible to waive these requirements.
- 1.12 The Rules will only be waived where it can be shown:
  - 1.12.1 the decision does not fall within Rule 9 (exceptions to competitive tendering)
  - 1.12.2 the Council’s overall interests, including best value, are met by waiving all or part of the Rules
  - 1.12.3 the agreement of the Assistant Director Procurement and Commissioning is obtained.
- 1.13 Once section 1.11 to 1.12 have been complied with, waivers may be approved:
  - 1.13.1 by the relevant Director (or, where unavailable, the Chief Executive) for all Contracts with estimated value of up to EU Procurement threshold for Services or £500,000 for works subject to the appropriate authority report.
  - 1.13.2 If the decision is a Key Decision then the rules relating to Key Decisions must be followed including placing notice of such Key Decisions on the Council’s Key Decision List In cases of urgency Rule 15 and/or 16 of the Councils Constitution must be adhered to.
- 1.14 All waivers will be reported to the Councils Audit Committee on an annual basis by Assistant Director of Procurement and must be justified by the relevant Director.
- 1.15 The Director requesting the waiver **must** keep a written record of any waiver of the Rules sending a copy to the Assistant Director of Procurement using the standard form for waivers of the Rules published from time to time by the Assistant Director Procurement (which must include a unique reference number tracked by the Assistant Director Procurement).

**Appendix 2 – Waivers May 2016 – September 2017**

<b>Department</b>	<b>Reference Number</b>	<b>Title</b>	<b>Value</b>	<b>Supplier</b>	<b>Notes</b>	<b>Date</b>	<b>Specific Waiver Rule</b>
CEX	DN212874	Added value support to the Council in support of its long term strategic objectives to transform the borough	£38,000	Metro-Dynamics	<p>Metro-Dynamics are being engaged to provide added value support to the Council in support of its long term strategic objectives to transform the borough through maximising opportunities arising from national infrastructure activity and changes in Government Policy as well as offering strategic support to the Council as it seeks to increase its role regionally and nationally to increase inward investment, improve relations with Whitehall and secure a stronger strategic voice in decision making and influencing across the capital and beyond.</p> <p>To this effect the organisation has agreed with the Chief Executive and</p>	27/09/16	

					Leader (in the first instance) to prepare a series of papers and related workshops to enable greater capacity within the organisation to achieve these high-level objectives and ensure Enfield is best placed to take advantage of present and future opportunities that can transform the borough and increase its economic resilience.		
SCS	DN169503	Juvenile Appropriate Adult Service contract	£12,000	TAAS The Appropriate Adult Service	The Juvenile Appropriate Adult Service contract has been extended by 2 years (5 years in total) and a quotation exercise was undertaken. On closure of the bidding process, YOU were informed that the Police are making changes to Enfield custody arrangements, which will, from January 2017 be in Haringey. This will provide an opportunity for Enfield	27/06/2016	

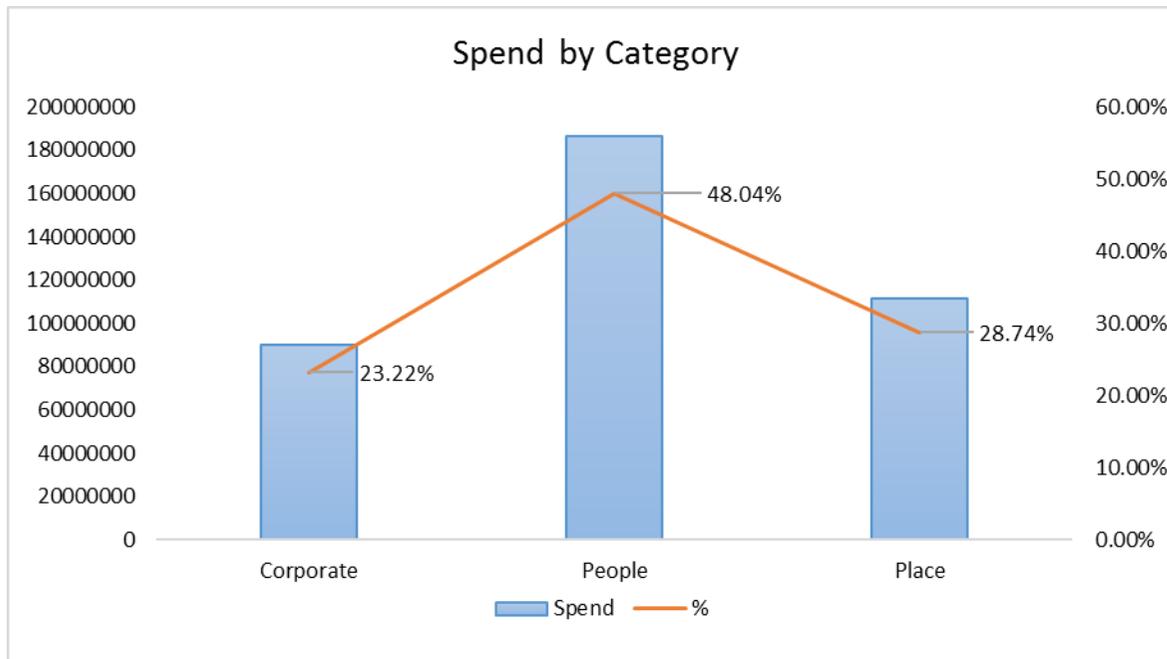
					and Haringey to jointly commission a new service for Adults and Juveniles (to commence 1 April 2017). Further extension due to delays		
FRCS	DN168747	Kiosk for Edmonton Green	£11,505	Banking Automation Ltd	This product has been integrated into Councils cash receipting IT system with similar machines in use and working well. Alternative products are available on the market, but introducing a new product will have implementation risks (delay and integration costs) and introducing another product / supplier will add further complexity to the existing support arrangements.	22/06/16	

