

**SUBJECT: INTERNAL AUDIT SECTION
CONTRACT PROCEDURE RULES -
EXEMPTIONS**

DIRECTORATE: Resources
MEETING: Audit Committee
DATE: 25th July 2019
DIVISION/WARDS AFFECTED: All

1. PURPOSE

- 1.1 To consider the adequacy and appropriateness of the exemption process from the Authority's Contract Procedure Rules since the last report in November 2018.
- 1.2 To inform the Audit Committee of the number of exemptions requested by operational managers and to identify any non compliance with the process or adverse trends.

2. RECOMMENDATION(S)

- 2.1 That the Audit Committee accepts and acknowledges the justifications for the exemptions provided by operational officers.
- 2.2 If the justifications are not accepted, then consideration should be given to calling in the respective operational officer and their respective Head of Service to further account for the reasons why they could not comply with the Council's Contract Procedure Rules at the time of the procurement.
- 2.3 That the Audit Committee receive an updated report in 6 months time to include any further responses obtained by the Chief Internal Auditor.

3. KEY ISSUES

- 3.1 To ensure compliance with the Council's Contract Procedure Rules in the way goods, works and services are procured on behalf of the Authority.
- 3.2 Reassurance that the exemption process from Contract Procedure Rules is operating as intended by managers procuring goods, works or services on behalf of the Authority.

- 3.3 Some operational managers procuring goods, works and services on behalf of the Authority may not be as familiar with Contract Procedure Rules and the exemption process as they should be.

4. REASONS

- 4.1 Council approved the revised Contract Procedure Rules for Monmouthshire County Council in April 2009. This was as a result of a major update of the Council's former Contract Standing Orders which incorporated compliance with the Procurement Strategy.
- 4.2 The previous report was presented to Audit Committee in November 2018. This report covers the period June 2018 to October 2018 and the period November 2018 to May 2019. Following the previous report, two managers were invited to Audit Committee to explain to Members their reasons for seeking an exemption rather than complying with the Council's Contract Procedure Rules.

5. EXEMPTIONS - Background

- 5.1 Although the Contract Procedure Rules were written to ensure a consistent and fair approach to how officers procure works, goods and services on behalf of the Council, there will be occasions where full compliance may not be appropriate. Provided there is sufficient justification and appropriate approval for not following these rules then that is permissible within the agreed policy.
- 5.2 Management need to ensure that the use of exemptions is proper and they are not being used for convenience or to avoid following CPRs. Exemptions from CPRs are therefore administered by Internal Audit, although approvals are given by Heads of Service, Chief Officers and or Cabinet Members.
- 5.3 Since the revised CPRs were approved by Council, 259 exemptions have been requested (up to May 2019) as shown at Appendix 1.
- 5.4 The majority of exemption forms have been returned to Internal Audit although there are some which are still outstanding so it is not possible to determine whether or not the correct procedures have been followed in all cases.
- 5.5 An exercise was undertaken to capture the missing information on previously non returned exemption forms as shown at Appendix 2. The majority of forms had subsequently been returned to Internal Audit or were no longer required. From those which were returned, the majority were appropriately authorised; those that were not correctly authorised were highlighted in the table in the Appendix.

5.6 This process will only capture the exemptions which have been requested via and returned to Internal Audit.

5.7 The process is as follows:

- Obtain a sequentially numbered exemption form from Internal Audit
- Record the reason for requesting the exemption on the form
- Obtain the appropriate level of approval
- Return the fully signed off and approved form to Internal Audit

6. EXEMPTIONS – June 2018 to October 2018 [260 - 272] [Appendix 3]

6.1 Of the 13 requested exemptions, 8 were returned to Internal Audit as required and were correctly authorised; 3 were no longer required; 2 were not returned to Internal Audit which means that it cannot be verified that they have been correctly authorised; these are highlighted in the table.

EXEMPTIONS – November 2018 to May 2019 [273 - 280] [Appendix 4]

6.2 Of the 8 requested exemptions, 4 were returned to Internal Audit as required and were correctly authorised; 2 were returned to Internal Audit but had not been correctly authorised; 2 were no longer required.

7 GENERAL

7.1 All officers who request an exemption will be reminded to return the form to Internal Audit by the Chief Internal Auditor.

