

Report of Head of Regeneration

Report to Director of City Development and Chief Officer PPPU & Procurement

Date: 14th July 2015

Subject: Request to waive CPR 3.1.7 and CPR 15.2 and to approve the use of the Crown Commercial Services Legal Framework RM919 to procure legal advice in support of the East Leeds Extension

Are specific electoral Wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, name(s) of Ward(s): Crossgates & Whinmoor, Harewood, Garforth & Swillington, Killingbeck & Seacroft, Temple Newsam		
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 checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, Access to Information Procedure Rule number: Appendix number:		

Summary of main issues

1. The East Leeds Extension and adjoining area of Thorpe Park is a strategic growth point for Leeds and the city region. It encompasses c250 hectares of land allocated or with planning approvals for housing, employment, leisure and retail. Land ownership is fragmented and there are major infrastructure, land assembly, planning and delivery requirements to support the anticipated scale and scope of development.
2. The Council is taking a leading role in co-ordinating the programme to enable this growth to come forward in a timely way, working with land owners, developers, local stakeholders, government, the West Yorkshire Combined Authority and the Local Enterprise Partnership. The Council also has land holdings of its own in the area that will ultimately form part of the programme through either disposal or dedication to use for supporting infrastructure. The programme is multi-faceted and complex and requires significant multi-disciplinary inputs from across all departments of the local authority.
3. The lead for this work is through City Development, with legal support currently provided through in-house Legal Services. The Head of Regeneration, Head of Land &

Property in City Development and the Head of Service in Legal Services, have identified the need for external legal advice due to the lack of in-house capacity, both in terms of officer time available and the scope of support required across a range of strategic and detailed matters.

4. The WYLAW Framework is the Council's approved route for procurement of external legal services. Following consultation with the Head of Service in Legal Services it is considered that it would not be possible to secure the necessary breadth and depth of skills and experience from any of the firms on this Framework, without procuring multiple firms across multiple Lots. This would not be in keeping with the need to procure efficiently or to achieve value for money. Nor would it provide the consistency and quality of legal advice required for this complex work.
5. The Crown Commercial Services (CCS) Legal Framework has been procured by the Government Procurement Service and Government Legal Service and is available for public bodies, including Local Authorities, as a simplified means of procuring external legal services from a variety of law firms who have been awarded a place on it. It is considered to provide the most effective and value for money alternative means of securing the necessary legal advice to support the East Leeds Extension programme.
6. The CCS Legal Framework has 8 Lots, including Lot 8 'Complex and Major Projects'. There are 23 firms on this Lot a number of which have either a Leeds base or are known to have previously worked in Leeds. The range of firms on the Lot are also known to offer the key skills and experience in complex land, property and regeneration projects both in the city and nationally. It is anticipated that there is sufficient scope from this list for a mini-competition to secure the high quality legal advice required.
7. The likely timescale over which the advice will be required, the total value of professional fees that may be incurred cumulatively or in a single year and the overall impact of the work to which it relates mean that this will be a Key Decision. Accordingly this was placed on the List of Forthcoming Key Decisions for the period up to 13th July.

Recommendations

The Director of City Development is recommended to:

- a) Waive Contract Procedure Rule 3.1.7, 'Requirement to use an Approved Framework Agreement', and approve the use of the Crown Commercial Services Legal Framework to procure strategic and detailed legal advice in support of the programme for delivery of the East Leeds Extension.
- b) Waive Contract Procedure Rule 15.2 to reduce the price element of the quality/price evaluation below 40%, to reflect the narrow banding of maximum rates in the CCS Framework and ensure a greater emphasis on securing best value, high quality services through the procurement exercise.
- c) Note that the use of the Crown Commercial Service Legal Framework will be subject to the delegated approval of the Chief Officer of PU/PPPU.

The Chief Officer of PU/PPPU is recommended to:

- d) approve the use of the Crown Commercial Service Legal Framework RM919 to procure strategic and detailed legal advice in support of the programme for delivery of the East Leeds Extension.

1 Purpose of this report

- 1.1 To request through Delegated Decisions of the Director of City Development and the Chief Officer of PPPU & Procurement, the approval to waive Corporate Procurement Regulations and to use an external organisation's framework agreement.

