

DIVISION: N/A

CABINET MEMBER FOR LOCAL COMMUNITIES – 15 December 2020

Exemption from Contract Procedure Rules – VCS Infrastructure

Report by Corporate Director for Customers & Organisational Development

Recommendation

1. **The Cabinet Member for Local Communities is RECOMMENDED to approve this exemption from the Council’s Contract Procedure Rules.**

Executive Summary

2. Oxfordshire has a vibrant voluntary and community sector and the Council recognises the vital role this sector plays in supporting thriving communities. We support the growth and development of the voluntary and community sector (VCS) through an infrastructure contract.
3. Following two extensions, the contract will expire at the end of March 2021. The VCS and statutory partners are undergoing significant challenge and change resulting from pressures already within the system, intensified significantly through the COVID-19 crises. Partners are also either already experiencing or planning for major financial challenges.
4. There is new understanding of the power of working with the strengths of local communities as well as understanding need, and a specific objective of the OCC/CDC COVID-19 Recovery Strategy is to strengthen public and voluntary sector partnerships. Within the County Council and the wider system, it is the intention that collaborative and responsive ways of working and new partnerships seen during the COVID-19 crisis will be maintained and strengthened in the future, and now is the opportunity for significant new strategic approaches to community strategy.
5. Prior to the current situation, the need for change in the support delivered through the infrastructure contract was already established. For the County Council as commissioner, a strong driver is the need to make a much clearer link between the funding applied and the preventative and demand management agendas.
6. In this context and alongside the new reality driven through the crisis, this report considers the options for maintaining existing provision while delivering improvement and change. It concludes by recommending that the contract is extended until March 2022 in order to allow further development of the relationship between the Council, its partners and the VCS and for the

development of a market more able to meet the Council's requirements, while providing on-going support during a period of change and disruption.

Background

7. The Council's current VCS Infrastructure Contract has been held by Oxfordshire Community Voluntary Action (OCVA) since 2015 and ends in March 2021, following two one-year extensions. The contract outcomes are as follows:
 - Outcome 1: The VCS has access to relevant information, tools and advice and is raising its role in delivering services, influencing policy and shaping communities.
 - Outcome 2: Volunteering (social action) is promoted and developed.
 - Outcome 3: Communities are supported and empowered to find their own solutions to issues and become more active, working with others. Outcome three is delivered in a sub-contractor arrangement with Community First Oxfordshire.
8. The contract is valued £165,000 per annum. While there is other commissioned and grant funding tied to specific sectors and geographies, this is the only core infrastructure support for the local Voluntary and Community Sector (VCS).
9. The business case for the Council to provide this support is invest to save: a strong and active VCS promotes active, resilient communities leading to better outcomes for individuals and reduced pressure on statutory services.
10. The provisions of the contract and the support offered by the supplier are valued within the VCS. However, the scope and impact of the current arrangements are not delivering the full value of the resources applied. In particular, focus has often been on reacting to the needs of small non-commissioned groups and mitigating the impact of decommissioning across the county, rather than proactively coordinating action and priorities across the VCS and other partners.
11. Support to the VCS was previously considered by CEDR in August and November 2019. In these reports, CEDR received an update on the process of new engagement activity that followed a 2018 Local Government Association peer review into the Council's relationship with the VCS. That engagement envisaged the co-production of a new contract specification in collaboration with VCS organisations, including those currently delivering core infrastructure support.
12. At the point of the August 2019 report, it was concluded that the developmental work was not yet sufficiently mature to procure a new contract on a fundamentally new basis and that there had been insufficient progress on developing a new strategic approach to working with the VCS.
13. Subsequently in December, the Lead Member for Local Communities agreed an extension of the existing contract to allow further development. This extension expires in March 2021 and therefore decisions are now needed on the future of the contract.

Risk Management*

*Risk is calculated using the OCC risk management toolkit which can be found [here](#). A none-accessible format of the below Options Appraisal can be found in **Annex 3**.