7.2 Some managers are still sending Exemption Forms to Internal Audit which have not been formally issued which indicates a weakness in the control environment as the correct process is not being followed.

7.3 Although Heads of Service and operational managers were made aware of the revised Contract Procedure Rules at the time, the main concern is that current operational managers may be non compliant because they are not seeking the appropriate exemptions.

7.4 A list of all requests for CPR exemptions which have not been returned to Internal Audit will be sent to Heads of Service to chase up a return to the Chief Internal Auditor who will then verify that they have been correctly authorised. The Chief Internal Auditor will then also remind all Heads of Service of the correct procedure to follow when seeking an exemption from the Council's procurement rules.

8. RESOURCE IMPLICATIONS

None.

9. CONSULTEES

Chief Officer Resources

Results of Consultation:

10. BACKGROUND PAPERS

Report to Council 2nd April 2009 – Contract Procedure Rules

11. AUTHOR AND CONTACT DETAILS

Andrew Wathan, Chief Internal Auditor

Telephone: x.4243

Email: andrewwathan@monmouthshire.gov.uk

AUDIT COMMITTEE JULY 2019

CONTRACT PROCEDURE RULES - EXEMPTIONS

APPENDIX 1

**Contract Procedure Rules
Exemption Forms Log**

		Period	Exemption Ref	No' of exemption requests	Cumulative
Report 1	January 2011	April 2009 to 31 Aug 2010	1 – 41	41	41
Report 2	November 2012	September 2010 to August 2011	42 – 60	19	60
		September 2011 to August 2012	61 – 92	32	92
Report 3	May 2013	September 2012 to March 2013	93 – 102	10	102
Report 4	December 2013	April 2013 to October 2013	103 - 117	16	117
Report 5	July 2014	November 2103 to May 2014	118 - 132	15	132
Report 6	December 2014	June 2014 to October 2014	133 - 141	9	141
Report 7	July 2015	November 2014 to May 2015	142 - 174	33	174
Report 8	December 2015	June 2015 to October 2015	174 - 179	5	179
Report 9	June 2016	November 2015 to May 2016	180 - 194	15	194
Report 10	December 2016	June 2016 to October 2016	195 - 207	13	207
Report 11	November 2017	November 2016 to May 2017	208 - 222	15	222
Report 12	November 2018	June 2017 to October 2017	223 - 246	24	246
		November 2017 to May 2018	247 - 259	15	259
Report 13	July 2019	June 2018 to October 2018	260 - 272	13	272
		November 2018 to May 2019	273 - 280	8	280

Appendix 2

Follow up of previously requested exemption forms which were not returned to IA identified in the November 2018 report

Number	Requester	Details / comment	Estimated Contract Value £	Directorate	Date	Correctly authorised	Date Returned to Internal Audit	Reason for exemption
224	Becky Pritchard	Contractor for home to school transport went into liquidation overnight, leaving 29 contracts undelivered. PTU looking to award these contracts on emergency basis for 6 weeks until end of school year to temporary providers, with a view to formal re-tendering over the summer school holiday period.	tbc	Operations	14/06/2017			Unforeseeable emergency causing serious disruption to Council services
Exemption form subsequently returned to Internal Audit; not correctly authorised, not signed by the Head of Service. Value of contract was £35,309								
227	Nicola Needle	Relating to WG Intermediate Care Funding, the team need to provide proof of concept to WG prior to taking this to Market	120,000 - 130,000	Adult Services	31/07/2017			Specialist provider
"We did not complete and return the exemption form (number 227) as upon reflection, the ICF funding allocation was awarded on the basis of a partnership bid with MCC as Lead Local Authority and Bridges Centre the other organisation/partner involved in delivery"								

229	Sandra Travers	Commissioning for adult services	Over £25k	Adult Services	21/08/2017			Extension of existing contract, specialist provider
230	Sandra Travers	Commissioning for adult services	Over £25k	Adult Services	21/08/2017			Extension of existing contract, specialist provider
231	Sandra Travers	Commissioning for adult services	Over £25k	Adult Services	21/08/2017			Extension of existing contract, specialist provider
232	Sandra Travers	Commissioning for adult services	Over £25k	Adult Services	21/08/2017			Extension of existing contract, specialist provider
234	Sandra Travers	Commissioning for adult services	Over £25k	Adult Services	21/08/2017			Extension of existing contract, specialist provider
235	Sandra Travers	Commissioning for adult services	Over £25k	Adult Services	21/08/2017			Extension of existing contract, specialist provider

236	Sandra Travers	Commissioning for adult services	Over £25k	Adult Services	21/08/2017			Extension of existing contract, specialist provider
-----	----------------	----------------------------------	-----------	----------------	------------	--	--	---

"The original request in 2017 was a result of a miscommunication/understanding on our part and the exemptions weren't needed."

