

COUNCIL

21 APRIL 2022

CONTRACT LETTING – EXCEPTIONAL CIRCUMSTANCES

Portfolio Holder: Councillor Adrian Gulvin, Portfolio Holder for Resources

Report from: Bhupinder Gill, Monitoring Officer

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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 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 UK Directive, Statute or Regulation.

2.2 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:

- 2.2.1 Good and services: £189,330
2.2.2 Works £4,733,252

3. Exemptions Granted

- 3.1 The Exemptions granted for the period 1 January 2021 to 31 March 2022 were as follows:

Exemption 1 – Housing Infrastructure Fund (HIF) Acquisition, CPO, General Property Matters

Value: £180,000 (Services contract)

Project Summary:

- The contractor was previously instructed to provide CPO and acquisition advice on for the HIF bid/expressions of interest stage.
- Contractor developed a thorough understanding of the proposals and was mid-CPO when the exemption was required.

Rationale:

- This exemption allowed Medway to submit to the Secretary of State a robust TWAO and SRO/CPO application for both the road and rail elements of the HIF programme.
- Any change in contractor would have resulted in disproportionately expensive fees due to becoming reacquainted with the HIF scheme as well as missing key deadlines.

Directorate seeking Exemption Request: RCET

Date Exemption Approved by the Monitoring Officer: March 2021

Exemption 2 – Winter Grant Free School Meals

Value: £180,000 (Goods contract)

Project Summary:

- The winter grant provides an opportunity for Medway Council to use national funds to support a range of vulnerable families and children with basic supplies such as food, energy and water bills.

Rationale:

- Due to the national lockdown and social distancing in place during Easter, a voucher scheme that was operated successfully during Easter is the best way of reaching all families.

Directorate seeking Exemption Request: Public health

Date Exemption Approved by the Monitoring Officer: March 2021

Exemption 3 – Public art Commissions

Value: £50,000 (Service contract)

Project Summary:

- To explore options for creating cultural and creative improvements in Chatham.

Rationale:

- Medway Council's trading company, Medway Development Company, directly engaged and negotiated the rates with the contractor who previously delivered High Street works on behalf of the Council.

Directorate seeking Exemption Request: Medway Development Company

Date Exemption Approved by the Monitoring Officer: April 2021

Exemption 4 – Mountbatten House enabling works

Value: £49,500 (Works contract)

Project Summary:

- The delivery of Future High Street Fund enabling works at Mountbatten House.

Rationale:

- The proposed contractor had developed a detailed understanding of this scheme including all the constraints of the site.

Directorate seeking Exemption Request: Medway Development Company

Date Exemption Approved by the Monitoring Officer: April 2021

Exemption 5 – Paddock Landscaping

Value: £138,000 (Services contract)

Project Summary:

- The delivery through all RIBA stages of the works to be carried out at the Paddock.

Rationale:

- The contractor worked extensively in Chatham on developing the Future High Street Fund bid and accumulated significant knowledge of the area and its master planning requirements.

Directorate seeking Exemption Request: Medway Development Company

Date Exemption Approved by the Monitoring Officer: April 2021

Exemption 6 – Design team for the Pentagon Healthy Living Centre (HLC)

Value: £180,000 (Services contract)

Project Summary:

- The Council acquired the Pentagon shopping centre with a plan to use the first floor more productively.
- The NHS was interested in developing a HLC within the building.

Rationale:

- The NHS required the Council to complete RIBA stage 2 to submit their business case.
- The NHS's capital for the development needed to be spend by March 2023 and therefore the Council progressed the design with urgency.
- The exemption was capped to RIBA stage 2.

Directorate seeking Exemption Request: Business Support

Date Exemption Approved by the Monitoring Officer: April 2021

Exemption 7 – Software Subscription – Autocad & Keysoft

Value: £35,000 (goods contract)

Project Summary:

- Multiple Service areas within the RCE directorate entered into separate annual subscription packages for software support for Autocad & Keysoft.

