

Report of: Business Manager (Waste Management Contracts)

Report to: Chief Officer for Waste Management

Date: 3rd July 2015

Subject: Procurement of wheeled bins and other waste containment systems

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 checked="" type="checkbox"/> Yes	<input 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. Leeds have been utilising a framework arrangement procured by Warrington MDC to purchase a range of wheeled bins and other waste containment systems since 2009. The Councils own CPR's have been altered and there is now the requirement to vet all externally procured frameworks.
2. It is proposed to undertake a mini competition exercise and this report confirms that this is compliant with the scope and terms of the contract and allows the Council to explore the opportunity for a reduction in the prices originally received at the time of tendering.
3. A methodology for evaluating the bids received in the mini competition exercise is proposed within this report and the Chief Officer is requested to note and approve this methodology.

RECOMMENDATIONS

The Chief Officer for Waste Management is recommended to note the content of this report and:

- Approve the continued use of the Warrington MBC framework contract for wheeled bins, sacks and other containers through to its expiry in May 2017; (This is to include the plastic sack requirements on behalf of Parks and Countryside and the Locality teams)
- In continuing to use the framework, agree to the undertaking of a mini competition exercise inviting those on the framework to submit new reduced bids for the supply of bins, recycling containers and sacks;

- Agree that in order to be consistent with the framework conditions the subsequent call-off duration would be applicable from the point of award through to the expiry of the contract, committing ourselves to using the selected provider on an exclusive basis and on the basis of the fixed prices submitted throughout this period ;
- Approve the proposed evaluation criteria which would be used to evaluate bids in the mini competition exercise;

PURPOSE OF THIS REPORT

- 1.1 The proposed approach set out in this report seeks to ensure compliance with CPR's in respect of:
- Obtaining approval to proceed with a process to seek competition through a mini competition exercise, calling off new prices on the Warrington framework contract;
 - Obtain approval for the use of proposed evaluation criteria by which submissions in the above mini competition exercise will be assessed;

2 BACKGROUND INFORMATION

- 2.1 Since 2009 The Council have been a key client utilising a framework arrangement which was procured by Warrington Borough Council in order to source wheeled bins primarily. However, the original contract was also used for the supply of food waste caddies. The arrangement was utilised successfully by Leeds throughout this first contract and during a subsequent framework which was procured and commenced 1st June 2013 and is scheduled to expire 31st May 2017.
- 2.2 Bearing in mind that it was envisaged that Leeds would be a key customer in these arrangements, Leeds Procurement officers and officers from Waste Management contributed towards the specification for these contracts and were also involved in the evaluation of tenders and testing of bins.
- 2.3 CPR's require the Chief Procurement Officer to approve externally procured frameworks. This is in order to ensure that the Council are utilising appropriate contracting arrangements which have been procured correctly, in compliance with Public Contract Regulations and our own internal rules around contracting and financial matters. The Chief Procurement Officer has been consulted and has provided advice on the legality of the framework, recommendations made will be incorporated into contract documents issued to suppliers.
- 2.4 In trying to regularise how the procurement of bins takes place and ensure that off-contract spend is avoided, the service is now also reviewing the internal governance and approvals processes, and some of the recommendations made within this report will help to maintain compliance in this regard.

3 MAIN ISSUES

3.1 Procurement Issues

- 3.1.1 Having reviewed the advertisement which was used to publicise the Warrington Framework and the contract documentation that was issued to bidders, the Procurement Governance and Regulation Manager has highlighted a number of issues as follows:

Terms and Conditions

- a) It is considered that the terms are poorly drafted in some respects, and might therefore lead to uncertainty such that if a dispute were to occur it would involve time and expense to determine their true meaning.
- b) There are a number of references within the terms that lack definitions;

- c) The payment terms are not clear in terms of the timescales by which invoices become payable or what the sanctions might be if invoices are not paid in a timely manner;
- d) The value of Employers Liability Insurance is not stipulated;
- e) There are no Data Protection or Confidentiality clauses.

3.1.2 As with any framework agreement the terms and conditions cannot be substantially changed. However, it is not considered that the amendments required to address the issues listed in 3.1.1 terms and conditions would be significant and nor would any such amendments materially affect the nature of the contract or what is required from the contracted parties.

3.1.3 The framework call-off mechanism provides the opportunity for individual purchasing local authorities to make their own amendments as long as those amendments are not significant and do not contradict the main terms of the contract. This therefore provides the means to address the concerns raised by the Procurement Governance and Regulation Manager in this respect.

3.2 Authority to Proceed

3.2.1 CPR 3.1.8 requires a delegated decision process to be undertaken in order to obtain approval to proceed with procurements and any call-off from existing frameworks are also subject to this requirement.

3.2.2 The Chief Officer for Waste Management should be satisfied that budgetary provision is in place prior to granting approval to place a call-off from the framework.

