

## COUNCIL

12 JANUARY 2012

### CONTRACT LETTING – EXCEPTIONAL CIRCUMSTANCES

Portfolio Holder: Councillor Alan Jarrett, Deputy Leader and Finance  
Report from: Deborah Upton, Monitoring Officer  
Author: Gurpreet Anand, Strategic Procurement and Energy Manager

#### Summary

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

#### 1. Budget and Policy Framework

- 1.1 The constitution requires that the Monitoring Officer shall report to Council for information purposes on the number of contracts recommended by Directors for award and approved by the Monitoring Officer under delegated powers and reliance on the exceptional circumstances permitted by Contract Procedure Rules 1.8.1 and 1.8.2.
- 1.2 Contract letting under exceptional circumstances is legislated for within Medway Council's Contract Procedure Rules, which superseded the previous Contract Rules on 1 January 2011. This report and the exemptions permitted by the Monitoring Officer herein, refer to the Contract Procedure Rules and as such any decision made by the Monitoring Officer has been made in accordance with the new Contract Procedure Rules post 1 January 2011.

#### 2. Background

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

- Where for technical or artistic reasons or reasons connected with the protection of exclusive rights the contract can only be awarded to one economic entity.
- In a case of extreme urgency brought about by unforeseen circumstances, which are not attributable to the Council, when there is insufficient time to secure quotations or tenders.
- Procurements of Supplies (Goods), Services, or Works where the procurement procedure to be followed by the Council is the subject of express legislation.
- Supplies (Goods), Works or Services procured in an emergency because of a need to respond to events that were beyond the control of the Council (e.g. natural disasters such as flooding or fires) but any such expenditure in excess of **£15,000** must reported to the Strategic Procurement Team within 1 week of the date of the contract award using the *Exemption Request Form*. Any contract entered into by the Council under this Exemption must not be for a term of more than 6 months.
- Contracts for the acquisition and disposal of land or property that are covered within the remit of the Assistant Director, Housing and Corporate Services and within the Financial Limits as prescribed within part 5 of chapter 3 of the Constitution.
- Contracts for employment for staff, except where an agency is used to supply the staff.
- Works orders with utility infrastructure providers, e.g. Gas Mains.
- Where supplies are acquired from a closing down sale in circumstances permitted by the Regulations.
- Where the contract is for replacement goods or installations and contracting with an alternative supplier to the supplier of the initial goods or installation would either result in incompatibility with existing goods or installations or lead to disproportionate technical difficulties in the operation and maintenance of existing goods or installations.
- Where the provision of services is reserved to the winner of a design contest as specified in the Regulations.
- Where the Council has entered into a contract and additional works or services not exceeding 20% of the value of the original contract are needed through unforeseen circumstances and can not be separated from the original works or services without major inconvenience to the Council or are necessary for the later stages of performance of the contracts.

- The disposal of Council Assets that are covered by the Property Procedure Rules and Financial Procedure Rules.
  - Contract extensions permitted by the Regulations.
  - In any other circumstances permitted by the Regulations.
- 2.2 In all cases the Director concerned is required to recommend to and seek the agreement of the Monitoring Officer to enter into the proposed contract and the value of the contract cannot exceed the appropriate and current EU Procurement Thresholds.
- 2.3 Any Officer acting on behalf of an appropriate Director to request an exemption to a procurement process in line with these Contract Procedure Rules must complete an Exemption To Contract Procedure Rules Form. This form must be approved and signed by the appropriate Director before submission to the Strategic Procurement Board for the Monitoring Officer to consider.
- 2.4 The Contract Procedure Rules, which all of Medway's procurement activity is governed by, forms part of the Constitution and the procedures laid out within the Contract Procedure 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).

**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 thresholds in place when exemptions highlighted within this report were granted were: **£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.

EU procurement thresholds are reviewed every two years to ensure that they remain in line with the threshold used for the World Trade Organisation's Government Procurement Agreement. On 2<sup>nd</sup> December 2011 new EU public procurement thresholds were published in the [Official Journal of the European Union](#). The new thresholds are to be amended upwards and will apply from 1<sup>st</sup> January 2012 and will be reflected accordingly in future Full Council reports for contract letting in exceptional circumstances.

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 Procedure 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.

- 2.5 The Monitoring Officer, further to requests from Medway Directors, has approved the following exemption requests since the matter was last reported to Council on 13 January 2011.

## **Exemption 1 – Infrastructure Consultant Appointment for Rochester Riverside**

**Value** £35,000

### **Project Summary:**

- In order to progress the activities required at Rochester Riverside during 2010/11 it was necessary to appoint appropriate engineering consultants as quickly as possible. Halcrow had been employed on Rochester Riverside throughout the engineering contract so their knowledge of the project was critical.
- Using the OJEU procurement framework panel and the Terms and Conditions of that framework, SEEDA had obtained fee proposals from Halcrow for the necessary engineering consultancy work related to the infrastructure works required to meet the proposals set out in the Cabinet reports.
- The total value of the Halcrow's appointment was £86,033.25, of which Medway was required to contribute £35,000. Therefore, Medway was entering as a partner into a contract to which it had no influence, thus requiring a single source exemption for Medway's contribution.
- The Monitoring Officer, upon request of the Director for Regeneration, Community and Culture Directorate, agreed to waive Contract Procedure Rules by formalising the contractual relationship between Halcrow, SEEDA and the Council, based upon the Council's contribution.

### **Risks:**

- In line with Contract Procedure Rules this was within the Monitoring Officer's remit to exempt as the contract was below the then EU threshold for Services of £156,442.00 and therefore the risk of EU Procurement Regulation/Treaty principles being impeached were very low as SEEDA has called off an EU Compliant Framework Contract.

### **Exemption Requested By:**

Sarah Beck, Medway Renaissance

**Date Exemption Requested:** 20<sup>th</sup> December 2010.

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

Robin Cooper approved this exemption request.

**Date Exemption Approved By The Monitoring Officer:** 19<sup>th</sup> January 2011

## **Exemption 2 – Chatham Waterfront Bus Station – Information Centre – Managed Services**

**Value:** £130,250

### **Project Summary:**

- A request was sought to contract with Arriva for the management of the Chatham Waterfront Bus Station to run for a 24-month period. The benefit of this arrangement would be to:
  - Enable a smooth transition of passenger services during the opening of the bus station.
  - Provide an opportunity to assess the current arrangements and review the service specification before putting out to competition a long-term contract.
  - Migrate the risk of loss of service whilst compliant procurement processes were completed
  
- The Monitoring Officer, upon request of the Director for Regeneration, Community and Culture Directorate, agreed to waive Contract Procedure Rules by formalising the contractual relationship between Arriva and the Council on the understanding that it was a maximum period of 24 months and thereafter the contract would be subjected to competition.

