

Report of: Business Officer – Waste Management

Report to: Chief Officer Waste Management

Date: 26th May 2015

Subject: Request to waive CPR 9.1 and 9.2 and enter into a new contract with the existing provider of the paint reuse service.

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: 10.4 (3) Appendix number: Appendix 1	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

Summary of main issues

1. The formal contract for the collection and reuse of paint expired on 31st March 2015.
2. Paint continues to be collected at the Household Waste Recycling Centres (HWRC) with 259 tonnes being collected in 2014.
3. The existing contractor, Seagulls Reuse Ltd., continue to deliver reused resources to the Leeds community, support to local disadvantaged people and provide a range of volunteering and employment opportunities in Leeds.
4. The Waste Management Programme Board have approved a procurement strategy that sees LCC enter into an interim arrangement with Seagulls Reuse Ltd, as the only organisation capable of delivering the service in its current form whilst more in-depth work is undertaken regarding the future of this waste stream and maximising value for money.
5. To let a contract without seeking competition, Chief Officer authorisation must be given to waive CPR 9.1 and 9.2.

Recommendations

1. The Chief Officer Waste Management is recommended to note the contents of this report, approve the waiver of CPR 9.1 and 9.2 – High value procurements and authorise entering into a new 20 month contract with the existing provider of paint

collection and reuse service, Seagulls Reuse Ltd .

Purpose of this report

- 1.1 The report seeks to give the Chief Officer Waste Management sufficient information to approve the waiver of CPR 9.1 and 9.2 – High value procurements and to enter into a new contract with the current reuse paint contractor without seeking competition. The Chief Officer should be satisfied that the recommended action ultimately delivers the most suitable service but also offers value for money for the Council by forming a key component of the most appropriate overall strategy.

2 Background information

- 2.1 The formal contract for the collection and processing of reuse paint by Seagulls Reuse Ltd expired on 31/3/15.
- 2.2 Prior to the expiry of the contract a report was submitted to the Waste Management Programme Board to provide an update on the current contractual arrangements and to gain agreement to the procurement strategy for the future provision of this service. This is included as Appendix 1.
- 2.3 Programme Board agreed the preferred option within this report which was to enter into an interim contract with Seagulls. This was on the basis that:
 - Seagulls are the only organisation capable of delivering the service in its current form.
 - There are significant environmental and social benefits provided.
 - An interim contract provides an opportunity to further investigate value for money for the Council and to develop a more robust business model with Seagulls.
- 2.4 The duration of the contract would then be used to refine the future of the waste and establish how it could be procured going forward in a way that incorporates the opportunities for realising social benefits that this particular waste stream and treatment method offers.

3 Main issues

- 3.1 The paint reuse market is extremely restricted; if the contract were procured without any consideration of environmental and social benefits then the paint material would be destined for disposal.
- 3.2 In addition to the environmental benefits associated with waste re-use, the social benefits offered by Seagulls are significant. They have a long history of engaging and supporting local people, particularly those facing disadvantage, and creating volunteering, training and job opportunities. They have won numerous awards and were recently recognised at a national level by Defra as an exemplar organisation for the type of service they are delivering.
- 3.3 This contract will deliver:

- Continuity of service including reuse for a potentially difficult waste;
- An improved arrangement with Seagulls including clear service related pricing and better contract management;
- The time needed to undertake work on scoping future services and maximising value for money further.

3.4 Continuity of Service

3.4.3 Although there are no concerns in terms of sourcing disposal capacity for the materials through alternative outlets, the social benefits achieved will be significantly reduced as the paint would not be reused, and without a formal contract the Council would potentially be vulnerable to spot pricing, poor service delivery standards and no course of redress due to a lack of legal framework.

3.5 Improved Arrangement

3.5.4 The current agreement with Seagulls is based on a monthly charge per site which is unrelated to the volume of material reused. In the new arrangement it is proposed this will be replaced by a cost per collection, as shown in Confidential Appendix 1. Whilst not necessarily reducing the overall costs of the service provided, this introduces a mechanism to give value for money; if the tonnage levels fluctuate then the cost to the Council continues to reflect the service that is actually being delivered.