238	Rob O Dwyer	£600k of fire protection works, paid for by MCC on behalf of CSC Foundry Limited	600,000	RER	14/09/2017			Avoid future delays and cost increase, refurb of LG site
-----	-------------	--	---------	-----	------------	--	--	--

"Although a form was originally requested (ref 238), an exemption was not eventually required for the Steelwork. I have discussed the matter with the CSC Foundry Project Manager and she has confirmed that IQE undertook this work directly with CMB via their separate contract and prior to the involvement of CCR."

241	Richard Cope - PTU	Looking to award a de-minimus bus service contract which we are not required to tender but does require an exemption form be signed	tbc	OPS	27/09/2017			Exempt contract under the de minimus provisions of the Transport Act 1985
-----	--------------------	---	-----	-----	------------	--	--	---

Exemption form subsequently returned to Internal Audit; correctly authorised, signed off by line manager and Head of Service

243	Paul Keeble	Develop plans for an active travel crossing over River Usk between Llanfoist & Abergavenny - to appoint directly to WSP (previously Parsond & Brinkerhoff)	299,000	OPS	05/10/2017			WSP's experience & unique knowledge of the site; previously undertaken significant work at the site.
-----	-------------	--	---------	-----	------------	--	--	--

Exemption form was previously returned to Internal Audit but was not correctly authorised or signed off by the Head of Service

247	Huw Jones Senior Passenger Transport Unit officer	Contract for maintenance of PTU fleet (larger vehicles & those that cannot be serviced by Transport Unit)	tbc	Operations	18/12/2017			
-----	---	--	-----	------------	------------	--	--	--

HJ no longer with the Authority, both RH and RC do not recall being asked to sign this.

248	Chris Price, Highways	Extension of up to 6 months of current contract for Highways waste disposal pending re-tender	£80k	Operations	21/12/2017			
-----	--------------------------	--	------	------------	------------	--	--	--

Exemption form subsequently returned to Internal Audit; correctly authorised, signed off by line manager and Head of Service

249	Chris Price, Highways	Extension of up to 6 months of current contract for safety fencing for SWTRA agency, pending re-tender	£125k	Operations	21/12/2017			
-----	--------------------------	---	-------	------------	------------	--	--	--

Exemption form subsequently returned to Internal Audit; correctly authorised, signed off by line manager and Head of Service

250	Colin Richings, Abergavenny Integrated Services	Detailed design for new Care Home	<£25k	SCH	04/01/2018			Specialist providers
-----	---	--------------------------------------	-------	-----	------------	--	--	----------------------

Exemption form subsequently returned to Internal Audit; not authorised or signed off by line manager or Head of Service. There was email correspondence from the former Chief Officer Social Care and Housing agreeing the process and stating she would need to sign off the exemption.

APPENDIX 3

June 2018 to October 2018 [Exemptions 260 - 272]

Number	Requester	Details / comment	Estimated Contract Value £	Directorate	Date	Correctly authorised	Date Returned to Internal Audit	Reason for exemption
260	Ross Price Project Engineer (Highways & Flood Management)	Purchase of Sustainable drainage Systems (SuDS) module for existing IDOX planning software system. Contract is £3k for software itself but with additional set-up integration, training & licences budget of £10k has been allowed.	approx 10,000	Operations	04/07/2018	Y	13/07/2018	Specialist supplier - purchase of additional module to bolt on to an existing software system plus related costs of maintenance, licenses, training etc.
261	Mark Howcroft, Assistant Head of Finance	Provision of expert Corporation Tax for the CSC Foundry company, as part of the Cardiff City Region	20,000	Resources	20/07/2018	Y	18/09/2018	Specialist tax advice.
262	Steve Lane, County Highways	Specialist weather forecasts/early warnings for severe winter weather. An All Wales tender was being prepared but there are concerns this will not be completed in time for Winter 2018/19, so Steve is arranging an extension of the exiting contract at current prices with current supplier MeteoGroup. MCC would then join All Wales contract from 2019/20.	<10,000	Operations	20/07/2018	Not needed		