14. **Option 1 – Let a long-term strategic contract** – not recommended **Risk score = 48**

Pros

- Would provide certainty to the successful provider.
- Would provide a long-term strategic approach to the VCS.

Cons

- We are not in a position to tender for a long-term strategy as we do not understand our new priorities and needs in light of COVID-19 **Risk = 20**
- A long-term strategy requires new scope that must be co-produced with the sector, which they have not had time or resource to prioritise. Failing to understand their needs would result in a long-term contract which may not be fit for purpose. **Risk = 16**
- The opportunity for impactful engagement, both internally and externally, would be lost and lead to a contract specification that does not meet our or the sector's needs. **Risk = 12**

15. **Option 2 – Allow the contract to expire** – not recommended **Risk score = 75**

Pros

- Saves money.
- Allows time to complete a needs assessment and redesign infrastructure requirements.

Cons

- Risk of reputational damage due to lapse in support to our communities. **Risk = 20**
- Will diminish the relationships we have with the VCS and demean their incredible efforts during COVID-19 which have been vital in providing support to our residents. **Risk = 16**
- Doesn't support our corporate commitment to ensure thriving communities for everyone in Oxfordshire or working in partnership to improve outcomes for residents. **Risk = 15**
- A reduction in funding could see key organisations across the county become unsustainable. **Risk = 12**

Communities suffer because VCS organisations are unable to support communities sufficiently. **Risk = 12**

16. **Option 3 – Let a short-term contract** – not recommended **Risk score = 52**

Pros

- Would allow us to reshape current provision and retain option for more significant change in the future.

Cons

- We are not in a position to develop a new contract specification in co-production with the sector meaning the tendering process could cause significant disruption and potentially result in awarding a contract that does not meet our needs. **Risk = 20**
- Would require competitive tendering which requires significant resource from the sector, removing dedicated support from residents in order to prioritise tendering process. **Risk = 20**
- Does not provide long term certainty for the provider or for the sector. **Risk = 12**

17. **Option 4 – Further extend the contract – recommended** **Risk Score = 12**

Pros

- Known quantity with the option to revise current outcomes to ensure fit for temporary purpose
- Allows more time to understand our new priorities and needs to form future infrastructure requirements
- Allows time for the sector to regroup following pandemic response to put forward a collective voice and understand their new needs and priorities
- Ensures support is continuous and VCS organisations and our communities do not suffer from a lapse in support
- Easy to do and requires no extensive resource from ourselves and the sector to complete.

Cons

- There is some concern that the current provisions are not fully reflective or representative of the sector. **Risk = 4**
- A lack of long-term security for the sector could impact business planning for organisations. **Risk = 8**

18. The Chief Executive Direct Reports (CEDR) Leadership Team considered the options appraisal and has suggested Option 4 as the preferred way forward, by way of exemption from contract procurement rules.

Reason for requesting exemption from Contract Procedure Rules

Development within the sector

19. The principle mechanism of engagement on the support contract has been through a grouping called the “Oxfordshire Alliance”, developed as a new partnership, supported by the existing provider (OCVA). While the Alliance continues to convene new thinking on collaboration, support and leadership within the sector, it has limited participation and there has been a gap in engagement with smaller organisations. To address this a broader programme of engagement was planned for March 2020. This was suspended due to the

COVID-19 crisis which meant that voluntary sector leaders were much less available for long-term planning. The programme is currently recommencing with the launch of an invitation to shape the Alliance as an effective voice for the sector. This is welcome.

20. The Alliance has not brought forward as originally envisaged proposals that the Council can engage with for a new contract scope. It has also not yet reached a point of maturity where a new collaborative body would be in a position to bid for an infrastructure contract or indeed make its own proposals for support arrangements beyond those supported by the Council.

