

COUNCIL

24 JANUARY 2013

CONTRACT LETTING – EXCEPTIONAL CIRCUMSTANCES

Portfolio Holder: Councillor Alan Jarrett, Deputy Leader and Finance
Report from: Perry Holmes, Monitoring Officer
Author: Genette Laws, Head of Category Management,
Strategy and Operational Support Category

Summary

This report details contracts awarded in accordance with the provisions of the current Contract Procedure Rules 1.8.1 and 1.8.2 to deal with the letting of contracts in exceptional circumstances where it is considered to be in the best interests of the Council to do so, provided that the exemption does not breach any EU or UK Directive, Statute or Regulation.

1. Budget and Policy Framework

- 1.1 The constitution requires that the Monitoring Officer reports to Council the number of contracts recommended by Directors for award and approved by the Monitoring Officer under delegated powers and reliance on the exceptional circumstances permitted by Contract Procedure Rules 1.8.1 and 1.8.2.
- 1.2 Contract letting under exceptional circumstances is provided for within Medway Council's Contract Procedure Rules. This report and the exemptions permitted by the Monitoring Officer are by their nature, retrospective.

2. Background

- 2.1 Subject to overall compliance with the EU Procurement Rules, Contract Procedure Rule 1.8.2 permits the Council to enter into negotiations leading to the award of a contract with one or more potential contractors without advertisement in the following exceptional circumstances, subject to approval from the Council's Monitoring Officer in conjunction with the Procurement Board:

- Where 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 a case of extreme urgency brought about by unforeseen circumstances, which are not attributable to the Council, when there is insufficient time to secure quotations or tenders.
 - Procurements of Supplies (Goods), Services, or Works where the procurement procedure to be followed by the Council is the subject of express legislation.
 - Supplies (Goods), Works or Services procured in an emergency because of a need to respond to events that were beyond the control of the Council (e.g. natural disasters such as flooding or fires) but any such expenditure in excess of £15,000 must be reported to the Strategic Procurement Team within 1 week of the date of the contract award using the *Exemption Request Form*. Any contract entered into by the Council under this Exemption must not be for a term of more than 6 months.
 - Contracts for the acquisition and disposal of land or property that are covered within the remit of the Assistant Director, Housing and Corporate Services and within the Financial Limits as prescribed within part 5 of chapter 3 of the Constitution.
 - Contracts for employment for staff, except where an agency is used to supply the staff.
 - Works orders with utility infrastructure providers, e.g. Gas Mains.
 - Where supplies are acquired from a closing down sale in circumstances permitted by the Regulations.
 - 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.
 - 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 and additional works or services not exceeding 20% of the value of the original contract are needed through unforeseen circumstances and can not be separated from the original works or services without major inconvenience to the Council or are necessary for the later stages of performance of the contracts.
 - The disposal of Council Assets that are covered by the Property Procedure Rules and Financial Procedure Rules.
 - 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 recommend the award and seek the agreement of the Monitoring Officer to enter into the proposed contract and the value of the contract cannot exceed the appropriate and current EU Procurement Thresholds.
- 2.3 Any Officer acting on behalf of an appropriate Director to request an exemption to a procurement process in line with these Contract Procedure