### **Risks:**

In line with Contract Procedure Rules this was within the Monitoring Officer's remit to exempt as the contract was below the then EU threshold for Services of £156,442.00 and therefore the risk of EU Procurement Regulation/Treaty principles being impeached were very low

### **Exemption Requested By:**

Steve Hewlett, Head of Transport Services

**Date Exemption Requested:** 20<sup>th</sup> December 2010.

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

Robin Cooper approved this exemption request.

**Date Exemption Approved By The Monitoring Officer:** 19<sup>th</sup> January 2011.

### **Exemption: 3 – Medway Multi-Agency Transition Database for Young People with Disabilities**

**Value:** £27,000

#### **Project Summary:**

- Approval was requested for a single tender action for the purchase of database software for the establishment of a transition database in Medway. This would allow agencies:
  - To work together more effectively in supporting the transition of young people with learning difficulties and disabilities into adulthood (ages 13-19 and up to 22).
  - To be able to share information about individual young people so as to be aware, or better aware of their overall needs or specific aspects of their needs, to facilitate integrated working so that there is better overall support for the young person and better planning for their future.
  - To provide aggregated performance data for the population of young people in transition, which would allow analysis, identification of issues and hence strategic planning for improvement
- The Monitoring Officer, upon request of the Director for Children's and Adult's Directorate, agreed to waive Contract Procedure Rules requirements for a competitive process and to formalise contractual arrangements.

#### **Risks**

- In line with Contract Procedure Rules this was within the Monitoring Officer's remit to exempt as the contract was below the then EU threshold for Services of £156,442.00 and therefore the risk of EU Procurement Regulation/Treaty principles being impeached were very low.

#### **Exemption Requested By:**

Richard Barker, Commissioning Consultant

**Date Exemption Requested:** 13<sup>th</sup> January 2011

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

Rose Collinson approved this exemption request.

**Date Exemption Approved By The Monitoring Officer:** 19<sup>th</sup> January 2011.



## **Exemption 4 – Provision of an assessment, equipment and support service for blind and visually impaired people**

**Value:** £353,000

### **Project Summary:**

- Exemption was sought to award a single source contract for the provision of an assessment, equipment and support service for blind and visually impaired people for a period of 18 months with the option to extend the contract for a further year. The annual contract value is £142,000, which over 18 months equates to £213,000 and if the further 12 month extension is sought, equates to a total maximum value of £353,000.
- The service, currently provided by Kent Association for the Blind (KAB) has been in place since 2004, and the initial 18 months was sought to enable the council to undertake a thorough review of the service, and determine whether the service delivery model fitted with current social care policy.
- The reason for the review was to consider the overall design of Sensory Services within Medway given that Deaf Services had recently been transferred in house from Kent County Council.
- This extended timeframe also allowed time for the Council to undertake a competitive tender process, in case the review identified that a different service delivery model would be better value for money and to ensure the continuation of a valuable service.
- KAB fulfils the Council's statutory duty in terms of assessment and provision of equipment to those with visual impairment and if these services were not delivered by this organisation, they would have to be delivered by Officers of the Council.
- The Monitoring Officer, upon request of the Director for Children's and Adult's Directorate, agreed to waive Contract Procedure Rules requirements for a competitive process and to formalise contractual arrangements.

### **Risks:**

In line with Contract Procedure 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:**

Charles Kirabbo, Commissioning Portfolio Manager

**Date Exemption Requested:** 19<sup>th</sup> January 2011

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

Rose Collinson approved this exemption request on 19<sup>th</sup> January 2011.

**Date Exemption Approved By The Monitoring Officer:** 19<sup>th</sup> January 2011

## **Exemption 5 – Purchase of Copyright Information for Rochester Riverside 1A(i)**

**Value:** £150,000

### **Project Summary:**

- An exemption to Contract Procedure Rules was requested to allow the purchase of design copyright and Intellectual Property Rights from Crest Nicholson in relation to their work associated with Phase 1A (i) of Rochester Riverside and the Reserved Matters Planning permission associated with this work.
- The total value of the payment due to Crest was £300,000 with Medway Council's contribution being £150,000 with SEEDA contributing £150,000.
- This exemption request was a matter of urgency because of the need to enable Hyde Housing to draw down the £4.6m of HCA grant for the affordable housing on Phase 1A(i) by mid March 2011 and would permit Medway Council to proceed with the associated infrastructure works without threat of challenge from Crest.
- The Monitoring Officer, upon request of the Director for Regeneration, Community and Culture Directorate, agreed to waive Contract Procedure Rules by formalising the contractual relationship.

### **Risks:**

In line with Contract Procedure Rules this was within the Monitoring Officer's remit to exempt as Medway's contribution to the contract was below the then EU threshold for Services of £156,442.00 and therefore the risk of EU Procurement Regulation/Treaty principles being impeached were very low.

### **Exemption Requested By:**

Sarah Beck, Medway Renaissance

**Date Exemption Requested:** 13<sup>th</sup> January 2011

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

Robin Cooper approved this exemption request on 8<sup>th</sup> February 2011

**Date Exemption Approved By The Monitoring Officer:** 16<sup>th</sup> February 2011

## **Exemption 6 – Replacement Theatre Management & Booking Application to Achieve Compliance to Payment Card Industry Data Security Standard**

**Value:** £26,007

### **Project Summary:**

- An exemption was sought to upgrade the current non-compliant Blackbaud system, which did not meet the requirements of the Payment Card Industry Data Security Standard, which Central Government mandated had to be completed by the deadline of 31 March 2011.
- Achieving this standard was critical for all Medway systems that take credit card payments, including the theatre booking system.
- The theatre booking and marketing was known to be non-compliant with PCIDSS and several attempts by the supplier, Blackbaud to upgrade the system and achieve compliance had failed with no guarantee of achieving successful compliance within the next six to twelve months. Therefore the decision was made to replace the system with one that would deliver compliance.
- Procurement of a hosted system would remove the initial capital cost pressure on the service budget, and the annual revenue cost of 2 (out of 4) of the proposals are only marginally higher than the current cost of the non compliant Blackbaud system of £26,007 for hardware and software.
- Due to the short timescales to meet the 31<sup>st</sup> March 2011 deadline for PCIDSS implementation and the service delivery need to have a fully working system in place, an exemption was sought as a full procurement process would both hinder delivery within stipulated timescales and potentially cause detriment to theatre booking service delivery.
- The Monitoring Officer, upon request of the Director for Business Support Directorate, agreed to waive Contract Procedure Rules by formalising the contractual relationship.

### **Risks:**

- In line with Contract Procedure Rules this was within the Monitoring Officer's remit to exempt as the contract was below the then EU threshold for Services of £156,442.00 and therefore the risk of EU Procurement Regulation/Treaty principles being impeached were very low.
- Non-compliance with PCIDSS was one of the primary risks, which had to be overcome, and for which an exemption was sought.