FRCS	DN169358	Microsoft SQL and Oracle Database Support	£160,000	Sungard Availability Services	<p>Following a market testing exercise, it is recommended to award a 1 year contract to Sungard Availability Service to provide the required SQL and Oracle support. Microsoft SQL and Oracle Database are relational databases management systems which are used extensively within Enfield Council. These databases are core components of many of the business solution utilised to provision services to citizen. The proposed 1 year contract is for the duration of the migration and consolidation period of the Council's data centre migration to the Azure Cloud. After which the Council will review the required support provision based on the consolidated environment. There is insufficient time to undertake a further competition or seek the</p>	22/06/16	
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					require number of quotes as the contract needs to be in place by 1 July to avoid the loss of this essential IT support service."		
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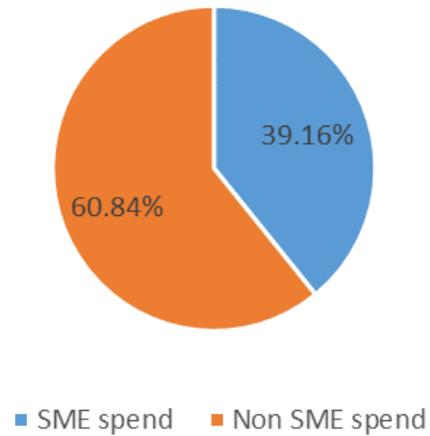
**Appendix 4 - Procurement Spend 2016/2017**

**Figure 1 – Spend by Category**



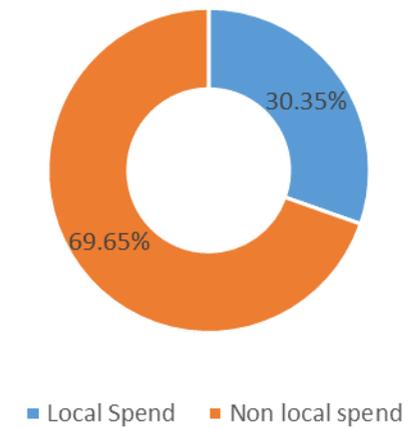
Total Spend	£387,628,499.18	Percentage of spend.
Total Spend by Corporate	£90,007,252.76	23.22%
Total spend by Place	£111,416,813.32	28.74%
Total spend by People	£186,204,433.10	48.04%

**Figure 2 – 2016/2017  
SME Spend**



SME spend	39.16%	£151,782,342.35
Non SME spend	60.84%	£235,846,156.83
Total Spend	100%	£387,628,499.18

**Figure 3 – 2016/2017  
Local Spend**



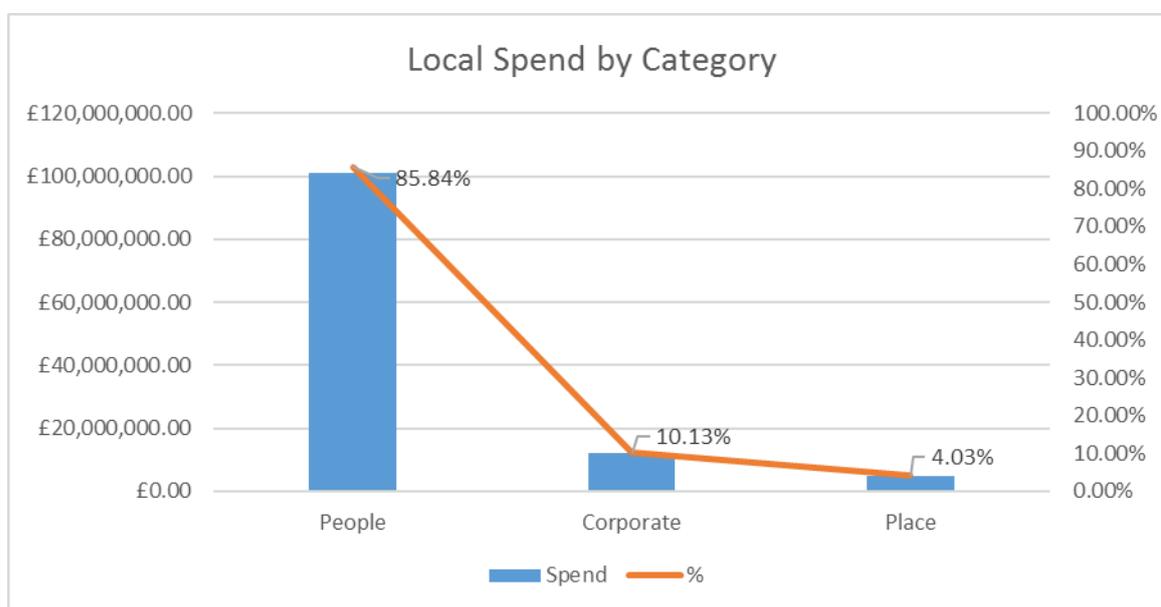
Local Spend	30.35%	£117,654,297.22
Non local spend	69.65%	£269,974,201.96
Total Spend	100.00%	£387,628,499.18