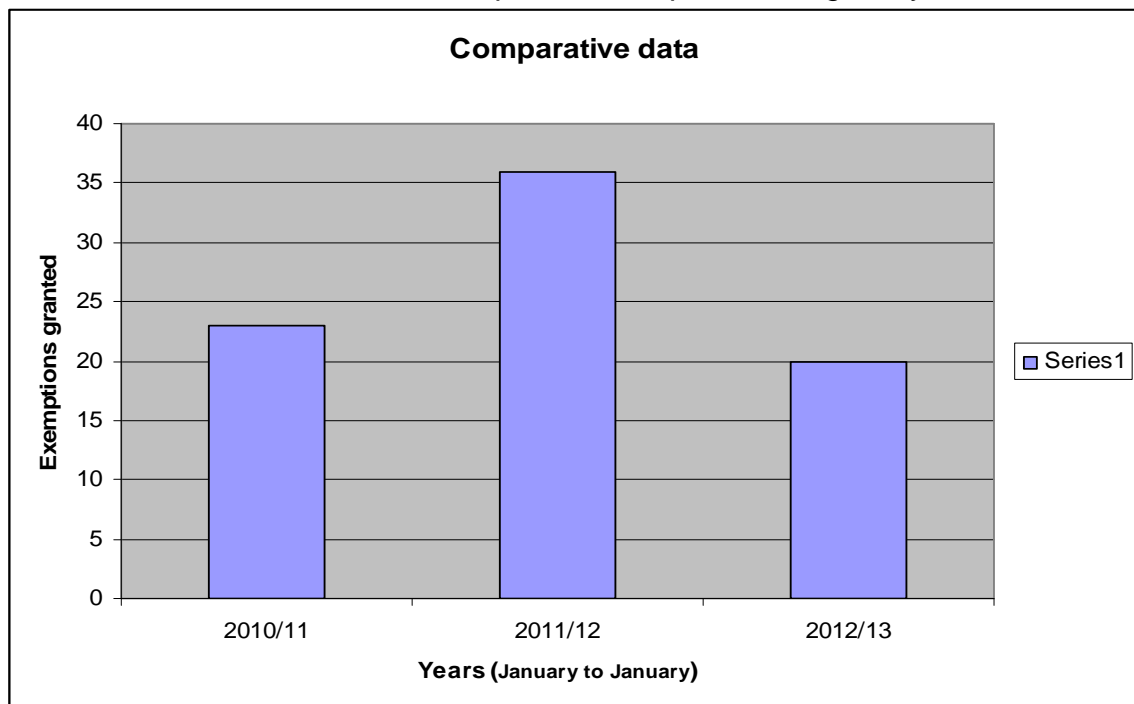
Rules must complete an Exemption To Contract Procedure Rules Form. This form must be approved and signed by the appropriate Director before submission to the Procurement Board for the Monitoring Officer to consider. The Procurement Board is chaired by the Finance Portfolio Holder and includes the Portfolio Holder for Adult Services and support from senior officers including the Chief Finance Officer.

3. Category Management

3.1 The Council in December 2012 changed the way it manages procurement and has adopted a “category management” approach. This seeks to group spend together into categories to deliver savings for the Council and to ensure that commissioned services offer better value for money. It also signals a more robust approach to procurement with more emphasis on evidence based decision-making, contract management and stronger control of the commissioning process.

3.2 As part of the shift to category management the Monitoring Officer has committed to reducing the number of exemptions granted and this is to be a performance indicator for the new category management team. As the attached table shows a more rigorous consideration of exemptions at Procurement Board has already begun to take effect with a significant reduction compared to last year and a reduction compared to the previous year.

3.3 The nature of the Council's business means that there will be circumstances when exemptions may be required to ensure continuing service provision. Nonetheless, there will continue to be a drive to reduce the number of exemptions granted in 2013. Work will be undertaken to benchmark the level of acceptable exemptions in a given year.



3.4 The Monitoring Officer, further to requests from Medway Directors, has approved the following exemption requests since the matter was last reported to Council on 12 January 2012.

Exemption 1 – Providers of Short Breaks for children with disabilities, and their families

Value £60,680

Project Summary:

- Medway Council sought tenders from internal and external providers for a range of short breaks for children with disabilities and their families.
- Alternative care had not proved possible for Cerebral Palsy, Demelza House and Kent Association for Spina Bifida & Hydrocephalus; therefore an exemption request was sought.

Risks:

- Local Authorities have a legal duty to provide a range of short breaks (not just for families in crisis)
- Considered low risk as existing contracts provided a satisfactory service.

Exemption Requested By: Richard Barker

Date Exemption Requested: 7 September 2011

Director Approving Exemption Request For A Decision By The Monitoring Officer:

Rose Collinson approved exemption request on **14 December 2011**

Date Exemption Approved By The Monitoring Officer: 16 January 2012

Exemption 2 – Drug & Alcohol Services

Value £1,708,546

Project Summary:

- An extension of KCA, KMPT & CRI contracts until March 2013 was requested to permit a full re-tendering process, allowing time for Medway DAAT to have its structure and management confirmed, together with budget levels.

