

COUNCIL

23 JANUARY 2020

CONTRACT LETTING – EXCEPTIONAL CIRCUMSTANCES

Portfolio Holder: Councillor Adrian Gulvin, Resources
Report from: Perry Holmes, Monitoring Officer
Author: Michael Kelly, Head of Category Management

Summary

This report details contracts awarded in accordance with the provisions of the current Contract Procedure Rule 1.8.2.

Exemptions to Contract Procedure Rules, 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, can be approved by the Monitoring Officer, 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 1.8.2.

2. Background

2.1 In accordance with Sections 1.8.2.1 and 1.8.2.2, individual provisions within the Contract Procedure Rules may be exempted in exceptional circumstances, where it is considered to be in the interests of the Council to do so, provided that the exemption does not breach any EU or UK Directive, Statute or Regulation.

2.2 The Monitoring Officer, further to requests from Directors, has approved two exemption requests since the matter was last reported to Council on 24 January 2019.

2.3 The Monitoring Officer can sign exemptions off up to the relevant financial value as set within the Procurement Directives. Exceeding this threshold

would result in the requirement bring subject to the Public Contracts Regulations 2015. This value varies but is as follows;

- 2.3.1 Good and services: £181,302
- 2.3.2 Works £4,551,413

3. Exemptions Granted

3.1 The Exemptions granted during 2019 were as follows:

Exemption 1 – Surge Classes for Secondary School Places for September 2020

Value: £3m (Works contract)

Project Summary:

- To meet the forecasted need of additional school places for September 2020.
- Although the preferred option was for this need to be met by the DFE's free school programme, the Schools Organisation Team did explore/progress alternative options in so far as practically possible given it was their understanding delivery with DFE would have gone ahead.

Rationale:

- Granting the exemption will enable the council to meet its statutory duty of providing sufficient school places in time to meet known demand, whereas not granting it will remove any guarantees of the places being available.
- The proposal works out as exceptional value for money for the number of pupils who will benefit over the years going forward.
 - A contractor who won similar projects on a competitive basis was chosen.
- Until two weeks from the date of the exemption, the DFE were still indicating that the delivery of the temporary accommodation would go ahead and so there was no justification in incurring significant additional costs in going through any tender process prior to this.
- The affected pupils will be at the schools for seven years and having the accommodation in place provides the council with flexibility going forward.

Directorate seeking Exemption Request: Children and Adults

Date Exemption Approved by the Monitoring Officer: October 2019

Exemption 2 – Innovation Park Medway Local Development Order Support

Value: £8k (Services contract)

Project Summary:

- To support Medway completing outstanding elements of the Local Development Order prior to adoption.

Rationale:

- A consultant with prior knowledge of the site and scheme was needed to urgently address various services.
- Delaying the appointment of a consultant could have incurred additional project delays and cost.

Directorate seeking Exemption Request: RCET

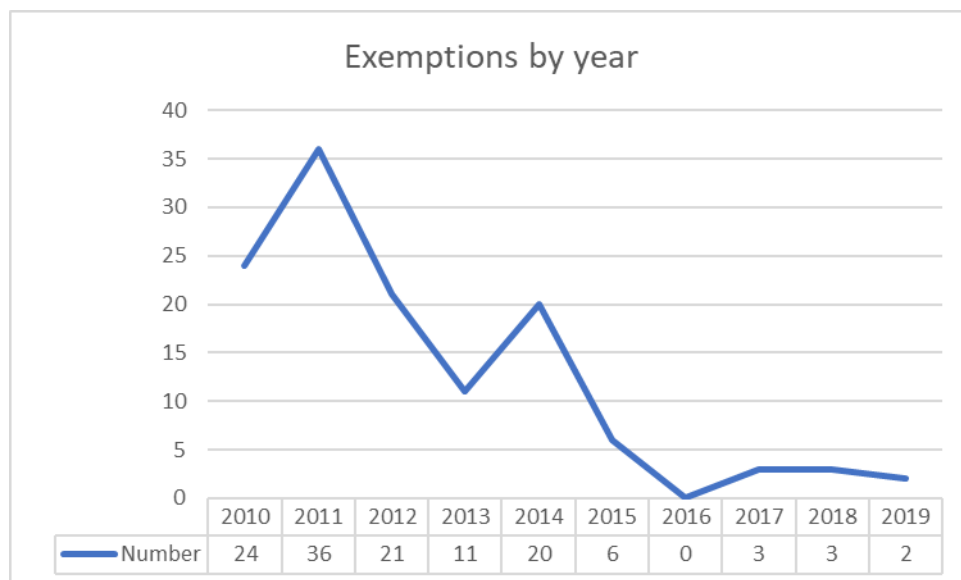
Date Exemption Approved by the Monitoring Officer: December 2019

4. Analysis

4.1 A concerted effort has been made over recent years to reduce the number of exemptions to a minimum, although it has been accepted that in an authority of this size some exemptions may be necessary. The Category Management team have worked hard with teams across the Council to better prepare for up-coming procurement exercises, under the oversight of the Procurement Board. Inevitably some service requirements occur that require a quicker response, than those that are planned and monitored.

4.2 The graph below represents the annual trend since 2010.

4.3 Due to the rationale of exemptions and their importance to the organisation’s functionality, when they arise, unless the services can be varied into an existing contractual arrangement, there is a strong argument for them to be progressed.



5. Risk Management

5.1 The Category Management team review each exemption request and provide 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.

6. Financial and legal implications

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

7. Recommendation

7.1 To note the contents of the report.

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Appendices

None

Background papers

None