

**Report of: Principal Legal Officer, Legal Services**

**Report to: Director of City Development**

**Date: 26 April 2017**

**Subject: Proposed Waiver of Contract Procedure Rules 3.1.15, 8.1 and 8.2 to appoint Grant Thornton UK LLP to provide advice in connection with the funding arrangements for the redevelopment of Headingley Stadium**

Are specific electoral wards affected? If yes, name(s) of ward(s): Headingley	<input checked="" type="checkbox"/> Yes <input 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. At its meeting on 19 April 2017, Executive Board agreed to the Council entering into arrangements with Leeds Cricket Athletic and Football Company (LCFA) and Yorkshire County Cricket Club (YCCC) as well as a third party investor to facilitate the redevelopment of the North/South stand at Headingley Stadium, subject to those arrangements being compliant with the European Commission's rules as to the provision of State aid.
2. Advice has been received from the Council's external legal advisers that in the circumstances it is necessary for the Council to obtain independent professional economic and financial advice in order to assess whether the arrangements are compliant with the State aid rules.
3. An appointment of this nature would normally be made via the Crown Commercial Services framework. This would require the Council to run a secondary call for competition to select a provider, but in this case, because of the urgency of the matter, this is not felt to be an appropriate way forward.
4. Given their expertise in State aid law, the Council's external legal advisers have been consulted as to suitable providers and they have recommended that Grant Thornton UK LLP would be the most suitable firm to carry out the work required.

## **Recommendation**

The Director of City Development is recommended to approve the waiver of Contract Procedure Rules, 3.1.15, 8.1 and 8.2 and appoint Grant Thornton UK LLP to provide advice in connection with the funding arrangements for the redevelopment of Headingley Stadium.

### **1. Purpose of this report**

The purpose of this report is to seek approval of a waiver of Contract Procedure Rules, 3.1.15, 8.1 and 8.2 and appoint Grant Thornton UK LLP to provide advice in connection with the funding arrangements for the redevelopment of Headingley Stadium.

### **2. Background information**

- 2.1. At its meeting on 19 April 2017, Executive Board agreed to the Council entering into arrangements with Leeds Cricket Athletic and Football Company (LCFA) and Yorkshire County Cricket Club (YCCC) as well as a third party investor to facilitate the redevelopment of the North/South stand at Headingley Stadium, subject to those arrangements being compliant with the European Commission's rules as to the provision of State aid.
- 2.2. Advice has been received from the Council's external legal advisers that in the circumstances it is necessary for the Council to obtain independent professional economic and financial advice in order to assess whether the arrangements are compliant with the State aid rules.
- 2.3. As outlined in the Executive Board report, the documentation for the arrangements needs to be concluded by the end of June 2017 so as to ensure that the redevelopment of the North/South stand can be completed in time for the start of the 2019 Cricket World Cup.
- 2.4. An appointment of this nature would normally be made via the Crown Commercial Services framework. This would require the Council to run a secondary call for competition to select a provider, but in this case, because of the urgency of the matter, this is not felt to be an appropriate way forward.
- 2.5. Given their expertise in State aid, the Council's external legal advisers have been consulted as to suitable providers and they have recommended that Grant Thornton UK LLP would be the most suitable firm to carry out the work required.

### **3. Main issues**

#### **3.1 Reason for contracts procedure rules waiver**

- 3.1.1 As outlined in the Executive Board report, the documentation for the arrangements needs to be concluded by the end of June 2017 so as to ensure that the redevelopment of the North/South stand can be completed in time for the start of the 2019 Cricket World Cup.
- 3.1.2 An appointment of the nature referred to in this report would normally be made via the Crown Commercial Services framework. This would require the Council to run a secondary call for competition to select a provider, but in this case, due to the time critical nature of the work and the fact that any delay would put the whole development project at risk, this is not felt to be an appropriate way forward. The project will deliver significant economic benefits for Leeds and the merits of the waiver proposed by this report outweigh the risks which would arise by delaying the delivery of the project.
- 3.1.3 Given their expertise in State aid law, the Council's external legal advisers have been consulted as to suitable providers and they have recommended that Grant Thornton UK LLP would be the most suitable firm to carry out the work required. It should be noted that Grant Thornton are on the Crown Commercial Services framework for this type of work.
- 3.1.4 In view of the above, the waiver of Contract Procedure Rules, 3.1.15, 8.1 and 8.2 is sought.

3.1.5 As regards the waiver of Contract Procedure Rule 3.1.15, as this is a specialist appointment which requires specific terms and conditions, the Council's tender documents have not been used. Instead, the attached terms and conditions, which have been approved by the Projects, Programmes and Procurement Unit, have been agreed with Grant Thornton UK LLP.