Number	Requester	Details / comment	Estimated Contract Value £	Directorate	Date	Correctly authorised	Date Returned to Internal Audit	Reason for exemption
263	Chris Robinson, Commissioning							No Response from service area
264	Ian Brain, Project Engineer	Purchase of specialist paving and kerbing for redevelopment in Monmouth Town centre. Contract has been entered into with Marshalls, specialist supplier to guarantee consistency, quality and quantity of product throughout the contract lifetime	21,021	Operations	06/08/2018	Y	13/08/2018	Specialist supplier
265	Mark Lloyd, Rural Programme Co-ordinator	We wish to retain the services of a consultancy to carry out further work on a recently completed contract. They were competitively selected at the time and the opportunity was advertised on Sell2Wales. It makes sense for them to continue especially as their work was an excellent standard and they've built up an in-depth knowledge of the area	<25,000	ENT	08/08/2018			It was a more speculative enquiry as to the process involved in being exempt from the contract procedures rules and it turned out that there was an unsuccessful grant bid therefore project did not go ahead.

Number	Requester	Details / comment	Estimated Contract Value £	Directorate	Date	Correctly authorised	Date Returned to Internal Audit	Reason for exemption
266	Chris Robinson, Commissioning	<p>To research and experiment with assistive technology solutions to improve the well-being of people with dementia who are living in their own homes in the Usk area. We will be utilising equipment to an approximate value of £25k during the pilot from the contractor below (SigFox) and other potential suppliers. Equipment to be purchased from SigFox (but could be subject to change). The Usk area has been chosen (for the dementia project), because of its designation as rural within the RDF and also because it has significant digital connectivity problems across the area. So our proposal utilises the offer of communication and network services via the SigFox base station concept from an organisation called WaveReach. We would be seeking exemption from CPR as they have offered these services free of charge for the pilot.</p>	25,000	SCH	12/09/2018			No response from service area

Number	Requester	Details / comment	Estimated Contract Value £	Directorate	Date	Correctly authorised	Date Returned to Internal Audit	Reason for exemption
267	Deb Jackson	<p>PTU now have additional school contracts (they lost some coaches contracts, but gained 3 smaller minibus contracts) DJ had to hire in 3 vehicles from Days rental, £836 per mth, per vehicle, so £10,032. per vehicle, per yr. The school contract is for 5 years. Vehicles are likely to cost about £18K on a vehicle a few years old and have the asset at the end of the contract, rather than £50K per vehicle and no asset at the end.</p> <p>(Fords have stopped production of their minibuses until April next year, then it's a 26 week wait.) This form was used only for one vehicle in the end, additional forms will be required.</p>	17,250	OPS	02/10/2018	Y	11/10/2018	Awarded directly to the supplier as there is no second hand vehicle framework.
268	Rachel Lewis / Jill Edge	Footfall survey - planning -	6,000		03/10/2018	Y	08/10/2018	Specialist provider; owner of previous data

Number	Requester	Details / comment	Estimated Contract Value £	Directorate	Date	Correctly authorised	Date Returned to Internal Audit	Reason for exemption
269	Chris Robinson, Commissioning	Extension of SP contracts that were due for renewal/retendering 1 April 19. The extension would be issued once SP's actual funding for 2019/20 has been announced.	£1.69m	SCH	09/10/2018	Y	11/10/2018	Stability when the Authority is moving towards a two separate grants - Housing (which SP is included within) and Children and Communities
270	Ian Brain, Project Engineer	Extension of contract for improvements to public realm in Abergavenny Town Centre to extend and complement existing work in Lion Street and surrounding areas	330,000	OPS	18/10/2018 (DW)	Y	12/07/2019	Extension of existing contract, specialist provider