- Contracts affected by the request are:-
KCA for drug treatment = £1,205,338 per annum
KMPT alcohol service = £285,402 per annum
CRI drug intervention programme = £217,806 per annum

Risks:

- If not in place, there would be an unmanageable level of uncertainty over the sustainability of the service contracts and the capacity of the DAAT

Exemption Requested By:

Zoe Barkham

Date Exemption Requested: 9 January 2012

Director Approving Exemption Request For A Decision By The Monitoring Officer:

Rose Collinson approved exemption request on **9 December 2012**

Date Exemption Approved By The Monitoring Officer: 25.1.12

Exemption 3 – Medway Matters Distribution

Value £100,000

Project Summary:

- Contract concluded 31 December 2011, exemption sought with the incumbent provider for a period of 14 months from 1.1.12 to 14.2.13. Based on the requirement of 8 bi-monthly distributions over a 14-month period at £10,000 each, plus an additional £20,000 as a contingency for ad hoc distribution requirements.
- Extension requested to investigate broader opportunities to combine the delivery with other postage related contracts in the Council. The extension end date would tie in with the Annual Council Tax Billing distribution contract due to expire 14 February 2013.
- The introduction of category management under Better4Less transformation programme may present further opportunities for consolidation of contracts relating to postage, distribution and delivery.

Risks:

- Other forms of distribution, other than Royal Mail, in the past i.e. insertions in newspapers and hand delivery, have proved unsatisfactory.

Exemption Requested By:

Simon Wakeman

Date Exemption Requested: 18 January 2012

Director Approving Exemption Request For A Decision By The Monitoring Officer:

Neil Davies approved exemption request on **9 December 2011**.

Date Exemption Approved By The Monitoring Officer: 25.1.12

Exemption 4 – Connexions Service

Value £749,393.75 (based on £1,798,545 actual forecast in 2011-2012)

Project Summary:

- Medway Council became responsible for the commissioning of the Connexions Service as part of the contractual obligation for all local authorities.
- Connexions Services contribute to the priorities in the Medway Children & Youth People's Plan 2011-2014 through increasing the range and number of Apprenticeships available to young people.
- The Strategic Procurement Board had agreed the Gateway 3 report on 30 November 2011 subject to final budget setting at Full Council in February 2012.
- Following the November decision and risks indicated by the approved incumbent, an extension of 5 months as opposed to the requested 12 months was agreed.

Risks:

- Non-exemption may have resulted in no service provision between April and June 2012, if the funding decision in February 2012 required a significant or total reduction. Staff may be TUPE'd into the Council from the incumbent if the delivery was needed to be in-house. Consultation with current staff could have taken up to three months and not begin until the funding is known

Exemption Requested By:

Donna Mills

Date Exemption Requested: 22 December 2011

Director Approving Exemption Request For A Decision By The Monitoring Officer:

Rose Collinson approved this exemption request on **9 Jan 2012**.

Date Exemption Approved By The Monitoring Officer: 13 February 2012

Exemption 5 – Economic Development Business Support Service Level Agreement

Value £28,800.00

Project Summary:

- The current SLA with Business Support Kent CiC was originally tendered for 3 years in March 2010 but due to budget uncertainty was reduced to 2 years. The value for 2010/11 was £40K for 2011/12, but was reduced to £30,000 due to budget reductions.
- Permission was sought to extend the existing SLA for a further 12 months to a maximum value of £28,800.
- Business Support CiC work with the Council's Economic Development Team to develop start up business planning workshops, sponsorship was agreed for the next 12 months.
- Currently seeking funding sources, the outcome to have a bearing on future business support services.

Risks:

- It was reported there were few providers of business support services, but others were expected in the future.

