

COUNCIL

12 NOVEMBER 2009

CONTRACT LETTING IN EXCEPTIONAL CIRCUMSTANCES

Portfolio Holder: Councillor Alan Jarrett, Finance
Report from/Author: Deborah Upton, Assistant Director, Housing and Corporate Services (Monitoring Officer)

Summary

This report details contracts awarded in accordance with the provisions of Contract Rules 12.1 and 12.2 to deal with the letting of contracts in exceptional circumstances.

1. Budget and Policy Framework

- 1.1 The constitution requires that the Monitoring Officer shall report annually to Council on the number of contracts awarded by directors under delegated powers and reliance on the exceptional circumstances permitted by Contract Rules 12.1 and 12.2.

2. Background

- 2.1 Subject to overall compliance with the EU Rules then Contract Rule 12.2 permits negotiations leading to the award of a contract to be entered into with one or more potential contractors without advertisement in the following exceptional circumstances:
- To invite to negotiate previous interested parties where the original process has been discontinued
 - Where there is a nil response to an advertisement provided the original terms are not substantially altered for the negotiated procedure
 - Whether for technical or artistic reasons or reasons connected with the protection of exclusive rights the contract can only be awarded to one economic entity
 - In the case of extreme urgency brought about by unforeseen circumstances which are not attributable to Medway when there is insufficient time to secure quotations or tenders

- Where supplies are required from a closing down sale in circumstances permitted by the regulation
- Where the contract is for replacement goods or installations and contracting with an alternative supplier to the supplier of the initial goods or installation would either result in incompatibility with existing goods or installations or lead to disproportionate technical difficulties in the operation and maintenance of existing goods or installations in circumstances permitted by the regulations
- Where the provision of services is reserved to the winner of a design contest as specified in the regulations
- Where the council has entered into a contract in additional work for services not exceeding 50% of the value of the original contract are needed through unforeseen circumstances cannot be separated from the original works or services without major inconvenience to Medway or are necessary for the later stages of performance of the contracts
- Contract extensions permitted by the regulations
- In any other circumstances permitted by the Regulations.

2.2 In all cases the director concerned is required to seek the agreement of the monitoring officer to enter into the proposed contract and the value of the contract cannot exceed the delegated threshold for that director.

2.3 The following approvals have been given since the matter was last reported to Council on 18 September 2008:

Exemption 1 - Yellow and Supported Bus Services:

Value:

£50,000 - £122,000

Project Summary:

- The current contract concluded 31.08.09;
- Due to technical reasons beyond control it was not possible to align project delivery timescales / gateway processes with the conclusion of the current contract;
- In the event that the incumbent provider(s) were unsuccessful, an exemption to the value of approx £122,000 would be required for a period of 5 months 01/09/09 to 21/02/10 to allow the incoming provider(s) the chance to purchase vehicles and manage the contract mobilisation/service transfer including a mandatory 56 day registration process;
- In the event that the incumbent provider(s) were successful, an exemption to the value of approx £50,000 would be required for a period of 2 months 01/09/09 – 01/11/09 to ensure that there was legal protection in place whilst a new contract is signed and to allow the incumbent provider(s) an opportunity to purchase new vehicles/refine processes;
- In line with Contract Rules this was within the Monitoring Officer's remit to exempt as the maximum total value was below (approx £122,000) which was below the approx £139,000 for services in line with EU procurement regulations.

Risks:

- The risks of any challenge to this exemption were very low as the Council was in the process of mirroring this exemption by undertaking a robust and compliant EU procurement process.

Exemption Requested By:

Gary Lindsey – Transport Procurement Unit
Regeneration Community and Culture

Exemption 2 - Supporting People Programme

Value: Refer to table below

Service Description	Value of extension required
Low intensity accommodation based Mental Health support	£34,783.63
Accommodation based support for women fleeing domestic violence	£59,848.08
High Intensity accommodation based support for single homeless	£213,314.88
Low intensity accommodation based support for single homeless	£21,340.88
Floating support for adults with substance misuse	£115,312.33
Intensive accommodation based support for offenders	£254,807.73
High intensity accommodation based mental health support	£124,942.35
High intensity accommodation based support for young people	£40,548.40
Accommodation based support for BME women fleeing domestic violence	£27,913.46
Intensive accommodation based support for young people at risk	£419,369.18
Accommodation based support for young women	£75,277.06
Supporting People Assessment service	£17,763.30
Generic short term floating support service	£124,252.99

Project Summary:

- There were 16 separate contracts which had different contract end dates dependant upon the length of extension provisions remaining within each respective set of contract terms and conditions;
- Thirteen of the 16 contracts required a certain amount of extra time above and beyond the current contract provisions to enable a robust recommissioning/procurement process to be undertaken;

- Exemptions were sought for these 13 contracts from Contract Rules for the specified periods and values. Formalised arrangements with the respective incumbent organisations were subsequently put into place without competition until such a time that then new procurement processes could commence and result in an award;
- In line with Contract Rules this was within the Monitoring Officer's remit to exempt as the contracts were all Part B services and although 4 of 13 contracts were above the EU threshold for services (approx £139,000), Medway demonstrated that competition and the principles of the EU regulations were going to be upheld through the comprehensive recommissioning/procurement plan which was presented to Procurement Board on 23.09.09;

Risks:

- The risks of any challenge to this exemption were very low as the Council was in the process of mirroring this exemption by undertaking a robust and compliant EU procurement process.

Exemption Requested By:

Genette Laws – Children's Commissioning Team
Children's and Adults

Exemption 3 – ST George’s Centre Second Extension:

Value:

£250,000

Project Summary:

- Further to tendering the initial extension at the ST George’s Centre, the need arose for a second extension with the external fabric and design needing to mirror the first extension;
- The building is listed and it was important to have continuity across both sets of extensions;
- A price was sought from the original contractor procured to do the first extension and a Quantity Surveyor was used to evaluate Value for Money and current market costs;
- An exemption was therefore sought to exempt contract rules and procure the second extension via the same contractor that provided the services on the first extension;
- In line with contract rules this was within the Monitoring Officer’s remit to exempt as the maximum total value was below (approx £250,000) which was below the approximate value of £3.3 million for works in line with EU procurement regulations.

Risks:

- The risks of any challenge to this exemption are very low as the Council is in the process of mirroring this exemption by undertaking a robust and compliant EU procurement process.

Exemption Requested By:

Jim Mack – Design and Surveying Team
Business Support – Housing and Corporate Services

Exemption 4 – Resource Link HR Payroll system procurement:

Value:

£50,000

Project Summary:

- The current integrated Payroll and Personnel system, Resource Link, has been in place for 9 years. The application maintains the majority of employee and job related information. This includes the use of payroll, recruitment, training, expenses, absence and disciplinary modules;
- The current 9 year maintenance contract is set to conclude 31.03.10;
- The conclusion of the current contract is being used as an opportunity to review and develop a new HR payroll system for Medway, which will be future proof enough to deliver the future requirements of Medway. However, from initial research, any such new specification and subsequent system is likely to cost in the region of £1 Million;
- Although there is currently sufficient time to commence and complete and OJEU procurement process, the requirements of Medway have not been identified fully to create a robust and comprehensive specification. Furthermore, in the event that an OJEU procurement process resulted in the incumbent provider being unsuccessful, there would not be sufficient contractor mobilization / knowledge transfer time to the incoming provider, which is anticipated to be a period of one-year;
- In light of the above issues, the Monitoring Officer agreed to exempt Contract Rules and continue with the current arrangement with the incumbent for the Resource Link system for one-year from 01.04.10 to 31.03.11 at a cost of £50,000 (for maintenance and support) whilst an OJEU procurement process is planned and delivered in line with the Council's gateway process;
- In line with contract rules this is within the Monitoring Officer's remit to exempt as the maximum total value is approximately £50,000 and is below the approximate £139,000 for services in line with EU procurement regulations.

Risks: N/A

Exemption Requested By:

Stuart Bull – Payroll
Business Support – Finance and Corporate Resources

Exemption 5 – Parentis Training:

Value:

£125,000

Project Summary:

- Exemption request was sought to enter into single source arrangement to deliver Parenting Early Intervention Pilot requirements;
- This requirement was for the purchase of services to deliver parenting skills classes to parents of babies through to teenagers in a range of community settings via a Parenting Early Intervention Pilot;
- Funding must be spent by 31.03.10 and although sufficient time is in place to tender this requirement, the tendering time will leave little time to deliver the services by 31.03.10;
- Future requirements for this service are to be tendered in line with the Gateway Procurement Process and Contract Rules.
- Exemption value is £125,000 for the period August 09 - 31st March 10.
- In line with contract rules this is within the remit of the Monitoring Officer to exempt as the maximum total value of approximately £125,000 is below the approx £139,000 for services in line with EU procurement regulations

Risks:

- If this exemption was not approved by the Monitoring Officer, Medway would be at risk of failing to deliver key services and £125,000 funding would be lost both in this financial year and in future financial years;
- The risks of any challenge to this exemption are very low as the Council is in the process of mirroring this exemption by undertaking a robust and compliant procurement process for Part B services in line with Medway's Contract Rules and EU Procurement Regulations

