

## COUNCIL

13 JANUARY 2011

### ANNUAL REVIEW OF CONTRACT LETTING IN EXCEPTIONAL CIRCUMSTANCES

Portfolio Holder: Councillor Alan Jarrett, Deputy Leader and 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 the old 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.
- 1.2 Contract letting under exceptional circumstances is legislated for within Medway Council procurement rules and regulations, referred to up until 31 December 2010 as the Contract Rules and thereafter superseded by a new set of rules on 1 January 2011, referred to as the Contract Procedure Rules. This report and the exemptions permitted by the Monitoring Officer herein, refer to the Contract Rules and as such any decision made by the Monitoring Officer have been made in accordance with those old Contract Rules pre 31 December 2010.
- 1.3 Any future reports hereon in relation to contract letting under exceptional circumstances shall be in accordance with the new Contract Procedure Rules which went live as part of the Council's Constitution on 1 January 2011.

#### 2. Background

- 2.1 Subject to overall compliance with the EU Procurement Rules, 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 Contract Rules, which all of Medway's procurement activity is governed by, forms part of the Constitution and the procedures laid out within the Contract Rules, cover Medway's legal obligations in line with both UK and EU Procurement Regulations.

The EU Procurement Regulations regulate the purchasing by public sector bodies and certain utility sector bodies of contracts for Supplies (Goods), Works or Services. The law is designed to open up the EU's public procurement market to competition, to prevent "buy national" policies and to promote the free movement of goods and services.

The EU Procurement Regulations generally apply when three main pre-conditions are met:

1. **The procuring body is a "contracting authority" as defined in the rules.** The definition is wide and includes central government, local authorities, associations formed by one or more contracting authorities and other "bodies governed by public law" (e.g. registered social landlords and fire authorities).
2. **The contract is a public works, services or supplies contract.** Sometimes the contract will be a mixed contract (e.g. for the supply and maintenance of computers). Where it is, a contracting authority must determine, in accordance with the rules, the predominant element of the contract and, therefore, which set of rules will apply. This is important to get right as the rules vary slightly depending on the type of contract (e.g. lower financial thresholds apply to Services and Supplies contracts than to Works contracts).
3. **The estimated value of the contract (net of VAT) equals or exceeds the relevant financial threshold.** The rules expressly prohibit deliberately splitting contracts to bring them below the thresholds. The current thresholds are: **£3,927,260.00** for the procurement of Works and **£156,442.00** for the procurement of Supplies and Part A Services by other public sector bodies including Medway.

Where these three pre-conditions are satisfied a contracting authority must normally advertise the contract in the EU's Official Journal and follow the procedural rules set down in the Regulations.

The Regulations divide services into so called "Part A" (or "priority") services and "Part B" (or "residual") services. Only Part A services are fully caught by the Regulations. Part B services are caught by a lesser regime, with only a few of the detailed rules of the Regulations applying.

Generally, Part B services are those that the EU considered would largely be of interest only to bidders located in the Member State where the contract was to be performed. Part B services would normally be subject primarily to each local authority's set of contract rules on the

basis that the general EU principles are adhered to; these being transparency, fairness and equal treatment of suppliers. Part B services include:-

- Health and Adult Social Care services
- Education and Children's services
- Recreational, cultural and sporting services

The Monitoring Officer, when exercising the constitutional role of contract exemptions, can only permit the exemption of a contract where either the total term of the contract is less than the EU Procurement Regulation thresholds for Works, Supplies (Goods) or Services and where the procurement requirement is deemed a Part B Service as defined within the EU Procurement Regulations.

Even if either the contract value is below the relevant threshold or the contract is a Part B Service, the Monitoring Officer must make an informed decision and ensure that the general principles of the EU Procurement Regulations including fairness, transparency and equal treatment are not impinged upon.

- 2.4 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 November 2009.

## **Exemption 1 - Dementia Advisory Service:**

**Value:** £100,000.00

### **Project Summary:**

- The current contract concluded 29/03/10.
- Medway Council, in partnership with NHS Medway, was successful in a bid to be a pilot site in supporting people with dementia through the commissioning of advisers geared towards supporting people that are diagnosed, and living, with dementia.
- As part of the bid submission and evaluation, organisations that included a third sector organisation as part of their bid were more likely to be successful. In submitting the bid to the Department of Health, the Council and NHS Medway invited the Dementia Advisory Service to be part of the bid in terms of delivering the commissioned service.
- Due to the delayed confirmation and receipt of grant funding in relation to the joint bid, there was insufficient time to follow the contract rules and go through a competitive process to secure the involvement of a third sector organisation. Therefore, this request sought to permit a single source contract award to the Dementia Advisory Service via a formal exemption to the contract rules
- The success of this bid meant that additional monies were attracted into the Medway economy to support people with dementia. The success of the bid required third sector involvement and this could only be achieved, in the timescales, by the procurement requirement to source a third sector supplier, being exempted from the contract rules. The timescale for submitting this bid was approximately 6 weeks and the contract value was £100,000.00.
- The Monitoring Officer, upon request of the Director for Children's and Adult's Directorate, agreed to waive Contract Rules by formalising the contractual relationship between the Dementia Advisory Service and the Council to allow the continuation of the innovative project and in order to deliver key sensitive services.
- The Monitoring Officer agreed to waive Contract Rules and allow Medway Council to contract via the route of a single source exemption until 31<sup>st</sup> March 2012 with an option to extend for 6 months for any under spend that could be utilised during that period.
- It was agreed by the Monitoring Officer that any request to exercise this contractual extension option would be progressed through the Officer Scrutiny Panel, if required. In line with the new Contract Procedure Rules that came into effect from 01.01.11 and which supersede the current Contract Rules to which this report refers, any such decision to exercise a

an extension of 6 months shall be subject to a review by the Monitoring Officer in consultation with the Strategic Procurement Board.

**Risks:**

- In line with Contract Rules this was within the Monitoring Officer's remit to exempt as the contract was below the EU threshold for Services (currently £156,442.00) and furthermore was a Part B Service and therefore the risk of EU Procurement Regulation/Treaty principles being impeached were very low as the contract was of interest solely within the locality.

**Exemption Requested By:**

Genette Laws - Social Care Commissioning and Voluntary Sector Manager  
Children and Adults

**Date Exemption Requested:** 29 March 2010

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

Rose Collinson – Director of Children and Adults

**Date Exemption Approved By The Monitoring Officer:** 7 September 2010

## **Exemption 2 - Chatham Waterfront, Holborn Wharf, Chatham**

**Value:** £25,000.00

£19,000.00 for the options work on the site and £6,000.00 for the architectural options to the Rats Bay Pumping Station, which adjoins the Waterfront site.