Rationale:

- The services were already in place, this exemption saw the individual terms extended to allow alignment of corporate needs.

Directorate seeking Exemption Request: BSD on behalf of RCE

Date Exemption Approved by the Monitoring Officer: June 2021

Exemption 8 – Future High Street Fund (FHSF) – St Johns Church

Value: £1,000,000 (Works contract)

Project Summary:

- The Council's successful FHSF bid had £1m allocated to the refurbishment of St John's Church, Chatham.
- The budget formed part of a wider refurbishment planned by the Church who also sought to provide additional funding on the proviso they delivered the scheme.

Rationale:

- The Council awarded St John's Church the £1m grant allocation under contract and ensured the church followed Council procurement processes.
- By doing this, the Council was able to generate more funding than granted to deliver the scheme in compliance with Public Sector procurement rules and against a ring-fenced budget.

Directorate seeking Exemption Request: RCE

Date Exemption Approved by the Monitoring Officer: July 2021

Exemption 9 – HIF Rail Delivery- Land Referencing

Value: £75,874 (Service contract)

Project Summary:

- Land referencing was an original requirement of the HIF rail delivery programme, and the Council procured an adhoc provider on the back of a recommendation from MHCLG (the funder of the HIF scheme) when the project first initiated.
- The initial project scope broadened to a stage at which the original contract could not be varied to accommodate the change and, as such, an exemption was sought.

Rationale:

- For continuity of service, the contractor remained in situ to deliver the remainder of the scheme.
- By procuring an alternative provider, the cost would have disproportionately expensive due to re-training and familiarization of the scheme.

Directorate seeking Exemption Request: RCE

Date Exemption Approved by the Monitoring Officer: September 2021

Exemption 10 – Social Care Team Manager Development

Value: £35,200 (Service contract)

Project Summary:

- There was a need to commission a bespoke learning and development package in children's social care to undertake a programme of work, comprising analysis of skill and knowledge and bespoke tailored individual coaching and mentoring for team managers.
- The Council had to ensure that team managers have the skills required to effectively perform their roles; ensuring assessments are timely and clear, decisions are robust and ensuring that staff receive reflective and impactful supervision.

Rationale:

- Officers were aware that the market was restricted, and the recommended provider had limited capacity to deliver this service. As such, if the Council was to otherwise tender, it ran the risk of missing the allocated start date without the ability to source alternative provision.

Directorate seeking Exemption Request: C&A

Date Exemption Approved by the Monitoring Officer: November 2021

Exemption 11 – Hydrogen Feasibility Study

Value: £30,000 (Service contract)

Project Summary:

- An exploration of hydrogen ecosystems within Medway and Western Swale Area. This included the identification of potential hydrogen users, demand, energy alternative, and supply of hydrogen.
- A study into hydrogen has been a pertinent and prevailing endeavour for Medway Council and will be incorporated into the council's refresh of strategic documents. However, due to resourcing and capacity issues, the optimal route was for Thames Estuary Growth Board (TEGB) to lead on commissioning this study, and for the co-beneficiaries to pay the required contribution.

Rationale:

- A fair and competitive process was to be undertaken quickly by Thames Estuary Growth Board to appoint a consultancy to undertake the study and that Thames Estuary Growth Board have a successful track record of undertaking a similar study and have expertise in this subject area.

Directorate seeking Exemption Request: RCE

Date Exemption Approved by the Monitoring Officer: December 2021

Exemption 12 – HIF Rail Delivery – Construction Management

Value: £63,220 (Service contract)

Project Summary:

- The GRIP 3 report at the request of Network Rail was updated to include an end-to-end solution for the proposed battery-operated service, including a new timetable solution, and a rolling stock study.
- These elements are normally undertaken at GRIP 4 stage (single option development), however Network Rail insisted that this was brought forward to GRIP 3, to de-risk the scheme and ensure stakeholder buy in and business case approval before the single option development stage.