2 Background information

- 2.1 The East Leeds Extension and adjoining area of Thorpe Park is a strategic growth point for Leeds and the city region. It encompasses c. 250 hectares of land allocated or with planning approvals for housing, employment, leisure and retail. Land ownership is fragmented and there are major infrastructure, land assembly, planning and delivery requirements to support the anticipated scale and scope of development.
- 2.2 The Council is taking a leading role in co-ordinating the programme to enable this growth to come forward in a timely way, working with land owners, developers, local stakeholders, government, the West Yorkshire Combined Authority and the Local Enterprise Partnership. The Council also has land holdings of its own in the area that will ultimately form part of the programme through either disposal or dedication to use for supporting infrastructure. The programme is multi-faceted and complex and requires significant multi-disciplinary inputs from across all departments of the local authority.
- 2.3 The scope of legal advice required will be both strategic and detailed. It is likely to vary in the degree to which it will be drawn on, though it is anticipated that all aspects of the East Leeds Extension programme will have a requirement for this legal input and that there will need to be a strong join up and consistency across the different elements.

Strategic Advice

- 2.4 The Council requires over-arching advice to set a clear strategy in respect of:
 - The East Leeds Orbital Road including planning, procurement, land assembly, funding;
 - An East Leeds Extension Development Framework, including drafting and adoption of a Supplementary Planning Document, including relationships to Community Infrastructure Levy, s106 and securing developer contributions

- The Council's engagement as landowner in any consortium activities to bring forward development
- Minerals Planning and strategy for managing or mitigating third party sub-surface minerals rights

Specific support:

2.5 The Council anticipates that more detailed and specific support will be required in relation to the strategic advice outlined above and as soon as possible, to assist in progressing matters already underway but which have been held in abeyance pending securing of the necessary legal input, including (but not limited to):

- Monitoring of a Bridge agreement with Network Rail and a third party landowner, including complex s6, s38, s278 highways agreements and related deeds of release for the Manston Lane Link Road;
- Section 106 Planning Act agreements;
- Section 104 Water Industry Act agreements;
- Highways agreements;
- Compulsory purchase orders and statutory procedures for land acquisitions;
- Indemnity agreements or CPO indemnity agreements with developers for purchase of third party land;
- Disposal of LCC land;
- Interaction and relationships between various types of legal agreements and development or land agreements (e.g. s106, land indemnity/land transfer, highway agreements);
- Procurement and State Aid;
- Detailed advice relating minerals rights and the excavation of minerals;
- General land and property advice including title due diligence, land assembly, easements, wayleaves etc;
- Taxation advice;
- Judicial Review and other challenge risks.

3 Main issues

3.1 A cross-service team is in place to enable the Council to support the work in co-ordinating the East Leeds Extension programme. The lead for this is through City Development, with legal support currently provided through in-house Legal Services.

- 3.2 The Head of Regeneration, Head of Land & Property in City Development and the Head of Service in Legal Services, have reviewed the in-house capacity to continue to provide the legal support required, as identified in the background section of this report. On the basis of this review, the need for external legal advice has been identified to cover the scope of support and the availability of lawyers to provide this.
- 3.3 Where an internal service provider cannot be used, under Contracts Procedure Rule No 3.1.7 there is a requirement to use an Approved Framework Agreement.
- 3.4 The WYLAW Framework is the Council's approved route for procurement of external legal services. Following assessment of the legal firms on the framework by the relevant Heads of Services in relation to the scope of support required for the East Leeds Extension, it is considered that it would not be possible to secure the necessary breadth and depth of skills and experience, without procuring multiple firms across multiple Lots. This would not be in keeping with the need to procure efficiently or to achieve value for money. Nor would it provide the consistency and quality of legal advice required for this complex work.
- 3.5 The Crown Commercial Services (CCS) Legal Framework has been procured by the Government Procurement Service and Government Legal Service and is available for public bodies, including Local Authorities, as a simplified means of procuring external legal services from a variety of law firms who have been awarded a place on it. It is considered to provide the most effective and value for money alternative means of securing the necessary legal advice to support the East Leeds Extension programme.
- 3.6 The CCS Legal Framework has 8 Lots, including Lot 8 'Complex and Major Projects'. There are 23 firms on this Lot, a number of which have either a Leeds base or are known to have previously worked in Leeds. The range of firms on the Lot are also known to offer the key skills and experience in complex land, property and regeneration projects both in the city and nationally. It is anticipated that there is sufficient scope from this list for a mini-competition to secure the high quality legal advice required.
- 3.7 Use of the Legal Services framework RM919 will reduce the cost and time taken to procure the services since it has already been competitively tendered. It potentially offers value for money through centralising, standardising and aggregating spend for legal services. The framework offers competitive rates which offer significant reductions against existing rates in the open market. These rates will be tested further through a secondary competitive exercise under the framework.
- 3.8 If approval is not forthcoming to waive CPR 3.1.7 or to use an alternative framework to procure the required legal advice there is a very real risk that the Council will not be in a position to identify and resolve legal risks or progress the necessary actions towards realising a major area of housing and economic growth for the city in a timely way. This would have an adverse impact on the pace at which housing delivery would be achieved against agreed targets in the adopted Core Strategy, the progression of major infrastructure that will support jobs and economic

