



**Report of: Head of Catering and Cleaning**

**Report to: Chief Commercial Services Officer**

**Date: 25 July 2014**

**Subject: Extension to the contract for the supply of frozen foods (LCC5225) until 4 January 2015 in order to allow time for the Council to seek resubmissions within the current tender process and identify a preferred supplier**

Are specific electoral Wards affected?	No
If relevant, name(s) of Ward(s):	
Are there implications for equality and diversity and cohesion and integration?	No
Is the decision eligible for Call-In?	No
Does the report contain confidential or exempt information?	No
If relevant, Access to Information Procedure Rule number: Appendix number:	

### Summary of main issues

1. This report seeks to extend the contract for the supply of frozen foods to Leeds City Council from 6 August 2014 until 4 January 2015. This is to allow for the completion of the current procurement exercise, which has encountered a delay.
2. After the initial evaluation of bids and having consulted with the Procurement Unit (PPPU & PU), it has been proposed that a further return and evaluation of prices, method statements and samples would be advisable, which will delay the award of the new contract, that was originally due to be in place on or before 5 August 2014.
3. The reason for the delay with the current tender process is due to the lack of affordability of the submissions. Following analysis of the bids received the price of the highest scoring bid would result in an approximate 50% increase on the estimated value and this would not be affordable within the budget. Nor is there authority for such spend within the original decision to procure this contract.
4. The current contract with JJ Foodservice Ltd was procured three years ago by Catering Services following a competitive tendering exercise and awarded for 3 years with an option to extend for 1 additional year.
5. An extension of 5 months is now requested to allow time for the tender process to be completed, with the new contract being in place to commence on 5 January 2015.

6. The current contract has provided the quality of products required, though there continues to be a shift towards more fresh items used within the service.
7. The value of this contract is estimated at £ 1.9m per annum. The value of the extension period is estimated to be £600,000.
8. The timescales required for seeking resubmissions makes it impractical to defer this decision to extend the current contract until such time that as it has been on the Council's list of forthcoming key decisions for 28 days. It is also not practicable to observe the call-in requirement under the Council Constitution.

## **Recommendations**

1. The Chief Commercial Services Officer is recommended to extend the contract with the aforementioned supplier until 4 January 2015 in accordance with the Contract terms and the Council's Contract Procedure Rule 21. This will allow time for the contract renewal process to be completed.
2. The Chief Commercial Services Officer is also requested to confirm that the General Exception under 2.5 of the Executive and Decision Making Procedure rules applies so as to exempt this decision from publication for 28 calendar days as the urgency is such that this decision is exempt from Call-in as per 5.1.3 of the Executive and Decision Making Procedure Rules.
3. The Chief Commercial Services Officer is recommended to approve the seeking of resubmissions from the current bidders in order to achieve best value.

## **1 Purpose of this report**

- 1.1 The purpose of this report is to a) seek approval to extend this contract until 4 January 2015, in accordance with the terms of the existing contract, which is for a period of three years with a maximum twelve month extension and b) obtain approval to seek resubmissions from the current bidders on the basis that the current submissions are unaffordable.

## **2 Background information**

- 2.1 In 2010 a procurement exercise was undertaken to source the current frozen food supplier.
- 2.2 The current procurement process commenced in March 2014, which aimed to award the new contract prior to the end of the initial 3 years of the existing contract, 5 August 2014.
- 2.3 The procurement was undertaken using the EU Open Procedure. This entailed the issuing of a Pre-Qualification Questionnaire (PQQ) together with the tender documents

- 2.4 The scheme was advertised on the council's electronic tendering portal "Yortender" and in the Official Journal of the European Union (OJEU) and expressions of interest and bid documents were received from a number of companies.
- 2.5 There were four respondents to Lot 1 and 5 for Lot 2.
- 2.6 Following evaluation, one bid was identified as scoring highest, however the price of this bid would mean an approximate 50% increase on the estimated value. The estimated value has clearly been identified on YORTender, within the OJEU notice and the specification. The affordability element of the bid means that it would not be in the best interests of the Council to proceed with the award of the contract at this stage. It is proposed that the pricing schedule is reviewed to provide a clearer picture of the actual costs involved.

