

CABINET MEMBER FOR LOCAL COMMUNITIES – 21 January 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.**

Introduction

2. Oxfordshire has a vibrant voluntary and community sector and the Council recognises the vital role this sector plays in supporting thriving communities. One key part of our relationship with the sector is through the Voluntary and Community Sector infrastructure contract. This contract, valued at approximately £170k per annum, is due to run until the end of March 2020.
3. The need to work even more effectively in partnership with the VCS, and to enhance their capacity and capability to help us deliver our priorities, has been raised in the Corporate Peer Challenge, the LGA Voluntary Sector Peer Review, inspections by OFSTED and the Care Quality Commission.
4. In response the Council has been working with partners to co-produce a new solution to better meet the needs of the sector. To allow this to continue, this report seeks an exemption from contract procurement rules with a preferred option to extend the current contract for one year to enable a new solution to be developed with the sector, for retendering to begin summer 2020.

Background

5. The Oxfordshire context is one of a vibrant voluntary and community sector, and we recognise the vital role this already plays in supporting thriving communities. The council already has a significant role within the voluntary and community sector; ranging from strategic relationships to funding arrangements and direct commissioning.
6. One key part of our relationship with the sector is through the VCS infrastructure contract, which was awarded to a consortium of organisations: OCVA, Oxfordshire Youth, Community First Oxfordshire, Volunteer LinkUp and Volunteer Connect. The contract runs until the end of March 2020 and the contract outcomes are:

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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.

7. The contract is formally monitored twice yearly against the specification. The primary function of the monitoring is to check that the service is being delivered well, to the required standards with the required outcomes. The contract is also monitored to check the costs of the contract are no higher than expected.
8. Co-production of a new contract is underway, it has taken time to establish this new way of working with our internal and external public sector colleagues and those from across the voluntary and community sector. Significant progress has been made since the co-production group first met in August 2018, however the environment surrounding this activity has evolved.
9. Oxfordshire County Council has recently entered into a partnership arrangement with Cherwell District Council and together we are exploring joint working opportunities. In common with all councils we face significant financial pressures, our Transformation Programme will change the way the whole council operates, focused on transforming and improving efficiency rather than simply saving and cutting or reducing services. While ensuring we achieve the best we can for residents across all services and activities.
10. The co-production activity coincides with the partnership working arrangements being developed between Oxfordshire County Council and Cherwell District Council and the county council's Transformation Programme; making it prudent to use this opportunity to ensure any contract for future VCS infrastructure support aligns with our evolving vision, strategic approach and future ways of working.
11. As a result of this options were considered for the next twelve months as set out below:

Option 1	Advantages	Disadvantages
Seek Exemption/extend the current contract specification for one year with some amendments to outcomes.	<ul style="list-style-type: none"> • Allows for continuity of service, supporting the sector and communities • Current consortia established • Quick, easy and less resource intensive to implement 	<ul style="list-style-type: none"> • Doesn't provide significant change as quickly as desired • Extends need for resource commitment to co-production.

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	<ul style="list-style-type: none"> • Enables alignment with the Transformation and Joint Working programmes • Allows more time to co-produce the right solution for all. 	
<p>Option 2</p> <p>Recommission the current contract specification for one year with some amendments to outcomes.</p>	<ul style="list-style-type: none"> • Allows for continuity of support to the sector and communities • Allows previous bidders to re-bid relatively easily • More time to co-produce a more suitable solution. 	<ul style="list-style-type: none"> • Increased resource requirement, for a short contract • Would be paying for some elements of the contract that may not be realistic over a single year • Limited providers in the market, based on the length of contract • Tupee implications may apply to a new provider • Tight timescales for procurement and mobilisation of a new provider.
<p>Option 3</p> <p>Allow the contract to lapse until a new specification is agreed</p>	<ul style="list-style-type: none"> • OCC saves £165k • Redesign process isn't rushed, ensuring we take the time to get it right. 	<ul style="list-style-type: none"> • Smaller groups would be unsupported. • Knock on effect to communities, through lack of support. • Reputational damage from being seen to withdraw support from sector, and communities as a result. • Some organisations become unsustainable due to lack of support. • Doesn't support our corporate vision and damages our

		relationship with the sector due to lapse in support.
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12. The Chief Executive Direct Reports (CEDR) Leadership Team considered the options appraisal and with advice from the procurement team has suggested Option 1 as the preferred way forward, by way of exemption from contract procurement rules.

Reason for requesting exemption from Contract Procedure Rules

13. To be able to proceed with Option 1, 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.
14. 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.
15. 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.
16. 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.
17. There are limited providers for this type of provision with the co-production approach aiming to establish a healthier market place 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

18. The exemption from contract procedure rules are being applied for financial year 2020/21 for £165k which is the equivalent to Year 3 financials from the original contract award.

19. The contract exemption would mitigate against any costs arising from potential TUPE arrangements.

Consequences if the proposed action is not approved

20. 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.
21. 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.
22. 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

23. The joint co-production working group will consider the needs of the sector, how these might be delivered and work towards a new model that may or may not include a contract. Any co-production and engagement relating to procurement activity will be completed in early 2020 to allow officers to draw up appropriate models and funding streams.
24. Should it be that a contract is required, a full procurement process will then be undertaken beginning in summer 2020 for implementation in April 2021.

Equalities Implications

25. 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.'
26. 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.
27. The outcome is more likely to address needs identified across a diverse county population, having provided all VCS partners the opportunity to raise our awareness of where we need to work harder to achieve this, and to work with us on how we can design inclusion into services from the start.

Sustainability Implications (Environmental Impacts – Reducing our Climate Impact)

28. There are no sustainability implications in the proposal, or the operation/administration of the proposal.

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BEN THREADGOLD

Policy & Performance Service Manager

Contact Officer: Emily Schofield, Senior Policy Officer

December 2019

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 Chief Legal Officer

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 if 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)

6th January 2020

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 Chief Legal Officer

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. A previous exemption was agreed in 2018 in relation to a one year extension 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.

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 £181,302 and, from 1st January 2020, £189,330) and the contract therefore falls outside the stricter requirements that would otherwise apply.
3. Notwithstanding the more limited procedural requirements, the Chief Legal Officer 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 Chief Legal Officer recommends that the request for exemption is approved in the terms proposed, in these special circumstances.

Nick Graham
Chief Legal Officer

17 December 2019