

MIDDLESBROUGH COUNCIL	
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Report of:	Director of Finance
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Submitted to:	Audit Committee
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Date:	14 March 2024
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Title:	Review of Contracts awarded under Exemption from Contract Procedure Rules
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Report for:	Information
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Status:	Public
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Strategic priority:	All
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Key decision:	No
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Why:	Report is for information only
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Subject to call in?:	No
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Why:	
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Proposed decision(s)
That Audit Committee note the contents of this report

Executive summary
<p>This report provides the Audit Committee with an overview of procurement activity related to:</p> <ul style="list-style-type: none"> • contracts which were originally approved subject to exemptions from the Council’s Contract Procedure Rules since 1 April 2021 through to 31/1/2024. • Contracts that were approved subject to extensions prior to 1 April 2021, which are still active contracts. <p>The report provides information on:</p> <ul style="list-style-type: none"> • The number of exemptions approved. • The number of exemptions declined. • Contractual position of all exemptions approved.

- The identification of exemptions “in query” and associated actions.

1. Purpose

- 1.1 The purpose of this report is to provide the Committee with assurance in relation to the Council’s compliance with the Public Contract Regulations 2015 specifically in relation to those contracts that have been awarded subject to an exemption from the Council’s Contract Procedure Rules (CPRs)/ Standing Orders (SOs).
- 1.2 Exemptions are allowed under specific circumstances as set out in the CPRs/SOs in exceptional circumstances, details of which can be found in paragraph 4.7 below. This report provides a summary of the Council’s activity in regard to exemptions submitted and approved under the Councils standing Order rule 5 (in accordance with the previous contract procedure rules). To report on the current status of those exemptions and any issues arising from their approval.

2. Recommendations

That the Audit Committee

- Note the content of this report.

3. Rationale for the recommended decision(s)

- To receive assurance that the Council has in place the Contract Procedure Rules as part of the Council’s Constitution, and these provide the governance in respect of exemption approvals that ensure compliance with the Public Contract Regulations 2015.

4. Background and relevant information

- 4.1 In August 2023 the external auditors EY produced a value for money report and Issued 11 Statutory Recommendations under section 24 schedule 7(2) of the Local Audit and Accountability Act 2014. One of the recommendations, (no.9) required:

We recommend that the Council complete their review of all ongoing contracts which were initially awarded under an exemption but have been subject to subsequent amendment (including extension) to identify whether they are compliant with The Public Contract regulations. If further non-compliance is identified, the Council should evaluation whether any remedial action is necessary.

- 4.2 During their audit work in 2022, EY audit had identified an issue relating to the multiple award of a contracts to a single service by Children’s Services in 2020 this has been appropriately reported, investigated and relevant actions have been undertaken in accordance with the Council’s management and procurement procedures. However, following the identification of this matter, external audit required the Council to demonstrate whether this was indicative of a wider issue of non-compliance with Contract Procedure Rules across the local authority, or whether this was an isolated event, which resulted in the statutory recommendation set out above.

4.3 The table below shows the financial thresholds as of 1st April 2022 to 31st March 2023, which all procurement activity within that time frame was required to adhere to:

WORKS	GOODS/ SERVICES/ CONSULTANTS	LIGHT TOUCH REGIME	TENDERING PROCEDURE
Up to £10,000	Up to £10,000	Up to £10,000	Neither written quotations nor tenders need to be invited. Ensure value for money is achieved using local suppliers where possible.
£10,001 - £1,000,000	£10,001 - £213,477 (inclusive of VAT) £177,897.50 (exclusive of VAT)	£10,001 - £633,540 (inclusive of VAT) £552,950 (exclusive of VAT)	At least 3 written quotations. The quotation system must be used for quotations. Use local suppliers where possible. Tenders can be sought but this is optional.
£1,000,001 - £5,336,937 (inclusive of VAT) £4,447,447.50 (exclusive of VAT)	N/A	N/A	At least 4 tenders must be sought. The Tender advert(s) must be placed on Contracts Finder. The NEPO portal must be used.
Above £5,336,937 (inclusive of VAT) £4,447,447.50 (exclusive of VAT)	Above £213,477 (inclusive of VAT) £177,897.50 (exclusive of VAT)	Above £633,540 (inclusive of VAT) £552,950 (exclusive of VAT)	EU Procedure - OJEU Notice. At least 5 tenders must be sought, ensuring that the tender process complies with the EU Directives. The NEPO portal must be used.

