

## **Meeting of the Audit and Standards Committee - 23<sup>rd</sup> March 2023**

### **Report of the Director of Digital, Customer and Commercial Services**

#### **Exemptions from the requirement for a competitive procurement process**

##### **Purpose of report**

1. To notify Audit and Standards Committee of the Exemptions from the requirement for a competitive procurement process received.

##### **Recommendation**

2. It is recommended that the Audit and Standards Committee note the information contained in this report.

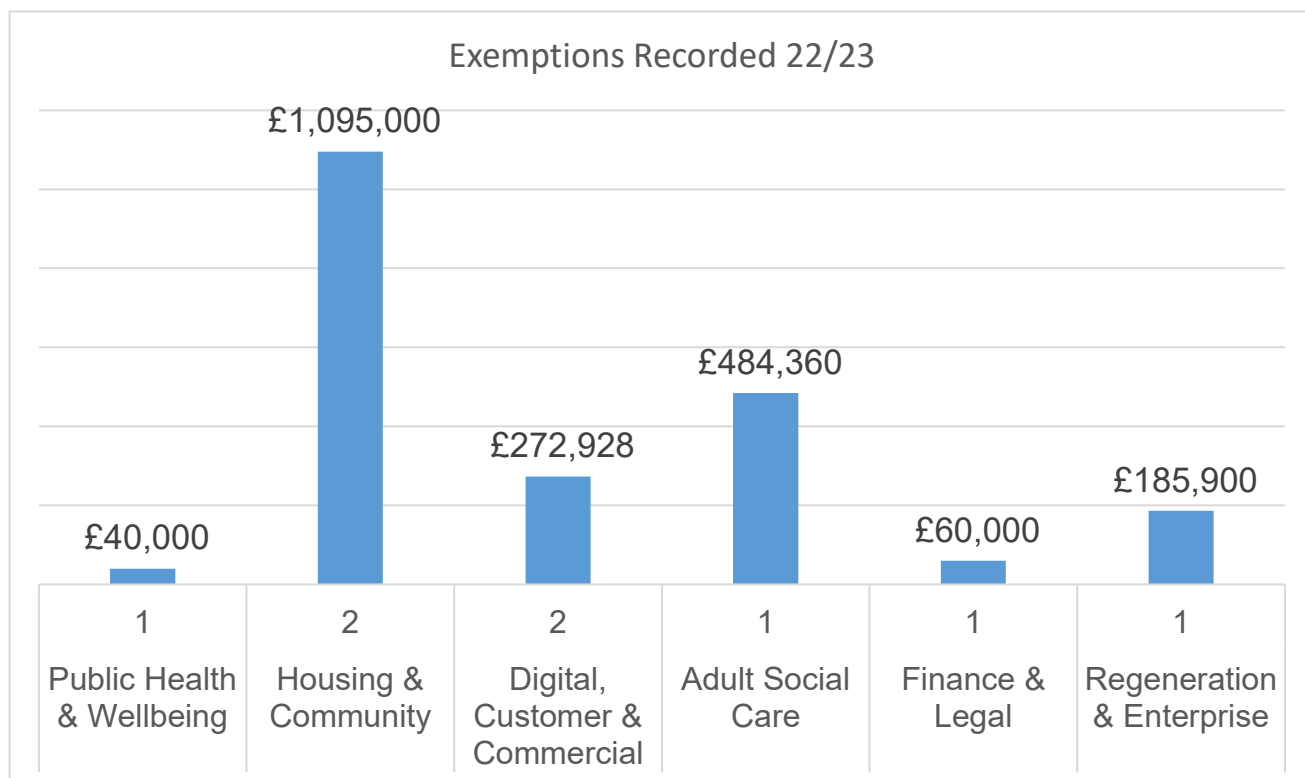
##### **Background**

3. The Public Contract Regulations 2015 (PCR 15) require us to competitively tender all contracts above the threshold of £213,477 for goods and services, or c.£5.3 million for works contracts. Regulation 32 in PCR 15 provides for the use of a negotiated procedure without prior publication in certain circumstances e.g. competition is absent for technical reasons.
4. Since June 2022 Procurement have recorded Exemptions – where officers directly awarded contracts using the allowance in the Contract Standing Orders (CSO) based on Regulation 32 of the PCR 15.
5. Procurement services do not grant Exemptions retrospectively. This is where an officer has made a commitment to a provider of works/goods/services without appropriate approval. Procurement report retrospective requests to the Executive Leadership Team (SEB) and to the Audit and Standards Committee as part of the Annual Contract Review. None have been identified to date this year, but this does not mean that contracts have not been direct awarded.

6. Proceeding with a non-compliant procurement without the appropriate approvals is the responsibility of the officer involved and their executive director.

### **Exemptions Received**

7.
  - 8 Exemptions were received between June 2022 & February 2023.
  - Total value of £2,138,187.50



8.
  - The Exemptions were granted with the following rationale:
    - Genuine Urgency = 2 Exemptions
    - Previous/Expertise knowledge = 4 Exemptions
    - No Genuine Competition = 2 Exemptions
9. In addition, Public Health submitted 17 breaches of the CSO to SEB that have been captured by Procurement.
- This was as a result of the discontinuation of the Integrated Care Provider Model after it was determined the procurement exercise was no longer live or viable due to the time elapsed since initiating the procurement exercise and significant changes in the NHS landscape.
  - As continuation of these contracts would breach legal requirements under the PCR 15 no Exemption could be granted. A decision was taken to accept the risk of challenge by SEB as the contracts needed to continue whilst the Council re-tendered.
  - These were worth £12,372,015

- It is acknowledged by the Head of Procurement that further work needs to be done around how breaches to the CSO's are reported and how any waivers, if appropriate, are granted. As these processes are developed, they will be brought back to Audit and Standards Committee for approval.
10. Procurement do not have data from previous years to compare the values of direct awards made. The view of the Head of Procurement and Director of Digital, Customer and Commercial Services is that there are likely to be unreported breaches, where Exemptions and/or Waivers have not been properly granted. This incompliance creates a risk of challenge from the market and/or potential fraud.

### **Future Reporting**

11. Moving forward the Procurement Service has created a new form to capture the rationale and justification more accurately for Exemptions and rolled out training to over 150 Council Officers that included information on direct awards. Procurement will continue to train and inform Council officers and conduct further work on the recording and reporting of Waivers to the CSO.

### **Finance**

12. Adherence to the Contract Standing Orders and Procurement Code provides greater oversight of expenditure and means there is less likely to be off contract spend with suppliers that has not gone through a competitive process and as such does not demonstrate value for money.

### **Law**

13. There is a requirement to ensure all 3<sup>rd</sup> party expenditure is procured within the legal framework of the Public Contract Regulations 2015.

### **Risk Management**

14. Failure of Council Officers to comply with the Procurement Code and Contract Standing Orders could lead to greater risk of procurement challenge and/or fraud.

### **Equality Impact**

15. No equality impacts have been identified.

### **Human Resources/Organisational Development**

16. The Procurement team will continue to train and inform Council officers of the requirements under the Procurement code and Contract Standing Orders.

## **Commercial/Procurement**

17. The information provided in this report is required to be presented under the Procurement Code and Contract Standing Orders.

## **Environment/Climate Change**

18. No environment/climate change impacts have been identified.

## **Council Priorities and Projects**

19. The information contained within this report supports the Future Council Programme as the Council aims for financial sustainability and looks to strengthen governance processes to take informed and transparent decisions.



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