### **Project Summary:**

- Three individually owned sites form the majority of the Waterfront area and are owned by Medway Council, A2 Dominion and Watts Charity.
- Between July 2008 and February 2009 A2 Dominion, in the capacity of lead developer, engaged John Lyall Architects to bring forward a scheme across all three sites. Against the backdrop of the adopted "Chatham Centre and Waterfront Development Brief" this proposal developed the idea of a high quality mixed-use scheme referred to as "Holborn Wharf, Chatham".
- This work culminated in a presentation to Medway's Councillors and senior officers in February 2009 who were called together to comment on the proposal. Although overall the scheme received a positive response, concern was raised over certain aspects of the scheme and it was agreed that the scheme should be redesigned.
- During the same period the greater effects of the general downturn in the economy were being felt and as a result A2 Dominion felt unable to respond to the comments on design without sharing the financial burden of doing so with the other landholders.
- Medway Renaissance was keen to explore the development options with A2 Dominion in order to respond to the comments made at the February 2009 workshop. The options were however to be carried out on a reduced site that excluded the Watts Charity land, as they felt unable to contribute to the work.
- It was vital that design work was taken forward with immediate effect to enable the Council to reach agreement with A2 Dominion, in order for the waterfront project to progress. This meant paying a contribution to the existing architects employed by A2 Dominion and directly contracting with them for Medway's proportion that amounted to £25,000.00.
- The reasoning for Medway to contract with A2 Dominion's commissioned architect was to ensure that when the feasibility work was complete the necessary financial appraisal work could be carried out on the options. This in turn would inform decisions on both the agreement with A2 Dominion and decisions over potential for acquisition of adjoining land.
- The Monitoring Officer, upon request of the Director for Regeneration, Community and Culture Directorate, agreed to waive Contract Rules by

formalising the contractual relationship between John Lyall Architects and the Council to allow for further rapid feasibility studies to be conducted without further delay.

**Risks:**

- In line with Contract Rules this was within the Monitoring Officer's remit to exempt as the contract was below the EU threshold for Part A Services (currently £156,442.00).
- As the exempted value of £25,000.00 was low, the risk of challenge was also very low and was far outweighed by the urgency of completing the feasibility studies and the risk of having to discontinue and losing all costs associated with work undertaken to date by John Lyall Architects in order to commence a new procurement process.

**Exemption Requested By:**

Sara Purvis - Chatham Project Manager, Regeneration and Development

**Date Exemption Requested:** 4 February 2010

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

Robin Cooper – Director of Regeneration, Community and Culture

**Date Exemption Approved By The Monitoring Officer:** 4 February 2010



### **Exemption 3 – New Mobile Library Van:**

**Value:** £112,276.00

#### **Project Summary:**

- An exemption to Contract Rules was sought after the original approved procurement method of undertaking an EU compliant tendering exercise to procure a mobile library van had to be abandoned in favour of a call-off from an envisaged framework agreement set up by Kent County Council (KCC) as the lead body. The call-off option negated the need to commit staff resources and time for this procurement activity and therefore was deemed a more viable and cost effective procurement methodology to adopt.
- Miscommunication on the part of both KCC and Medway Council's client department prolonged the procurement exercise. Subsequent discussions with KCC revealed that the framework agreement referred to above had expired and the procurement activity for a new framework was not due to commence until January 2010.
- Time constraints and a strict delivery date had rendered it almost impossible to undertake a formal tendering exercise or await the setting up of a new framework for this requirement. In addition, there had been a change in the funding stream and a consequential reduction of the previous budgetary allocation for this project.
- It was subsequently envisaged that this project would fall below the EU threshold of £156,442 for Supplies (Goods) based upon an initial market scooping exercise. However, although the EU Procurement Regulations would not apply in respects to prescribed timescales, the projected cost of the van was nonetheless still above £100,000.00 and therefore required for a competitive tendering process in line with the Council's contract rules.
- Owing to the strict deadline for the spend allocated for this project, an exemption to Contract Rules for this project was sought to enable the Client department to invite quotations from at least 3 bidders as opposed to undertaking a formal tender process so as to meet the tight delivery deadline.

#### **Risks:**

- In line with Contract Rules this was within the Monitoring Officer's remit to exempt as the contract was below the EU threshold for Part A Supplies (currently £156,442.00). As the exempted value of £112,276.00 was below the £156,442.00 Supplies threshold, the risk of challenge was also very low and was mitigated by subjecting the requirement to a competitive quotation process thus ensuring that a degree of competition was maintained in order to achieve best value.

**Exemption Requested By:**

Martin Garlick – Head of Customer First

**Date Exemption Requested:** 26 January 2010

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

Neil Davies – Chief Executive

**Date Exemption Approved By The Monitoring Officer:** 9 February 2010

#### **Exemption 4 – Parenting skills:**

**Value:** £117,000.00

#### **Project Summary:**

- The Officer Scrutiny Panel approved the commencement of a procurement project on 26<sup>th</sup> August 2009 to deliver parenting skills courses. The contract was formally advertised on 1<sup>st</sup> October 2009 with a view to formalise contractual arrangements on 7<sup>th</sup> January 2011.
- Expressions to participate in the tender process were received from 6 applicants, subsequent to which only three applicants submitted a tender on 4<sup>th</sup> December 2010. Subsequent to the tender return deadline, one applicant tenderer submitted an expression to form a partnership with the incumbent provider on 3<sup>rd</sup> December 2010. Furthermore, the incumbent provider refused to share TUPE information with the third tendering organisation, thus making the process anti-competitive and resulting in the third tendering organisation declining to tender.
- The Strategic Procurement Team and Legal Services Team advised that the existing procurement process and documentation did not allow for partnership bids and allowing such a variation to what had been advertised could place the Council at risk of challenge. As a result, the applicant tenderer wishing to form a partnership with the incumbent also withdrew leaving just the incumbent provider to submit a tender by the revised closing date of 15<sup>th</sup> January 2011.
- Subsequent evaluations which took place on 18<sup>th</sup> January 2011 led to an average assessment of the incumbent albeit the only comparison was against current and previous delivery in light of no counter tenders being issued. As a result, a tender clarification meeting was held with the incumbent Parentis to discuss the tender submission that was almost 25% above the pre-set budget.
- Parentis were advised that due to the issues surrounding budgets and a lack of market interest, the current process had been discontinued and that an exemption would be sought to invoke Contract Rule 12.2, thus allowing formal negotiations with Parentis on the basis of a discontinued process.
- The Monitoring Officer, upon request of the Director for Children's and Adult's Directorate, agreed to waive Contract Rules requirements for a competitive process and to invoke Contract Rule 12.2 in order to permit negotiations on the basis of a previously discontinued process. Subsequently, a formalised contractual relationship was agreed upon with Parentis to utilise £117,000.00 from the Area Based Grant Preventative Fund for 2010-2011.

