

EXEMPTION FROM PROCURMENT RULES

6-month Direct Award of Electoral Management System to existing supplier

Background

Attached to this request is a brief statement concerning the independent position of the Electoral Registration Officer and the Returning Officer. This is provided for completeness, should there be any ambiguity as to status of those independent officer from the Council that appoints them.

The Specific Issues of this Exemption

Following a procurement exercise in 2021, Democracy Counts Ltd was awarded the contract to supply the Electoral Management System (EMS) for the ERO/RO. The timing of this procurement was strategically aligned with the 2022 election cycle, which ultimately did not include any scheduled elections. The contract was set to expire in 2026, coinciding with (what was to be) a natural fallow year (i.e. no scheduled elections), thereby reducing the risk and operational burden of transitioning to a new supplier during an active election period.

However, since 2022, there have been developments that have introduced additional complexities that make the originally envisaged procurement in early 2026 problematic. The Government's English Devolution drive, and Greater Essex being within the Government's Devolution Priority Programme, would envisage (subject to the necessary orders being made nationally) the first Greater Essex Mayoral election in May 2026. As part of the Devolution Priority Programme, Government also oversaw the enactment of The Local Authorities (Changes to Years of Ordinary Elections) (England) Order 2025 which, for Tendring, concerned the change in the scheduled year of elections for Essex County Council from 2025 to 2026. . Given the current legal position that there would be combined elections to deliver locally on 7 May 2026, potentially changing EMS provider early in 2026 poses an unacceptable risk to the delivery of those elections.

Transitioning to a new EMS provider is a complex process, typically requiring several months to ensure thorough system testing and comprehensive staff training. Past experience has shown that such a migration must be carefully managed to maintain operational integrity across the wide range of EMS functions.

Current Position and Proposal

In light of the potential reputational and operational risks associated with changing suppliers during preparations for major elections, it is proposed that the current EMS supplier (Democracy Counts Ltd) be given a direct award by this Council for 6 months to then provide for the procurement exercise to be undertaken for an EMS supplier from Autumn 2026 (rather than Spring 2026). Their performance to date has been strong, and this direct award would ensure continuity and stability across the 7 May 2026 elections without any interruption.

The proposed six-month direct award amounts to a commitment to expenditure of £7,500. This equates to the costs of the current contract, which as stated earlier was secured in 2021/2022 with no indication that costs in this market have decreased since that procurement. The cost will be funded from the existing Electoral Registration and Election Expenses budget.

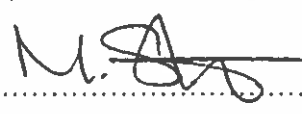
A full procurement process for a longer-term EMS contract is being undertaken, with completion anticipated by January 2026. On the basis of this exemption, the winning contractor would then commence their contract in autumn 2026 (rather than in March 2026).

Recommended

Signed 

Richard Barrett

If you concur with the above and an exemption from procurement rules is appropriate / justified, please confirm agreement below:

Signed 

Cllr M Stephenson

Leader and Portfolio Holder for Corporate Finance and Governance

IMPORTANT NOTE

Independence of the Electoral Registration Officer/Returning Officer

It is important to be aware of the legal status of the Electoral Registration Officer and of Returning Officer in considering the need for an exemption from the Council's procurement rules.

A District Council is subject to a requirement to appoint an Electoral Registration Officer for its district council area by virtue of Section 8 of the Representation of the People Act 1983 (the 1983 Act). The duties of the Electoral Registration Officer are set out in the 1983 Act and in other legislation. Section 54 of the 1983 Act provides that any expenses properly incurred by an Electoral Registration Officer in the performance of his registration duties shall be paid by the relevant local authority (in this case Tendring District Council).

The term Returning Officer covers a range of "body-sole" roles established in various separate pieces of legislation relevant to the electoral event they perform that role at. For instance, at Parliamentary Elections, the Acting Returning Officer is generally established by virtue of Section 28(1) of the 1983 Act. Separately at Section 35 of the 1983 Act there are provisions for the appointment of a Returning Officer at District Council elections and at Parish Council elections. The rules to be applied for the particular electoral event (and by which the Returning Officer (RO) has a personal official duty in law to apply) are set out elsewhere in a range of statutes. Section 36 of the 1983 Act provides for all expenditure properly incurred by a RO in respect of District Council elections shall be paid by that Council (subject to any limit applied by the Council). The same section provides for charges in respect of Parish Council elections to be recharged to the relevant Parish Council. National Polls are subject to payment to the RO to meet his/her reasonable costs in respect of those electoral events.

As such, while the ERO/RO may utilise the furniture, equipment, accommodation and staff of the local council, in performing their duties they are separate from the body corporate of the Council. As such, within the restrictions relating to the performance of the tasks applicable to those roles and the establishment of scales for elections, the Council's own procurement rules cannot bind the ERO/RO. It is on this basis that the exemption from those procurement rules is submitted.

Nothing in the foregoing should be taken as any intention or desire to treat public funds without the due diligence and care that is implicit in such use. As such the ERO/RO will seek to demonstrate good custody of those public funds and therefore reference the Council's procurement rules where it is expeditious to do so.