



**RECORD OF DELEGATED DECISION (OFFICER)**

**CONTRACT EXEMPTION**

<b>1. Decision Reference No.</b>	<b>CEX370</b>
<b>2. Name/Title of Officer</b>	<b>Michelle Howard Director for Housing and Communities (Deputy Chief Executive)</b>
<b>3. Email address of Officer</b>	<b><a href="mailto:mhoward@melton.gov.uk">mhoward@melton.gov.uk</a></b>
<b>4. Contract Title / Subject Matter:</b>	<b>Contract Extension - Regulatory Assurance Lead</b>
<b>5. Type of Decision:</b>	<b>Public</b>
<b>6. Key Decision?</b>	<b>YES – General Exception Notice required</b>
<b>7. Contract type:</b>	<b>Services</b>
<b>8. Decision Taken:</b>	
<b>1.To agree a further extension of the Consultancy Agreement on the following terms:-</b>	
<b>(a) From 05.12.2023 to 14.05.2024 to undertake 35 days at an increased daily rate of £450</b>	
<b>(b) to undertake a further 20 days at a daily rate of £450 at approximately 3 days a week.</b>	
<b>(c) To provide additional capacity for the inspection by the Regulator for Social Housing – a further 9 days at a daily rate of £450 from the financial year 2024/25 with delegated authority from the Director for Housing and Communities (Deputy Chief Executive)</b>	
<b>(d) To enter into the necessary legal agreements to enable this change</b>	
<b>2. To apply a contract procurement exemption to enable this change</b>	
<b>3. To apply a General Exception Notice</b>	
<b>4. For the Chief Finance Officer in consultation with the Director for Housing and Communities and the Portfolio Holder for Housing &amp; Landlord</b>	

**Services to draw down £19,290 from HRA reserves to fund both the increase in the daily rate and the commissioning of 20 further days in 2023-24 and £4,050 to fund the commissioning of a further 9 days in 2024-25.**

## **9. Contract Details**

Service area	<b>Housing Management (Housing and Communities Directorate)</b>
Short contract description	<b>To extend the current contract to allow the contractor time to deliver the commissioned 35 days, and then the commission a further 20 days at the new daily rate of £450. To also commission a further 9 days at a daily rate of £450 to provide additional capacity for the inspection. These additional days will be funded within the financial year 24/25.</b>
Length of Exemption (months)	<b>Until 14.05.2024</b>
Exemption start date	<b>Original November 2022</b>
Exemption end date	<b>Original exemption awarded in November 2022 proposed to extend to December 2022 (as the contract did not commence until 5 December 2022) to then extend this contract until the 14.5.2024 to allow the contractor to deliver both the outstanding commissioned and additional days</b>
Total exemption value (£)*	<b>£62,532.50 + £4050 = £66,582.50</b>
Cumulative value of all previous Exemption requests (if applicable)	<b>£43,245.00</b>

Where the total value of the contract is £5,000 or more, the resultant contract must be added to the Contract Register to ensure compliance with Transparency Regulations.

An award notice is required on Contracts Finder for all Contracts with a total value of £20,000 or above. Welland Procurement is responsible for such award notices.

Officers must formally advise Welland of the award details, so that they can publish the award notice.