#### **Risks:**

- In line with Contract Rules this was within the Monitoring Officer's remit to exempt as the contract was below the EU threshold for Services (currently £156,442.00) and furthermore was a Part B Service and therefore the risk of EU Procurement Regulation/Treaty principles being impeached were very low as the contract was of interest solely within the locality.

**Exemption Requested By:**

Marilyn Roe - Commissioning Manager Parenting and Family Support  
Children and Adults

**Date Exemption Requested:** 12 February 2010

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

Rose Collinson – Director of Children and Adults

**Date Exemption Approved By The Monitoring Officer:** 31 March 2010

## **Exemption 5 – Rochester Riverside:**

**Value:** £53,107.03

### **Project Summary:**

- BAM Nuttall Ltd (BNL) completed the engineering contract at Rochester Riverside on 11<sup>th</sup> January 2008 and their 2 year Defects Correction Period (DCP) was due to come to an end. At the north side of the site, in the area of Phases 3 to 5, a programme of surcharge monitoring, placement and transfer was necessary following the end of the DCP upto 2013 in order to properly complete the settlement of this part of the site for future development.
- During the DCP, BNL monitored the surcharge settlement as part of their contractual obligations but would not do so once their DCP came to an end. The continued monitoring of the surcharge was and is necessary and BNL were considered the most appropriate contractor to continue the process due to their extensive experience with, and knowledge of, these works.
- As a result, a waiver was sought from the Monitoring Officer to negate having to seek three quotations in line with Contract Rule 3.5 and single source contract with the incumbent provider BNL until 2013 for a total contract value of £53,107.03.
- The Monitoring Officer, upon request of the Director for Regeneration, Community and Culture Directorate, agreed to waive Contract Rules by formalising the contractual relationship between BAM Nuttall Ltd on the basis of a single source exemption without competition.

### **Risks:**

- In line with Contract Rules this was within the Monitoring Officer's remit to exempt as the contract was below the EU threshold for Supplies (Goods) (currently £156,442.00).
- As the exempted value of £53,107.03 was low, the risk of challenge was also very low and was far outweighed by the importance of having continuity in respects to monitoring as was provided by the incumbent.

### **Exemption Requested By:**

Dean Brunton - Medway Waterfront Project Officer, Regeneration and Development

Date Exemption Requested: 11 January 2010

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

Robin Cooper – Director of Regeneration, Community and Culture

Date Exemption Approved By The Monitoring Officer: 14 January 2010

## **Exemption 6 – SIMS Learning Gateway:**

**Value:** £67,900.00

### **Project Summary:**

- The SIMS Learning Gateway is an extension module to the current SIMS suite of software used by schools to undertake management information and administrative tasks. The purpose of the new module was to give schools, parents and teachers access rights to live web based information on students and management information.
  - In light of potential integration costs of using an alternative supplier and the need to have a compatible system, it was advised that procuring the additional SIMS module through the incumbent provider Capita via an exemption was the most cost and time effective avenue to achieve set requirements. This was evident in light of the fact that schools must have a web based reporting mechanism in place by 2010 either individually or collectively.
  - Schools could in essence procure this requirement separately from the systems provider Capita but then the economies of scale associated with Medway procuring on behalf of the 12 schools would be lost.
  - The total value of the exemption request was £67,900.00 and was broken down as follows:
    - 12 SIMS Learning Gateway licences - one for each school, costs recoverable from schools (£45,600.00)
    - 12 Capita annual maintenance charges - one for each school, costs recoverable from schools (£10,800.00)
    - Service support for - Medway Council to pay (£11,500.00)
  - The Monitoring Officer, upon request of the Director for Children's and Adult's Directorate, agreed to waive Contract Rules requirements for a competitive process and permit a single source contract to be entered into. Subsequently, a formalised contractual relationship was agreed upon with Parentis to utilise £117,000.00 from the Area Based Grant Preventative Fund for 2010-2011. in order to deliver key sensitive services.
- Risks:**
- In line with Contract Rules this was within the Monitoring Officer's remit to exempt as the contract was below the EU threshold for Supplies (Goods) (currently £156,442.00).

- The risks of non-approval were medium as the Council could potentially have lost the opportunity to achieve economies of scale associated with procuring on behalf of 12 schools and schools would have been forced to individually procure from Capita with potential impacts upon delegated budgets.
- The risks of any challenge to this exemption were very low as Medway had market tested requirements and had identified that any alternative was not viable in respects to time and costs and that due to the value there would be little interest from the competitors of Capita.

**Exemption Requested By:**

Jacqui Moore – ICT Advisor, Children's and Adult's

**Date Exemption Requested:** 26 January 2010

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

Rose Collinson – Director of Children and Adults

**Date Exemption Approved By The Monitoring Officer:** 16 February 2010



## **Exemption 7 – The Howard School – Emergency Roofing Works:**

**Value:** £211,535.00

### **Project Summary:**

- On the 18<sup>th</sup> November 2009, the Howard School reported serious water penetration and resulting damage to two blocks of accommodation at the school causing the structure to become rotten. The rooms below the structure had to temporarily put out of use due to health and safety implications, which in effect caused considerable inconvenience to students and teachers and the overall operational delivery of education within the school.
- As part of an ongoing programme of roof replacement, a contract had already been procured to provide a new roof on the shared Howard School/Rainham School for Girls sports hall. The exemption request sought to negate Contract Rules and a competitive process and award a single source contract to the current on site contractor thus ensure a quick turn around and a consistent delivery across the school.
- The Monitoring Officer, upon request of the Director for Children's and Adult's Directorate, agreed to waive Contract Rules requirements for a competitive process and permit the current contractor engaged for the Howard School/Rainham School for Girls sports hall project to undertake the additional works.

### **Risks:**

- In line with Contract Rules this was within the Monitoring Officer's remit to exempt as the contract value of £211,535.00 was below the EU threshold for Work (currently £3,927,260.00).
- The risks of challenge in respects to not exposing to a competitive process were relatively low compared to the risks associated with children not being able to safely receive education and the associated structural risks.