4.4 In order to ensure compliance with the Public Contract Regulations and in accordance with the Councils Financial and Contract procedure rules applicable at the time no exemptions could be approved above the following values:

- Goods & Services - £213,477
- Light Touch - £633,540 (specifically for services for health & social care)
- Works - £5,336,937

Within the contract procedures applicable at the time, section 5 contained the appropriate guidance with respect to request and award of exemptions.

4.5 An exemption understanding order 5 allowed for a contract to be placed by direct negotiation with one or more suppliers rather than through a procurement route in accordance with the procedures set out in the threshold table above. No exemption could be approved under the Contract Procedure Rules if the EU thresholds would be breached.

4.6 All exemption applications and the reason for them are required to be recorded and documented to enable due consideration for approval or rejection. As such a request for exemption form has been utilised which requires signature of both the requestor and budget holder. It stipulated a requirement that exemptions were to be signed by the Head of Service and Chief Finance Officer. This authority was delegated to the

Head of Commissioning by the former Chief Finance Officer who undertook the review and approval process on behalf of the Chief Finance Officer. However, this was not recorded in writing and was therefore an area of non-compliance with the CPRs identified by external audit.

4.7 Within standing order 5 the potential reasons for requesting the exemption were clearly outlined such as:

- Any contract or sub-contract that is substantially for the undertaking of services in which exercise of professional knowledge and skill is primary importance.
- For work, supplies and services which are patented or of a proprietary or special character and for which it is not possible or desirable to obtain competitive prices.
- Where for technical, commercial or artistic reasons or because of exclusive rights it is not reasonable to advertise for tenders.
- Social care services under the National health services and Community care Act, 1990 or the Children Act 1989 (contract value must be below £633,540).
- Where grant conditions require expenditure to be incurred within a financial year, and notification of a grant is received so late as to prevent compliance with the table above.
- Where a new contract is proposed to be entered into or an existing contract is being extended and a change of supplier would cause a) disproportionate technical difficulties b) diseconomies or c) significant disruption to council services.

This above is not an exhaustive list, other reasons included where there was no market, purchased by auction, purchases from another public body etc

4.8 In compliance with the section 24 recommendation made by EY in August 2023, a full review of live contracts that have been awarded subject to an exemption from CPRs has been undertaken. This identifies the status of those contracts and seeks to provide assurance to the Committee that the Council’s procurement practices are in accordance with Contract Procedure rules and are compliant with the Public Contract Regulations 20xx.

5.0 Review of Exemptions

5.1 The table below provides details of the number of contracts awarded subject to exemptions from CPRs since April 2021, and also includes any contracts awarded with exemptions prior to that date which are still live..

Exemptions	Number	%
Total Number of Request received	129	100
Total number of requests accepted	121	94
Total number of requests rejected	8	6

Of the 121 accepted:

Exemptions	Number	%
Number of contracts still active as end date of exemption has not passed	44	36
Number of contracts in place with an Extension	2	2
Number of contracts ceased	70	58

Number of exemptions “in query”	5	4
Total	121	100

- 5.2 The table indicates that 4% of exemptions received are in query by the Procurement service as a result of this process. The detail concerning those exemptions is outlined in Appendix 1, along with the issue and resulting actions.
- 5.3 It should be noted that none of the exemptions in query breach the Public Contract Regulations 2015 in terms of the total value of expenditure exceeding the financial limits within the regulations.
- 5.4 In addition, with regard to the 2 contracts that were let subject to an exemption which have subsequently been subject to a contract extension, the financial values have been checked and the total amount falls below the Public Contracts Regulations 2015.
- 5.5 The review has concluded that all contracts that have been awarded subject to an exemption are compliant with the financial thresholds determined under the Public Contract regulations 2015. Members can therefore be assured that the contract procedure rules in relation to letting contracts subject to exemptions are robust and compliant with legislative requirements.

