

**Report of: Business Manager – Waste Management**

**Report to: Chief Officer Waste Management**

**Date: 2<sup>nd</sup> May 2017**

**Subject: Request to waive CPR 8.1 and 8.2 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: <b>10.4 (3)</b> Appendix number: <b>Appendix 1</b>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

**SUMMARY OF MAIN ISSUES**

The current formal contract for the collection and re-use of paint expires on 21<sup>st</sup> May 2017.

Paint continues to be collected at all eight of the Household Waste Recycling Centres (HWRC) with 340 tonnes being collected January to December 2016.

The existing contractor, Seagulls Re-use Ltd., is a social enterprise, who for 15 years has delivered reused paint to the Leeds community, support to local disadvantaged people and provide a range of volunteering and employment opportunities in Leeds. As well as this they are working with Leeds Council's Housing Services and its contractors to supply a range of new paint products which they now stock.

Seagulls have been identified as the only organisation which can provide this unique service with the added social benefits which they offer. Informally testing the market has demonstrated that overall, and taking into account the Social Value, they can offer better value for money than private sector organisations who can deal with this waste stream. As such the Service now wishes to extend the existing arrangement for 6 months without seeking competition.

The longer term intention is to scope a future contract beyond this time for a term of 5 years, which will provide both confidence in the ongoing value for money of these

arrangements and longer term certainty required by the contractor in order to be able to develop the business and maximise the potential for further social benefit.

To let a contract without seeking competition, Chief Officer authorisation must be given to waive Contract Procedure Rules 8.1 and 8.2.

## **RECOMMENDATIONS**

The Chief Officer Waste Management is recommended to note the contents of this report, approve the waiver of CPR 8.1 and 8.2 in relation to high value procurements, and authorise entering into a new extended arrangement with Seagulls for 6 months beyond the expiry of the existing contract thereby formalising the arrangement through to 21<sup>st</sup> November 2017.

## **1 PURPOSE OF THIS REPORT**

- 1.1 The report seeks to give the Chief Officer Waste Management sufficient information to inform the decision to waive CPR 9.1 and 9.2 in relation to intermediate value procurements and to seek approval 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 value for money for the Council.

## **2 BACKGROUND INFORMATION**

- 2.1 The formal contract for the collection and processing of paint by Seagulls Re-use Ltd expires on 21<sup>st</sup> May 2017.
- 2.2 A short-term arrangement now needs to be put in place to allow continuity of this service while opportunities for wider partnership working with the future long-term provider of this service are fully explored and can be scoped into a longer term contractual arrangement.

## **3 MAIN ISSUES**

- 3.1 The paint reuse market is extremely limited. If the contract had been procured without any consideration of environmental and social benefits then the paint material would have been destined for other disposal/treatment methods.
- 3.2 In addition to the environmental benefits associated with waste re-use, the unique social benefits offered by Seagulls are significant. They established themselves in 2002 with the intention of engaging and supporting local people, by creating volunteering, training and job opportunities, particularly for those facing disadvantage.
- 3.3 They have since won numerous awards, including being recognised at a national level by Defra as an exemplar organisation for the type of service they are delivering.
- 3.4 The current arrangement sees the Council paying Seagulls on a price per tonne collected basis. The annual spend, however, was capped at the start of the current contractual arrangement to protect the Council from rising costs.
- 3.5 Full details regarding the current rates and the cap are provided within the attached confidential Appendix 1.
- 3.6 However, paint volumes brought to the Council's sites by householders have now risen quite significantly since this time, and beyond the level envisaged when the cap was set. These increased volumes have created a pressure for Seagulls, with them currently expecting to reach the Council's existing annual price cap some months before the end of the year. In light of these increased tonnages, it is now considered reasonable to remove this price cap, and to replace it with a new pricing mechanism which includes reduced prices per tonne based on banded tonnages. It is on this basis that the Service is proposing to extend the existing contract with Seagulls. Full details of this proposal are provided within Appendix 1.

- 3.7 In order to manage the risk of escalating costs as a result of further increases in volumes, the Service intends to monitor inputs on the sites more closely going forward, in particular to ensure there is no trade waste paint entering the system.

## **4 CORPORATE CONSIDERATIONS**

### **4.1 Consultation and Engagement**

- 4.1.1 The Executive Member for Environment and Sustainability has been consulted on the approach and is supportive of the proposals. The Chief Procurement Officer and Director of Environment and Communities have also been consulted.

### **4.2 Equality and Diversity / Cohesion and Integration**

- 4.2.1 Awarding the proposed extension without competition provides continuity for the benefits this contract provides the Leeds Community. 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 8.1 and 8.2 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 A recent informal market sounding exercise has also demonstrated that the Seagulls offer is now competitive in the market place alongside other private sector waste disposal/treatment organisations. In addition to this and the environmental benefits of paint re-use, Seagulls also deliver a range of local social benefits which will serve to reduce costs to other public sector services.
- 4.4.3 The existing contractual price cap has not been assumed in the budget for 2017/18, and therefore the reduced rates proposed by Seagulls represent a small saving (£2k) against the budget for the period of the proposed arrangement compared to forecast tonnages.

### **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 would be of interest to contractors in other Member States, and, if so, it 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 Due to the nature of the services being delivered, market sounding information, the relatively low value of the contract and the requirement for the services to be performed in the City of Leeds, it is deemed unlikely that this would 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 8.1 & 8.2, the above comments should be noted by the Chief Officer Waste Management in making the final decision as to whether this extension 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, a likely increase in the volume of waste paint being disposed of rather than re-used, and a risk to the future viability of Seagulls and the social and environmental benefits they provide within Leeds.

## **5 CONCLUSIONS**

5.1 It is recommended that the Council enter into a new 6 month extension period with Seagulls beyond the expiry of the existing contract:

- To provide certainty of the service standards that are currently being delivered;
- To safeguard the range of social benefits provided by Seagulls;
- Due to the value for money demonstrated through prices secured through a prior competitive procurement, with market information gained through, and subsequent to, that procurement indicating no alternative providers of this service;
- Based on the intention to deal with the longer-term arrangements for this service through a separate exercise later in the year.

## **6 RECOMMENDATIONS**

6.1 The Chief Officer Waste Management is recommended to note the contents of this report, approve the waiver of CPR 8.1 and 8.2 in relation to intermediate value procurements, and authorise entering into a new extended arrangement with Seagulls for 6 months beyond the expiry of the existing contract thereby formalising the arrangement through to 21st November 2017.

## **7 BACKGROUND DOCUMENTS<sup>1</sup>**

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

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<sup>1</sup> 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.