

Report title	Standing Order 27 Request - Internal Data and Reporting on Contract Management
Report author	Mario Leo
Department	Law and Governance
Exempt?	No
Exemption type	Not applicable
Reasons for exemption	Not applicable

Purpose of report:

For information

Synopsis of report:

This report has been requested by Councillors S Jenkins and S Williams under the provisions of Standing Order 27, which entitles two Members of a committee to request that an item of business which falls within the function of a committee be placed on the agenda for consideration at a meeting of that committee.

This report seeks to provide information on the manner in which the Council manages contracts.

1. Context and background of report

1.1 Councillors S Jenkins and S Williams requested via an email to the Chief Executive dated 18th December 2023 that this report be placed on the agenda under the provisions of Standing Order 27. It was agreed that there would be a delay due to the holiday season, so it was not possible to bring this item to the previous meeting of the committee.

1.2 The email from Councillors Jenkins and Williams stated as follows:

Dear Andrew,

I am writing to request an item of business to be included on the agenda for the Standards and Audit Committee meeting on 23rd January 2024 under Standing Order 27.4 of the Runnymede Borough Council Constitution.

The item of business is 'Internal Data and Reporting on Contract Management'.

I would like this to be referred to the Monitoring Officer so that he may produce a report to be considered by the committee. This report should include:

- Information about how many current/active contracts are in receipt of a waiver under section 2.6 of Contract Standing Orders.
- Information about how many improvement notices were served in relation to contracts between RBC and external organisations within the last five years.
- Information about how many contracts were stopped or abandoned due to Council omissions or failures in the specification / requirements.
- Information about how many contractors were subject to remedial actions by RBC (from October 2022 onwards) for failing to meet sustainability obligations, as set out in the Procurement Policy.

I am happy for this to be presented to the committee as a Part II item as I appreciate that it has the potential to contain commercially sensitive information.

1.3 The information requested is set out below.

2. Report and, where applicable, options considered and recommended

2.1 A local authority is a body corporate and as such acts through officers and staff and must exercise its functions for the purpose for which they were granted. Local authorities have the power to enter into contracts that concern their functions. However, local authority contracts are subject to public law considerations such as the local authority's power to enter into, and to be bound by, contracts and the particular rules that apply when these powers are exercised. Local authority contracts are also governed by the general principles of the law of contract.

2.2 A local authority's powers to contract may be general or specific. A general power allows local authorities to act for the good of their area in ways that are not specified by statute. For example:

- Section 111 of the Local Government Act 1972
- Section 1 of the Localism Act 2011
- Section 3(1) of the Local Government Act 1999

2.3 Specific power for local authorities to enter into contracts may be contained in statute. For example:

- Under section 9 of the Agriculture (Miscellaneous Provisions) Act 1954, a local authority can enter into an agreement to sell kitchen waste for animal feed.
- Section 38 of the Local Government (Miscellaneous Provisions) Act 1976 permits local authorities to use their own surplus computer capacity to provide computer-based services to third parties and to charge for those services if they consider it appropriate to do so.

2.4 The Council has to comply with a legal regime when entering into contracts and has adopted its own internal set of rules, contained in its Contract Standing Orders, in exercise of powers granted to it under section 135 Local Government Act 1972.

2.5 The answers to the questions posed by Councillors Jenkins and Williams are set out below, with any necessary background information.