6.0 Improvements to Date

- 6.1 Notwithstanding the assurance provided by this review, the Procurement Service has sought to deliver further improvement to strengthen the governance arrangements around procurement.
- 6.2 The contract procedures rules were refreshed and approved by Council as part of the Constitution in September 2023. As a result, authorisation on exemptions have been strengthened as follows:
- Requests for exemptions up to full contract value of £150,000 will be authorised by Head of Strategic Commissioning & Procurement
 - Request for exemptions in excess of £150,000 will be authorised by Head of Strategic Commissioning and Procurement, and the Director of Finance (s.151 officer)
 - Request to extend a contract that is subject to an exemption will be signed by Head of Strategic Commissioning & Procurement, Director of Finance and Director of Legal & Governance (Monitoring Officer).
- 6.3 The authorisation process assures additional due diligence for any extension requests to an original exemption. It should be noted that no extensions are permitted if the contract values would exceed the thresholds set out in the Public Contract Regulations.
- 6.4 In addition the guidance stipulates that exemptions should be for no more than two years, unless there is a defined case which can demonstrate the value for money for a longer time period.

- 6.5 A clear process has been established for referencing, as prior to submission for signature a procurement officer will explore all feasible options including the potential for call off from frameworks, variation of existing contracts etc.
- 6.6 Mandatory training has been provided to all budget holders in which exemptions have been covered, and the case for exemption to be the exception rather than the rule has been re-enforced to the staff base.
- 6.7 Finally, guidance on the staff intranet has been updated in regard to submission of appropriate forms and associated guidance.

7.0 Other potential alternative(s) and why these have not been recommended.

7.1 There are no other alternatives for consideration.

8.0 Impact(s) of the recommended decision(s)

Financial (including procurement and Social Value)

- 8.1 Within Middlesbrough Council’s constitution, the regulations pertaining to contracts are outlined within the Contract Procedure Rules. Staff are required to adhere to the contract procedures pertaining to any procurement activity, and flow charts and threshold tables are provided on the staff intranet as easy reference guides.
- 8.2 The table below indicated the level of spend against reach Directorate through the exemption route since 1st April 2021 to xxxx date xx (including an open exemptions at this date)

Directorate	Total Exemption spend 2021/22 to xxxxx (£)	% of overall Exemption Spend
Legal	52,780	1
ECS	1,138,811	11
Finance	413,170	4
Adults	2,033,513	20
Public Health	1,948,858	20
Regeneration	1,721,393	17
Childrens	2,665,717	27
Total	9,974,242	100

Rounded to nearest %

8.3 People services have the highest value in requests, this reflects the market positions locally and the individual needs experienced by the respective client groups. It is also reflective where grant income has been directed by Government within minimal time to progress procurement activity in order to deliver services to enable grant to be drawn

down in accordance with grant funding conditions which are often time limited. This is compliant with the terms of the exemption award criteria.

8.4 It should also be noted that some services have moved between directorates over time so this financial split is appropriate when the exemption was awarded but may not be reflective of current position.

8.5 A review of exemption activity will be undertaken quarterly, and information concerning activity will be shared with directors as part of the budget monitoring cycle.

9.0 Legal

9.1 A request for an exemption is a route to procurement therefore all elements of the procurement process are still progressed including any GDPR requirements, and the development of a contract with terms and conditions.

10. Risk

10.1 External audit requested a review of awarded exemptions principally to check that no exemptions had been agreed which breached the Public Contract Regulations 2015 financial threshold. This review provides the assurance that the Council has no exemptions awarded which have breached the statutory threshold.

11. Human Rights, Public Sector Equality Duty and Community Cohesion

There are no human rights, equality or data protection issues arising as a result of the recommendations in this report.

12. Climate Change / Environmental

There are no Climate Change / Environmental issues arising as a result of the recommendations in this report.

13. Children and Young People Cared for by the Authority and Care Leavers

There are no issues relating to Children and Young People cared for by the authority and care leavers arising as a result of the recommendations in this report.

14. Data Protection / GDPR

There are clear processes linked to data protection and GDPR within procurement guidelines and practices.

Actions to be taken to implement the recommended decision(s)

Action	Responsible Officer	Deadline
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Appendices

1	Details of exemptions “in query”
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Background papers

Body	Report title	Date
none		

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