### **Exemption Requested By:**

Adrian Hipkins, ICT Development Manager

**Date Exemption Requested:** 31<sup>st</sup> January 2011

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

Neil Davies approved this exemption request on 14<sup>th</sup> February 2011

**Date Exemption Approved By The Monitoring Officer:** 17<sup>th</sup> February 2011

## **Exemption 7 – Better for Less – External Consultancy Support – category management services & target operating model services**

**Value:** £169,768 (but payment of £60,258 is dependent on contract leading to identification of at least 2% addressable 3<sup>rd</sup> part spend, or will be paid in the context of a further contract to support Medway Council to realise the savings identified)

### **Project Summary:**

- An exemption was sought to extend the use of the PWC transformation methodology to the Council's commissioning and procurement activity in order to identify options for savings in third party spend and to develop new commissioning and procurement processes, staffing structures and governance arrangements to ensure the Council is best placed to secure ongoing efficiencies through contracts in the future.
- The Monitoring Officer was requested to Contract Procedure Rules and permit contracting directly with PWC via an OGC framework as this would provide EU compliance and the discounted rate achieved would provide the best value for money to the Council.
- The Monitoring Officer, upon request of the Director for Business Support Directorate, agreed to waive Contract Procedure Rules by formalising the contractual relationship.

### **Risks:**

- In line with Contract Procedure Rules this was within the Monitoring Officer's remit to exempt as the contract although above the then EU threshold for Services of £156,442.00, was being procured via an EU compliant framework and therefore the risk of EU Procurement Regulation/Treaty principles being impeached were very low.

### **Exemption Requested By:**

Stephanie Goad – AD Communications, Performance & Partnerships

**Date Exemption Requested:** 18<sup>th</sup> March 2011

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

Neil Davies approved this exemption request on 18<sup>th</sup> March 2011

**Date Exemption Approved By The Monitoring Officer:** 20<sup>th</sup> March 2011

**Exemption 8 – Better for Less – External Consultancy Support – for implementing customer management & decision making & administration business cases**

**Value:** £1,360,000

**Project Summary:**

- Due to unprecedented cuts in funding savings of £23M for 2011/12 and at least £8M savings for 2012/2013 with potential for further reductions in future, the Council wished to use the previously used PWC Consultants for 27 months.
- The primary purpose of re-engaging PWC Consultants was to use their previously gained knowledge to assess the efficiency of internal cross cutting processes and to support the development of business cases that would transform working practices and achieve efficiency gains and savings.
- The Monitoring Officer was requested to waive Contract Procedure Rules and permit contracting directly with PWC via an OGC framework as this would provide EU compliance and the discounted rate achieved would provide the best value for money to the Council.
- The Monitoring Officer, upon request of the Director for Business Support Directorate, agreed to waive Contract Procedure Rules by formalising the contractual relationship.

**Risks:**

- In line with Contract Procedure Rules this was within the Monitoring Officer's remit to exempt as the contract although above the then EU threshold for Services of £156,442.00, was being procured via an EU compliant framework and therefore the risk of EU Procurement Regulation/Treaty principles being impeached were very low.

**Exemption Requested By:**

Stephanie Goad – AD Communications, Performance & Partnerships

**Date Exemption Requested:** 18<sup>th</sup> March 2011

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

Neil Davies approved this exemption request on 23<sup>rd</sup> March 2011

**Date Exemption Approved By The Monitoring Officer:** 23<sup>rd</sup> March 2011

## **Exemption 9 – Community Meals Service (Meals on Wheels)**

**Value:** £126,000

### **Project Summary:**

- An exemption was sought to extend community meals contract until 31 March 2012 whilst a business case was prepared with options for the future of the service.
- The existing contractor, Apetito Ltd agreed to continue to provide a subsidised service at £5.09 per head (£3.70 per client + £1.39 Medway Council) for a period of one-year whilst the Council looked into different delivery models for the future.
- The Monitoring Officer, upon request of the Director for Children's and Adult's Directorate, agreed to waive Contract Procedure Rules requirements for a competitive process and to formalise contractual arrangements.

### **Risks:**

- In line with Contract Procedure 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:**

Ben Gladstone

**Date Exemption Requested:** 18<sup>th</sup> March 2011

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

Rose Collinson approved this exemption request on 22<sup>nd</sup> March 2011

**Date Exemption Approved By The Monitoring Officer:** 31<sup>st</sup> March 2011



## **Exemption 10 – Drug & Alcohol Services (DAAT)**

**Value:** £2,583,412

### **Project Summary:**

- An exemption was sought to all current DAAT contracts other than Equinox and Turning point as retendering had been delayed as a result of a lack of clarity around future funding.
- As the DAAT received grants from the home Office (Drug Intervention Programme) and the National Treatment Agency along with local funding from NHS Medway and Medway Council, DAAT had not been informed of the amount of funding it would receive from these organisations for 2011/2012 and therefore structuring a future long term procurement delivery model was not possible.
- Following an audit of all services, Equinox and Turning Point had been advised they would not have their contracts extended into 2011/12.
- In addition to awaiting funding clarity, an exemption was also sought to allow the time to develop a plan to restructure drug and alcohol services in Medway based on identified need (through a needs assessment) and within the budget once confirmed and allocated.
- The Monitoring Officer, upon request of the Director for Children's and Adult's Directorate, agreed to waive Contract Procedure Rules requirements for a competitive process and to formalise contractual arrangements.

### **Risks:**

In line with Contract Procedure Rules this was within the Monitoring Officer's remit to exempt as although the contract was above the EU threshold for Services (currently £156,442.00), because it was a Part B Service 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:**

Michelle Howells, Adult Joint Commissioning Manager

**Date Exemption Requested:** 18<sup>th</sup> March 2011

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

Rose Collinson approved this exemption request on 1<sup>st</sup> March 2011

**Date Exemption Approved By The Monitoring Officer:** 12<sup>th</sup> April 2011

## **Exemption 11– Opportunities for sponsorship and advertising**

**Value:** £25,000

### **Project Summary:**

- An exemption was sought to contract with Publitas Consulting for an invest to save project, which aimed to review the Council's advertising sponsorship models, and help to implement better management processes in order to maximise income generation possibilities.
- The service provider, Publitas Consulting offered a unique copyright methodology relating to the 'Advertising Audit' and as such was the sole supplier and were independent and not affiliated to other advertising agencies.
- The Council has a number of sites let out by individual services for advertising and sponsorship and it was agreed that the Council should look at a more holistic approach to ensure compliance with EU Regulations and achieve best value.
- In order to achieve this Publitas through this exempted contract agreed to audit the council's advertising, sponsorship and processes, help to identify potential future advertising opportunities and identify where there was potential for future advertising and sponsorship including locations and income streams.
- The Monitoring Officer, upon request of the Director for Regeneration, Community and Culture Directorate, agreed to waive Contract Procedure Rules by formalising the contractual relationship.

