

Summary Sheet

Council Report

Cabinet and Commissioner Ney – 11th April, 2016

Title

Contract Renewals

Is this a Key Decision and has it been included on the Forward Plan?

No

Strategic Director Approving Submission of the Report

Stuart Booth, Interim Strategic Director Finance and Corporate Services

Report Author(s)

Colin Earl, Assistant Director Audit, ICT and Procurement

Ward(s) Affected

All

Executive Summary

This report provides details of work being undertaken to strengthen arrangements for the procurement of contracts, in particular the centralisation and co-ordination of the Council's Contracts Register which is a published register of all contracts that the Council has in place. As part of this activity, a number of contract areas have been identified where a re-tendering procurement exercise should have taken place but has not and as a result an exemption from Standing Orders is sought. This exemption will enable a full consideration of the future procurement and tendering options for each of the contracts listed.

This report also clearly identifies the management actions to be put in place to strengthen procurement arrangements across the Council to ensure Standing Orders are adhered to.

Recommendation

Cabinet is asked:

- To note the actions being taken to strengthen the application of procurement processes

- To approve exemptions under Standing Order 38 from the provisions of Standing Orders 47/48, to enable the continuation of contracts scheduled in Appendix 1 for one year
- To agree to the conducting of procurement reviews of all contracts included in Appendix 1 to ensure that future exemptions are not sought.

Commissioner Ney is asked:

- To note the actions being taken to strengthen the application of procurement processes
- To approve exemptions under Standing Order 38 from the provisions of Standing Orders 47/48, to enable the continuation of the contract scheduled in Appendix 2 for one year.
- To agree to the conducting of a procurement review of the contract included in Appendix 2 to ensure that a future exemption is not sought.

List of Appendices Included

Appendix 1: Schedule of Contracts and Renewal Dates

Appendix 2: Contract Schedule – CCTV system.

Background Papers

EU Procurement Rules

Standing Orders

Contracts Database (restricted)

Consideration by any other Council Committee, Scrutiny or Advisory Panel

None

Council Approval Required

No.

Exempt from the Press and Public

No.

Title (Main Report)

Contract Renewals

1. Recommendation

1.1 Cabinet is asked:

- To note the actions being taken to strengthen the application of procurement processes
- To approve exemptions under Standing Order 38 from the provisions of Standing Orders 47/48, to enable the continuation of contracts scheduled in Appendix 1 for one year
- To agree to the conducting of procurement reviews of all contracts included in Appendix 1 to ensure that future exemptions are not required.

1.2 Commissioner Ney is asked:

- To note the actions being taken to strengthen the application of procurement processes
- To approve exemptions under Standing Order 38 from the provisions of Standing Orders 47/48, to enable the continuation of the contract scheduled in Appendix 2 for one year.
- To agree to the conducting of a procurement review of the contract included in Appendix 2 to ensure that a future exemption is not sought.

2. Background

2.1 Appendix 1 (for Cabinet) and Appendix 2 (for Commissioner Ney) shows the schedule of contract renewals covered by this report. The Council is moving to implement good procurement practice throughout all of its procurement activity so as to ensure that a competitive and fair process is universally adopted across all contracts.

2.2 In mid-2015, the Procurement Service transferred into the Finance and Corporate Services Directorate, under the Assistant Director Audit, ICT and Procurement. During the second half of 2015 and early 2016:

- Contract management for a number of contracts has been centralised and co-ordinated into the Procurement Team
- The Contracts Register has been reviewed to ensure that it provides a comprehensive and complete record of all relevant contracts. The register now holds details of c400 contracts over £5,000 per year and 200 smaller contracts.
- Contracts are being reviewed to ensure compliance with legislation and Standing Orders
- Training has been developed on procurement processes and is being rolled out to managers across services

- The procurement service has put in place a data analytics reporting tool 'Spend Analytics' to help focus procurement resource activity.
- 2.3 The work done to date has highlighted further actions that are now being implemented:
- The Chief Executive has asked the Director of Finance and Customer Services to chair an officer Procurement Group, to oversee and ensure the implementation of good practice.
 - The Contracts Register will be updated quarterly by the Procurement Service using information requested from and supplied by service colleagues. The register is now beginning to be used to assess key contracts requiring renewal in the future, although this can now be developed further into a stronger management and compliance tool. A forward plan of tendering decisions will be developed and reviewed by the Procurement Group.
 - The forward plan and quarterly Contracts Register updates will be reviewed by the Director of Finance and Customer Services, the Assistant Director Legal and the Procurement Group, both to ensure compliance with procurement rules and to consider opportunities for savings through the review of contracts.
 - Current managers' guidance will need to be strengthened to ensure it is more comprehensive in terms of clarifying roles and responsibilities and will be re-written by 30th April 2016.
- 2.4 Managers are responsible for ensuring compliance with the Council's Standing Orders and Financial Regulations. The requirements of Standing Orders are set out at Section 8. Financial Regulations and current managers' guidance notes relating to procurement indicate processes to be followed for the approval of expenditure relating to contracts. Current review of the managers' guidance notes indicates these can be strengthened in relation to the requirement of Standing Orders and a revision of the notes is underway. Refreshed training is currently being provided to services on their responsibilities.
- 2.5 A key role for the Procurement Service is to monitor and support compliance with procedures. While there is now better corporate understanding of the scale of the current problem, further progress towards review and renewal of all contracts receiving annual exemptions is required. Consequently one-year exemptions are sought to enable reviews to be completed for the relevant systems / contracts.
- 2.6 The Interim Strategic Director of Finance and Corporate Services and Assistant Director Audit, ICT and Procurement have taken the opportunity to commission a review of the service through the LGA. This is expected to report by May and Cabinet will be updated on the outcomes and recommendations from the review.