**10. Exemption Details**

<b>Type of Exemption:</b>	<input checked="" type="checkbox"/> New Requirement <input type="checkbox"/> Change to Existing Requirement <input type="checkbox"/> Replacement to Existing Requirement <input type="checkbox"/> Other
<b>Which rule are you seeking an exemption from?</b>	<input type="checkbox"/> To advertise <input checked="" type="checkbox"/> To follow a competitive process
<b>Name of Proposed Provider:</b>	Mr Christopher Lambert
<b>Has the requirement been subject to a previous Exemption?</b>	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes CEX254 granted permission for the appointment of the specialist consultant. CEX 232 varied the establishment. CEX339 increased the number of days from 2 – 3.5
<b>Applicable Exemption:</b>	<input checked="" type="checkbox"/> (1) No genuine competition: proprietary or patented goods or services; requirement of such a specialist nature that it can genuinely only be fulfilled by one person or organisation; compatibility with existing goods or services is required and where those existing goods or services can only be sourced from the same supplier.
<i>If the justification being relied upon is as detailed in here, the relevant Service Director will need to approve the exemption prior to it being submitted to the Director for Corporate Resources and the Director of Governance and Regulatory Services for approval.</i>	<input type="checkbox"/> (2) There is a sound business case and/or an independent review that there is no value for money in running a full procurement process. Supporting evidence will need to demonstrate market testing and enquiries to other suppliers. This should not be used to avoid competition or where decisions to procure have been postponed and there are insufficient timelines to procure.

	<input type="checkbox"/>	(3) Genuine emergencies: critical preventative or remedial work where there is a real and imminent risk to the safety of people or property arising from hitherto unforeseen 'catastrophic' events or incidents, for example fire, bombing, landslide etc.
	<input type="checkbox"/>	(4) Urgent Situations not of the Council's own making: the urgency must have been reasonably unforeseeable (e.g. existing supplier going into liquidation) and genuinely be a case of time is of the essence. Urgency arising from the Council's own making (e.g. lack of planning) shall not justify an exemption. Where this exemption is used, a compliant procurement must be implemented as soon as possible.
	<input type="checkbox"/>	(5) Collaborative/Joint Procurement: where another authority/public body is acting as the 'lead buyer' and provided that the Officer can demonstrate those arrangements comply with relevant Regulations and best practice.
	<input type="checkbox"/>	(6) Grants which the Council may receive or make: except where the grant is the form of payment for a contract for services where the Council specifies the output or outcomes to be delivered. The awarding of grants by the Council or on behalf of the Council must be carried out under the principles of openness, fairness, non-discrimination and value for money. Officers cannot choose to treat procurement as a grant in order to avoid conducting a competitive process.
	<input type="checkbox"/>	(7) Contracts for the execution of either mandatory works or provision of goods or services which must be provided by Statutory Provider other than the Council. This includes but is not limited to public utility companies and other legal authorities.

<b>Details of benchmarking or market testing carried out</b>		The consultant brings with him extensive knowledge of housing management, and to date has Produced a 10 point action plan to tackle rent arrears (now reduced by £120k) completed a comprehensive review of our current performance against the Housing Consumer Standards, and been instrumental in our preparation for regulatory inspection
<b>How will value for money be secured?</b>		The initial daily rate of £365, and revised rate of £450, are considerably lower than that paid for another consultant at £850 per day.

## 11. Reasons for Decision:

The contractor, due to personal circumstances, has not been able to deliver the commissioned days within the timescale of the current contract, which ended on the 5.12.2023 (Decision Notices CEX254 and CEX339). Approval is sought to extend the current contract from the 5.12.23 until 14.5.2024 to allow the contractor to deliver those commissioned outstanding days (35) and additional days at the new daily rate of £450 per day based on approximately 3 days per week.

A further 20 days is also required at the contractor's new daily rate of £450 to be delivered over approximately 3 days per week. This would cost an additional £9,000 which would take the contract over the £50k threshold.

As the council was notified in March 2024, that it will be in the first round of inspections, by the Regulator for Social Housing, an additional 9 days has been requested.