### **Exemption Requested By:**

Clive Mailing – Asset Manager of School Organisation, Children's and Adult's

**Date Exemption Requested:** 25 January 2010

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

Rose Collinson – Director of Children and Adults

**Date Exemption Approved By The Monitoring Officer:** 25 January 2010



## **Exemption 8 – Academies and Capital Programme Support**

**Value:** £145,540.00

### **Project Summary:**

- This exemption request sought to negate having to undertake a competitive process and further to single source the requirement for Capital Programme Management support to MACE for a total value of £145, 540.00.
- MACE was procured for project management support service for the delivery of the Outline Business Case and prime contractor procurement for the three Academies projects using the Partnership For Schools Framework. MACE were delivering in accordance with this requirement under the terms and conditions of the contract signed with Medway Council.
- In addition to the three academies projects, there were several other major projects currently in progress under the banner of the Primary Capital Schemes.
- The aim of the School Inclusion team from the onset of the academies programme was to recruit a Capital Programme manager and support team to manage the long-term capital programme for schools via a comprehensive handover from MACE.
- However, the recruitment process proved problematic with insufficient and inadequate responses resulting in the requirement for MACE to provide additional project management support whilst a new recruitment process commenced.
- In order to facilitate this, an exemption to contract rules was sought to the value of £145, 450.00 for MACE to provide project management support to the capital programme for schools until July 2010. Although this requirement could be competitively tendered, the transition costs and time between knowledge transfer from MACE to another supplier and then the new supplier to the incoming capital programme manager would be immense and cumbersome.
- It was proposed that the current commission for project and programme management support from MACE was extended to the end of July 2010. This would allow for a realistic handover period from external to internal resources based on the current projected appointment dates.

- The Monitoring Officer, upon request of the Director for Children's and Adult's Directorate, agreed to waive Contract Rules requirements for a competitive process and permit MACE to deliver project support until July 2010 on the basis of a new formalised contract.

**Risks:**

- The risks of non-approval were high, as the Council would not have sufficient internal resources to manage the school's capital programme until the new capital programme manager was recruited and there would be the risk of insufficient knowledge transfer if MACE left Medway.
- The risks of any challenge to this exemption were very low as Medway could sufficiently justify this exemption on the basis of direct and indirect costs associated with interim tendering that would not provide best value to the Council and because this was within the remit of exemption as the total cost was below the EU threshold for Services (currently £156,442.00).

**Exemption Requested By:**

Chris McKenzie - Head of School Organisation and Student Services, Children's and Adult's

**Date Exemption Requested:** 18 February 2010

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

Rose Collinson – Director of Children and Adults

**Date Exemption Approved By The Monitoring Officer:** 13 March 2010

## **Exemption 9 – Cozenton Wheel Park – Big Lottery Fund**

**Value:** £178,000.00

### **Project Summary:**

- This procurement was originally part of 4 projects that were presented to Officer Scrutiny Panel at Gateway 1 as part of the Big Lottery Play Funding. The 4 projects in question are Pottery Road, Riverside Country Park, Jacksons Recreation Ground and Cozenton Park and agreement was given to use the ESPO framework to undertake the procurement.
- Unfortunately despite a mini competition process being undertaken from the ESPO framework in which all tenderers on the framework were afforded the opportunity to tender, no tender returns were forthcoming by the set date. After consultation with all the tenderers that were invited to mini-competition, it became evident that due to capacity issues, the specialist nature of the specification and the associated minimal value of the contract (£178,000.00) compared to Pottery Road, Riverside Country Park, and Jackson's Recreation Ground, there was insufficient market interest.
- The options now available to Medway were:
  - Option 1 - Full tender process including advertisement – This was not feasible as timescales were short and a contractor needed to be appointed and must have commenced operations before 31.03.10 in order to ensure funding was not lost.
  - Option 2 - Use of an alternative framework – This was not possible as no such framework existed which could deliver the specialist requirements of the specification.
  - Option 3 - Undertake a mini-competition via a short-list of specialist suppliers as identified by Strategic Procurement by negating contract rules/procurement manual requirements to subject to a formal tender process – This was the best option as it would allow delivery within the set timescales, would prevent a loss of funding and would still ensure best value as a mini competition would be undertaken between 6 specialist contractors.
- The Monitoring Officer, upon request of the Director for Regeneration, Community and Culture Directorate, agreed to waive Contract Rules requirements for a formal tender process and permit a mini competition via a chosen short list of capable suppliers.

**Risks:**

- In line with Contract Rules this was within the Monitoring Officer's remit to exempt the requirement for a formal tendering process as the contract value of £178,000.00 was below the EU threshold for Work (currently £3,927,260.00).
- The risks of non-approval were high as the Council could potentially have lose the funding and the public's perception could have been damaged as a huge amount of consultation had already taken place with residents who were expecting this to be delivered.
- The risks of any challenge to this exemption were very low as Medway would be undertaking a competitive process; albeit one which would not advertise requirements to the wider marketplace and one which would be below the EU threshold for Works thus the challenge element would be less.

**Exemption Requested By:**

Chris Valdus – Acting Greenspace Development Manager

**Date Exemption Requested:** 30 October 2009

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

Robin Cooper – Director of Regeneration, Community and Culture

**Date Exemption Approved By The Monitoring Officer:** 10 November 2009

## **Exemption 10 - GM Mechanical**

**Value:** £131,377.00

### **Project Summary:**

- In 2007, work commenced on establishing Gun Wharf as the main HQ for Medway Council. Significant works, including building and design, mechanical and engineering, and heating and plumbing, were required, and the services of external consultants were used to design the tenders and complete the procurement process according to Medway Council procurement rules.
- Significant work was required in the computer room at Gun Wharf. It was agreed that services could continue to run from the computer room at the Civic Site in Strood until such time as the servers could be relocated at Gun Wharf. A review of the existing ICT infrastructure was carried out, including a report on the existing air conditioning units in situ.
- In a report produced by the Norman Bromley Partnership, the air conditioning units were deemed obsolete as they used R22 gas that was deemed to be illegal for use as from 2010, they were 16 years old, replacement parts were unobtainable as production of these parts ceased 6 years, and one of the units had a leak that could not be repaired.
- It was therefore agreed that the air conditioning units needed replacing. As GM Mechanical were appointed as the contractors for heating and plumbing works within Gun Wharf tender, they would be the contractors responsible for the replacing the air conditioning units within the computer room.
- During 2009, a project was initiated by Kent Connects (a pan-Kent technology partnership) to deliver regional data centres. As the data centre at Gun Wharf was large and being developed, it was an opportunity for Medway Council to develop the first data centre, which would enable adherence to the shared services agenda, and also would enable income generation. In order to develop the data centre, KCC agreed to provide some capital funding to ensure the infrastructure was of a sufficient capacity to house additional servers.
- The replacement of the air conditioning units was therefore split into 2 phases – phase 1 which was the original requirements for Medway, and phase 2 which expanded the air conditioning power to enable additional servers to be housed and maintained in the correct environment.
- As the floor needed to be taken up for phase 1, it seemed an ideal opportunity to lay the pipe work for phase 2, to avoid future disruption to services.