Exemption Requested By:

Marilyn Roe – Children's Commissioning Team
Children's and Adults

Exemption 6 – MVM M3 System Public Protection System:

Value:

£103,750

Project Summary:

- Exemption request was sought to enter into a single source arrangement to purchase maintenance and support of the MVM M3 System Public Protection System;
- Current arrangements concluded 31.08.09 and a new formalised arrangement was required with immediate effect;
- Monitoring Officer agreed to exempt contract rules and permit officers to enter into a new single source contract for 3 years with provisions to extend for a further 2 x 1 year periods to total a maximum of 5 years;
- Annual value will be £20,750 and the total maximum value over will be £103,750 if the additional 2 year extension provisions are taken;
- If this exemption was not approved, Medway would be have been at risk and there could have been a detrimental effect on the service delivery of Safer Communities to the public, especially as no upgrades would be provided when the law changed. Furthermore, in the event that the current system stopped functioning there would be no contract in place to provide Medway Council with maintenance support;
- In line with contract rules this is within the remit of the Monitoring Officer to exempt, as the maximum total value is £103,750, which is below the approx £139,000 for services in line with EU procurement regulations.

Risks:

- The risks of any challenge to this exemption are very low as the Council is in the process of mirroring this exemption by undertaking a robust and compliant procurement process in line with Medway's Contract Rules and EU Procurement Regulations

Exemption Requested By:

Vikram Sahdev – Surveillance and Business Development
Regeneration Community and Culture

Exemption 7 – Management of Legionella:

Value:

£43,445

Project Summary:

- Exemption request was sought to enter into a single source arrangement to purchase Legionella management services;
- The newly appointed Facilities Manager highlighted that no arrangements existed for the management of Legionella services across Medway Council's corporate buildings;
- Furthermore, the Facilities Manager identified that the Council had entered into a 5-year lease of a component used for delivering this service with a contractor. However, this arrangement failed to meet legal requirements for the management of Legionella and also cost three times more than it would have cost to purchase outright;
- In order to mitigate this the Facilities Manager held discussions with several contractors and it was decided to enter into an interim single source arrangement whilst a more in-depth analysis could be undertaken to plan a longer-term Legionella contract;
- The decision to seek an exemption to contract rules as opposed to seeking interim quotes was based on the fact that only this company could meet the tight legislative timescales and held the most comprehensive asset management data to deliver an effective service;
- Monitoring Officer agreed to exempt contract rules and permit the Facilities Manager to enter into a new single source contract for 6 months to deliver Legionella Services and achieve legislative compliance across 68 sites within 21 days;
- In line with contract rules this is within the remit of the Monitoring Officer to exempt, as the maximum total value is £43,445, which is below the approx £139,000 for services in line with EU procurement regulations.

Risks:

- If this exemption was not approved, Medway would be have been at risk of challenge and fines for non compliance;
- The risks of any challenge to this exemption are very low as the Council is in the process of mirroring this exemption by undertaking a robust and compliant procurement process in line with Medway's Contract Rules and EU Procurement Regulations

Exemption Requested By:

Joseph Eubearthur – Facilities Management
Business Support Directorate – Housing and Corporate Services

Exemption 8- Hadlow College/ Cozenton Nursery:

Value:

£130,000

Project Summary:

- Exemption request was sought to enter into a single source arrangement to purchase seasonal bedding requirements for 3 cycles from summer 2010.
- The purchase of this bedding through Hadlow College will facilitate the longer term development of the site under Hadlow College's Management. This will allow Hadlow College to contract grow Medway's floral bedding requirements, providing opportunities for NEETS (those not in Education, Employment or Training) as well as growing flowers/plants on site that can then be sold at the Cozenton Flower Festivals in 2010.
- The Monitoring Officer agreed to the exemption on the basis that although there were other providers who could supply Medway's bedding requirements, there were not other suppliers who could address the NEETS issue, run the Flower Festival and be in a position to invest in and take on the management of the nursery site.
- In line with contract rules this is within the remit of the Monitoring Officer to exempt, as the maximum total value is £130,000, which is below the approx £139,000 for services and supply of goods in line with EU procurement regulations.

Risks:

- The risks of any challenge to this exemption are very low and the only alternative would be to go to the marketplace, but the risks of failing to find a provider who could address the NEETS issue, run the Flower Festival and be in a position to invest in and take on the management of the nursery site were high.