### **Risks:**

- In line with Contract Procedure Rules this was within the Monitoring Officer's remit to exempt as Medway's contribution to the contract was below the then EU threshold for Services of £156,442.00 and therefore the risk of EU Procurement Regulation/Treaty principles being impeached were very low.

### **Exemption Requested By:**

Joy Kirby, Risk Management RCC

**Date Exemption Requested:** 18<sup>th</sup> March 2011

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

Robin Cooper approved this exemption request on 23<sup>rd</sup> March 2011

**Date Exemption Approved By The Monitoring Officer:** 12<sup>th</sup> April 2011

## **Exemption 12– Supporting People Services – Service Review & Re-commissioning**

**Value:** £2,372,348

### **Project Summary:**

- An exemption was sought for a period of one year until 31 March 2012 for the existing Supporting People contracts, to allow for the necessary timescale required to enable the re-commissioning of these contracts.
- The Monitoring Officer, upon request of the Director for Children's and Adult's Directorate, agreed to waive Contract Procedure Rules requirements for a competitive process and to formalise contractual arrangements.

### **Risks:**

- In line with Contract Procedure Rules this was within the Monitoring Officer's remit to exempt as although the contract was above the EU threshold for Services (currently £156,442.00), because it was a Part B Service 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:**

Ben Gladstone, Commissioning Portfolio Manager

**Date Exemption Requested:** 27<sup>th</sup> May 2011

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

Rose Collinson approved this exemption request on 30<sup>th</sup> May 2011

**Date Exemption Approved By The Monitoring Officer:** 27<sup>th</sup> May 2011

## **Exemption 13 – Family Group Conference (FGC)**

**Value:** £150,000

### **Project Summary:**

- An exemption was sought to contract with the incumbent FGC provider Medway Mediation, for a period of 12 months to allow a full options appraisal of the FGC including an appraisal of other synergies across the Adults and Children's Division such as such as family mediation and advocacy services.
- The Monitoring Officer, upon request of the Director for Children's and Adult's Directorate, agreed to waive Contract Procedure Rules requirements for a competitive process and to formalise contractual arrangements.

### **Risks:**

- In line with Contract Procedure 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:**

Ben Gladstone, Commissioning Portfolio Manager

**Date Exemption Requested:** 31st May 2011.

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

Rose Collinson approved this exemption request on 31<sup>st</sup> May 2011

**Date Exemption Approved By The Monitoring Officer:** 31<sup>st</sup> May 2011

## **Exemption 14 – Comprehensive Guide for Children’s Social Care**

**Value:** £26,000

### **Project Summary:**

- Exemption request was sought to contract via a single tender action without competition for the purchase of a suite of up to date Children’s social care policy documents tailored to the needs of Medway.
- This would allow social care to cover the risk of not having current and relevant policy documents fit for inspection purposes and also enable more effective joint working between the teams and sections of children’s social care having agreed a shared operation framework.
- The pressing need and urgency of these documents did not afford the necessary time to subject to competitive process.
- The Monitoring Officer, upon request of the Director for Children’s and Adult’s Directorate, agreed to waive Contract Procedure Rules requirements for a competitive process and to formalise contractual arrangements.

### **Risks:**

- Not having current and relevant policy documents fit for inspection purposes was a far greater risk than foregoing competitive procurement processes.
- In line with Contract Procedure 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:**

Sally Morris, Assistant Director, Commissioning and Strategy.

**Date Exemption Requested:** 16<sup>th</sup> May 2011

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

Rose Collinson approved this exemption request on 16<sup>th</sup> May 2011

**Date Exemption Approved By The Monitoring Officer:** 31<sup>st</sup> May 2011

**Exemption 15 – Procurement & Installation of a number of Voltage Power Optimiser Units for the following buildings – Medway Gun Wharf & Splashes**

**Value:** £23,105

**Project Summary:**

- Exemption request was sought to waive the contract procedure rules and contract via a single tender action without competition for the purchase of specialist electrical Voltage Power Optimiser Units from Power Perfectors Ltd.
- In order to ensure that external grant funding from SALIX was not withdrawn, and to contribute to carbon reduction targets, it was imperative that the Voltage Optimiser Units were installed with immediate effect.
- The primary reason for seeking an exemption other than meeting SALIX and carbon reduction targets was that Power Perfectors Ltd was the only company that could deliver the units within the required timescales and with a guaranteed carbon emissions reduction.
- The Monitoring Officer, upon request of the Director for Business Support Directorate, agreed to waive Contract Procedure Rules by formalising the contractual relationship.

**Risks:**

- In line with Contract Procedure Rules this was within the Monitoring Officer's remit to exempt as the contract was below the then EU threshold for Supplies of £156,442.00 and therefore the risk of EU Procurement Regulation/Treaty principles being impeached were very low.
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**Exemption Requested By:**

Gurpreet Anand, Strategic Procurement and Energy Manager and Harpinder Singh, Strategic Energy Manager.

**Date Exemption Requested:** 16<sup>th</sup> February 2011

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

Neil Davies approved this exemption request.

**Date Exemption Approved By The Monitoring Officer:** 20<sup>th</sup> February 2011

## **Exemption 16– Childminding Service**

**Value:** £240,000

### **Project Summary:**

- Section 13 of the Childcare Act 2006 requires local authorities to secure the provision of information, advice and training, whether delivered by themselves or by others, to meet the needs of local providers and support sufficiency of a childcare provision.
- The Sure Start programme and the LA's early childhood strategy are subject to changes arising from new government policy priorities and the future role of the LA in delivering and securing local services.
- Due to uncertainties associated with future funding, it was necessary in the short term that front-line Sure Start Services were not interrupted whilst clarity on funding and a future procurement model was devised.
- The Monitoring Officer, upon request of the Director for Children's and Adult's Directorate, agreed to waive Contract Procedure Rules requirements for a competitive process and to formalise contractual arrangements.

### **Risks:**

- In line with Contract Procedure Rules this was within the Monitoring Officer's remit to exempt as although the contract was above the EU threshold for Services (currently £156,442.00), because it was a Part B Service 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:**

Mark Holmes, Head of Children's Strategy

**Date Exemption Requested:** 28<sup>th</sup> February 2011

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

Rose Collinson approved this exemption request on 2<sup>nd</sup> March 2011

**Date Exemption Approved By The Monitoring Officer:** 10<sup>th</sup> June 2011

**Exemption 17– Gun Wharf – Phased Electrical Installation – Power/Generator/UPS Shutdowns – March 2011**

**Value:** £45,000

**Project Summary:**

- Exemption request was sought to waive the contract procedure rules and contract via a single tender action without competition to allow W E Manin Ltd to undertake the essential and emergency shutdown service and maintenance of HV/LV electrical supplies, standby generators, UPS systems and electrical distribution network.
- The Monitoring Officer, upon request of the Director for Business Support Directorate, agreed to waive Contract Procedure Rules by formalising the contractual relationship.

