

Guidance notes

Introduction

The following Contract Procedure Rules (CPRs) can be waived in **exceptional circumstances** and only with the prior written approval of the relevant chief officer –

Contracts procedure rule No 3.1.1.1 – Category plan and approved budget

Contracts procedure rule No 3.1.6 – Requirement to use existing suppliers

Contracts procedure rule No 3.1.7 – Requirement to use an approved framework agreement

Contracts procedure rule No 3.1.15 – Requirement to use the council's standard tender documents

Contracts procedure rule No 3.1.22 – Procurements not to be undertaken by consultants

Contracts procedure rule No 3.1.23 – Post tender negotiations

Contracts procedure rules No 8.1 and 8.2 – Intermediate value procurements

Contracts procedure rules No 9.1 and 9.2 – High value procurements

Contracts procedure rule 15.2 – Tender evaluation

Waivers cannot be made retrospectively in any circumstances and failure to comply with CPRs may result in disciplinary action.

A report is required to meet the council's obligations of transparency and openness and to show that the matter referred for consideration properly falls within CPRs.

Officers are recommended to seek advice from the chief procurement officer when completing the waiver report.

Report of the Head of Projects and Programmes

Report to the Deputy Director, Learning

Date: 14 August 2015

Subject: Construction Skills Programme 2015-17 Evaluation criteria and Invocation of Contract Procedure Rule 15.2



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: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. Leeds City Council wishes to procure through an EU Tender, a provider to deliver the Construction Skills Programme from December 2015 to 31 March 2015. This report seeks approval of the tender evaluation criteria attached as Appendix 1 of this report.
2. The Construction Skills Programme will be delivered through a fixed price contract and approval is also being sought to waive contract procedure rule 15.2, requiring the price element of evaluation to be 40% or greater and, permit evaluation primarily on quality.
3. The programme supports the Council's drive for a strong economy in a compassionate city and the achievement of the Best Council Plan objective to 'promote sustainable and inclusive economic growth by improving the economic wellbeing of local people and businesses' with a specific focus on helping people into jobs

Recommendations

4. The Deputy Director, Learning is asked to approve the evaluation criteria in the EU tender for a provider for the Construction Skills Programme to 31 March 2017 and to waive contract procedure rule 15.2 in order to permit evaluation primarily on quality.

1 Purpose of this report

- 1.1 As part of the preparations for the procurement of a delivery provider for the next phase of the Construction Skills Programme (December 2015 to March 2017), this report seeks approval of the tender evaluation criteria attached as Appendix 1 of this report and approval is also being sought to waive contract procedure rule (CPR) 15.2, requiring the price element of evaluation to be 40% or greater and, permit evaluation primarily on quality as the Construction Skills Programme will be delivered through a fixed price contract.

2 Background information

- 2.1 The city's economy is returning to high levels of growth, driven by large construction schemes underway or proposed that are worth nearly £6bn. The City's Housing Growth Programme will deliver 70,000 net new dwellings by 2028, further stimulating the construction industry and adding to the 180,000 new jobs set to be created across the UK through the construction industry by 2020.
- 2.2 An EU tender is to be published for a provider to deliver the Construction Skills Programme up to March 2017 in order to continue to address construction skills gaps and shortages and ensure that local people are well positioned, through quality training and work experience in the sector, to take full advantage of emerging job opportunities. The programme supports the delivery of employment and skills obligations through the Council's procurement and planning processes providing local residents with access to jobs, apprenticeships and work experience and supports employer investment in workforce skills training through grant funding to support competitiveness and business growth.

3 Main issues

Reason for contracts procedure rules waiver

- 3.1 The Construction Skills Programme tender is for a fixed price contract and contract procedure rule 15.2, requiring the price element of evaluation to be 40% or greater will not have any effect on differentiation between bids. In this tender there will be better differentiation between bidders through evaluation primarily on quality

Consequences if the proposed action is not approved

- 3.2 If CPR 15.2 is applied and the price element evaluated, all providers will score the same as their bids are for a fixed price contract and the contract pricing element will not vary, also as the pricing element would account for 40% of the scoring scheme there would be reduced opportunity to differentiate bidders through their responses to quality questions.

Advertising

- 3.3 The tender notice is scheduled to be published on OJEU by CPPU on 20 August 2015.

4 Corporate considerations

4.1 Consultation and engagement

- 4.1.1 To inform the specification of the proposed contract, the Council has consulted with Procurement, Legal and Financial Management services. The Procurement Officer advised the need to waive CPR 15.2 evaluation on price element and also advised the Chief Officer must formally agree the evaluation criteria prior to the EU Tender being published.

4.1.2 The Executive Member for Employment, Enterprise and Opportunity has also been consulted on the specifications for the proposed contract.