Exemption Requested By:

Wayne Saunders

Date Exemption Requested: 15 February 2012

Director Approving Exemption Request For A Decision By The Monitoring Officer:

Robin Cooper approved this exemption request on **3 February 2012**

Date Exemption Approved By The Monitoring Officer: 21.2.12

Exemption 6 – Banking Contract

Value £132,000

Project Summary:

- Report requested a single source extension from 31 March 2012 to 30 September 2013 with the existing contractor, NatWest.
- The service underpins all the Council's financial activities

Risks:

- A single source exemption was requested the current world banking system was high and the future uncertain. The Financial Advisors Sector recommended Local Authorities to not invest with banks, with the exception of Lloyds Group or RBS, for greater than 3 months.
- The Euro crisis continues and the effects of the crisis were unclear.
- Scoping for specification was incomplete
- High and low level criteria was not agreed
- The year end account required total use of staff
- If the tender process had resulted in a change of supplier the impact on resources would be significant.
- Timescales were too short to allow a full tender process
- Officers wished to introduce a new bank contract methodology

Exemption Requested By:

Andy Larkin

Date Exemption Requested: 10 January 2012

Director Approving Exemption Request For A Decision By The Monitoring Officer:

Mick Hayward approved this exemption request on **9 February 2012**.

Date Exemption Approved By The Monitoring Officer: 21.2.12

Exemption 7 – Housing Benefit & Council Tax Benefit Subsidy 2011/12 Grant Claim audit testing

Value £25,000

Project Summary:

- Specialist supplier, Branch and Lee undertake complex and specialist benefit and tax areas of work. It is the Council's largest grant claim specialist area of work in both volume and amount, and the Council has a fiduciary duty to ensure claims are accurate.

- In 2010/11 Branch & Lee undertook the work, meeting the exacting requirements of both the Audit Commission and the Department for Works and Pensions. The price quoted represented value for money as 2010/2011 costs was £30,000.

Risks:

- The only supplier in the marketplace

Exemption Requested By:

Patrick Knight

Date Exemption Requested: 19 December 2011

Director Approving Exemption Request For A Decision By The Monitoring Officer:

Mick Hayward approved this exemption request on **9 February 2012**

Date Exemption Approved By The Monitoring Officer: 21.2.12

Exemption 8 – Transfer of Maidstone CCTV Infrastructure to Medway control Centre (MCC)

Value £152,500

Project Summary:

- A single source arrangement of essential technical equipment required for the transfer from Maidstone CCTV infrastructure to Medway Control Room, using a supplier with previous experience of both control centres. The centre to house 700 cameras from Maidstone, Medway, Swale and Gravesham Councils enabling Medway to meet its target for 2012/13 of £144,000 income per annum.
- To fulfil the obligation of meeting the transfer deadline of 1 April 2012.
- Ensuring the project timescales was met using TJW Electrical Ltd.
- Potentially gaining further interest from neighbouring authorities as they look for sustaining their CCTV functions at reduced costs
- Replacement of 60 CRT monitors with TFT monitors, an essential part of the project for MCC, to house Maidstone Borough Council's CCTV infrastructure to result in energy savings.

Risks:

- Maidstone Borough Council had verbally agreed ownership of the essential technical equipment but in January 2012, bowing to media pressure and political sensitivity, withdrew their offer. Medway Council were required to procure equipment at relatively short notice.

Exemption Requested By:

Vikram Sahdev

Date Exemption Requested: 1 February 2012

Director Approving Exemption Request For A Decision By The Monitoring Officer:

Robin Cooper approved this exemption request **10 February 2012.**

Date Exemption Approved By The Monitoring Officer: 21.2.12

Exemption 9 – Rochester Castle Environmental Monitoring Assessment

Value £57,885.96

Project Summary:

- Single source exemption to install a monitoring system for stone decay and moisture fluctuations granted through English Heritage
- English Heritage recommended specialist consultants
- Recent rock falls from the keep have indicated deterioration; the urgent commencement of monitoring was required to secure long-term sustainability.