Impact of COVID-19 and new focus on inequality

21. The COVID-19 crisis has had significant impact on the VCS. Organisations and partnerships have in many cases radically changed their operations to deliver their services in innovative ways. Where that has not been possible, organisations have redirected effort towards the COVID-19 response. In some cases, organisations have been forced to cease operations in part or all of their business.
22. Existing VCS organisations have seen additional expenditure requirements alongside considerable loss of income from fund raising and trading activity. This has been partially offset by national and local COVID-19 funds. Moreover, specific new income streams, include the Oxfordshire Community Foundation's Community Resilience Fund, have the scale and ambition to bring about long term change as well as meeting immediate needs.
23. At the same time, a new group of community support groups (CSGs) have come to be critical to resilience in the community through the COVID-19 crises. They have played a major part in maintaining well-being and in keeping demand on the statutory and more formal voluntary sector sustainable. Often referred to simply as 'volunteering' the landscape has been much more complex with a spectrum of CSGs ranging from very loose networks of neighbours to more organised efforts, often based on existing organisations such as community associations, town and parish councils or existing locally based charities. The ability to activate social action at this scale has made many in the statutory sector and the formal VCS pay new attention to the power and strengths in local communities. The current VCS support arrangement does not recognise this new landscape.
24. Collaboration has been a notable feature of the period with new groupings of the sector coming together regularly to tackle problems together – sharing knowledge and in some cases resources in ways and at a pace we have not previously seen. This has included a new level of engagement and collaboration with the statutory sector. There is considerable ambition within the VCS to retain this new culture to drive efficiency, flexibility and responsiveness.
25. Along with many institutions at this time, organisations and leadership groups within the VCS have come to pay new attention to issues of inequality and diversity and challenging questions are being asked within the sector.

26. The ambitions and direction of travel within the sector therefore match the equivalent intentions of the statutory sector, including as set out within the County/Cherwell joint recovery strategy. It is our intention that this work leads to a major new strategic approach to the VCS and to working in communities. Community resilience and community-based approaches are expected to run across many if not all of the recovery work-streams. Our partners in the city and district councils and in the CCG are re-thinking their positions in this field and there is therefore an opportunity to significantly re-shape the approach across the sector.
27. This work will help us form the scope, objectives and outcomes for a future infrastructure contract and will be vital in our understanding of its longer term vision and deliverability.

Market Development

28. Due to the disruption of the COVID-19 crisis, significant new groupings and coordinating organisations have emerged and there is considerable realignment of relationships and collaboration within the market however the new context is far from mature. In the current provider there is new leadership at board and chief executive level and rethinking of approach and positioning is underway. There have been changes in other significant VCS organisations as well and new leaders and new innovative approaches to infrastructure support have emerged.
29. At the same time, there is a considerable new level of collaboration among commissioners and community engagement teams in the statutory sector. Again, this is developing and is in the process of transitioning from an emergency response to the recovery phase. While there is considerable opportunity to align commissioners' support, an agreed new vision for engagement with the VCS to be achieved through Recovery planning is some way off, and not without challenge.
30. To be able to proceed with Option 4, the preferred option, consideration was given to the financial impact of a full tendering process for a one-year contract versus extending the current arrangements. Completing a full tendering process would have a disproportionate officer resource requirement with no guarantee of alternative bidders outside of the current consortia which may leave OCC in the same position with the same outcome.
31. The VCS co-production group have indicated that their preferred option would be an extension to the current arrangements to allow time to co-producing a new model of infrastructure support.
32. The twice-yearly contract monitoring has not indicated any significant concerns with the current arrangements and the current specification. OCC would wish to change the outputs on some elements of the contract in line with the new corporate plan, corporate priorities and feedback from the co-production group.

33. There are limited providers for this type of provision with the co-production approach aiming to establish a healthier marketplace for a new delivery model. The co-production approach aims to help the VCS Sector to design a model that meets the needs of the sector engaging with them to form new consortia and look at different ways of delivery. Granting an exemption at this time would prevent potential competition amongst the sector whilst co-production is underway.