Number	Requester	Details / comment	Estimated Contract Value £	Directorate	Date	Correctly authorised	Date Returned to Internal Audit	Reason for exemption
271	Steve Baldwin, Project Engineer (Structures),	Single quotation for vegetation removal works required to be undertaken on the A466 near Livox Quarry. The site is currently under traffic light control for safety reasons and the works involve aggressive de-vegetation to facilitate a proposed remediation design for an unstable bank/cliff face which is proposed to commence in March next year. The works will be undertaken from specialist roped access in an area of Site of Special Scientific Interest and Special Area of Conservation	12,812	OPS	23/10/2018	Y	23/01/2019	The works will be undertaken from specialist roped access in an area of Site of Special Scientific Interest and Special Area of Conservation
272	Steve Baldwin, Project Engineer (Structures),	A single quotation for the supply of 'bespoke' retaining wall materials. Due to the confines of the site and the close proximity of Welsh Water apparatus we are proposing to use specific material. These materials are manufactured by the company.	15,026	OPS	23/10/2018			The scheme/order has not currently been progressed yet and may need amendments to the value depending on final design. Hopefully will be shortly.

Appendix 4
November 2018 to May 2019 [Exemptions 273 - 280]

Number	Requester	Details / comment	Estimated Contract Value £	Direct-orate	Date	Correctly authorised	Date Returned to Internal Audit	Reason for exemption
273	Paul Keeble (Highways)	Looking to get 3 alternative quotations for new road signage and line painting needed to prepare for Council taking control of civil parking enforcement	c.100k	OPS	12/12/2018 (DW)	Y (DW)	28/02/2019	Urgency to prevent potential disruption due to lack of control of parking following move to civil enforcement and loss of income
274	Deb Jackson	Replacement minibus for PTU Section. 2 minibuses have suffered engine failure. Due to their age it is not worth investing in replacement engines, having reviewed the workload, it has been decided to just replace one minibus for now	15,500	OPS	18/12/18 (DW)	Y	17/01/2019	Awarded direct to supplier as no available framework vehicles due to recent change in regulations re: braking systems.
275	Steve Baldwin	M031 Gilwern Viaduct Inspection & Monitoring - Geotechnical & Structural Services		OPS	29/03/2019	N	05/07/2019	Continuity of works [officer has agreed to obtain Head of Service authorisation]

276	Steve Baldwin	M065 A466 Scaling Works Nr St Arvans - Geotechnical & Structural Services		OPS	29/03/2019			This scheme is related to 2 sites in the Wye Valley A466. This relates to Site 1 Wyndcliffe which is currently on the 'back burner' until Site 2 Livox which is currently onsite is resolved. All resources are currently focused on site 2. This scheme will be resurrected shortly.
277	Steve Baldwin	M073 A466 Scaling Works Nr Livox - Geotechnical & Structural Services		OPS	29/03/2019	N	05/07/2019	Continuity of works [officer has agreed to obtain Head of Service authorisation]
278	Steve Baldwin	M117 A466 Treehouse Retaining Wall - Geotechnical & Structural Services		OPS	29/03/2019			Since the request we have had to undertake emergency works to provide temporary support to an unstable bank. The scope has changed quite significantly and will be speaking to Paul and Roger early next week about this scheme.

279	Rachel Lewis	In line with Welsh Government Practice Guidance on Building an Economic Development Evidence Base, we are required to produce an Employment Land Review (ELR). We do not have the expertise in house to undertake this work and therefore need to appoint consultants. The reason we require an exemption is that we would like to appoint BE Group specifically to undertake the work due to their previous involvement in the Adopted Local Development Plan (LDP) and more recently the Economies of the Future Evidence Base.	17,609	ENT	01/05/2019	Y	08/05/2019	Specialist supplier
280	Rachel Lewis	Planning are in the process of preparing a replacement Local Development Plan (LDP) and as part of this process we'll need to update the Retail Study Update that was prepared in 2016 by JW Planning consultancy services. We are proposing to appoint JW Planning to undertake the Retail Study Update 2019 as an exemption contract on the basis that JW prepared the 2016 Retail Study and has specialist knowledge of retail planning policy issues in Monmouthshire. JW also	7,300	ENT	24/05/2019	Y	29/05/2019	Specialist supplier (because of previous work done for MCC)

	<p>prepared the 2010 Monmouthshire Retail and Leisure Study, which informed the adopted LDP, and has been (and continues to be) the Council's retail planning policy consultant on retail planning applications for many years. It is therefore difficult to see how any other consultant could do this work more effectively given JW's extensive knowledge of such matters in the County.</p>						
--	---	--	--	--	--	--	--