### **3. Main issues**

1. The contract for frozen foods has now operated successfully for over three years. It is used weekly to provide frozen food items mainly to schools and adult social care sites.
2. The contract has been monitored by Catering Leeds throughout the time it has been operating. Contract management has been effective throughout the period of this contract and it is felt that this will continue without any supply issues over the extension period.
3. The main issues from the current procurement are;
4. The result of the Lot 1 evaluation, where we have four providers, two of whom have failed to meet the minimum quality threshold of 72 points, and all of whose prices, as evaluated, for just one lot actually exceed the estimated contract value for both.
5. There is a compliant bid that can be identified as the 'winning tender' however the price of this bid means an approximate 50% increase on the estimated value, or almost £1 million per annum. The estimated value has been clearly identified on YORTender, in the Invitation to Tender, OJEU and Specification.
6. There are also issues with Lot 2 where there are again four providers, none of whom have met the minimum threshold of 72 points, due in part to the lack of market availability for one item and unavailability of full marks for another item.
7. In addition, the pricing schedule was subject to adjustments where incomplete or non-compliant submissions were made, and also where volumes were pro-rata'd.
8. The majority of these issues could be dealt with on an individual basis or as a separate matter, but combined lead to increased risk in continuing with the evaluation as it stands.
9. Initial options considered in relation to Lot 1 were to either i. ask the bidder who failed to meet the threshold due to the lack of a sample to submit this on the basis of it being a genuine error that could be rectified; ii. appoint the overall winning bidder at the increased cost; or iii. Re-commence the procurement process.

10. The risk of ii. was considered lower than the risk of i. but the financial implications of ii. made it undesirable as an option, particularly as further evidence shows that the intention not to provide the sample was not a genuine error. That therefore leaves iii. as the preferred option.
11. The process can be restarted at award evaluation stage – i.e. seek resubmission of method statements, samples and pricing submissions from the 4 providers who successfully passed the PQQ stage.
12. The basis for this 'partial abandonment' needs to be clear and communicated fully to the bidders.
13. As regards the samples, we want to be as fair as possible, and given that the circumstances weren't ideal for collating all of these and there were some elements identified which meant the thresholds needed altering to account for market unavailability, it makes sense to revisit this element at the same time and achieve a robust result through the resubmission process. That way we can ensure that the evaluation methodology is applied equitably and fairly.
14. The finance submissions have resulted in a clear affordability issue resulting in the request to extend the current contract and call for new submissions at stage 2 of the process (from PQQ stage) The basis of the partial abandonment will be made clear to all bidders who will be asked to submit new method statements, new samples and a new pricing schedule. The new pricing schedule will be reviewed to provide a clearer picture of the actual costs involved. In order to be as fair as possible a list of the samples and dates required will be issued along with the evaluation documents. By undertaking all of the above the council can ensure that the evaluation methodology is applied equitably and fairly.

#### **4. Corporate Considerations**

##### **4.1 Consultation and Engagement**

- 4.1.1 It is not considered that the content of this report or the recommendation made will have a significant impact on any particular ward or community and as such no consultation has taken place.
- 4.1.2 Legal advice has been sought from the PPPU & PU on the legal implications and risks of the course of action proposed in this report. Details are set out below at paragraphs 4.5 and 4.6 and within the attached Appendix A.

##### **4.2 Equality and Diversity / Cohesion and Integration**

- 4.2.1 An updated Equality, Diversity, Cohesion and Integration impact assessment screening has been carried out. This indicates that the provision of a full range of meals will have a positive impact within the schools and establishments served by this contract.

##### **4.3 Council policies and City Priorities**

- 4.3.1 It is paramount that procurement within the council is undertaken with a view to ensure openness, transparency and fairness. As such the contract for the supply of

frozen foods was procured in line with the council's policies and procedures. The Council is striving to ensure that a similarly fair and transparent process is undertaken to replace this contract and is utilising the contract extension provisions in this contract in order to allow sufficient time to meet this requirement.

#### **4.4 Resources and value for money**

4.4.1 This contract is used for the purchase of frozen foods. It has been tested for value for money by monitoring market conditions and trading indices. The contract is monitored regularly by Catering Leeds and throughout the last three years has provided value for money and a quality service.