**Risks:**

- In line with Contract Procedure Rules this was within the Monitoring Officer's remit to exempt as the contract was below the then EU threshold for Supplies of £156,442.00 and therefore the risk of EU Procurement Regulation/Treaty principles being impeached were very low.

**Exemption Requested By:**

Nick Anthony, Head of Property and Assets

**Date Exemption Requested:** 1<sup>st</sup> March 2011

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

Neil Davies approved this exemption request.

**Date Exemption Approved By The Monitoring Officer:** 4<sup>th</sup> March 2011



**Exemption 18 – Procurement and Installation of Voltage Power Optimiser for Medway Park Leisure Centre, Medway Innovation Centre, The Brook Multi Storey Car Park and Riverside Offices-**

**Value:** £91,459

**Project Summary:**

- Exemption request was sought to waive the contract procedure rules and contract via a single tender action without competition for the purchase of specialist electrical Voltage Power Optimiser Units from Power Perfectors Ltd.
- In order to ensure that external grant funding from SALIX was not withdrawn, and to contribute to carbon reduction targets, it was imperative that the Voltage Optimiser Units were installed with immediate effect.
- The primary reason for seeking an exemption other than meeting SALIX and carbon reduction targets was that Power Perfectors Ltd was the only company that could deliver the units within the required timescales and with a guaranteed carbon emissions reduction.
- The Monitoring Officer, upon request of the Director for Business Support Directorate, agreed to waive Contract Procedure Rules by formalising the contractual relationship.

**Risks:**

- In line with Contract Procedure Rules this was within the Monitoring Officer's remit to exempt as the contract was below the then EU threshold for Supplies of £156,442.00 and therefore the risk of EU Procurement Regulation/Treaty principles being impeached were very low.

**Exemption Requested By:**

Jim Mack, Interim Head of Building and Design and Gurpreet Anand, Strategic Procurement and Energy Manager and Harpinder Singh, Strategic Energy Manager.

**Date Exemption Requested:** 4<sup>th</sup> March 2011

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

Neil Davies approved this exemption request.

**Date Exemption Approved By The Monitoring Officer:** 4<sup>th</sup> March 2011

## **Exemption 19 Proposal to deal more efficiently with unlicensed asbestos within the HRA**

**Value:** £27,905

### **Project Summary:**

- An emergency exemption was sought to manage asbestos handled by HRA, which was 95% unlicensed work.
- Medway's Housing Repair Authority has a duty to manage asbestos under the Control of Asbestos Regulations 2006 and has traditionally managed this through licensed contractors. Therefore, it was imperative that the issue of unlicensed asbestos was managed via a single source arrangement with immediate effect without subjecting the requirement to subject to further competition.
- The Monitoring Officer, upon request of the Director for Business Support Directorate, agreed to waive Contract Procedure Rules by formalising the contractual relationship.

### **Risks:**

- The risks of addressing non compliance with Asbestos regulations and health and safety far outweighed the risk of non compliance with procurement processes.
- In line with Contract Procedure Rules this was within the Monitoring Officer's remit to exempt as the contract was below the then EU threshold for Services of £156,442.00 and therefore the risk of EU Procurement Regulation/Treaty principles being impeached were very low.

### **Exemption Requested By:**

Alan Assheton, Health and Safety Officer

**Date Exemption Requested:** 23<sup>rd</sup> March 2011

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

Neil Davies approved this exemption request.

**Date Exemption Approved By The Monitoring Officer:** 23<sup>rd</sup> March 2011

## **Exemption 20 – Corporate Compliance Management Programme**

**Value:** 13 separate projects each to a maximum of £156,442

### **Project Summary:**

- Due to the current transformation programme relating to category management, structural reorganisation within the Facilities Management Team and the strict delivery deadline for all 14 Planned Maintenance Arrangement contracts to meet Corporate regulatory compliance, an exemption was sought for single tender action without competition for 13 different contracts up to a maximum value of £156,442.00
- Putting in place interim arrangements would allow the opportunity to support the work towards establishing category management for FM services across the whole estate and delivering effective service specifications and corresponding mechanisms for category contract management.
- The Monitoring Officer, upon request of the Director for Business Support Directorate, agreed to waive Contract Procedure Rules by formalising the contractual relationship.

### **Risks:**

- In line with Contract Procedure Rules this was within the Monitoring Officer's remit to exempt as the contract was equal to the then EU threshold for Services of £156,442.00 and therefore the risk of EU Procurement Regulation/Treaty principles being impeached were very low.

### **Exemption Requested By:**

Joseph Ebearthur, Facilities Manager

**Date Exemption Requested:** 27<sup>th</sup> May 2011

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

Neil Davies approved this exemption request.

**Date Exemption Approved By The Monitoring Officer:** 27<sup>th</sup> May 2011

## **Exemption 21 - Education Compliance Management Programme**

**Value:** 13 separate projects each to a maximum of £156,442

### **Project Summary:**

- Due to the current transformation programme relating to category management, structural reorganisation within the Facilities Management Team and the strict delivery deadline for all 14 Planned Maintenance Arrangement contracts to meet School's regulatory compliance, an exemption was sought for single tender action without competition for 13 different contracts up to a maximum value of £156,442.00
- Putting in place interim arrangements would allow the opportunity to support the work towards establishing category management for FM services across the whole estate and delivering effective service specifications and corresponding mechanisms for category contract management.
- The Monitoring Officer, upon request of the Director for Business Support Directorate, agreed to waive Contract Procedure Rules by formalising the contractual relationship.

### **Risks:**

- In line with Contract Procedure Rules this was within the Monitoring Officer's remit to exempt as the contract was equal to the then EU threshold for Services of £156,442.00 and therefore the risk of EU Procurement Regulation/Treaty principles being impeached were very low.

### **Exemption Requested By:**

Joseph Ebearthur, Facilities Manager

**Date Exemption Requested:** 27<sup>th</sup> May 2011

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

Neil Davies approved this exemption request.

**Date Exemption Approved By The Monitoring Officer:** 27<sup>th</sup> May 2011

## **Exemption 22 – Splashes Flume Tower & Platform**

**Value:** £21,643

### **Project Summary:**

- An urgent exemption was sought on the basis of temporary repair work carried out in September 2010 on the grounds of Health & Safety, which enabled the Splashes Leisure Centre flume to be reopened until a full quote could be received to set out the extent of repairs needed to the tower and the platform.
- The Monitoring Officer, upon request of the Director for Regeneration, Community and Culture Directorate, agreed to waive Contract Procedure Rules by formalising the contractual relationship.

### **Risks:**

- In line with Contract Procedure Rules this was within the Monitoring Officer's remit to exempt as Medway's contribution to the contract was below the then EU threshold for Works of £3,927.260 and therefore the risk of EU Procurement Regulation/Treaty principles being impeached were very low.