3.5.5 Contract management for the incoming contract will be strengthened to align with the standards for other contracts of this value, to include an annual due diligence, regular liaison meetings and monthly reporting as a minimum. The reporting will be tailored to this particular contract, and a template for this will be developed alongside Seagulls.

3.5.6 This reporting will support the longer term review of the service and will aim to assign monetary values to the benefits Seagulls provide to produce a clearer, more complete picture of the service. This will include quantifying the social and economic benefit of locally produced, discounted paint being offered to Leeds residents, the value of the volunteers and details of the people that if they were not being supported by Seagulls would need some form of resource from LCC e.g. use of a day centre.

3.6 Future Scoping

3.6.7 20 months is a reasonable time period for some real progress to be made to review this waste stream and to look at innovative ways of maximising value for money for the Council. Working with Seagulls to help them in becoming more sustainable through alternative business models, closer working with LCC stakeholders, identifying new private sector partnership and taking advantage of other funding opportunities will benefit both parties in future procurements.

3.6.8 Work has already begun in this area with:

- **Decorating vouchers and decorating scheme.** The individual ALMOs had a variety of discretionary arrangements with regard to providing decorating vouchers to tenants. The continuation of the voucher scheme is currently being reviewed by Housing Leeds and interest has been expressed in directly employing Seagulls to provide paint and a decorating service to very vulnerable individuals. This is being explored further.
- **LCC purchasing of reused paint.** Property Maintenance have a team of 5 decorators for smaller decorating jobs at LCC office premises. Waste Services are to introduce the decorating team to Seagulls to explore the possibility of them directly sourcing paint from Seagulls and providing training to Seagulls volunteers.

There is also a new 3 year contract for larger scale decorating work. This started in April 2015 and has 14 contractors. Mobilisation meetings are starting soon and the contract manager has agreed to promote Seagulls under the Corporate & Social Responsibility agenda in these meetings.

- **Corporate Social Responsibility Letter.** A letter has been drafted to be sent out by the office of the Chief Executive with a focus on encouraging waste contractors to consider support for waste disposal costs at Seagulls. The letter will also be sent to the large contractors on the Council's decorating framework contract.
- **Marketing Plan.** A member of the LCC communications team has been given approval to volunteer at Seagulls to assist with the production of their marketing plan.
- **Action plan for accessing funding streams.** Seagulls continue to apply for external funding. They have recently been successful in obtaining funding from the Henry Smith Charity to develop a volunteering programme. They have also been encouraged to apply to the Veolia Environmental Trust. The contract will provide for a review of costs to the Council in the event that additional external funding is secured by Seagulls.
- **Support from Housing Contractors.** Mears have the contract for repairs and refurbishment of a proportion of the Housing Leeds properties. They have been encouraged to source paint from Seagulls for this work, and will also be sent the corporate social responsibility letter.

The contract will include a requirement for regular formal reviews of progress against this suite of actions to be discussed at contractor liaison meetings, and forming a formal element of the ongoing contract management.

4.1 Consultation and Engagement

- 4.1.1 The Waste Management Programme Board have been consulted through the procurement strategy report that was submitted on 24th February 2015.
- 4.1.2 The Council have consulted with Seagulls, and will continue to do so, regarding their ability to offer greater value for money. More formal and detailed consultation and engagement will be undertaken as part of the review that will happen once this interim contract is in place.
- 4.1.3 The Executive Member for Cleaner, Stronger, Safer Communities has been kept informed of the issues relating to this contract.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 The cohesion and integration of reuse organisations in relation to their ability to provide sustainable business models will be explored in depth as part of the review of service over the next 20 months.
- 4.2.2 Awarding without competition provides continuity for the undoubted benefits this contract provides the Leeds area. The employment/volunteering opportunities for disadvantaged people and paint at a low cost fosters cohesion and integration in communities.

4.3 Council policies and City Priorities

- 4.3.1 The City's Best Council Plan 2013 - 2017 sets out a key objective to deal with waste effectively. The waiver of CPR 9.1 and 9.2 in order to award the contract to the existing supplier will both enable arrangements that support dealing with waste effectively, increasing recycling and achieving efficiency in the use of resources. These arrangements will also secure a range of important social benefits as outlined earlier in this report.