Exemption Requested by:

Richard Hicks
Regeneration, Community and Culture

Exemption 9 – Black Lion Leisure Centre Swimming Pool Air Conditioning:

Value:

£99,000

Project Summary:

- An air quality report on the Black Lion Leisure Centre highlighted that the main AHU was in urgent need of replacement;
- The value of the proposed works was approximately £99,000;
- The work needed to be completed during the 4 week closure period in December 09 / January 10;
- In order to install the new equipment within the closure timeframe, an order needed to be placed with immediate effect as there was a minimum 8-week lead in time from order to supplier delivery onsite;
- If the equipment was not replaced during the planned pool closure the authority could be faced with health concerns within the pool environment;
- The alternative to this exemption request was to seek three quotes in line with contract rules but this would have caused a time delay which would have meant that the closure period December 09 / January 10 could not be met and this in turn could have meant that the pool would need to close for a further 3 week period in February time causing disruption to centre users
- The Monitoring Officer agreed to exempt contract rules and award without competition in light of the above urgency. Other ventilation suppliers did not have the unique AHU design that the chosen supplier had it was also envisaged that this might have long-term energy benefits for the authority with lower emission factors.

Risks:

- The risks of any challenge to this exemption are very low. Normally Strategic Procurement would review common procurement vocabulary codes to determine whether this was a works or goods contract. However, as the value was below both a goods and works contract (£139,000 and £3.3 Million respectively), in line with contract rules this value of £99,000 is within the Monitoring Officer's remit to exempt and there was no need to analyse common procurement vocabulary.

Exemption Requested By:

John Richardson – Design and Surveying
Business Support Directorate – Housing and Corporate Service

Exemption 10 – Landscape Design

Value:

£53,000

Project Summary:

- Exemption request sought to procure landscape services without seeking two comparative quotes in line with Contract Rules;
- The rationale behind this was that as the project was being funded by external funds that needed to be spent by the end of the financial year, there was serious risk that delays could lead to delivery timescales not being met and CLG Parklands funding being clawed back;
- The schedule for delivery in 08/09 was reduced by 7 weeks by the delayed announcement from CLG as to which projects had been awarded funds. This severely curtailed the time available to Medway to seek three quotes and to still deliver within the timeframe, thus adding more weight to a single source exemption;
- In line with contract rules this was within the remit of the Monitoring Officer to exempt, as the maximum total value was £53,000, which is below the approx £139,000 for services in line with EU procurement regulations.

Risks:

- The risks of any challenge to this exemption are very low as the value is small and it is within the remit of the Monitoring Officer;

Exemption Requested By:

Joanne Cable – World Heritage Site and Great Lines City Park
Regeneration, Community and Culture

Exemption 11 – Bailiff Services

Value:

Cost Neutral

Project Summary:

- Current Bailiff Procurement process stopped due to errors in process identified by Strategic Procurement that could expose the Council to risk if the process continued;
- New EU compliant restricted procurement process to be commenced with immediate effect;
- Interim extension of current arrangements required from 31.10.09 – 30.09.10 – as extension provisions do not exist, exemption required to continue with incumbent suppliers on same terms and conditions and pricing structure without competition for a period of one year;
- The potential value of this exemption over a one-year period is based upon debt collections that are approximately between £1.6million and £2.4million although the actual cost to the Council is zero as the costs associated with collection are attained from the debtors via the debt collection company;
- It is proposed that the contract be extended with the incumbent suppliers without competition in light of the above urgency.
- As this is a Part A services procurement, in effect the Monitoring Officer cannot exempt these requirements. However, as the Council is proactively planning a fully compliant EU procurement process which aims to overcome current issues;
- The Monitoring Officer has agreed to allow the continuation of these services with the incumbent supplier whilst a fully robust and compliant EU procurement process is undertaken

Risks:

- The risks of any challenge to this exemption are very low as the process is being mirrored by a fully compliant EU procurement process;

Exemption Requested By:

Jon Poulson – Revenue and Benefits
Business Support Directorate – Finance and Corporate Resources

3. Risk Management

- 3.1 Strategic Procurement reviews each exemption request and provides quality assurance before recommending approval to the Monitoring Officer. As part of this review, risks are identified and managed and any exemptions, which do not conform with Contract Rules, are declined. The risks of accepting/rejecting all exemptions are identified and communicated to the Monitoring Officer to make an informed decision.

4. Financial and legal implications

- 4.1 The legal implications are set out in the report. The costs associated with the contracts were met from approved budgets.

5. Recommendation

- 5.1 To note the contents of the report.

Lead officer contact

Deborah Upton
Monitoring Officer
Tel: 01634332133
E-mail: deborah.upton@medway.gov.uk

Background papers

None