- In order to increase the air conditioning capacity, some building work, for which planning consent had been obtained, was also required to expand the air conditioning compound to the rear of the car park. The exemption request therefore sought an exemption for phase 2 which were not part of the original Gun Wharf tender.
- The Monitoring Officer, upon request of the Director for Business Support Directorate (Chief Executive), agreed to waive Contract Rules requirements for a formal tender process and permit a single source exemption to directly contract with GM Mechanical for the phase 2 works.

**Risks:**

- In line with Contract Rules this was within the Monitoring Officer's remit to exempt the requirement for a formal tendering process as the contract value of £131,377.00 was below the EU threshold for Supplies (currently £156,442.00).
- Although the exemption contained a mixture of Works, Services and Supplies (Goods), the greater value was proportioned to Services (£112,093.00 of the total £131,377.00 was attributable to the purchase of the air conditioning units with only £19,284.00 being attributable to the building works).
- The risk of challenge to the authority for not exposing the requirement to competition was low compared to the high risk of service failure and potential issues that could have arisen through having a different contractor work with infrastructure previously laid out by GM Mechanical such as conflict of liability in relation to maintenance and support of the existing pipework.
- Furthermore, there was the high risk that KCC would withdraw funding if phase 2 works were not completed within time, budget and in accordance with collectively agreed specifications.

**Exemption Requested By:**

Moira Bragg - Head of ICT, Business Support Department

**Date Exemption Requested:** 23 March 2010

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

Neil Davies – Chief Executive

**Date Exemption Approved By The Monitoring Officer:** 21 April 2010



## **Exemption 11: New Waterfront Arts Complex (WACx)**

**Value:** £10,000.00

### **Project Summary:**

- ACT/Roger Tomlinson were originally commissioned to examine cultural gaps in Medway and further to the original piece of work, further work was required in relation to developing the New Waterfront Arts Complex (WACx) and taking it to the next stage. Given the background knowledge and prior work undertaken by ACT/Roger Tomlinson, it was felt that best value would be derived from extending the contract scope and value on the basis of an exemption to contract rules to ensure continuity and completion of required outputs.
- The Monitoring Officer, upon request of the Director for Regeneration, Community and Culture Directorate, agreed to waive Contract Rules requirements for a formal tender process and permit an extension of the current contract and commission to ACT/Roger Tomlinson.

### **Risks:**

- The commission to another provider would result in delays of time and incurred cost and would not allow efficient and effective continuation of cultural gaps examination. As the value was £10,000.00, the risk of any challenge to this exemption were very low and was well within the remit of the Monitoring Officer as the value was below the EU Services threshold of £156,442.00.

### **Exemption Requested By:**

Mandy Thwaites, Head of Festivals, Arts and Theatres

**Date Exemption Requested:** 12 February 2010

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

Robin Cooper – Director of Regeneration, Community and Culture

**Date Exemption Approved By The Monitoring Officer:** 16 February 2010



## **Exemption 12: Family Group Conferencing**

**Value:** £100,000.00

### **Project Summary:**

- Family Group Conferences is the primary vehicle through which support is provided to families and friends to enable them to find solutions and arrangements following relationship breakdown or where safety of the child has become an issue.
- Family Group Conferences must also be held in all cases prior to instigation of proceedings and prior to children and young people becoming accommodated (outside of emergency). The aim of the Family Group Conference is to safely reduce the number of looked after children in Medway.
- The Family Group Conferences fit into the aims and objectives of the preventative intervention strategy. This will include reducing the number of children entering the looked after system and to providing more effective family support to vulnerable children and young people.
- The aim of the exemption was to having a continued service with the incumbent whilst a longer-term procurement framework solution was devised to enable the achievement of value for money and high standards of service delivery.
- The Monitoring Officer, upon request of the Director for Children's and Adult's Directorate, agreed to waive Contract Rules requirements for a competitive process and permit the incumbent provider to continue delivery of Family Group Conferences for a 12 month period, thus allowing the time to complete a comprehensive evaluation of both the service users and the most effective methodology for delivery.

### **Risks:**

- The risks of non-approval were high, as the Council would not have sufficient internal resources to manage the Family Group Conferencing requirement and children could have been put at increased risk of being placed into care.
- The risk of challenge was low as the value of the exemption was below the £156,442.00 threshold for services, was a Part B service and there were few competitors in the marketplace with capability and capacity to deliver Medway's requirements.

**Exemption Requested By:**

Sue Edmed – School Contracts and Commissioning Manager.

**Date Exemption Requested:** 29 March 2010

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

Rose Collinson – Director of Children and Adults

**Date Exemption Approved By The Monitoring Officer:** 26 April 2010

### **Exemption 13: The Brook Works Procurement - Breheny**

**Value:** £1,500,000.00

#### **Project Summary:**

- This exemption related to the procurement of the works contract to undertake the road widening and public realm works to the Brook. The works included demolition of a number of existing structures, road widening and realignment, construction of retaining structures, resurfacing and landscaping works. These works formed the final element of the phase 2 road improvements and public realm improvements to be carried out in Chatham within this funding period.
- Breheny were appointed following a competitive tendering process to carry out the Sir John Hawkins Way contract which was due to be completed in June 2010. They achieved a good standard of finish, and the delays experienced were largely due to outside factors such as prolonged poor weather conditions.
- Breheny also were awarded the contract for the works at Union Street (valued at approximately £1,200,000.00), again following a competitive exercise.
- The exemption sought to take advantage of the works being carried out by Breheny at Union Street and award the contract for the brook via a single source exemption without competition. The rationale for this exemption was that it would provide potential economies of scale, manage traffic management issues effectively and overcome time delays of undertaking a procurement process.
- Furthermore, as both sites are physically adjacent to one another, the exemption sought to take advantage of operational efficiencies that one contractor could bring to delivering both requirements including shortening the overall programme delivery time and overcome implications of different contractors working simultaneously across two sites.
- The Monitoring Officer, upon request of the Director for Regeneration, Community and Culture Directorate, agreed to waive Contract Rules requirements for a formal tender process and permit a single source exemption to contract with Breheny for the Brook works.

#### **Risks:**

- In line with Contract Rules this was within the Monitoring Officer's remit to exempt the requirement for a formal tendering process as the contract value of £1,500,000.00 was below the EU threshold for Works (currently £3,927,260.00).

- The risks of non-approval were high as the Council could potentially have lost the funding and the public's perception could have been damaged as a huge amount of consultation had already taken place with residents who were expecting this to be delivered.
- The risks of any challenge to this exemption were very low as Medway has demonstrated value for money through benchmarking costs of Breheny on other competitive tender schemes, which they had won.
- Furthermore, the cost effectiveness of Breheny being able to work across two sites could not be matched effectively and efficiently within the required timescales and delays costs of tendering the requirement would also be subsumed within any alternate tender submission.