development and the achievement of income for the Council arising from disposal of its own land holdings in this area, increased Council Tax base and New Homes Bonus.

- 3.9 Due to the complexity and size/value of the project a secondary competitive exercise should enhance value for money between the suppliers under Lot 8. It is intended to engage with the suppliers prior to any procurement activity to gauge their interest and capacity for the project. All bidders will be invited to submit a competitive bid in compliance with Council's Contract Procedure Rules.
- 3.10 The CCS Framework establishes maximum chargeable rates for the firms within each Lot. The secondary competition through the Framework will invite bidders to submit hourly rates at a competitive level, below these. These rates are however within a relatively narrow banding and it is considered that a greater emphasis should be placed on the quality element of tender assessments than is allowed for under Contract Procedure Rules to avoid the potential for relatively narrow differences in cost to skew an assessment outcome away from higher quality service offers.
- 3.11 As such a waiver of CPR 15.2 is required to reduce the price element of the quality/price evaluation below 40%, to reflect the narrow banding of maximum rates in the CCS Framework and ensure a greater emphasis on securing best value, high quality services through the procurement exercise.

4.0 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1. The Executive Member for Regeneration, Transport and Planning has been consulted and is supportive of the proposals in this report. No other specific consultation has been undertaken in relation to the proposals to waive CPRs or to use the CCS Legal Framework, other than with internal service providers/users. The relevant Head of Service in Legal Services has been part of the discussions in establishing the proposals and is in agreement with these. The PPPU & PU Compliance and Regulation Team have been consulted and provided legal advice on the use of this framework, following consultation with Crown Commercial Services.
- 4.1.2 The East Leeds Extension has been the subject of significant and ongoing consultation with Executive and Ward Members, through specific briefings and through the East Leeds Regeneration Board. Members have expressed strong views on the need to move the programme forward at a pace, ensuring the early and timely delivery of housing and supporting infrastructure.
- 4.1.3 The proposals in this report are considered to be in full accordance with the views expressed by Members.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 There are no implications for Equality and Diversity/Cohesion and Integration.

4.3 Council policies and City Priorities

- 4.3.1 Ensuring the Council is supported by legal advice of the appropriate quality will be essential in bringing forward the East Leeds Extension in a co-ordinated way. This fits squarely with the Council's Best Council Plan Objective of Promoting Sustainable Economic Growth, through enabling the delivery of housing and creating conditions to boost the local economy.