Rationale:

- This created additional complexities in providing a passenger service at option selection stage (GRIP 3) within a constrained budget, resulting in the appointment of the in-situ contractor being vital to ensuring the negotiation of the required infrastructure in order to reduce costs and right size the scheme in accordance with the Grant Determination Agreement (GDA). This required a vast amount of specialist input with an increased need for value engineering to ensure that the rail scheme remained financially viable and adhered to the original business case as approved by Homes England (the funder).
- Prior to this exemption, the Council advertised the interim opportunity to its existing framework members but received no viable bids, as such an exception was granted whilst a further procurement activity was conducted.

Directorate seeking Exemption Request: RCE

Date Exemption Approved by the Monitoring Officer: December 2021

Exemption 13 – HIF Rail Delivery (Project Management)

Value: £121,550 (Service contract)

Project Summary:

- Originally, project management was completed by the in-house HIF rail team. As the design has advanced it became necessary to appoint an external project management rail specialist. This was to ensure sufficient time was allocated to the technical and engineering details in the design of the scheme.
- The scheme design continues to advance rapidly and has reached a very technical stage. This requires a Specialist Project Manager who has wealth of rail industry knowledge to effectively anticipate and respond to technical issues, specific to the engineering and end to end solution aspects of the project.

Rationale:

- The granting of an exemption enabled the HIF project to continue at pace on the rail delivery programme. It also ensures that the Council was able to maintain the existing relationships developed with the key railway stakeholders whilst undertaking an open tender exercise in January 2022 (GRIP 4 stage) for the remainder of the Project Management services required for the rest of the HIF Rail project.

Directorate seeking Exemption Request: RCE

Date Exemption Approved by the Monitoring Officer: January 2022

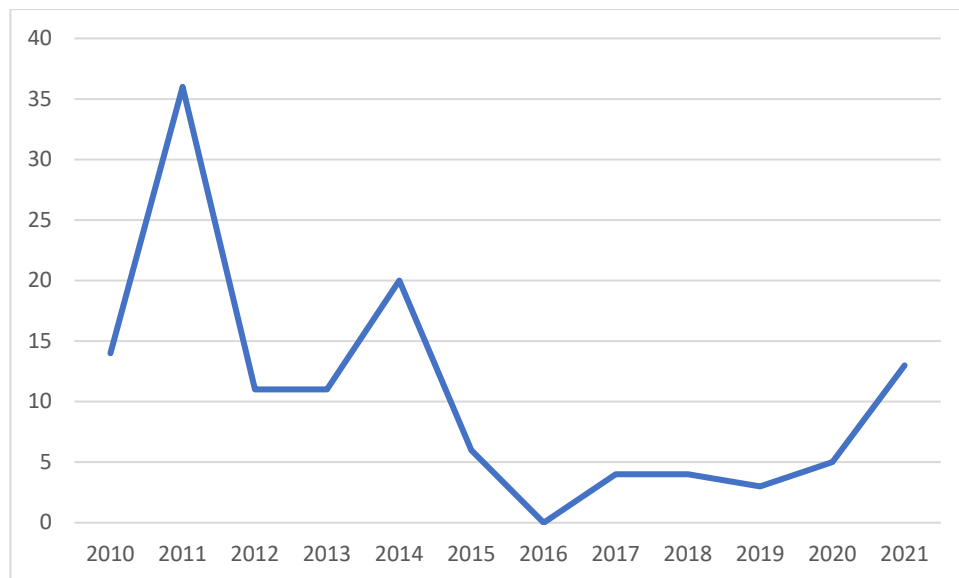
4. Analysis

- 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, 2021 was more challenging than previous years due to the impact of Covid, an increase in successful grant applications, as well as the UK's withdrawal from the European Union.

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 It is recommended that the Council notes the contents of the report.

Lead officer contact

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Appendices

None

Background papers

None