Financial and Staff Implications

34. The exemption from contract procedure rules are being applied for financial year 2021/22 for £165k which is the equivalent to Year 3 financials from the original contract award.
35. Entering into a full procurement process could have TUPE implications arising from a potential new supplier being awarded the contract for the duration of one financial year. The potential cost benefits and outcomes that could be achieved by going to market would outweigh the implementation and legal cost associated with this approach over remaining with the existing supplier.

Consequences if the proposed action is not approved

36. If an exemption is not approved then the approach would be to go to market with the current specification for a time limited contract. This would require OCC officer resource in advertising the tender, evaluating and awarding a new contract.
37. It would also place additional pressures on the sector to prepare bids and be subject to a full tendering process for a time limited award.
38. Potential award to a new organisation would result in the need to TUPE the existing staff to a new company potentially for a one-year period.

Future procurement strategy

39. To develop the future support model, we will continue to work with the Oxfordshire Alliance but take a more active role as a commissioner in engaging across the sector. This means that we will engage independently with other organisations and partnerships in addition to the alliance and ensure that development over the coming year of VCS support is closely aligned with Recovery Strategy work-strands.
40. At the same time, the Community Resilience Work-Stream itself will set the overall agenda for a new relationship with the VCS. We will engage internally in-line with budget and corporate plan development activity to develop opportunities to align the support in the contract with pressures and opportunities for change identified by services.

41. Within the system, we will work through systems-recovery groups with the aim of developing a common vision for our relationship with the VCS which will act as a key foundation of our support model.
42. Should it be that a contract is required, a full procurement process will then be undertaken, beginning in summer 2021 for implementation in April 2022.

Equalities Implications

43. The Public Sector Equality Duty, under section 149 of the Equality Act 2010, places a responsibility on local authorities to exercise 'due regard to the need to eliminate unlawful discrimination advance equality of opportunity and foster good relations.'
44. The VCS by its nature engages with the most vulnerable in our communities. As noted above, there is new consideration in the VCS of their role in promoting equality and of the diversity within the sector itself. If we extend this contract, we will include new objectives and activities that bring specific attention to equalities issues within the support provided - for example revising training offers, reviewing volunteer promotion and considering where support on governance can have an impact on equality.
45. There are no negative equality and inclusion implications arising directly from this report. Instead our commitment to more time for coproduction of the new solution with internal and external partners, supports inclusion by design and empowers innovation.

Sustainability Implications

46. This report is not considered to raise any sustainability issues.

ROBIN ROGERS
Head of Strategy

Annex: Annex 1 – Financial Appraisal
 Annex 2 – Legal Appraisal
 Annex 3 – None-accessible Options Appraisal

Contact Officer: Emily Schofield, Localities and Partnership Team Leader
 October 2020

Annex 1

Financial Appraisal

Customers & Organisational Development Directorate

Request for exemption from tendering under Contract Procedure Rule (“CPR”) 20 in respect of Voluntary and Community Sector infrastructure in Oxfordshire

Finance Appraisal by Director of Finance

Based on the information provided in this report and the limited timeframe for resolution and extension, the option agreed at CEDR, as a preferred way forward, does seem to limit the financial exposure to the council. The 12-month extension costing £165k, is funded through the current revenue budget and is therefore affordable. As this is not the first time this contract has been extended, it is imperative that the future procurement of this service is fully considered in a timely manner.

It is therefore recommended, from a finance perspective, that this exemption is approved.

Rob Finlayson, Finance Business Partner (on behalf of Lorna Baxter, Director of Finance)

3 December 2020

Annex 2

Legal Appraisal

Customers & Organisational Development Directorate

Request for exemption from tendering under Contract Procedure Rule (“CPR”) 20 in respect of Voluntary and Community Sector infrastructure in Oxfordshire

Legal Appraisal by Head of Legal Services

A. Background

The Customers & Organisational Development Directorate is seeking a further exemption under CPR 20 from the tendering requirements under CPRs 5-15 in relation to the direct award of a contract for the provision of Voluntary and Community Sector infrastructure in Oxfordshire (the “Services”) to a consortium of Oxfordshire organisations (the “Contractor”) as set out in the exemption report to which this Legal Appraisal is annexed. Previous exemptions were agreed in 2018 and 2019 in relation to one year extensions of the existing contract.