Decision	Approved		Expected/Actual	
	Days x £	£ Approved	Days x £	£ Cost
CEX254	104 x £300	£31,200.00	95.5 x £365 8.5 x £450	£34,857.50 £3,825.00
CEX339	33 x £365	£12,045.00	33 x £450	£14,850.00
Total		£43,245.00		£53,532.50
Difference				£10,287.50

Total Days Approved	137	£43,245.00
Total Days Taken	102	£37,782.50
Budget Remaining	35	£5,462.50

	Request		
	20 x £450	£9,000.00	
CEX370	9 x £450	£4,050	£13,050.00

Total Contract Value	£66,582.50
Draw from reserve - CEX370	£23,337.50

Rounded to £23,340

Therefore the decision is key and will need to be added to the forward plan, however an exemption is sought to reduce the timeframe from 28 days to 5 days as per Chapter 2, Part 4, Procedure Rule 12.3 (13).

### **Justification for the increase in the daily rate**

The reasons for the 23% increase in the daily rate are:

1. The contractor advised that he needed to increase his daily rate in view of the expenses he will have to cover.
2. We have paid similar specialist contractors £850 per day
3. The contractor is being offered £650 per day by other interested employers

### **Amend the period of the exemption**

There were delays in finalising the contract for the consultant, which resulted in the post holder not commencing work until the 5.12.2022, therefore the period of the exemption needs amending from November 2022 until 05.12.2023.

The request for a further exemption to extend the current contract until the 14.05.2024 will enable the consultant to both deliver the days which have already been commissioned and a further extension of 20 working days to be delivered at approx. 3 days per week, taking the contract to May 2024.

The additional expenditure of £19,290 in 2023-24 and the additional £4,050 in 2024-25 will be funded via reserves, under the delegated authority of the Director for Housing and Communities (Deputy Chief Executive).

As an exemption has already been granted under the previous decision notices, advice from Welland procurement (listed below) confirms that it is permissible to further extend the time frame for the contract and also that the normal requirement

that contracts cannot be varied by more than 10% does not apply in view of the exemption.

The decision notice does now need to be added to the forward plan, as its value exceeds £50k (£62,532.50, now £66,582.50).

The item will be listed on the forward plan, with the request that the standard notice period of 28 days is reduced to 5 in view of Chapter 2, Part 4, Procedure Rule 12.3 (13).

Rule 2.4 (General Exception) of the Access to Information Procedure Rules (Chapter Three –Procedure Rules)

Please see attached General Exemption Notice

## **12. Authority / Legal Power:**

1. Authority is delegated to the Director for Housing and Communities (Deputy Chief Executive) to enter contracts pursuant to Part 12.2 of the Officer Scheme of Delegation.
2. CPR 16.4 requires that exemptions from the Contract Procedure Rules must be approved by the Director for Corporate Services and the Assistant Director for Governance & Democracy.
3. Chapter 3-3 – Access to Information Procedure Rules Part 2.4 lists the exceptions to standard procedure for the forward plan of key decisions. As a general exception the Proper Officer must:
  - Provide notice in writing to the Chair of Scrutiny Committee, or in his/her absence the Vice Chair or if there is no such person, each member of that Committee of the decision which the decision taker is intending to make
  - Make copies of that notice available to the public at the Council Offices and on the Council's website; and
  - Ensure that at least 5 clear days have elapsed since the above bullet points were complied with
4. The Chief Finance Officer has delegated authority pursuant to part 12.3 of the Officer Scheme of Delegation in consultation with the Director for Housing & Communities and relevant Portfolio Holder (Housing & Landlord Services) to access the HRA development and Regeneration Reserve to progress projects and activities in support of the HRA up to a limit of £100k per project and up to a maximum of £500k in any one year subject to the financial viability of the HRA Business plan not being undermined

<b>13. Background Papers attached?</b>	<b>No</b>
<b>14. Alternative options available / rejected:</b> <ol style="list-style-type: none"><li>1. Not to increase the timeframe for the current tenancy, would not allow the consultant to deliver the days which have been commissioned.</li><li>2. Not to increase the number of days by 20 would hamper our ability to deliver the necessary work to ensure MBC is best placed to achieve a positive outcome from an inspection.</li><li>3. Not to commission the additional 9 days would reduce the amount of preparatory work which can be taken in advance of the inspection of the housing department commencing on the 7.5.2024.</li><li>4. As the value of the contract now exceed the £50k threshold, it needs to be added to the forward plan, with the above exemption, to ensure correct governance.</li></ol>	