**Exemption Requested By:**

Sara Purvis

**Date Exemption Requested:** 15 May 2010

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

Robin Cooper – Director of Regeneration, Community and Culture.

**Date Exemption Approved By The Monitoring Officer:** 15 May 2010

## **Exemption 14: Liberata**

**Value:** £56,000.00

### **Project Summary:**

- A pilot exercise was commenced on 1<sup>st</sup> July 2010 to assess the performance of Customer First against a private sector provider, Liberata. The aim was have Liberata deal with a proportion of Customer First Revenues and Benefits calls over a 3-month period to determine whether cost effectiveness and service delivery excellence lay in private sector or public sector delivery.
- The aim of the pilot exercise enabled a comparison of performance with a leading player in the private sector to consider whether there were further improvements that could be made to Medway's customer service delivery.
- The Monitoring Officer, upon request of the Director for Business Support Directorate (Chief Executive), agreed to waive Contract Rules requirements for a formal quotation process (as the rules required 3 quotations be sought for contracts between £15,000.00 and £100,000.00) and permit a single source exemption to directly contract with Liberata for a three-month pilot period.

### **Risks:**

- In line with Contract Rules this was within the Monitoring Officer's remit to exempt the requirement for a formal tendering and/or quotation process as the contract value of £56,000.00 was below the EU threshold for Services (currently £156,442.00).
- Furthermore, as the aim of the pilot was to determine whether the customer services provisions could be improved and whether there was merit for outsourcing, it was acknowledged that any future plans for consultation/outsourcing would be subjected to appropriate competition.
- Therefore, the risk of any challenge was low whereas the risk of competing on the basis of quotes was high, as it could have led to a provider being procured for the pilot, which was not of the qualitative level required by the Council.

### **Exemption Requested By:**

Richard Hicks – Assistant Director, Customer First, Leisure, Culture and Democracy and Governance

**Date Exemption Requested:** 22 July 2010

**Director Approving Exemption Request For Review By The Monitoring Officer**

Neil Davies – Chief Executive

**Date Exemption Approved By The Monitoring Officer: 29 July 2010**



## **Exemption 15: Great Lines Heritage Park-Bridge**

**Value:** £250,000.00

### **Project Summary:**

- This project was funded by central government via the Communities and Local Government's "Parklands" fund (administered by the Homes & Communities Agency).
- The decision to instruct officers to design and deliver the Great Lines Bridge within the field of fire Heritage Park programme of works was made by the Director of Regeneration, Community and Culture.
- The Funding Agreement was in place for the bridge as part of the wider suite of projects to deliver the Great Lines Heritage Park.
- As delivery of the bridge was required for completion by 31 March 2011 under the terms of the HCA funding agreement, there was not sufficient time to procure the requirement via a formal tender process.
- Furthermore, the specialist nature of the project required specialist scheduled monument consent from English Heritage, which if exposed to competition would not allow sufficient time to achieve.
- In addition, having to take the project through the Council's gateway process would also add time that would hinder meeting funding timescales. In light of this, an exemption was sought to negate having to subject the project to the gateway process, negate a formal tender process in line with contract rules and call off requirements from the Highways Agency Framework.
- The Monitoring Officer, upon request of the Director for Regeneration, Community and Culture Directorate, agreed to waive Contract Rules requirements for a formal tender process and permit a call off of requirements from the Highways Agency Framework.

### **Risks:**

- In line with Contract Rules this was within the Monitoring Officer's remit to exempt the requirement for a formal tendering process as the contract value of £2,50,000.00 was below the EU threshold for Works (currently £3,927,260.00).
- The risks of non-approval were high as the Council could potentially have lost the funding and the public's perception could have been damaged as a huge amount of publicity had already taken place around the Great Lines.

- Furthermore, having to undertake a formal competitive process would have meant that scheduled monument consent might have been hindered.
- The risks of challenge were low as the Highways Agency Framework had been subjected to the full EU Procurement Process and call offs from it were applicable to all contracting authorities.

**Exemption Requested By:**

Joanna Cable – Great Lines Project Manager

**Date Exemption Requested:** 20 July 2010

**Director Approving Exemption Request For Review By The Monitoring Officer**

Robin Cooper – Director of Regeneration, Community and Culture

**Date Exemption Approved By The Monitoring Officer:** 29 July 2010

## **Exemption 16: A228 Stoke Bridge**

**Value:** £30,000.00

### **Project Summary:**

- On 8<sup>th</sup> June 2009, the Cabinet agreed to award the contract for the A228 Stoke Bridge crossing to Birse Civils. However, due to planning consent not being granted at that present moment in time, it was acknowledged that the Council would be at financial risk to enter into a full contract.
- Therefore, an exemption to contract rules was sought for a single source contract to be issued to Birse Civils for a value of £30,000.00 for preparatory works in the hope that planning permission be granted in the future. It was envisaged that if this single source exemption was granted and the projected proceeded, work would be able to start on site in August 2010 to ensure that HCA funding was fully committed.
- In order to achieve this there were essential plans, method statements and applications that had to be submitted to HCA as soon as planning consent was granted. Only Birse could prepare these submissions and it was essential that the preparatory work started immediately or there would be a risk that the contract would not start on time.
- The Monitoring Officer, upon request of the Director for Regeneration, Community and Culture Directorate, agreed to waive Contract Rules requirements for a formal quotation process and permit a single source contract for preparatory works with Birse Civils call off of requirements from the Highways Agency Framework.

### **Risks:**

- In line with Contract Rules this was within the Monitoring Officer's remit to exempt the requirement for a formal tendering process as the contract value of £250,000.00 was below the EU threshold for Works (currently £3,927,260.00).
- The risks of non-approval were high as the Council could potentially have lost the funding and the public's perception could have been damaged as a huge amount of publicity had already taken place around the Great Lines.

**Exemption Requested By:** Ian Wilson

**Date Exemption Requested:** 20 July 2010

**Director Approving Exemption Request For Review By The Monitoring Officer**

Robin Cooper – Director of Regeneration, Community and Culture.

**Date Exemption Approved By The Monitoring Officer:** 29 July 2010

## **Exemption 17: Compliance Management Programme**

### **Value:**

Total exemption value of £1,199,980.00 reflects 14 Planned Maintenance Agreement contracts that have been individually exempted by the Monitoring Officer as individual contracts.