4.4 Resources and value for money

- 4.4.1 In the absence of sufficient internal resources and assessment of the WYLA framework in not meeting the Council's needs for this programme, the use of the CCS Legal framework will save valuable resources and time for the Council compared to undertaking a separate, bespoke procurement.
- 4.4.3 Crown Commercial Services' key driver in establishing the framework was to aggregate requirements and spend to exert maximum leverage on the market and so cost savings can be passed on to organisations calling off from the framework.
- 4.4.4 The firms represented on Lot 8 of the framework, 'Complex or Major Projects', are known to be both active and at the forefront of good practice in relation to large regeneration and development projects and it is considered that there is scope for securing a high quality service provider, with locally available, responsive resources.
- 4.4.5 The appointment of a service provider through this procurement exercise will not commit the Council to any level of fees other than those incurred in response to detailed instructions. As such the Council will remain in control of expenditure through regular monitoring and client liaison. There is current budget provision to support this work in 2015/16, the continuation of the commission will be reviewed and the need for continued or additional budget provision in future years will be fed into departmental budget setting.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 This is a Key Decision as defined under Article 13 of the Council's constitution due to the likely timescale over which the advice will be required, the potential value of professional fees that may be incurred cumulatively or in a single year and the overall impact of the work to which it relates. Accordingly the decisions recommended to the Director of City Development and Chief Officer of PU/PPU were placed on the List of Forthcoming Key Decisions for the period up to 13th July.
- 4.5.2 The Compliance and Regulation Team have reviewed the advertisement of the CCS Legal framework and are satisfied that the notice published in OJEU on 18th February 2012 (ref 17553-2012-EN) clearly includes the Council within the bodies entitled to use the framework.
- 4.5.3 The framework agreement has been established, to the best of the Council's knowledge, in accordance with the Public Contract Regulations 2006 and is not the subject of any challenge.

- 4.5.4 The term of the framework is current and the terms and conditions of the Framework Agreement are considered acceptable to the Council.
- 4.5.5 Use of an established framework precludes the Council from holding an open competitive process in procuring a service. However, the framework itself was procured through such a process and the Council may conduct a mini-competition between the suppliers under Lot 8 which will further mitigate any risk.
- 4.5.6 Use of an approved framework is fully in accordance with the CPRs, which define an Approved Framework as an agreement set up by an external organisation which has been authorised by PPPU/PU. It is considered that such authorisation is merited for this agreement.
- 4.5.7 It is advised that the award decision is followed by a voluntary 10 day standstill following call-off from a framework in the interest of transparency and equal treatment.

4.6 Risk Management

- 4.6.1 In reviewing whether an external framework should be approved for use by the Council, the prevailing risk is that there exist economic operators who are not appointed to the framework that could challenge their exclusion from consideration for the contract. It is considered that in light of the information in this report, this risk is mitigated.
- 4.6.2 Additional risk is inherent in the lack of control which the Council has over the procedure for establishment of the external framework. There are no current or previous challenges to this framework of which the Council is aware and legal advice is that the procedures seem robust.
- 4.6.3 There is further risk in ensuring the entitlement of the Council to utilise the framework. It is considered that this framework is clearly open to the Council.

5.0 Conclusions

- 5.1 The Council is playing a leading role in co-ordination cross-sector work to implement major new infrastructure and housing development to secure the delivery of a strategic growth point for the city at the East Leeds Extension.
- 5.2 This is a major and complex programme that requires significant legal support, that cannot be provided in-house and which is considered not to be available through the existing approved framework for external legal services. Approval to use the CCS Legal Framework will provide the Council with a route to obtain the high quality locally available legal advice necessary to assist in driving this work forward in a way that manages risk and enables a major contributor to the Best Council Plan.

6.0 Recommendations

- 6.1 The Director of City Development is recommended to:
 - a) Waive Contract Procedure Rule 3.1.7, 'Requirement to use an Approved Framework Agreement', and approve the use of the Crown Commercial

Services Legal Framework to procure strategic and detailed legal advice in support of the programme for delivery of the East Leeds Extension.

- b) Waive Contract Procedure Rule 15.2 to reduce the price element of the quality/price evaluation below 40%, to reflect the narrow banding of maximum rates in the CCS Framework and ensure a greater emphasis on securing best value, high quality services through the procurement exercise.
- c) Note that the use of the Crown Commercial Service Legal Framework will be subject to the delegated approval of the Chief Officer of PU/PPPU.

6.2 The Chief Officer of PU/PPPU is recommended to:

- d) approve the use of the Crown Commercial Service Legal Framework RM919 to procure strategic and detailed legal advice in support of the programme for delivery of the East Leeds Extension.

7 Background documents¹

7.1 None.

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.