

CABINET MEMBER FOR LOCAL COMMUNITIES – 20 NOVEMBER 2018

Exemption from Contract Procedure Rules – VCS Infrastructure

Report by Director for Resources

Introduction

1. 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 is due to run until the end of March 2019.
2. In March 2018, the Council invited the LGA to carry out a Peer Challenge of our work with the sector. One of the findings from this review was that the current contract arrangements were not meeting the needs of the sector. In response to this the Council is now co-producing a new solution with the sector. To allow this to happen, this report seeks an exemption from contract procurement rules with a preferred option to extend the current contract for one year to allow a new solution to be developed with the sector by September 2019.

Background

3. The council has recently set a new vision:

Thriving communities for everyone in Oxfordshire

- We listen to residents so we can continuously improve our services and provide value for money.

Thriving communities

- We help people live safe, healthy lives and play an active part in their community.
- We provide services that enhance the quality of life in our communities, and protect the local environment.

Thriving people

- We strive to give every child a good start in life, and protect everyone from abuse and neglect.
- We enable older and disabled people to live independently and care for those in greatest need.

Thriving Communities

- We support a thriving local economy by improving transport links to create jobs and homes for the future.
4. Alongside this, the county council is currently transforming the way it works, and challenging itself to ensure it achieves the best it can for residents across all services and activities through our Fit for the Future programme that will change the way the whole council operates. In common with all councils we face significant financial pressures, but are in a better position than most and are therefore now focused on transforming and improving efficiency rather than simply saving and cutting or reducing services.
 5. We also have ambitions for the council to be both more strategic, and more local. We operate as a lead strategic body in the county but also need to ensure we have a meaningful and valuable presence in local communities, so we both understand and respond to local needs.
 6. 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.
 7. In March 2018 the county council invited LGA Peers to carry out a Challenge Review of its work with the Voluntary & Community Sector (VCS). Following the receipt of the Peers' report with their findings and recommendations, and in light of the Corporate Plan approval in July, officers drew up an Action Plan to ensure momentum was not lost.
 8. 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 2019 and the contract outcomes are:

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.
 9. 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.

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10. The peer review findings noted that the voluntary sector felt that the current contract arrangements were not working for those within the sector. As a result of this a coproduction working group with VCS representatives was formed, the group initially met in August 2018 to consider the type of support the sector needs and alternative delivery models.
11. From this first meeting with the sector, it was clear that there is a desire to get the county council's support right, and not just rush to meet a deadline for retendering of the contract. There were also questions raised as to whether a contract was the best way to achieve desired outcomes with the available budget, or whether the funding might be more effectively spent in a different way. The group expressed a preference for extending the current arrangements for a further twelve months.
12. As a result of this options were considered for the next twelve months as set out below:

Option 1	Advantages	Disadvantages
<p>Extend/Seek Exemption/ Recommission the current contract specification for one year with some amendments to outcomes.</p>	<ul style="list-style-type: none"> • Allows for continuity of service of outcomes • Current consortia established • Allows previous bidders to re-bid relatively easily • Less resource intensive • More time to co-produce a more suitable solution 	<ul style="list-style-type: none"> • 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
<p>Option 2</p> <p>Design a new specification for a one-year contract, removing the community mobilisation outcome. The specific detailed outcomes under this relating to Day Centres and Children's Centres have been met and no other specific outcomes are agreed.</p>	<ul style="list-style-type: none"> • OCC could potentially save £50k 	<ul style="list-style-type: none"> • One organisation would be disadvantaged. • Impact on other OCC areas i.e. community transport • Not in line with our overall direction of travel for supporting communities to support themselves

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<p>Option 3</p> <p>Allow the contract to lapse until a new specification is agreed</p>	<ul style="list-style-type: none"> • OCC save £180k 	<ul style="list-style-type: none"> • Smaller groups would be unsupported. • Knock on effect to communities, through lack of support to volunteering • Reputational damage from being seen to withdraw support from sector, and communities as a result
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13. The County Leadership Team considered the options appraisal with Option 1 as the preferred way forward. Advice from the procurement team has suggested that this should be dealt with by way of exemption from contract procurement rules.

Reason for requesting exemption from Contract Procedure Rules

14. 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.
15. The joint working 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.
16. 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 and corporate priorities.
17. 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.
18. 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

19. The exemption from contract procedure rules is being applied for financial year 2019/20 for £165k which is the equivalent to Year 3 financials from the original contract award.
20. The contract exemption would mitigate against any costs arising from potential TUPE arrangements.