4.2 Equality and diversity / cohesion and integration

4.2.1 An EIA screening was completed on 16 July 2015 and will be reviewed annually. The screening highlighted the lack of equalities data across the industry but anecdotal information and programme participation data indicates that young people, women and people from Black, Asian and Ethnic Minority (BAME) groups remain underrepresented. In 2014/15, 25% of the programme beneficiaries supported by the Council through employment and skills obligations were under 25 years old, 7% were female and, 6% identified themselves BAME.

4.2.1 The requested waiver of CPR 15.2 due to the fixed price element has the same implications for all potential bidders and has no equality implications for the size or type of organisations eligible to bid.

4.3 Council policies and city priorities

4.3.1 The programme will contribute to the delivery of key objectives in the Best Council Plan 2015-20, specifically to 'promote sustainable and inclusive economic growth by improving the economic wellbeing of local people and businesses' with a focus on helping young people and other underrepresented groups into jobs

4.4 Resources and value for money

4.4.1 The total programme costs can be met through the Employment and Skills approved budget allocation for construction skills and represents a reduction of over £150,000 per annum on the previous delivery models. The revised arrangement is enabling a more efficient use of resources and is achieving an improved level of outputs. The Flexible Fund supports employers to invest in skills training for both new entrants and their existing workforce.

4.5 Legal implications, access to information and call in

4.5.1 Due to the total value of the fixed price contract and 2015 changes in the EU regulations, this programme is no longer classed as Part B Services (vocational training) and will be subject to a full procurement under EU regulations.

4.5.2 This decision will be a Significant Operational Decision. There is no access to information consideration at this stage and the proposals are not subject to Call-In.

4.5.3 CPR 15.1 "*Selection and award criteria must be distinguished and highlighted as part of the tender documentation. The evaluation criteria will be predetermined and approved (as an administrative decision) by the relevant Chief Officer and disclosed to all tenderers through the Invitation to Tender documentation. The evaluation criteria should be disclosed along with weightings. In exceptional circumstances, where this is not possible, the evaluation criteria may be listed in order of importance. Published criteria may not be changed and will apply throughout all stages of a procurement. The evaluation criteria and methodology must be set in accordance with the Public Contracts Regulations (including an assessment of cost effectiveness such as lifecycle costing) and the principles set out in the tender evaluation guidance*".

4.5.4 CPR 15.2 "*the price element of evaluation to be 40% or greater, can be waived. Any decision to waive this rule by a Chief Officer will be in accordance with CPR27 and must be justified in the circumstances. Authorised Officers should always consider whether a 'price –quality separated' approach may be applicable. This involves the first stage being a quality*

assessment which tenderers either pass or fail. Tenderers who pass are then assessed purely on price.”

- 4.5.5 CPR 27.1 “the relevant service directorate Chief Officer will take the Delegated Decision by completing a delegated decision notice following the receipt of a Waiver Report in the form set out in the waiver report template. A copy of the report and the delegated decision notice must be forwarded to the Chief Procurement Officer for monitoring purposes. The rest of the CPRs will still apply to the procurement”.
- 4.5.6 CPR 27.2 *“the report of the Chief Officer will set out the financial, legal, risk and equality implications of the waiver sought. The Chief Officer will consider whether the Chief Procurement Officer’s comments and advice should be sought in accordance with CPR 1.3. The Chief Officer should consider what sort of Delegated Decision is being taken. Any decision to procure that includes a waiver of the CPRs will be a Significant Operational decision as a minimum”.*

4.6 Risk management

- 4.6.1 The Construction Skills Programme will be evaluated by senior officers of the Employment and Skills Service. Robust procedures are in place to monitor the tender, evaluation and selection activities in accordance with the Council’s requirements.

5 Conclusions

- 5.1 Leeds City Council wishes to procure through an EU Tender a provider to deliver the Construction Skills Programme from December 2015 to 31 March 2015. This report seeks approval of the evaluation criteria attached as Appendix 1 of this report.
- 5.2 The Construction Skills Programme will be delivered through a fixed price contract and approval is also being sought to waive contract procedure rule 15.2, requiring the price element of evaluation to be 40% or greater and, permit evaluation primarily on quality.
- 5.3 The programme supports the Council’s drive for a strong economy in a compassionate city and the achievement of the Best Council Plan objective to ‘promote sustainable and inclusive economic growth by improving the economic wellbeing of local people and businesses’ with a specific focus on helping people into jobs

6 Recommendations

- 6.1 The Deputy Director, Learning, is asked to approve the evaluation criteria in the EU tender for a provider for the Construction Skills Programme to 31 March 2017 and to waive contract procedure rule 15.2 in order to permit evaluation primarily on quality.

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.