### **3.2 Consequences if the proposed action is not approved**

3.2.1 If the recommended action is not approved, a provider will have to be appointed via the Crown Commercial Services framework and there will be a delay in appointing them.

3.2.2 As set out above, the documentation for the arrangements needs to be concluded by the end of June 2017 so as to ensure that the redevelopment of the North/South stand can be completed in time for the start of the 2019 Cricket World Cup.

3.2.3 It is understood that it will take Grant Thornton UK LLP approximately two months to carry out the work required and to provide their advice. It is unlikely that any other provider will be able to provide the required advice any sooner.

3.2.4 Any delay in appointing a provider to carry out the work required is likely to mean that the advice which the Council needs will not be provided before the end of June 2017 with the result that the Council will not be able to enter into the documentation for the redevelopment of the North/South stand. This in turn is likely to mean that the redevelopment of the North/South stand will not be completed in time for the 2019 Cricket World Cup.

### **3.3 Advertising**

It is not proposed to advertise this opportunity for the reasons set out in section 3.1 above.

## **4 Corporate considerations**

### **4.1 Consultation and engagement**

The attached terms and conditions, which have been approved by the Projects, Programmes and Procurement Unit, have been agreed with Grant Thornton UK LLP.

### **4.2 Equality and diversity / cohesion and integration**

There are no Equality and Diversity / Cohesion and Integration issues.

### **4.3 Council policies and best council plan**

By procuring the provision of the services outlined in this report, the Council will be ensuring that the arrangements it is proposing to enter into will be compliant with the European Commission's rules as to the provision of State aid. This should mean that we can avoid unnecessary spending in defending claims or challenges.

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

4.4.1 The advice required is not available in-house.

4.4.2 The value of the contract has been estimated at £80,000 plus VAT. Grant Thornton UK LLP has agreed to cap its fee at £85,000 plus VAT and to notify the Council immediately if the fees are likely to exceed £75,000 plus VAT.

4.4.3 Assuming that the arrangements referred to in this report are concluded by the end of June, the cost of the services will be recovered from LCFA and YCCC. Otherwise payment for the services will be met from City Development's own budget.

## **4.5 Legal implications, access to information, and call-in**

- 4.5.1 Given the likely value of Grant Thornton's fees (estimated at £80,000 plus VAT and capped at £85,000 plus VAT) the decision requested is a Significant Operation Decision. It will not therefore be eligible for call in. There are no grounds for keeping the contents of this report confidential under the Access to Information Rules.
- 4.5.2 Appointing Grant Thornton without going through a competitive exercise could leave the Council open to potential claims from other providers to whom the work may be of interest that the Council has not been wholly transparent. It should be noted that case law suggests that the Council should always consider whether a contract of this value might be of interest to providers in other EU Member States, and if it would, whether the opportunity should be subject to a degree of European wide advertising. If it were minded to advertise, it would be for the Council to decide what level of advertising was appropriate given 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.
- 4.5.3 Due to relatively small value of the contract, and the scope and nature of the services, it is felt that the work would not be of interest to suppliers in other EU Member States
- 4.5.4 There is also 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. Whilst it is not considered that such an investigation would necessarily result in a finding of maladministration, such investigations are by their nature more subjective than legal proceedings.
- 4.5.5 Although there is no overriding legal obstacle preventing a waiver of CPR's 3.1.15, 8.1 and 8.2, the above comments should be noted. In making a final decision, the Director of City Development should be satisfied that the course of action proposed represents best value for money to the council.

## **4.6 Risk Management**

The Council needs to obtain independent professional economic and financial advice in order to assess whether the arrangements are compliant with the State aid rules. In addition, the Council needs to make an appointment as quickly as possible to ensure that the advice it requires is obtained by the end of June 2017 so as not to prejudice the development of the North/South stand in time for the 2019 Cricket World Cup. If the Council does not obtain this advice it will not be in a position to enter into the documentation required.

## **5 Conclusions**

For the reasons set out in this report it is recommended that Grant Thornton UK LLP be appointed as soon as possible to provide the advice the Council requires and that Contract Procedure Rules should be waived so as to facilitate this.

## **6 Recommendations**

The Director of City Development is recommended to approve the waiver of Contract Procedure Rules 3.1.15, 8.1 and 8.2 and appoint Grant Thornton UK LLP to provide advice in connection with the funding arrangements for the redevelopment of Headingley Stadium.

**7 Background documents**

None.