4.4 Resources and value for money

- 4.4.1 It is deemed that value for money will be delivered through the contract as the prices are based on a previous existing competitive procurement process in which Seagulls were successful.
- 4.4.2 Following the expiry of the contract awarded through the 2010 procurement exercise a market sounding was conducted to gauge changes in the market in terms of ability to offer reuse options and work opportunities for disadvantaged people. Seagulls were the only organisation who responded. For this reason a Voluntary Transparency Notice was issued in 2012 as an opportunity for competitors to challenge an automatic contract award. No issues were raised so Seagulls were awarded a further contract of 3 years.
- 4.4.3 Value for money will be further ensured by the proposed amendments to the basis for charging, and additional contract management and review measures that will be incorporated into the new specification.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 This is a significant operational decision which is not subject to call-in. The report contains exempt/confidential information at Appendix 1 which is Exempt/Confidential under Access to Information Procedure Rules 10.4(3), as it details the specific rates charged by the contractor for the provision of its services to the Council. It is considered that the public interest in maintaining the content of Appendix 1 as Exempt/Confidential outweighs the public interest in disclosing the information in the Appendix, as the rates charged relate to the financial/business affairs of the contractor, which if revealed may place the contractor at a commercial disadvantage when competing for other contracts .
- 4.5.2 Awarding a contract directly to Seagulls in this way could leave the Council open to a potential claim from other providers, to whom this contract could be of interest that it has not been wholly transparent as the opportunity is not being advertised and at least three written tenders invited.
- 4.5.3 Case law suggests that the Council should consider whether contracts of this value should be subject to a degree of European wide advertising. It is up to the Council to decide what degree of advertising is appropriate but consideration should be given to the subject-matter of the contract, its estimated value, the specifics of the sector concerned (size and structure of the market, commercial practices, etc.) and the geographical location of the place of performance.
- 4.5.4 The Chief Officer Waste Management has considered this and, due to the nature of the services being delivered and the requirement for the services to be performed in the City of Leeds, is of the view that the scope and nature of the services is such that it would not be of interest to contractors in other EU member states
- 4.5.5 There is a risk of an ombudsman investigation arising from a complaint that the Council has not followed reasonable procedures, resulting in a loss of opportunity. Obviously, the complainant would have to establish maladministration. It is not considered that such an investigation would necessarily result in a finding of maladministration however such investigations are by their nature more subjective than legal proceedings.
- 4.5.6 Although there is no overriding legal obstacle preventing the waiver of CPR 9.1 & 9.2, the above comments should be noted by the Chief Officer Waste Management in making the final decision as to whether the award of this contract and be satisfied that to do so represents best value for the Council.

4.6 Risk Management

- 4.6.1 There is a risk of legal challenge in awarding a contract directly to Seagulls. However, this is mitigated by lessons learned from previous procurements which would indicate the market does not exist for an alternative supplier to deliver the service with both the associated environmental and social benefits.

4.6.2 If the recommended course of action were not followed there would be a risk to the Council through the lack of security of not having a contract for the material and a risk to the future viability of Seagulls and the social and environmental benefits they provide within Leeds.

4.6.3 A full risk register will be drawn up and maintained throughout the course of the contract. High or escalating risks would be reported at Chief Officer level.

5 Conclusions

5.1 It is recommended that the Council enter into a new interim contract with Seagulls in order to ensure:

- Certainty of the service standards that are currently being delivered;
- Protection of the range of social benefits Seagulls offer;
- Value for money from prices secured through a prior competitive procurement, with market information gained in and subsequently to that procurement indicating no alternative providers of this service;
- Improved level of information sharing and contract management;
- Time to refine the future strategy for this waste stream;
- Support for the development of an important local charity.

6 Recommendations

6.1 The Chief Officer Waste Management is recommended to note the contents of this report, approve the waiver of CPR 9.1 and 9.2 and to award a contract to Seagulls Reuse Ltd for a period of 20 months.

7 Background documents¹

7.1 Appendix 1 Programme Board Report of 24th February, Procurement strategy for waste paint collection, re-use and disposal.

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.