3. Requests for Exemptions

- 3.1 Appendix 1 and 2 identifies 15 contracts for which one year exemptions are requested. Most (12 contracts) relate to the annual support, maintenance and licensing of IT systems used by services or corporate ICT. The systems are crucial either to service operations or corporate systems security and operation. For example, the FastSuite software (Appendix 1) is integral to the operational running of the planning, building control and local land charges services and it has been developed over the last 12 months to provide web functionality (including community mapping) that will allow customers to interact with the Council digitally improving the customer experience and future efficiency of the services. Exemptions are requested for each of these contracts to allow formal reviews to be conducted, during 2016/17, with a view to aligning the timing of the renewal of systems support, maintenance and licensing contracts together.
- 3.2 Contracts with Kiveton Park Independent Advice Centre and GROW Giving Real Opportunities to Women (Appendix 1) are currently subject to operational service reconsideration. These local community/voluntary organisations provide valuable support to vulnerable residents and an exemption is requested to continue these services until a decision is made regarding future provision, for up to 12 months.
- 3.3 The Town Centre CCTV communications network contract (Appendix 2) currently with BT is due for renewal. This service is subject to review, with regard to a possible relocation of the control function and/or the provision of the communication lines, including possible internal provision. An exemption is requested to allow the review to be completed and a future proposal to be prepared.

4. Options considered and recommended proposal

- 4.1 There are a number of possible options relating to the contracts referred to in this report (general or ICT related), which would involve:
- Extending the contract on a short- term basis to allow market testing exercises to be conducted – the procurement service has managed to negotiate a short-term extension e.g 1 month for the ICT contracts, however the extension is not sufficient to enable tendering exercises to be completed and also it is unlikely that all suppliers will agree to such a short-term extension; or
 - Allowing contract(s) to expire and commence a new procurement process immediately, accepting a possible short-term disruption to service which would be deemed unacceptable; or
 - Extending the existing contracts, without any exemption, to allow time for a fuller review and market test. This would present a high degree of risk of challenge and is again not considered appropriate.
- 4.2 Given that none of the above options are considered to be acceptable or appropriate, it is requested that a request to exempt from Standing Orders

each of the contracts in Appendix 1 and 2 is the preferred option. This will allow full reviews and market testing to be carried out for all relevant systems / contracts.

5. Consultation

5.1 Directorate representatives and system owners of the various council systems have been working with the Procurement Team to produce the information included in this report.

6. Timetable and Accountability for Implementing this Decision

6.3 Implementation of the decisions in this report would commence immediately, leading in the future to better strategic planning of contract renewals and a gradually reducing number of requests for Standing Order exemptions.

6.2 It is anticipated that an agreed approach to all contracts will be put into place by 2017. This will allow services time to consider any services changes / re-engineering that need to be taken into account setting up any market testing exercise.

7. Financial and Procurement Implications

7.1 The current EU procurement limit for services is £164,176. This is not an annual figure; for example for any contract set up for 3 years, it is the full value of the contract (not the yearly value) that should be taken into account when considering whether a full EU tender process (or appropriate alternative such as a framework contract), should be undertaken.

7.2 Many of the Council's contracts have been in place for several years and so most requests for exemptions from Standing Orders are for one year extensions. Ultimately, this approach becomes increasingly open to challenge as the period over which the contract was exposed to competition becomes ever more distant. It also means the Council has not tested value for money and is unlikely to be obtaining best value.

7.3 Where systems are changed there are likely to be short-term additional resource requirements relating to the implementation, although resource implications have to be taken into account in the tender evaluation process, and would only be incurred if overall this was the best value solution for the Council.

7.4 Any additional market testing activity and any subsequent system changes will affect the workload of the Corporate Procurement Team.

8. Legal Implications

8.1 The power to grant exemptions under Standing Order 38 rests with either the Cabinet or Commissioners depending upon the function to which the individual contract relates.

- 8.2 The granting of exemptions for the contracts relating to ICT, the Voluntary and Community Sector, Housing and Public Health, which would include the contracts set out in Appendix 1 fall within the remit of the Cabinet.
- 8.3 The granting of exemptions for contracts relating to community safety, which would include the contract relating to CCTV in Appendix 2, falls within the remit of Commissioner Ney.

9. Human Resources Implications

- 9.1 There are no direct HR implications arising from this report.

10. Implications for Children and Young People and Vulnerable Adults

- 10.1 There are no specific implications for Children and Young People and Vulnerable Adults arising from this report. Better procurement would secure better value for money within the services provided for all citizens.

11 Equalities and Human Rights Implications

- 11.1 Equalities and Human Rights requirements are incorporated into the Council's procurement processes. Compliance with best practice procurement further ensures equalities and human rights requirements are achieved.

12. Implications for Partners and Other Directorates

- 12.1 An extension of market testing / tendering exercises could have a significant positive impact on a wide range of services. Where relevant, partners and other services should be consulted on any service reconfigurations to be reflected in new contractual arrangements.

13. Risks and Mitigation

- 13.1 The longer the Council continues to utilise the current approach of not carrying out market testing, the higher risk of legal challenge. The recommended actions in this report will help mitigate the risk.
- 13.2 There is no guarantee that the Council is currently achieving value for money from its contracts. The recommended actions in this report will help mitigate the risk.
- 13.3 By not carrying out market testing the Council may be missing out on opportunities to improve value for money.

14. Accountable Officer(s)

Colin Earl, Assistant Director Audit, ICT and Procurement

Approvals Obtained from:-

Strategic Director of Finance and Corporate Services:- Stuart Booth

Assistant Director of Legal Services:- Dermot Pearson

Head of Procurement):- n/a