### **Exemption Requested By:**

Jenny Dearlove, Operations Manager RCC

**Date Exemption Requested:** 27<sup>th</sup> May 2011

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

Robin Cooper approved this exemption request on 27<sup>th</sup> May 2011

**Date Exemption Approved By The Monitoring Officer:** 8<sup>th</sup> June 2011

## **Exemption 23 – Key Training to Green Street Adult Education Centre**

**Value:** £182,706

### **Project Summary:**

- In order to begin works on site at Brompton Academy to build the new academy building, there was a commitment from the Council to move the tenants from Youth House away from the site by 31 August 2011 into the Green Street Adult Education Centre.
- This was a commitment made to Partnerships for Schools in order to secure the funding of the new building and develop the site as proposed in the Outline Business Case approved by Members at Cabinet on 20 November 2010 and approved by Partnerships for Schools in December 2010.
- The works at Green Street Adult Education Centre to accommodate the tenants from Youth House had been quoted at £182,706 to meet Key Training's requirements. This included drainage, plumbing and the provision of additional toilet provisions for the students as well as the modification to the classrooms.
- The work needed to be commenced on site in the last week of July 2011 and the urgency and time constraints did not permit time to subject to open competition, hence requiring an exemption.
- The Monitoring Officer, upon request of the Director for Regeneration, Community and Culture Directorate, agreed to waive Contract Procedure Rules by formalising the contractual relationship.

### **Risks:**

- In line with Contract Procedure Rules this was within the Monitoring Officer's remit to exempt as Medway's contribution to the contract was below the then EU threshold for Works of £3,927.260 and therefore the risk of EU Procurement Regulation/Treaty principles being impeached were very low.
- In addition, the risk to the Council if the work was not completed on time, the work at Brompton Academy would be delayed and the Council would be unable to meet its obligations under the Design & Build contract with BAM.

### **Exemption Requested By:**

Chris McKenzie, Head of School Inclusion

**Date Exemption Requested:** July 2011

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

Rose Collinson approved this exemption request on 1<sup>st</sup> July 2011

**Date Exemption Approved By The Monitoring Officer:** 6<sup>th</sup> July 2011.

**Exemption 24 – Canterbury ChristChurch University (CCCU) – BA Honours Degree in Early Years Studies and Foundation Degree in Early Years Studies courses**

**Value:** Total estimated expenditure for 3 years, 2011-2014 is **£96,765** of which £56,265 relates to the BA courses funded by Early intervention Plan.

**Project Summary:**

- Medway Council has a duty to secure free nursery education places for all children aged 3 and 4 years; to ensure that provision is of high quality by securing appropriate workforce training and guidance; and to improve the outcomes for young children and “school readiness”.
- The overriding service need is for locally available, good quality graduate-level courses for local early years practitioners. For the period to 2014 seek approval to continue current funding arrangements with CCCU Medway.
- Candidates are mainly Medway residents, some on relatively low incomes and need a great deal of support in helping them achieve their qualifications. Keeping the training local help them and possibly the local economy and community by supporting the CCCU Medway campus.
- An exemption was sought, as there were alternative options in the Medway area that provided the specific courses required and there were also no viable options in areas bordering Medway. A comparison of costs demonstrated that CCCU course costs were competitive.
- The Monitoring Officer, upon request of the Director for Children’s and Adult’s Directorate, agreed to waive Contract Procedure Rules requirements for a competitive process and to formalise contractual arrangements.

**Risks:**

- In line with Contract Procedure 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:**

Mark Holmes, Head of Children’s Strategy

**Date Exemption Requested:** 22<sup>nd</sup> June 2011



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

Rose Collinson approved this exemption request on 23<sup>rd</sup> June 2011

**Date Exemption Approved By The Monitoring Officer:** 6<sup>th</sup> July 2011

## **Exemption 25 – Community Equipment Services**

**Value:** £283,000 for 18 months

### **Project Summary:**

- An exemption was sought to award a single source contract for a period of 18 months for the provision of a community equipment services to service users who have physical disabilities to allow them to remain living independently and safely at home in a very cost effective way.
- The exemption was sought on the basis of letting 2 separate contracts via 2 different EU compliant frameworks with both MCH and Kent County Supplies for procurement, delivery, collection and cleaning of low cost, high volume equipment.
- The Monitoring Officer, upon request of the Director for Children's and Adult's Directorate, agreed to waive Contract Procedure Rules requirements for a competitive process and to formalise contractual arrangements.

### **Risks:**

- In line with Contract Procedure Rules this was within the Monitoring Officer's remit to exempt as although the contracts were above the EU threshold for Supplies (currently £156,442.00), as both had already been called off of EU compliant frameworks, the risk of EU Procurement Regulation/Treaty principles being impeached were very low.

### **Exemption Requested By:**

Charles Kirabo, Commissioning Portfolio Manager

**Date Exemption Requested:** June 2011

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

Rose Collinson approved this exemption request on 21<sup>st</sup> June 2011

**Date Exemption Approved By The Monitoring Officer:** 6<sup>th</sup> July 2011

## **Exemption 26 – Mail Processing Software**

**Value:** £129, 640

### **Project Summary:**

- An exemption was sought to appoint Neopost to provide a software upgrade to compliment existing mail infrastructure in order to deliver reduced postal and distribution costs, whilst ensuring full capacity of the existing mailroom equipment.
- As the current equipment within Medway's mail-room was not currently fully functional, additional software was required and an exemption would prove the most cost effective solution as it would result in a saving of £82,622 for a 5-year contract at £25,928 per annum.
- This solution would also overcome the current loss of £10,000 postal discount due to poorly addressed letters, use of wrong envelop size and illegible handwriting, which the new software would overcome.
- The Monitoring Officer, upon request of the Director for Business Support Directorate, agreed to waive Contract Procedure Rules by formalising the contractual relationship.

### **Risks:**

- In line with Contract Procedure Rules this was within the Monitoring Officer's remit to exempt as the contract was below the then EU threshold for Supplies of £156,442.00 and therefore the risk of EU Procurement Regulation/Treaty principles being impeached were very low.

### **Exemption Requested By:**

Nick Anthony, Head of Property and Assets

**Date Exemption Requested:** 3<sup>rd</sup> August 2011

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

Neil Davies 22<sup>nd</sup> August 2011

**Date Exemption Approved By The Monitoring Officer:** 22<sup>nd</sup> August 2011

## **Exemption 27 - Marlborough House**

**Value:** £113,735

### **Project Summary:**

- An urgent exemption was required to prevent Marlborough House becoming a Decent Homes failure in 2011 due to non compliant windows.
- Due to the Housing Repairs and Maintenance Contractor Mears being familiar with the site and the risks involved in the removal of asbestos, awarding a single source exemption to Mears would be both financially advantageous and mitigate the risk of asbestos and health and safety regulatory non-compliance.
- Quantity Surveyors had calculated a total works value of £108,543 compared to Mears' submission of £113,735. However, there was a risk that subjecting the requirement to a formal tender process could result in higher price quotes from other contractors because of the risk of asbestos removal and procurement costs of around £10,000 compared to £2,000 for providing cost management throughout the project with Mears.
- The Monitoring Officer, upon request of the Director for Business Support Directorate, agreed to waive Contract Procedure Rules by formalising the contractual relationship.