- 2.6 ***Information about how many current/active contracts are in receipt of a waiver under section 2.6 of Contract Standing Orders?*** – The default position of the Council is that it should advertise its various procurement opportunities to seek the widest possible interest from the market and thereby secure value for money. There is provision under the Council's Contract Standing Orders for officers who are responsible for undertaking a procurement exercise to seek a waiver from the obligation to undertake such an exercise from either the Head of Procurement or the Procurement Board (a body made up of the Head of Procurement, Assistant Chief Executive (S151) and the Corporate Head of Law and Governance).
- 2.7 Given that the life span of contractual arrangements will vary it would be an extremely labour intensive exercise to review every contract to determine whether it was the subject of a waiver or not. Officers are able to advise that for the period 01/04/22 to 22/02/24, 73 waivers have been granted. To provide Members with some context the Council publishes on a quarterly basis a list of all contracts with a value in excess of £5,000. The register was last published in December 2023 and listed at that time 186 live contracts with a value of over £5,000. It should be noted that the information provided covers a longer period of time than covered by the list and some contracts in respect of which a waiver may have been granted may have ended and not appear on the list. When a waiver is approved, officers are required to explicitly address how they will ensure that a further waiver is not required once the approved contract has ended.
- 2.8 ***Information about how many improvement notices were served in relation to contracts between RBC and external organisations within the last five years?*** – When any parties enter a contract which requires one party to deliver services to another party it is common to have a provision in a contract to deal with poor performance. The normal way such provisions are structured is to entitle the client to serve a notice on a contractor specifying how the contractor has failed to deliver the necessary standard of service. The contractor is then required to respond in a fixed period of time setting out what measures they will take to improve service delivery and set a timescale for doing so. The client will be able to review the proposals and agree them. The client will then monitor performance. If performance does not improve the client can serve a further notice. Most contracts will allow the client to terminate the contract if a certain number of improvement notices have been served within a fixed period of time.
- 2.9 Officers have identified only three instances in the last five years where it has been necessary to serve an improvement notice on a contractor. In one instance a notice was served on the former grounds maintenance contractor, one was served on a former contractor who dealt with reactive maintenance for housing properties, and one was served on the existing contractor dealing with reactive maintenance for the housing stock.
- 2.10 ***Information about how many contracts were stopped or abandoned due to Council omissions or failures in the specification / requirements?*** – When a public body seeks the provision of works, services, or goods it may include a specification which sets out what is required from a contractor. There may be instances where during the procurement process tenderers will submit clarifications or responses and when analysed, the Council may conclude that in drafting its requirements it did not draft them correctly. Officers have checked for the period 01/04/22 to 22/04/24 as no time period was specified in the request for this item. For that period, no procurements were stopped or abandoned for the reasons specified in the request for this item. There was however a revision to the specification in respect

of one procurement of a software system following pre-procurement engagement with suppliers. Just to be clear a procurement was not abandoned but rather early engagement enabled the Council to revise its specification prior to commencing formal procurement.

- 2.11 ***Information about how many contractors were subject to remedial actions by RBC (from October 2022 onwards) for failing to meet sustainability obligations, as set out in the Procurement Policy?*** – Amongst the suite of policies, the Council has adopted in relation to procurement matters it has adopted a policy entitled Procurement Policy – Sustainable Procurement and Carbon Reduction. In summary that policy is described as follows:

Environmentally sustainable procurement is the commissioning, purchase and management of goods, works and services in a way that reduces or negates negative environmental impacts within the supply chain. This policy considers four interconnected focus areas of environmentally sustainable procurement:

- Climate change mitigation and adaptation,
- Prevention of pollution,
- Sustainable resource use and consumption, and
- Protection and restoration of biodiversity.

As a result of this policy, environmental considerations will be built into the procurement and delivery of goods, works and services through specifications, tender questions, evaluation criteria, key performance indicators and clauses of contracts.

- 2.12 Where the Council considers that specific sustainability obligations are appropriate and relevant then these will be included in the requirements/specification for a contract. If such measures form part of the contractual obligations and are not met the Council can take action.
- 2.13 To date no contractor has breached such provisions, and no formal action has been required by the Council.

3. Policy framework implications

- 3.1 Given that this report makes no recommendations there are no policy implications which have to be considered. The body of the report makes reference to policies which are relevant to the content of the report.

4. Resource implications/Value for Money

- 4.1 There are no resource implications associated with the subject matter of this report as information is merely being provided.

5. Legal implications

- 5.1 Any relevant legal implications associated with the subject matter of this report have been included in the body of the report.

6. Equality implications

- 6.1 There are no Equalities Implications associated with the subject matter of this report as the report is merely providing information on matters which have been dealt with under specific functions.

7. Environmental/Sustainability/Biodiversity implications

- 7.1 There are no Environmental/Sustainability/Biodiversity implications flowing directly from matters dealt with in this report.

8. Risk Implications

- 8.1 Given that this report is not seeking any decision which involves a new course of action or a change to an existing process or procedure there are no risks directly associated with this report. Clearly the matters reported on in the report carry risks but those are dealt with in the processes and procedures relating to those matters.

9. Other implications

- 9.1 None.

10. Timetable for Implementation

- 10.1 There is no action being proposed in this report which has to be implemented.

11. Conclusions

- 11.1 This report provides information to Members on a series of matters concerning the operation of procurement functions undertaken by the Council. The information requested has been provided.

12. Background papers

None.

13. Appendices

None.