B. Grounds for Exemption

The exemption report sets out the justification for directly awarding the contract to the Contractor including the work underway, but not yet concluded, with the Oxfordshire voluntary and community sector to design a new relationship with the Council and how this has been delayed by, amongst other things, the COVID – 19 crisis.

C. Appraisal

1. Aside from the application of the Council’s own Contract Procedure Rules, public bodies are also required to comply with the Public Contracts Regulations 2015 (“the Regulations”), which impose further procedural requirements in relation to contracts over a prescribed pecuniary threshold.
2. The maximum aggregate value of the Services for the proposed contract is £165,000 which is below the applicable EU threshold (currently £189,330) and the contract therefore falls outside the stricter requirements that would otherwise apply.

3. Notwithstanding the more limited procedural requirements, the Head of Legal Services is concerned to ensure that, where there is a possibility of a cross-border interest in the contract, that the contractual arrangements proposed by the Customers & Organisational Development Directorate demonstrate compliance with the EU principles. In this case it is considered unlikely that there would be a cross-border interest in the contract because of the relatively low value.

D. Recommendations

In light of the information in the exemption report prepared by the Director of Customers & Organisational Development, the Head of Legal Services recommends that the request for exemption is approved in the terms proposed, in these special circumstances.

Sukdave Ghuman
Head of Legal Services

3 December 2020

Annex 3

Options Appraisal

Option 1 – Let a long-term strategic contract – not recommended
Risk score = 48

Pros	Cons
Would provide certainty to the successful provider.	We are not in a position to tender for a long-term strategy as we do not understand our new priorities and needs in light of COVID-19 Risk = 20
Would provide a long-term strategic approach to the VCS.	A long-term strategy requires new scope that must be co-produced with the sector, which they have not had time or resource to prioritise. Failing to understand their needs would result in a long-term contract which may not be fit for purpose. Risk = 16
	The opportunity for impactful engagement, both internally and externally, would be lost and lead to a contract specification that does not meet our or the sector's needs. Risk = 12

Option 2 – Allow the contract to expire – not recommended
Risk score = 75

Pros	Cons
Saves money.	Risk of reputational damage due to lapse in support to our communities. Risk = 20
Allows time to complete a needs assessment and redesign infrastructure requirements.	Will diminish the relationships we have with the VCS and demean their incredible efforts during COVID-19 which have been vital in providing support to our residents. Risk = 16
	Doesn't support our corporate commitment to ensure thriving communities for everyone in Oxfordshire or working in partnership to improve outcomes for residents. Risk = 15
	A reduction in funding could see key organisations across the county become unsustainable. Risk = 12

	Communities suffer because VCS organisations are unable to support communities sufficiently. Risk = 12
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Option 3 – Let a short-term contract – not recommended
Risk score = 52

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Would allow us to reshape current provision and retain option for more significant change in the future.	We are not in a position to develop a new contract specification in co-production with the sector meaning the tendering process could cause significant disruption and potentially result in awarding a contract that does not meet our needs. Risk = 20
	Would require competitive tendering which requires significant resource from the sector, removing dedicated support from residents in order to prioritise tendering process. Risk = 20
	Does not provide long term certainty for the provider or for the sector. Risk = 12

Option 4 – Further extend the contract – recommended
Risk Score = 12

Pros	Cons
Known quantity with the option to revise current outcomes to ensure fit for temporary purpose	There is some concern that the current provisions are not fully reflective or representative of the sector. Risk = 4
Allows more time to understand our new priorities and needs to form future infrastructure requirements	A lack of long-term security for the sector could impact business planning for organisations. Risk = 8
Allows time for the sector to regroup following pandemic response to put forward a collective voice and understand their new needs and priorities	
Ensures support is continuous and VCS organisations and our	

communities do not suffer from a lapse in support	
Easy to do and requires no extensive resource from ourselves and the sector to complete.	