3.2.3 The Principal Finance Manager responsible for Waste Management has confirmed that the following annual budget is in place for wheeled bin and plastic sack procurements:

AREA OF SPEND	ANNUAL BUDGET
Replacement wheeled bin capital	£700k
Waste Management plastic sacks and food liner requirements	£131k (Food is around £36k of this)
Locality teams plastic sack requirements	£40k
Parks and Countryside plastic sacks requirements	£5 to 10k***
TOTAL	£876k to £881k

*** Spend on plastic sacks isn't separated out for budget purposes so the figures provided are broad estimates.

3.2.4 The proposed course of action would be to take up the option available within the arrangement to undertake a mini competition exercise asking those organisations on the framework to re-submit bids. Orders can be placed from the framework utilising the prevailing rates. However, the mini competition exercise provides the opportunity to benefit from any additional price reductions that the bidders might be able to offer. There will be no opportunity for bidders to submit increased bids but given the apparent reduction in oil prices currently and since the contract was originally tendered, which in turn invariably has an impact on the price of wheeled bins, it is expected that the mini competition exercise would provide savings.

3.2.5 The points regarding the quality of the terms and conditions could be addressed at this time and as the instructions for the call-off are released to bidders a revised set of terms and conditions can be issued. This therefore reduces/removes the risk of any misunderstanding between the parties.

3.3 Evaluation Criteria Approval

3.3.1 CPR 15.1 introduces a requirement to obtain Chief Officer Approval for any selection and award criteria. This requirement extends to the selection criteria to be used in framework call-offs and as such the following information is provided in order to inform on the current proposal.

3.3.2 Within the original contract documentation issued by Warrington it was stated that during mini competition exercises a pre-determined evaluation criteria may be used by participating authorities. (See paragraph 3.3.9 and the associated table below for further information)

3.3.3 In order to remain consistent with the Council's corporate steer in placing a keen emphasis on the importance of prices for contracting arrangements it is assumed that in the mini competition exercise being proposed the price will be weighted at 60% of the overall marks available with the remaining 40% being used to assess the quality of the bids. The weighting towards price is the heaviest available if we are to remain consistent with the way the original contract was advertised.

3.3.4 In terms of quality, the organisations on the framework will be re-issued with the original contract documentation and they will be required to submit bids against the specified service. However, we will be able to introduce our own specific requirements in addition and it will be this element where the quality of their bids will be assessed.

3.3.5 A key requirement in order to pass minimum quality score thresholds will be for bidders products to be subjected to a physical testing process whereby their bins/containers will be inspected and exposed to significant operating practices designed to reveal any production/quality flaws. If any bins do not meet the specified requirements then that particular product will be removed from further consideration.

3.3.6 The original procurement process invited submissions based on a number of separate lots as follows:

LOT 1: Plastic wheeled Bins (various sizes);

LOT 2: Galvanised metal wheeled bins (various sizes);

LOT 3: Kerbside and other plastic recycling containers (e.g. food caddies);

LOT 4: Woven bags;

LOT 5: Sacks and food liners.

3.3.7 Leeds do not currently use or have any plans to use woven bags and as such it is proposed to seek bids in the mini competition for all the lots excluding lot 4

3.3.8 It is proposed that a 2 stage evaluation for each of the Lots would be used as follows:

1ST STAGE will assess the “Product Details” element only, including the submission of the certificate of conformity with the relevant EN quality standard, and this will include a physical/practical testing of the products ensuring they meet minimum quality thresholds as determined by the testing methodology which will be published within the documentation. Only the bids that meet the required standard will be assessed in the second stage.

2ND STAGE will evaluate price and quality of all those meeting the minimum requirements of the physical testing process in the first stage. The quality element of this stage will include the scores achieved in the first stage and combine them with the scores achieved in the other quality aspects of stage 2 and the prices submitted on a 60% price/40% quality basis

3.3.9 The table below provides detail around the proposed quality weighting criteria for each Lot. It should be noted that the Warrington Framework suggested a range of weightings to be used however in practice the application of these weightings does not work and Warrington have confirmed that the wording in the contract is such that there is some flexibility in this and that Councils may or may not use the suggested weightings.

CRITERIA	TOTAL POINTS AVAILABLE	MINIMUM SCORE THRESHOLDS
1. PRODUCT DETAILS (Considered in Stage 1 & 2)		
A. Performance against the practical/physical testing schedule (The actual content of this physical testing will be different in some respects for each Lot)	300	60% of the score available
2. STORAGE AND DELIVERY (Considered in Stage 2 only)		
A. Guaranteed delivery time from placing of orders. (Bidders should take note of the specified minimum timescales however scores here will be based on the ability to improve on the specified timescales and the performance mechanism will be invoked if the commitment here is not met in practice)	35	N/A
B. Details of delivery practices including the following: i. Offloading procedures and facilities (5 points) ii. Delivery recording arrangements (5 points) iii. Details regarding flexibility on batch sizes (5 points) iv. H&S considerations (5 points)	20 Note sub criteria scores	N/A
C. Details regarding any guaranteed stock availability.	10	N/A
D. Product quality control protocols and procedures.	35	60% of the score available
TOTAL	400	

4 CORPORATE CONSIDERATIONS

4.1 Consultation and Engagement

4.1.1 It is not considered that the content of this report or the recommendations made will have a significant impact on any particular ward or community, and as such no consultations have taken place.