### **Risks:**

- In line with Contract Procedure Rules this was within the Monitoring Officer's remit to exempt as the contract was below the then EU threshold for Services of £156,442.00 and therefore the risk of EU Procurement Regulation/Treaty principles being impeached were very low.

### **Exemption Requested By:**

Jim Mack, Interim Head of Building and Design

**Date Exemption Requested:** 25<sup>th</sup> July 2011

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

Neil Davies approved this exemption of 22<sup>nd</sup> August 2011

**Date Exemption Approved By The Monitoring Officer:** 22<sup>nd</sup> August 2011

## **Exemption 28 – Integration Software Procurement**

**Value:** £35,000

### **Project Summary:**

- An exemption was requested to procure without competition integration software from NDL.
- This would enable the integration of the new CRM to Medway's existing systems to enable Customer Service Officers to more effectively orchestrate service requests and assessments and therefore drive process efficiency and enable the new Customer Contact Target Operating Model.
- Using NDL would provide the Council with a potential £121,155.00 capital savings against current system.
- Due to the high workload placed on the ICT team during phase 1 of BfL, it was necessary to employ NDL who were best placed to deliver both support.
- The Monitoring Officer, upon request of the Director for Business Support Directorate, agreed to waive Contract Procedure Rules by formalising the contractual relationship.

### **Risks:**

- In line with Contract Procedure Rules this was within the Monitoring Officer's remit to exempt as the contract was below the then EU threshold for Supplies of £156,442.00 and therefore the risk of EU Procurement Regulation/Treaty principles being impeached were very low.

### **Exemption Requested By:**

Moira Bragg, Head of ICT

**Date Exemption Requested:** 15<sup>th</sup> August 2011

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

Stephanie Goad, Assistant Director, Performance and Partnerships

**Date Exemption Approved By The Monitoring Officer:** 22<sup>nd</sup> August 2011

## **Exemption 29 – Approved Garage Contract**

**Value:** £0 (financed by licensees)

### **Project Summary:**

An exemption was sought to cover interim arrangements post expiration of the current approved garages contract whilst a new contract is awarded which will be effective from 1<sup>st</sup> April 2012.

Although the total contract value is cost neutral to the Council and garages charge directly for their services, as the Council is approving the garages to be used for licensing purposes and providing them an opportunity to derive an income, the requirement was subject to procurement rules.

- The Monitoring Officer, upon request of the Director for Business Support Directorate, agreed to waive Contract Procedure Rules by formalising the contractual relationship.

### **Risks:**

- In line with Contract Procedure Rules this was within the Monitoring Officer's remit to exempt as the contract was below the then EU threshold for Services of £156,442.00 and therefore the risk of EU Procurement Regulation/Treaty principles being impeached were very low.

### **Exemption Requested By:**

Mandy Francis, Senior Licensing Officer

**Date Exemption Requested:** 7<sup>th</sup> September 2011

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

Neil Davies approved this exemption request.

**Date Exemption Approved By The Monitoring Officer:** 9<sup>th</sup> September 2011

## **Exemption 30 – Siren for Grain Village**

**Value:** £24,000

### **Project Summary:**

- An exemption to the contract procedure rules was sought to procure a siren for Grain village, as an early warning system should there be an incident at the Liquefied Natural Gas site.
- Given HSE's timescales of 6-8 weeks for installation to have a system in place that will alert the village if an incident occurs it was not possible to use the Council's agreed procedure to use the Invitation to Quote documentation and formally obtain 3 written quotes, although 3 estimates were obtained.
- The Monitoring Officer, upon request of the Director for Regeneration, Community and Culture Directorate, agreed to waive Contract Procedure Rules by formalising the contractual relationship.

### **Risks:**

- In line with Contract Procedure Rules this was within the Monitoring Officer's remit to exempt as Medway's contribution to the contract was below the then EU threshold for Supplies of £156,442.00 and therefore the risk of EU Procurement Regulation/Treaty principles being impeached were very low.

### **Exemption Requested By:**

Joy Kirby, Risk Management RCC

**Date Exemption Requested:** 31st August 2011

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

Robin Cooper approved this exemption on 30<sup>th</sup> August 2011

**Date Exemption Approved By The Monitoring Officer:** 4<sup>th</sup> September 2011

## **Exemption 31 – Pier Road Retaining Wall Structure no 6189 – Emergency Repair Work**

**Value:** £100,000

### **Project Summary:**

- An emergency exemption was sought because the condition of retaining wall near to the junction with Camden Road, Gillingham had progressively become worse since 2009 to the point where it was dangerous.
- Although the wall retains private garages and the owners of the garages and historically the ownership and responsibility of the wall has been in question, the Council had an immediate highways responsibility to safeguard the wall on grounds of health and safety.
- The exemption sought to use Enterprise by utilising the Kent Alliance Contract to carry out the emergency works due to the specialist nature for the works.
- The Monitoring Officer, upon request of the Director for Regeneration, Community and Culture Directorate, agreed to waive Contract Procedure Rules by formalising the contractual relationship.

### **Risks:**

- In line with Contract Procedure Rules this was within the Monitoring Officer's remit to exempt as Medway's contribution to the contract was below the then EU threshold for Works of £3,927.260 and had been called off from an EU compliant framework, thus the risk of EU Procurement Regulation/Treaty principles being impeached were very low.
- The Health and Safety issues for leaseholders of garages, vehicles and general public if not repaired urgently outweighed the risk of non-compliance with procurement processes.

### **Exemption Requested By:**

David Bond, Implementation Manager QPTC

**Date Exemption Requested:** 18<sup>th</sup> October 2011

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

Robin Cooper approved this exemption request on 18<sup>th</sup> October 2011

**Date Exemption Approved By The Monitoring Officer:** 18<sup>th</sup> October 2011



## **Exemption – 32 - Medway Council Tunnel and Pumping Station Maintenance Contract**

**Value:** £439,800

### **Project Summary:**

- An exemption was sought to formalise contractual arrangements for the management of the Medway Tunnel Pumping Station for a period of 18 months.
- This exemption was required to ensure continued service delivery under a formalised contract and to enable exploration of other pumping requirements across Medway's corporate estate, which could be combined into a future procurement process to yield savings and benefit from economies of scale.
- The Monitoring Officer, upon request of the Director for Regeneration, Community and Culture Directorate, agreed to waive Contract Procedure Rules by formalising the contractual relationship.