## 15. Implications:

<b>Legal</b>	<p>The Council has the power to enter into contracts in order discharge its functions (Local Government Act 1972, s111 and the Local Government (Contracts) Act 1997, s1).</p> <p>The Local Government Act 1972 requires the Council to make regulations in relation to how it enters into contracts. In addition to complying with all relevant UK legislation every contract entered into on behalf of the Council must also comply with the Council's Contract Procedure Rules and the Council's Financial Regulations. The Contract Procedure Rules allow exemptions but the exemptions listed do not apply to procurements valued above the relevant EU Threshold.</p> <p>Exemptions to the Contract Procedure Rules must be approved by the Director for Corporate Services and the Assistant Director for Governance &amp; Democracy</p> <p>Legal Approval – Deputy Monitoring Officer: 8 April 2024</p>																																																							
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	<p>The total days taken are correct as at the latest invoice for the period to 21.12.23. The amounts additional to the previously approved £43,245 from CEX 254 &amp; 339 (£19,290) will be funded from the reserve in 2023-24 as a one-off cost under the delegation of the Director for Housing &amp; Communities.</p> <p>The Director for Housing and Communities (Deputy Chief Executive) has delegated authority in consultation with the Director for Corporate Services and Portfolio Holder for Housing and Landlord Services to access the HRA Development and Regeneration Reserve to progress projects and activities in support of the HRA up to a limit of £100k per project and £500k in any one year subject to the financial viability of the HRA Business Plan not being undermined. £371,537 has been funded under this delegation this year to date.</p> <p>The additional £4,050 will be funded under the same delegation in 2024-25.</p> <p>Finance Approval – Section 151 Officer: 4 April 2024</p>
<p><b>HR</b></p>	<p>The post holder is self employed with a contractor contract therefore there are no HR implications as a result of this decision</p>
<p><b>Procurement</b></p>	<p>Initial questions about the increase in the daily rate were raised, but context has now been provided, and it reflects normal industry rates. See section 11.</p> <p>I can confirm as the original contract was awarded via the exemption route then the contract variation threshold (10%) does not apply on this occasion, however this would need to be clearly stated within the decision notice.</p> <p>Procurement Approval – Head of Welland Procurement: 2 January 2024</p>
<p><b>16. Signature of relevant Service Director:</b> Where justification (2) is being relied upon, the relevant Service Director will need to approve the exemption prior to it being submitted for further approval</p>	<p>Email approval received:</p> <p>Michelle Howard Director for Housing and Communities (Deputy Chief Executive)</p> <p>9 April 2024</p>

<p><b>17. Signature of Decision Maker with authority to sign :</b></p> <p><b>CPR 16.4 Exemptions must be approved by the Director for Corporate Services and the Assistant Director for Governance &amp; Democracy</b></p>	<p><b>Director for Housing and Communities (Parts 1-4 of decision)</b></p> <p>Signature redacted  <b>Chief Finance Officer (Director for Corporate Services) (Part 4 of decision)</b></p>
<p><b>18. Consultation with:</b></p> <p><b>Approval from Director for Corporate Services (Exemption to CPRs)</b></p> <p><b>Approval from Assistant Director for Governance &amp; Democracy (Exemption to CPRs)</b></p> <p><b>Consultation with Portfolio Holder for Housing &amp; Landlord Services (Access to Reserve)</b></p>	<p>Signature redacted  <b>Chief Finance Officer (Director for Corporate Services) (Part 4 of decision)</b></p> <p><i>C. H. Tobin</i>  <b>Assistant Director for Governance &amp; Democracy</b></p> <p>N/A</p>
<p><b>19. Date:</b></p>	<p><b>10 April 2024</b></p>

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