#### **4.5 Legal Implications, Access to Information and Call In**

4.5.1 There are two discrete decisions requested of the Chief Commercial Services Officer in order to proceed on the basis set out in this report. These have been combined in a single report as they are intrinsically linked and it provides a clearer audit trail to set out both courses of action within one report. However, the categorisation of the decisions remains distinct and needs to be clearly shown.

4.5.2 The decision required to extend the current contract must be dealt with in accordance with CPR 21 as a new decision that is not a consequence of the initial decision to procure. Therefore, in accordance with Article 13 of the constitution, this decision is a Key Decision for the purposes of the Executive and Decision Making Procedure Rules.

4.5.3 In line with the Council's value of being 'open, honest and trusted', the Council aims to be as transparent as possible in its decision making. Nevertheless, due to the circumstances around timescales as set in paragraph 1.1 above, it has only come to light since evaluation of submissions for the current procurement exercise that the decision needs to be taken to extend the current contract. The imminent expiry of this contract on 5 August 2014 makes it impracticable to defer the taking of a Key Decision until such time as it has been included on the List of Forthcoming Key Decisions for a period of 28 calendar days. Further, the urgency to continue with the current service provision also makes it impractical to submit this key decision to the Call-In process.

4.5.4 It is recommended that the decision to revise the tender documentation and seek resubmissions from bidders be treated as a Significant Operational Decision on the basis that it is considered of such significance that a published record of the decision would ensure transparency and accountability in relation to decision making within the authority. It would not be subject to call-in.

4.5.5 This report contains confidential information relating to the risks associated with the procurement process, which are contained in Appendix A, attached herewith.

4.5.6 The legal implications of extending the current contract are considered minimal, the contract provides for such extension within its terms, which were advertised at the commencement of the procurement process in 2010, the extension provisions have not yet been exhausted and the contract has not expired. The Contracts Procedure Rules require best value considerations to be made when deciding to extend a contract. It is considered that remaining in contract with a contractor appointed

following a robust procurement process, and who has demonstrated performance capability over a three year period, will provide the best value for money at short term for continued provision of this nature.

- 4.5.7 The initial decision to undertake the current procurement exercise was taken on the basis of the estimated contract value that was included within the published OJEU notice, YORTender advertisement and tender documentation. In order to award a contract significantly in excess of this authorised value, a further decision would need to be taken which would need to demonstrate the likelihood that it meets best value. Due to the circumstances set out in paragraph 2.5 it is not considered that there is enough information to take such a decision at this stage

## **4.6 Risk Management**

- 4.6.1 The potential for risk in extending the current contract to allow for continued service provision is considered very low as set out in 4.5.6.
- 4.6.2 The risk of allowing the current contract to expire is high as the service provision is still required and the Council would not have a properly procured contract in place to utilise for this.
- 4.6.3 The risk in proceeding to an award without resubmissions under the current procurement process is deemed high in that it does not demonstrate that a new contract could secure value for money for the Council nor provide certainty of costs for such contract.

## **5 Conclusions**

- 5.1 On advice from PPPU & PU, the recommendation is to:

Re-invite bidders to submit method statements, a revised pricing schedule, product specifications and product samples. The new pricing schedule will be reviewed to provide a clearer picture of the actual costs involved.

- 5.2 In order to maintain a contract for frozen foods until the award of a new contract. it is necessary to extend the existing contract.
- 5.3 Discussions have taken place and advice received from PPPU & PU To give sufficient time to complete the procurement exercise a 5 month extension is required.
- 5.4 It is recommended that this key decision to extend is exempt from publication for 28 days on the list of forthcoming key decisions under the General Exception in rule 2.5 of the Executive and Decision Making Procedure Rules.
- 5.5 Approval is sought from the Chief Commercial Services Officer to exempt this key decision to extend from call-in due to its urgency under the provision made in the Executive and Decision Making Procedure Rules.

## **6 Recommendations**

### **Extension**

6.1 The Chief Commercial Services Officer is recommended to approve:

- the extension of the contract with the current supplier until 4 January 2015 in accordance with the terms of the contract and Contract Procedure Rule 21.
- the exemption of this decision from publication on the list of forthcoming key decisions Forward Plan and from the Call-in process on the grounds that any delay would seriously prejudice the Council's or the public's interests

### **Resubmission**

6.2 The Chief Commercial Services Officer is recommended to take the significant operational decision to seek resubmissions from the existing bidders for the new contract.

## **7 Background documents**

None