4.1.2 The Chief Procurement Officer has been consulted to provide approval for the use of the framework and will continue to provide advice and recommendations throughout the procurement process to ensure compliance with CPRs.

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 An Equality Impact Assessment has been completed and it is not considered that the content of this report or the recommendations made will have any impact on any specific individual or group in terms of equality, diversity, cohesion and integration.

4.3 Council policies and City Priorities

4.3.1 It is paramount that procurements in the authority are undertaken with a view to ensuring openness, transparency and fairness. This procurement was originally let by Warrington MBC through undertaking a formal competitive exercise and the award was based on an evaluation which achieved a cost/quality balance which subsequently offers best value to the participating authorities. In undertaking the proposed mini competition process the competitive element will be re-introduced.

4.3.2 All appropriate governance arrangements will be followed throughout and this report forms part of that process. A second report will be submitted once the process is concluded and in order to gain approval prior to award.

4.4 Resources and value for money

4.4.1 By undertaking a formal tender process as described in this report an element of market competition has been introduced and this helps to drive down prices.

4.4.2 The evaluation criteria used for selecting service providers was developed by Warrington MBC in liaison with other authorities with a view to achieving a value for money arrangement for the participating authorities and indeed we have already benefited from more favourable prices than are offered through other existing frameworks.

4.4.3 The Chief Officer for Waste Management should be satisfied that the proposed evaluation criteria within this report for the mini competition exercise will also achieve a value for money outcome.

4.5 Legal Implications, Access to Information and Call In

4.5.1 Due to the annual value of the decision being estimated at approximately £890k This decision is being treated as a key decision and as such it has been posted on the Council's Forward Plan of Key Decisions. The Decision is not exempt from Call-in.

4.5.2 The decision to appoint a contractor at the conclusion of the mini competition exercise will be reported to the Chief Officer for Waste Management once the process is concluded. As this second decision will be the consequence of implementing a previous Key decision the decision to award will be treated as a Significant Operational Decision.

- 4.5.3 Officers from Legal and Democratic Services have been consulted throughout this process. The contract was advertised in the Official Journal of the European Union (OJEU) as is required of a contract of this value. An open and transparent process has been followed and will continue to be followed throughout the mini competition exercise proposed.

Note that by virtue of Access to Information Rules 10.4.(3) The Appendices attached to this report are restricted as confidential. This is on the basis that they contain information relating to the financial or business affairs of any particular person (including the authority holding that information) which, if disclosed to the public, would, or would be likely to prejudice the commercial interests of that person or of the Council.

It is considered that the public interest in maintaining this information as exempt outweighs the public interest in disclosing the information, as disclosure may prejudice the outcome of the procurement process, whilst the details of the tender proposals within the appendices also contain the financial details/business affairs of individual companies.

4.6 Risk Management

- 4.6.1 A risk register has been developed and identified risks have been adequately managed. The risk register will continue to be maintained in terms of the ongoing management of the contract once awarded, and any high risks or escalating risks will be brought to the attention of the Chief Officer for Waste Management.
- 4.6.2 It is imperative that a reliable quality source for wheeled bins and refuse sacks is secured in order to maintain the collections infrastructure and a means for fulfilling our statutory duty to collect waste and recyclates from the kerbside of Leeds residents. The risk of not having this contracted arrangement secured is that the continued availability of wheeled bins and refuse sacks may be compromised, which will in turn affect the delivery of the front line collections service.
- 4.6.3 The mini competition process will provide a legally binding contract with the selected organisation on the framework and the terms of the contract will protect the Council against adverse performance issues, site availability issues, health and safety concerns, as well as securing the rates agreed.

5 CONCLUSIONS

- 5.1 It is concluded that the continued use of the Warrington framework for wheeled bins and sacks offers the best option for the Council and to undertake a new secondary call for competition will provide firm new prices for these supplies for Waste Management, Locality Teams and Parks and Countryside.
- 5.2 The Terms and Conditions can be adjusted without any real risk as the changes will not alter the scope of the contract or transfer any risk excessively and as such the recommendations made within this report are considered practicable.

6 RECOMMENDATIONS

- 6.1 The Chief Officer for Waste Management is recommended to note the content of this report and:

- Approve the continued use of the Warrington MBC framework contract for wheeled bins, sacks and other containers through to its expiry in May 2017; (This is to include the plastic sack requirements on behalf of Parks and Countryside and the Locality teams)
- In continuing to use the framework, agree to the undertaking of a mini competition exercise inviting those on the framework to submit new reduced bids for the supply of bins, recycling containers and sacks;
- Agree that in order to be consistent with the framework conditions the subsequent call-off duration would be applicable from the point of award through to the expiry of the contract, committing ourselves to using the selected provider on an exclusive basis and on the basis of the fixed prices submitted throughout this period ;
- Approve the proposed evaluation criteria which would be used to evaluate bids in the mini competition exercise;

7 BACKGROUND DOCUMENTS¹

7.1 In compiling this report no additional background papers were used.

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.