

## **COUNCIL**

**21 JANUARY 2021**

### **CONTRACT LETTING – EXCEPTIONAL CIRCUMSTANCES**

Portfolio Holder: Councillor Adrian Gulvin, Portfolio Holder for 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 6 exemption requests since the matter was last reported to Council on 23 January 2020.
  - 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 being subject to the Public Contracts

Regulations 2015. For the year this report covers, these values are 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 2020 were as follows:

#### **Exemption 1 – Rochester Riverside School**

**Value:** £1.6m (Works contract)

##### **Project Summary:**

- Through the Rochester Riverside development, an obligation was put on the contractor to deliver a 1FE (One Form of Entry) school with 2FE facilities for future expansion.
- The DfE during the term of the original contract awarded Medway Council £1.6m on the proviso that Medway engaged with and took responsibility of the delivery.

##### **Rationale:**

- To save time on the project and remove any disruption for the school.
- To remove any funding responsibility from the Council.
- To acquire a 2FE school without the need to source funding in the future.
- Provide continuity of the project by utilising the same contractor.
- Enables a consistency of the build fabric and visual impact by having the one professional team on board.

**Directorate seeking Exemption Request:** Children and Adults

*Date Exemption Approved by the Monitoring Officer: September 2020*

#### **Exemption 2 – Highways Infrastructure Fund (HIF) Environmental Impact Assessment (EIA) Scoping Report.**

**Value:** £39k (Services contract)

##### **Project Summary:**

- To deliver an EIA scoping report for the rail and road elements of the project.

##### **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.

- The use of the existing consultant would have reduced planning risk and demonstrated consistency in the approach.

**Directorate seeking Exemption Request: RCET**

*Date Exemption Approved by the Monitoring Officer: August 2020*

**Exemption 3 – Social Care Recruitment Branding**

**Value:** £36k (Services contract)

**Project Summary:**

- An Ofsted inspection identified permanency of staffing as an area of improvement.
- The project was to deliver revised branding for such recruitment purposes.

**Rationale:**

- The supplier had a successful track record with other public bodies and was able to mobilize in time.

**Directorate seeking Exemption Request: Children and Adults**

*Date Exemption Approved by the Monitoring Officer: September 2020*

**Exemption 4 – Innovation Park Medway (IPM) Electrical Works**

**Value:** £1.6m (Works contract)

**Project Summary:**

- Electricity providers are registered to be able to work on behalf of UKPN and as part of their commission as Principal Designer for IPM works, the Council's lead consultant approached three providers during Covid-19 lockdown. Due to furlough and lack of resource, responses were delayed by approx. 10 weeks.

**Rationale:**

- It was a specialised piece of work which needs to be completed within a tight timeframe to keep to the programme and satisfy SELEP's conditions so that funding was not lost.
- The lead consultant had sought various quotes from all registered suppliers to deliver these works and the awarded contractor was the most economically advantageous against the criteria set.

**Directorate seeking Exemption Request: RCET**

*Date Exemption Approved by the Monitoring Officer: September 2020*

## **Exemption 5 – Road Surface Monitoring Pilot**

**Value:** £15k (Works contract)

### **Project Summary:**

- To utilize emerging technology to collect data on pavement condition/defects.
- This information will feed back into highway engineers to analyse and optimize decision making.

### **Rationale:**

- Pavement renewals are principally driven by a regime of routine technical surveys which are often not comprehensive enough to cover the entire network.
- The current means of surveying is not regular enough to pick up defects that develop between iterations.
- By being able to continuously monitor defects, the highways team will be able to better maintain the condition of the streets.

**Directorate seeking Exemption Request:** RCET

*Date Exemption Approved by the Monitoring Officer: December 2020*

## **Exemption 6 – Winter Grant Free School Meals (FSM) Holiday Hampers**

**Value:** £153,500k (Goods contract)

### **Project Summary:**

- To utilize national funds to support a range of vulnerable families and children with basic supplies such as food, energy and water bills.
- To provide 7,675 free school meal eligible children with a holiday hamper containing a balanced range of food, for the Christmas 2020 half term break.

### **Rationale:**

- The grant received came with conditions of spending to which the awarded supplier was the only the Council could identify as being able to deliver.
- The awarded supplier is contracted with Medway Council's subsidiary company who have undertaken due diligence on them previously.
- The grant was ring fenced and if this service was not delivered it may have been recovered.

**Directorate seeking Exemption Request:** Public Health

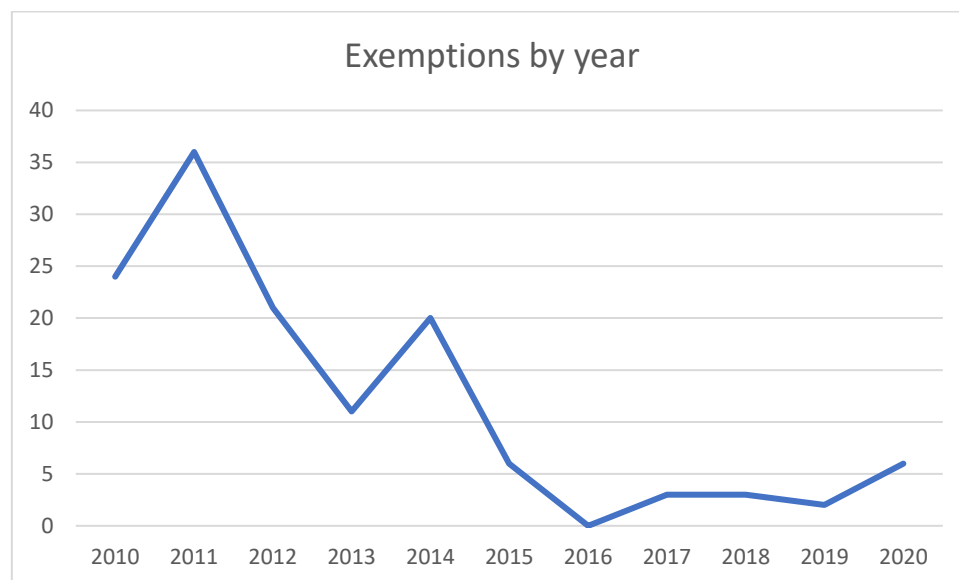
*Date Exemption Approved by the Monitoring Officer: December 2020*

## 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. More specifically, 2020 was more challenging than previous years due to the impact of Covid, which is reflected within the below graph.

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. Recommendations

7.1 The Council is asked to note the contents of the report.

### Lead officer contact

Perry Holmes  
Monitoring Officer  
Tel: 01634332133  
E-mail: [perry.holmes@medway.gov.uk](mailto:perry.holmes@medway.gov.uk)

### Appendices

None.

### Background papers

None.