Each individual exempted contract is below the EU threshold for Services currently set at £156,442.00 and was awarded to different contractors via a single source exemption as set out below:

<b>CONTRACTS AND ESTIMATED VALUE</b>				
SERVICE GROUP	TOTAL PROJECTED COST SCHOOLS	TOTAL PROJECTED COST CORPORATE	TOTAL PROJECTED COST HOUSING	Total Costs
CATERING EQUIPMENT	£18,500.00	£400.00	£200.00	£19,100.00
ELECTRICAL TESTING	£44,010.00	£78,100.00	£700.00	£122,810.00
FIRE SYSTEMS	£61,870.00	£48,200.00	£1,970.00	£112,040.00
SECURITY SYSTEMS	£64,075.00	£57,310.00	£1,600.00	£122,985.00
LIFTS	£6,900.00	£13,100.00	£1,860.00	£21,860.00
MECHANICAL SERVICES	£59,384.00	£51,300.00	£2,170.00	£112,854.00
MIXING VALVES	£20,347.00	£13,421.00	£900.00	£34,668.00
VENTILATION & AC	£57,800.00	£58,200.00	£1,930.00	£117,930.00
WATER MANAGEMENT	£0.00	£79,020.00	£3,980.00	£83,000.00
ASBESTOS	£98,721.00	£42,123.00	£0.00	£140,844.00
DECS	£52,175.00	£49,134.00	£430.00	£101,739.00
CONDITION SURVEYS	£142,000.00	£0.00	£0.00	£142,000.00
ELCTRICAL SERVICES	£38,120.00	£28,210.00	£1,820.00	£68,150.00
<b>TOTAL COST PER GROUP</b>	<b>£663,902.00</b>	<b>£518,518.00</b>	<b>£17,560.00</b>	<b>£1,199,980.00</b>

### **Project Summary:**

- This exemption request sought to seek agreement to 14 individual exemptions for Planned Maintenance Agreement contracts after the originally approved procurement method to call-off from an EU compliant framework set by Kent County Council had to be abandoned in favour of direct award of contractors from KCC's select list of Contractors and Constructionline list of approved contractors.

- This was due to the fact that Medway officers had been incorrectly advised as to the validity of utilising the KCC framework, which as it transpired could only be utilised by County and the 12 Kent districts but not Medway.
- The Monitoring Officer, upon request of the Director for Business Support Directorate (Chief Executive), agreed to waive Contract Rules requirements and allow the formalisation of contractual requirements with the contractors listed in the table above via a process of a single source exemption.

**Risks:**

- The risk of challenge was low as the value of each exemption was below the £156,442.00 threshold for Services and because the contract term was interim whilst a robust longer-term procurement process is put in place.
- In direct contrast, the risk of non approval was high as there were huge Health and Safety risks associated with the failure to deliver the Planned Maintenance Service within the next 21 days including the repercussions from the Health and Safety Executive and the exposure of staff to risks including Legionella, Asbestos and faulty gas systems.

**Exemption Requested By:**

Joseph Ebearthur, Facilities Manager

**Date Exemption Requested:** 23 July 2010

**Director Approving Exemption Request For Review By The Monitoring Officer:**

Neil Davies – Chief Executive

**Date Exemption Approved By The Monitoring Officer:** 23 July 2010

## **Exemption 18: Overdrive - Introduction of e-books**

**Value:** £33,000.00

### **Project Summary:**

- E-book is the term to describe a text that is available in electronic format through mediums such as IPAD, Sony readers and other electronic devices. The provision of e-books is an objective in the 2010/11 Library Service Plan.
- There are no other comparable products available in public libraries to help meet the requirements as outlined within the Library Service Plan. A recent report commissioned by the South East Library Management System (SELMS) Consortium concluded that the company Overdrive is the only supplier currently in the marketplace, albeit that the market is developing. This is evidenced in the fact that the majority of SELMS consortium authorities have purchased the Overdrive offering.
- An exemption request had been sought to purchase the E-book offering through Overdrive as there was no alternative marketplace suppliers.
- The Monitoring Officer, upon request of the Director for Business Support Directorate (Chief Executive), agreed to waive Contract Rules requirements and allow the formalisation of contractual requirements with Overdrive for E-Book services on the basis that the cost could be covered from existing budgets.

### **Risks:**

- The risk of challenge was low as the value of the exemption value of £33,000.00 (for a two year contract term) was below the £156,442.00 threshold for Supplies and because there was no alternative providers.

### **Exemption Requested By:**

Lyn Rainbow, Library Services

**Date Exemption Requested:** 23 July 2010

### **Director Approving Exemption Request For Review By The Monitoring Officer:**

Neil Davies – Chief Executive

**Date Exemption Approved By The Monitoring Officer:** 29 July 2010





## **Exemption 19: Banking Contract**

**Value:** £114,000.00

### **Project Summary:**

- Further to the imminent conclusion of the banking contract with Natwest which ran from 1<sup>st</sup> October 2005 to 30<sup>th</sup> September 2010 (3 years plus 2 year extension), a single source exemption was sought for a new 18 month contract to be formalised with the incumbent provider from 1<sup>st</sup> October 2010 to 31<sup>st</sup> March 2012.
- In light of the financial crisis and the business critical nature of the contract to service delivery such as council tax, social care debt and housing rents it was imperative that a new contract be formalised with immediate effect to afford the council protection against commercial risk whilst a longer strategy is developed in respects to how the new banking contract should be structured and procured longer term.
- The Monitoring Officer, upon request of the Director for Business Support Directorate (Chief Executive), agreed to waive Contract Rules requirements and allow the formalisation of contractual requirements with Natwest for a further 18-month term whilst procurement and contracting review was undertaken in respects to how the new contract could be procured and delivered.

### **Risks:**

- The risk of challenge was low as the value of the exemption value of £114,000.00 was below the £156,442.00 threshold for Services and because the contract term was interim whilst a robust longer-term procurement process is put in place.
- In direct contrast, the risk of non approval was high as the service underpins all the Council's activities; handling all payments from customers including direct debits, cash and cheques, plus all payments by the Council via the bank.
- A change of bank would create a significant risk as council tax bills, cheques, income payment slips and other stationery would need to be reprinted and distributed with a significant cost and a risk of adverse customer impact, particularly from inevitable errors in data transfer.

**Exemption Requested By:** Andy Larkin

**Exemption Request Date:** 20 August 2010

**Director Approving Exemption Request For Review By The Monitoring Officer**

Neil Davies – Chief Executive

**Date Exemption Approved By The Monitoring Officer: 20 August 2010**

## **Exemption 20: Medway Matters**

**Value:** £42,000.00

### **Project Summary:**

- Medway Matters distribution contract with the Royal Mail ended on 31<sup>st</sup> December 2010. The magazine is published every two months and is a 32-page A4 publication; delivered to every residential address within a two-week delivery window.
- Procurement Board wished to investigate broader opportunities to combine the delivery of Medway Matters with other postage-related contracts held elsewhere within the council. The exemption was required for a 12-month period to allow time for these investigations to take place while delivery of Medway Matters was delivered via the Royal Mail as an interim measure.
- The Monitoring Officer, upon request of the Director for Business Support Directorate (Chief Executive), agreed to waive Contract Rules requirements and allow for a further 12-month contractual arrangement with the Royal Mail whilst postage is reviewed across the organisation.