Risks:

- Lack of monitoring detrimental to the national monument
- Council lack of knowledge of appropriately skilled consultants for the fabric of the building
- Injury to the public from falling stonework

Exemption Requested By:

Chris Valdus

Date Exemption Requested: 7 February 2012

Director Approving Exemption Request For A Decision By The Monitoring Officer:

Robin Cooper approved this exemption request on **16 February 2012**

Date Exemption Approved By The Monitoring Officer: 16.3.12

Exemption 10 – Corporate contract for council mobile phones

Value £45,000

Project Summary:

- Government Procurement Service delayed the offer of new contract terms, estimated to be available 1 July 2012, to allow final negotiations to be held with the three available UK suppliers to provide best value.
- Extend the contract for a 5 month period to cover the interim period
- The contract has no absolute monetary value, as the charges were for calls and line rental only and devolved through individual business units.

Risks:

- Disruption to the corporate mobile phone contract if not approved

Exemption Requested By:

Moira Bragg

Date Exemption Requested: 17 February 2012

Director Approving Exemption Request For A Decision By The Monitoring Officer:

Neil Davies approved this exemption request on **24 February 2012**

Date Exemption Approved By The Monitoring Officer: 16.3.12

Exemption 11 – Supporting People Services-Service Reviews and Re-commissioning

Value £1,005,000

Project Summary:

- To extend a group of contracts previously funded under Support People programme to cover a 90-day period of public consultation to determine how and where budget reductions will be made. Consultation to commence March 2012, dependent on outcome may need to extend further.
- It was not possible to progress re-commissioning earlier due to the uncertainty regarding funding. The Director of Adult Social Care requested approval to provide the exact contract extension required.
- Gateway 1 report to be presented once re-commissioning services is available.
- Funding available to cover the 90-day extension.

Risks:

- Not possible to terminate the services in the interim.

Exemption Requested By:

Ben Gladstone

Date Exemption Requested: 6 March 2012

Director Approving Exemption Request For A Decision By The Monitoring Officer:

Rose Collinson approved this exemption request on **8 March 2012**

Date Exemption Approved By The Monitoring Officer: 16 March 2012

Exemption 12 – Extend Customer First confidential Employee Assistance Programme

Value £100,000

Project Summary:

- To extend retrospectively for one year from 1 October 2011 – 30 September 2012
- The extension was due to the contractor providing a competitive offer, which proved favourably at the time compared to the marketplace; the cost was reduced from £65,000 per annum to £50,000.
- The timing was not right to change to another supplier, continuing the contract was the best option.

Risks:

- Possible risk of stress related ill health related to work activities
- Risk of sickness, absence, reduced productivity and lower quality of service a possibility, leading to the threat of claims against the employer
- Employment Tribunals and costly settlements

Exemption Requested By:

Tricia Palmer

Date Exemption Requested: 10 March 2012

Director Approving Exemption Request For A Decision By the Monitoring Officer: Neil Davies approved this exemption request on **16 April 2012**

Date Exemption Approved By The Monitoring Officer: 18 April 2012

Exemption 13 – Annual billing for Council Tax & NNDR

Value £33,600

Project Summary:

- A one-year extension was requested to combine a joint procurement to accommodate the annual billing with electoral services from 2013-2014 onwards.

Risks:

- An alternative would prove costly in time, effort and price to request quotes for a one-year interim contract.

Exemption Requested By: Jon Poulson

Date Exemption Requested: 18 April 2012

Director Approving Exemption Request For A Decision By The Monitoring Officer:

Neil Davies approved this exemption request on **16 April 2012**

Date Exemption Approved By The Monitoring Officer: 18 April 2012

Exemption 14 – Cash Receipting System

Value £401,800

Project Summary:

- Exemption sought for a 10-year contract with two-year break clauses due to the supplier, Civica being the only contractor able to comply with the Council's requirement to protect customer payments.

Risks:

- Current system not compliant for the processing of credit/debit card payments via BACS, Internet or telephone.
- EU legal requirement by the end of 2012, various problems with the incumbent/Council's software had already delayed the change.