Consequences if the proposed action is not approved

21. 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.
22. 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.
23. 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

24. 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 cease in August/ September 2019 to allow officers to draw up appropriate models and funding streams.
25. Should it be that a contract is required, a full procurement process will then be undertaken beginning in October 2019 for implementation in April 2020.

Equalities Implications

26. 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.'
27. There are no equality and inclusion implications arising directly from this report.

RECOMMENDATION

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

BEN THREADGOLD

Policy & Performance Service Manager

Background papers:

Contact Officer: Sarah Jelley, Senior Policy Officer
October 2018

Financial Appraisal

29. This appraisal is prepared by the Finance Business Partner (FBP) in conjunction with the (interim period - Principal Procurement Manager (PPM) SCS or E&E) and approved by the Head of Corporate Finance covering whether the exemption proposal is sound from their viewpoint, concluding with a recommendation on whether the exemption should be granted or not.
- (1) Background details in relation to overall financial and budgetary position. (FBP)
 - (2) Assessment of business case. (FBP)
 - (3) Assessment of financial risk to the council. (FBP)
 - (4) Assessment as to whether exemption specified is appropriate in terms of effective procurement by the council. (PPM)
 - (5) Where necessary, identification of action to be taken before recommendation for exemption can be made in Financial Appraisal. (FBP/PPM)
 - (6) Whether additional changes are necessary in procurement practice for future contracts. (PPM)
 - (7) Recommendation as to whether exemption should be granted. (FBP and PPM)

Financial Appraisal

30. This appraisal is prepared by the Finance Business Partner (Adult Services & Public Health).

A. Background

31. The Resources Directorate is seeking exemption under CPR 20 from the tendering requirements under CPRs 5-15 in relation to the award of a contract for the purchase of Voluntary and Community Sector infrastructure services (the "Services") as set out in the exemption report to which this Legal Appraisal is annexed.
32. The contract is for 12 months and has a value of £0.165m. The background to the request is discussed in the exemption report.

B. Grounds for Exemption

33. The Council is co-producing a new support arrangement with the voluntary sector as a peer review suggested that the current arrangements did not work for the sector. The current contract is due to end in March 2019 and an extension to the current arrangements is required to allow a co-produced solution to be developed.

C. Appraisal

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34. Extending the contract for a year will allow the new long - term support model to be designed effectively so that more effective, better value for money, arrangements can be implemented from April 2020.
35. The existing budget is £0.180m and the cost of the extended year is expected to be £0.165m in line with the third year of the existing contract. Therefore, there is a small saving against the budget. If the contract were retendered for one year only it is likely that the bids would exceed the £0.165m cost of the extension. Because of this extending the existing contract is assessed to be likely to provide better value for money than retendering. Extending the current arrangements also minimises the cost of potential TUPE implications.

D. Recommendation

36. In light of the information in the exemption report prepared by the Director of Resources, the Director of Finance recommends that the request for exemption is approved in the terms proposed, in these special circumstances.

LORNA BAXTER
Director of Finance
12 November 2018

Legal Appraisal

37. This appraisal is prepared by Legal Services and approved by the County Solicitor.
 - (1) Appraisal of legal issues relevant to request, e.g. application of the CPRs, EU regulations, competition law.
 - (2) Assessment of risk to the council of legal challenge.
 - (3) Assessment of alternative courses of action and likely legal impact on the council.
 - (4) Recommendation as to whether exemption should be granted and, if so, on what basis.

Resources Directorate

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

Legal Appraisal by the Director Law and Governance

A. Background

1. The Resources Directorate is seeking exemption under CPR 20 from the tendering requirements under CPRs 5-15 in relation to the award of a contract for the purchase of Voluntary and Community Sector infrastructure services (the “Services”) as set out in the exemption report to which this Legal Appraisal is annexed.
2. The contract is for 12 months and has a value of £165,000. The background to the request is discussed in the exemption report.

B. Grounds for Exemption

The Council is co-producing a new support arrangement with the voluntary sector as a peer review suggested that the current arrangements did not work for the sector. The current contract is due to end in March 2019 and an extension to the current arrangements is required to allow a co-produced solution to be developed.

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 estimated aggregate value of the Services is below the applicable EU threshold (£181,302) and the contract therefore falls outside the stricter requirements that would otherwise apply.
3. Notwithstanding the more limited procedural requirements, the Director of Law and Governance 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 Resources 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. Recommendation

In light of the information in the exemption report prepared by the Director of Resources, the Director of Law and Governance recommends that the request for exemption is approved in the terms proposed, in these special circumstances.

NICK GRAHAM

Director of Law and Governance

12 November 2018