**Figure 4 - Top 50 Suppliers  
2016/2017**

<b>Supplier Name</b>	<b>Total Spend with Supplier</b>	<b>% of Total 2016/2017 Spend</b>
MULALLEY & CO LIMITED	£11,976,670.55	3.09%
RINGWAY JACOBS LTD - CIS	£11,710,318.05	3.02%
Barnet Enfield. & Haringey Mental Health	£8,198,285.13	2.11%
MORGAN SINDALL PLC	£7,378,424.81	1.90%
SERCO SOLUTIONS	£6,660,249.65	1.72%
KEEPMOAT REGENERATION	£6,353,111.09	1.64%
INDEPENDENCE & WELLBEING ENFIELD LT	£6,061,236.42	1.56%
ERNST & YOUNG LLP	£5,912,517.15	1.53%
ENFIELD LIGHTING SERVICES LTD	£5,280,377.27	1.36%
ITC CONCEPTS LTD	£4,987,200.00	1.29%
DURKAN LIMITED	£4,922,734.40	1.27%
EDUCATION SUPPORT (ENFIELD2) LTD	£4,777,104.23	1.23%
LOUISIANA PROPERTIES LTD	£4,769,108.09	1.23%
SUNGARD AVAILABILTY SERVICES (UK) L	£3,981,637.46	1.03%
KARAKUSEVIC CARSON ARCHITECTS	£3,777,409.50	0.97%
NSL LIMITED	£3,473,917.66	0.90%
UNITED LIVING (SOUTH) LTD	£3,470,289.68	0.90%
LAKEHOUSE CONTRACTS LTD	£3,253,277.75	0.84%
EDUCATION SUPPORT (ENFIELD) LTD	£2,965,870.54	0.77%
NORTH MIDDLESEX UNIVERSITY HOSPITAL	£2,784,824.61	0.72%
GRANGE HOMES ESTATE AGENTS LTD	£2,724,887.50	0.70%
ASHDALE SERVICES LIMITED	£2,664,061.50	0.69%
ASSETGROVE LETTINGS LTD	£2,530,393.12	0.65%
J MURPHY & SONS LIMITED	£2,520,785.58	0.65%
MARCUS & MARCUS LTD	£2,242,853.36	0.58%
PYTHAGORAS COMMUNICATIONS LTD	£2,129,287.88	0.55%
PURDY CONTRACTS LTD	£2,097,798.33	0.54%
WORKFLAIR LTD	£2,085,305.96	0.54%
KIRKMAN & JOURDAIN LIMITED	£2,083,271.02	0.54%
AMBER CONSTRUCTION SERVICES	£2,000,224.45	0.52%
BIFFA WASTE SERVICES LTD	£1,937,968.74	0.50%
URBAN LAND MANAGEMENT LTD	£1,877,461.86	0.48%
PRICEWATERHOUSECOOPERS	£1,862,591.89	0.48%
COMPASS	£1,778,696.17	0.46%
T BROWN GROUP LIMITED	£1,712,697.27	0.44%
PRESTIGE GUARANTEED RENTALS	£1,704,212.00	0.44%
ELIZABETH LODGE	£1,652,276.55	0.43%
RAAM CONSTRUCTION LIMITED	£1,651,625.69	0.43%
WATES LIVING SPACE (MAINT) LTD-LINB	£1,627,839.63	0.42%
CIVICA UK LTD	£1,623,599.61	0.42%
SANCTUARY CARE LIMITED	£1,582,714.80	0.41%

ONE HOUSING GROUP	£1,554,125.56	0.40%
TROWERS & HAMLINS LLP	£1,451,845.04	0.37%
DEAN HOUSING LTD	£1,434,007.84	0.37%
MCP PROPERTY SERVICES LTD	£1,419,192.10	0.37%
EDENVALE CARE LTD	£1,413,700.41	0.36%
GLENDALE COUNTRYSIDE LTD	£1,409,654.50	0.36%
<b>Total Spend</b>	<b>£163,467,642.40</b>	<b>42.17%</b>

**Figure 5 – 2016/2017 Local Spend by Category**



Total Local Spend	£117,654,297.22	Percentage of spend.
Total Local Spend by Corporate	£11,917,403.71	10.13%
Total Local spend by Place	£4,741,455.94	4.03%
Total Local spend by People	£100,995,437.57	85.84%