Exemption Requested By:

Andrew Larkin

Date Exemption Requested: 29 May 2012

Director Approving Exemption Request For A Decision By The Monitoring Officer:

Mick Hayward approved this exemption request on **12 June 2012**

Date Exemption Approved By The Monitoring Officer: 15 June 2012

Exemption 15 – Advertising & Non Advertising Bus Shelter Contract Extension

Value £0

Project Summary:

- Permission was sought to extend the existing contract with Clear Channel from 4 November 2012 –5 May 2013 with provision for a further 3 years.
- The extension would allow sufficient time to develop a new model, generating income for the Council.

Risks:

- The current contract had no provision for an income.

Exemption Requested By: Gary Lindsey

Date Exemption Requested: 31 May 2012

Director Approving Exemption Request For A Decision By The Monitoring Officer:

Robin Cooper approved this exemption request on **7 June 2012**

Date Exemption Approved By The Monitoring Officer: 15 June 2012

Exemption 16 – Housing Related Support Service Contracts 2012-2013

Value £1,450,000

Project Summary:

- Exemption sought for a group of contracts previously funded under the 'Supporting People' programme to extend with revised terms from 1 July 2012 for a period of 9 months. The revised terms to transfer commissioning responsibilities to the relevant specialist service areas.

Risks:

- All the services support and promote the independence of vulnerable adults and young people within the community, it was agreed there could not be a break in the service provision.

Exemption Requested By: Ben Gladstone

Date Exemption Requested: 13 June 2012

Director Approving Exemption Request For A Decision By The Monitoring Officer:

Rose Collinson approved this exemption request on **2 June 2012**

Date Exemption Approved By The Monitoring Officer: 15 June 2012

Exemption 17 – Assessment of Equipment & Support Service for Blind and Visually Impaired People

Value £426,000 (approx £142,000 per annum for 3 years)

Project Summary:

- Exemption sought to negotiate directly with the incumbent, Kent Association for the Blind (KAB) for a three year contract due to lack of competition.
- KAB were the only provider currently to provide all the statutory functions of the service.
- Historically KAB had used Council premises free of charge but this was to be reconsidered.
- Soft marketing testing proved that other providers were looking to develop the service in the future During the three year period it was agreed officers would work towards increasing the potential for a competitive process for contract renewals.
- Officers to support KAB to potentially expand their own service.

Risks:

- .Other providers were either unable to provide the same level of service or were not interested in tendering.

Exemption Requested By:

David Tappenden

Date Exemption Requested: 13 June 2012

Director Approving Exemption Request For A Decision By The Monitoring Officer:

Rose Collinson approved this exemption request on **15 June 2012**

Date Exemption Approved By The Monitoring Officer: 26 June 2012

Exemption 18 – Medway 33 Support Service for Young People

Value: £100,000

Project Summary:

- Transfer of two contracts previously funded under Supporting People programme to an alternative supplier as a single supply contract from 1 October to 30 June 2013.
- Extension required due to current supplier, Shaftesbury & Arethusa withdrawing their services to 33 people in Medway.
- The Board of Trustees withdrew the funding due to a significant reduction in funding

Risks:

- .33 young people in Medway would be homeless if no action taken

Exemption Requested By: Ben Gladstone

Date Exemption Requested: 5 September 2012

Director Approving Exemption Request For A Decision By The Monitoring Officer:

Neil Davies approved this exemption request on 31 August 2012

Date Exemption Approved By The Monitoring Officer: 7 September 2012

Exemption 19 – Stanley House, Chatham

Value: £40,186

Project Summary: To seek agreement to exemption to contract rules for the supported accommodation service at Stanley House. To create a bridge between residential care and independent living. This was agreed on the basis that the new model would be tested to support the specification and service review.

Risks: concerns for vulnerable residents,

Exemption Requested By: Dick Frak

Date Exemption Requested: 28 November 2012

Director Approving Exemption Request For A Decision By The Monitoring Officer: David Quirke Thornton

Date Exemption Approved By The Monitoring Officer: 10.12.12

3. Risk Management

- 3.1 Strategic Procurement and now Category Management review 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 to Contract Procedure 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 contract were met from approved budgets.

5. Recommendation

- 5.1 To note the contents of the report.

Lead officer contact

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Background papers

None