### **Risks:**

- In line with Contract Procedure Rules this was within the Monitoring Officer's remit to exempt as Medway's contribution to the contract was below the then EU threshold for Works of £3,927.260 and therefore the risk of EU Procurement Regulation/Treaty principles being impeached were very low.
- Pumping / drainage systems are critical to the relevant establishments for operations, hygiene, public safety and well-being and without which the facilities would not be able to legally remain open to the public which would have a serious impact on the highway network and applicable amenities. These far outweighed the risks of not subjecting requirements to formal procurement processes.

### **Exemption Requested By:**

Phil Moore, Head of Highways

**Date Exemption Requested:** 18<sup>th</sup> October 2011

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

Robin Cooper approved this exemption request on 24<sup>th</sup> October 2011

**Date Exemption Approved By The Monitoring Officer:** 1<sup>st</sup> November 2011

## **Exemption – 33 Urban Traffic Management & Control Fault Management System**

**Value:** £66,000

### **Project Summary:**

- An exemption was sought to contract via a single tender action for a contract to maintain the Council's traffic data software through a fault management system.
- The exemption sought to contract with Confirm for its FMS assessment management system, over a 5-year contract. UTMC compliant Fault Management Systems are not commonplace and only Confirm offered the required level of service.
- The Monitoring Officer, upon request of the Director for Regeneration, Community and Culture Directorate, agreed to waive Contract Procedure Rules by formalising the contractual relationship.

### **Risks:**

- In line with Contract Procedure Rules this was within the Monitoring Officer's remit to exempt as Medway's contribution to the contract was below the then EU threshold for Supplies of £156,442.00 and therefore the risk of EU Procurement Regulation/Treaty principles being impeached were very low.

### **Exemption Requested By:**

Ian Wilson, Head of Capital Projects and David Highley, Senior Project Planner

**Date Exemption Requested:** 24<sup>th</sup> November 2011

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

Robin Cooper approved this exemption request on 24<sup>th</sup> November 2011

**Date Exemption Approved By The Monitoring Officer:** 30<sup>th</sup> November 2011

**Exemption – 34 Provision of Intruder Alarm & Access Control Maintenance  
(Part of the Compliance Management Programme)**

**Value:** £150,000

**Project Summary:**

- An exemption was sought to put in place an enhanced security system with the incumbent contractor, IDH Alarms for the financial year 2012-2013 across Medway's 250 commercial buildings.
- This would allow sufficient time to review requirements and the marketplace and thereafter procure long-term requirements in conjunction with the incorporate of future category management strategies, without currently tying the Council into long-term arrangements.
- The Monitoring Officer, upon request of the Director for Business Support Directorate, agreed to waive Contract Procedure Rules by formalising the contractual relationship.

**Risks:**

In line with Contract Procedure Rules this was within the Monitoring Officer's remit to exempt as the contract was below the then EU threshold for Services of £156,442.00 and therefore the risk of EU Procurement Regulation/Treaty principles being impeached were very low.

**Exemption Requested By:**

Nick Anthony, Head of Property and Assets

**Date Exemption Requested:** 24<sup>th</sup> November 2011

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

Neil Davies approved this exemption request on 23<sup>rd</sup> November 2011

**Date Exemption Approved By The Monitoring Officer:** 30<sup>th</sup> November 2011.

## **Exemption– 35 Proposed Variation to the Retendering of Medway Council Local Bus service Contracts**

**Value:**Up to a maximum of £156,442

### **Project Summary:**

- An exemption was sought to contract with the incumbent contract service providers in order to align contract dates, which would permit a future procurement delivery model whereby all contracts would be aligned e into line with effect from 2 September 2012. This would allow synergies and economies of scale to be achieved; whilst meeting the objectives of Better for Less and to tie in with future Category Management strategies.
- The Monitoring Officer, upon request of the Director for Regeneration, Community and Culture Directorate, agreed to waive Contract Procedure Rules by formalising the contractual relationship.

### **Risks:**

- In line with Contract Procedure Rules this was within the Monitoring Officer's remit to exempt as Medway's contribution to the contract was up to a maximum of the then EU threshold for Services of £156,442.00 and therefore the risk of EU Procurement Regulation/Treaty principles being impeached were very low.

### **Exemption Requested By:**

David Bond, Implementation Manager QPTC

**Date Exemption Requested:** 30<sup>th</sup> November 2011

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

Robin Cooper approved this exemption request on 5<sup>th</sup> December 2011

**Date Exemption Approved By The Monitoring Officer:** 15<sup>th</sup> December 2011.

**Exemption– 36** - Upgrade of Assistive Technology-Social Alarm Monitoring System (Medway Control System)

**Value:** £130,000

**Project Summary:**

- The initial five-year partnership agreement with Tunstall Healthcare UK Ltd concluded and a new formalised arrangement was required with immediate effect.
- It was the intention to review both the requirement and supplier marketplace more strategically with future category management initiatives, but until such time as it is possible, an interim contract needed to be put in place to improve the reliability functionality and capability of the Medway Control Centre through the installation of software upgrade (PNC6)
- As Tunstall is the single supplier of PNC6 and is considered the market leader and alternative offerings were found to be more expensive and less reliable in respects to functionality, an exemption to contract with Tunstall was deemed the most appropriate solution.
- As Medway currently monitors 100% of Tunstall outfield equipment and systems, Tunstall equipment at either end of the service means 100% compatibility is assured which is crucial for a life-saving service, something which could not be guaranteed by other suppliers currently within the marketplace.
- The Monitoring Officer, upon request of the Director for Regeneration, Community and Culture Directorate, agreed to waive Contract Procedure Rules by formalising the contractual relationship.

**Risks:**

- In line with Contract Procedure Rules this was within the Monitoring Officer's remit to exempt as Medway's contribution to the contract was below the then EU threshold for Services of £156,442.00 and therefore the risk of EU Procurement Regulation/Treaty principles being impeached were very low.

**Exemption Requested By:**

Vikram Sahdev, Surveillance and Business Development Manager

**Date Exemption Requested:** 12<sup>th</sup> December 2011

**Director Approving Exemption Request For A Decision By The Monitoring Officer:** Robin Cooper approved this exemption request on 16<sup>th</sup> December 2011

**Date Exemption Approved By The Monitoring Officer:** 16<sup>th</sup> December 2011.

### **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 Procedure Rules, are declined. The risks of accepting/rejecting all exemptions are identified and communicated to the Monitoring Officer to make an informed decision.

### **4. Financial and legal implications**

- 4.1 The legal implications are set out in the report. The costs associated with the contract were met from approved budgets.

### **5. Recommendation**

- 5.1 To note the contents of the report.

#### **Lead officer contact**

Deborah Upton  
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E-mail: [deborah.upton@medway.gov.uk](mailto:deborah.upton@medway.gov.uk)

#### **Background papers**

None