### **Risks:**

- The risk of challenge was low as the value of the exemption value of £42,000.00 was below the £156,442.00 threshold for Services and because the contract term was interim whilst a robust longer-term procurement process is put in place.
- In direct contrast, the risk of non-approval was high as residents of Medway value the service and any drop in service would be deemed negatively.

### **Exemption Requested By:**

Simon Wakeman, Head of Marketing and Communications

**Date Exemption Requested:** 5 October 2010

### **Director Approving Exemption Request For Review By The Monitoring Officer**

Neil Davies – Chief Executive

**Date Exemption Approved By The Monitoring Officer:** 26 October 2010



## **Exemption 21: Recommissioning of Supporting People Services**

**Value:** £2,060,430.26 – Maximum annual exemption value.

### **Project Summary:**

- This exemption sought to seek agreement to an exemption to the contract rules and to grant permission to extend the 16 contracts listed below:

<b>Service Description</b>	<b>Value of extension required</b>
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
Floating support for women at risk of domestic violence	£47,807.00
Medium intensity accommodation based support for offenders	£63,280.00
Accommodation based support with an outreach service for single homeless	£295,616.00

Generic short term floating support service	£124,252.99
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- The current contract is funded from non-ring fenced Area Based Grant monies that currently totals £5,800,000.00. Recommissioning of the services will not commence until the outcomes of the comprehensive spending review are communicated in detail and the subsequent implications for Medway are confirmed.
- As contracts are funded from non-ring fenced Area Based Grant, the tendering exercises for these services needed to be delayed until March 2011, following confirmation of the budget allocation for the Supporting People programme.
- Ensuring continuity of these services is essential to ensure that Medway Council continues to promote the independence of vulnerable adults and young people in the community and therefore it was of utmost importance that the exemption was approved.
- The Monitoring Officer, upon request of the Director for Children's and Adult's Directorate, agreed to waive Contract Rules by formalising the contractual relationship between for all 16 contracts in order to allow the continuation of and delivery of key sensitive services whilst the budget uncertainty was clarified.

**Risks:**

- In line with Contract Rules this was within the Monitoring Officer's remit to exempt each individual contract, as they are all Part B services. The risk of challenge was low as the marketplace providers were aware of the budget uncertainty and the need to have service continuity.
- In comparison, the risk of non-approval was high as without formalising contractual relations, the Council would be at risk of not meeting its statutory obligations and vulnerable citizens could potentially be detrimented.

**Exemption Requested By:**

Genette Laws - Social Care Commissioning and Voluntary Sector Manager  
Children and Adults

**Date Exemption Requested:** 21 October 2010

**Director Approving Exemption Request For Review By The Monitoring Officer**

Rose Collinson – Director of Children and Adults

**Date Exemption Approved By The Monitoring Officer:** 26 October 2010





## **Exemption 22: Connexions – Medway Youth Trust**

**Value: TBC** – Current exemption value is £2,100,000.00 subject to Area Based Grant announcements in March 2011

### **Project Summary:**

- Funding is currently with the Area Based Grant from the DofE. There has been an in year cut to the ABG and Connexions service provider has taken a 5% reduction. ABG is expected to be significantly reduced even further in the autumn budget when a policy framework and guidance on future delivery is expected.
- Medway Council under its statutory obligations with the Children's Trust, must deliver integrated youth services through a model such as the Connexions Services.
- Procurement Board approved the commencement of a new procurement process to enable a new contract to be in place for 2011. However, subsequently the new coalition government announced that there would be significant changes to Area Based Grants from 2011. As a result, Procurement Board advised that no contract should be entered into until such a time as to when budget certainty could be assured.
- An exemption was requested until 2012 by which time a delivery model could be taken forward for procurement based upon defined budgets and a clear specification. This would overcome current uncertainty upon which if a procurement process was conducted, could leave the Council with an unaffordable contract.
- The Monitoring Officer, upon request of the Director for Children's and Adult's Directorate, agreed to waive Contract Rules by formalising the contractual relationship between the Council and the Medway Youth Trust until budget certainty around the Area Based Grants is ascertained and a clearly defined specification can be created upon which to deliver and effective procurement process.

### **Risks:**

- In line with Contract Rules this was within the Monitoring Officer's remit to exempt each individual contract, as they are all Part B services. The risk of challenge was low as the marketplace providers were aware of the budget uncertainty and the need to have service continuity.
- In comparison, the risk of non-approval was high as without formalising contractual relations, the Council would be at risk of not meeting its statutory obligations and Medway's youth could potentially be detrimented.

**Exemption Requested By:**

Juliet Sevier – Assistant Director, Inclusion

**Date Exemption Requested:** 14 July 2010

**Director Approving Exemption Request For Review By The Monitoring Officer**

Rose Collinson – Director of Children and Adults

**Date Exemption Approved By The Monitoring Officer:** 1 December 2010

## **Exemption 23: Better for Less Project – Price WaterHouse Coopers**

**Value:** £220,000.00

### **Project Summary:**

- Price WaterHouse Coopers were procured via the OGC framework for multi-disciplinary services for procurement, to enable the ongoing use of the transformation methodology Price WaterHouse Coopers employ.
- This exemption sought to use the basis of the original contract to enter into further services and form a contract for additional services not exceeding 50% of the value of the contract, needed through unforeseen circumstances and which cannot be separated from the original services without major inconvenience to Medway (12.2 of the contract rules.)
- The Monitoring Officer, upon request of the Director for Business Support Directorate (Chief Executive), agreed to waive Contract Rules requirements and allow the formalisation of contractual requirements with Price WaterHouse Coopers to take forward the next stage of the efficiency gains review.

### **Risks:**

- The risk of challenge was low as the additional requirements were low as the additional requirements were being procured from the OGC compliant framework, which had been subjected to the full application of the EU Procurement Regulations.
- Therefore, although the additional requirements were above the EU threshold for Services set at £156,442.00, the use of the EU compliant OGC framework mitigated this risk and therefore the only risk was non approval of the exemption which would have meant a delay in delivering the value for money agenda as set out in the Council's 'Better for Less' strategy.

### **Exemption Requested By:**

Stephanie Goad, Assistant Director, Communications, Performance and Partnerships

**Date Exemption Requested:** 9 December 2010

### **Director Approving Exemption Request For Review By The Monitoring Officer**

Neil Davies – Chief Executive

**Date Exemption Approved By The Monitoring Officer:** 10 December 2010

### **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 to 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 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