

**Report of:** Head of Programme, Projects, Programmes and Procurement Unit

**Report to** Director Children and Families

**Date:** 4 January 2018

**Subject:** School's Planned Maintenance Programme 2018: Waiver of Contracts Procedure Rule (CPR) 9.1 and 9.2 to enter into contracts with contractors without competition.

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<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?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

## Summary of main issues

1. The Planned Maintenance Programme seeks to deliver maintenance works to Authority maintained schools, foundation schools and Childrens' centres on school sites in Leeds. The scope of works typically delivered as part of this Programme include electrical services; mechanical services; roofing works; external wall, windows and door replacement; kitchen ventilation; demolition or removal of life expired buildings and Fire Safety works. The work Programme for 2018/19 has a construction value of circa £5.6 million procured through a number of routes, across 43 schools in the city.
2. These works are predominantly delivered during the school summer holiday period to reduce disruption within the learning environments. As a result of this there is often the need to phase projects over a number of years to create a manageable and achievable package of works for each school holiday period.
3. The purpose of this report is to seek approval to waive CPR 9.1 and 9.2 to directly appoint contractors for three specific phase three projects where the same contractor has competitively tendered and successfully delivered phases one and two in 2016/17 and 2017/18. The Chief Procurement Officer has confirmed his agreement to the waiver proposed.
4. The key benefits of directly engaging the contractors that completed the previous phases at each respective school are in relation to the enforcement of warranties to both workmanship and material manufacturers and ensuring a positive relationship between the contractors, client and end users.

5. To ensure that value for money is maintained with the waived projects it is proposed that these contractors are asked to submit a tender and a detailed pricing schedule that is evaluated as per the usual tendering process. Should the prices received not be considered value for money there is sufficient time within the programme to competitively tender these works as per the usual procurement process deployed for this.

## **Recommendations**

1. The Director of Children and Families is recommended to approve the waiver of the following CPRs , subject to the receipt of compliant and value for money tenders, in line with the budget and design freeze estimates, that will be developed as part of the work programme:

- 1.1. CPR 9.1 and 9.2 – High Value Procurements

## 1. Purpose of this report

1.1. The purpose of this report is to seek approval to waive CPR 9.1 and 9.2 in relation to three projects that are to be delivered as part of the School's Planned Maintenance Programme in 2018/19.

## 2. Background information

2.1. The Planned Maintenance Programme seeks to deliver maintenance works to Authority maintained schools, foundation schools and Childrens' centres on school sites in Leeds. The scope of works typically delivered as part of this programme include electrical services; mechanical services; roofing works; external wall, windows and door replacement; kitchen ventilation; demolition or removal of life expired buildings and Fire Safety works.

2.2. The work programme for 2018/19 has a construction value of circa £5.6 million procured through a number of routes across 43 schools. These procurement routes include utilising the internal service provider, engaging in exclusive supplier relationships, combining works with other programmes, such as the Learning Places Programme and seeking external competition.

2.3. These works are predominantly delivered during the school summer holiday period to reduce disruption within the learning environments. As a result of this there is often the need to phase projects over a number of years to create a manageable and achievable package of works for each school holiday period.

## 3. Main issues

3.1. As mentioned at 2.3 there is often a need to phase projects over a number of years to ensure that works can be completed during the school holiday period. Where there is a need to do this and works are delivered through external competition, each phase is tendered individually. There are a number of projects to be delivered as part of the 2018/19 work programme that are on to their third phase or fourth phase. The decision maker is requested to waive the requirements of CPR 9.1 and 9.2 in relation to these schemes to enable the Authority to enter into contract with the contractors that delivered a minimum of two phases in previous years for the below schemes.

Scheme	Works	Outline value	Contractor
Parklands Primary School	Windows/ external enveloping	£57K	Kingfisher
Beeston Primary School	Roofing	196K	Jennings
Brudenell Primary School	Roofing	£86K	SBS

3.2. The above contractors have demonstrated value for money in previous years programmes and have successfully, competitively tendered for at least two previous phases of these projects. These tendering exercises have been stringently evaluated by colleagues in NPS on a price only, standby or withdraw basis. As a result of these competitive exercises the above contractors have been awarded the works as the tenders had been considered value for money in line with the client budget, design freeze and pre-tender estimates. In order to ensure that this value for money is maintained going forward for the above projects in the next phase it is proposed that these contractors are requested to submit a tender and a detailed pricing schedule that is evaluated as per the usual tendering process. Should the prices received not be considered value for money there is sufficient time within the programme to competitively tender these works as per the usual procurement process deployed for this programme.

- 3.3. In terms of the performance of these contractors in relation to the aforementioned schemes, detailed contractor performance reports have been developed for each phase of the projects by both Childrens' Services and NPS. All of the above contractors have received positive performance reports and have been recommended for future invitations to tender. Where there have been any issues during the works period all contractors have been engaged as part of the works progress meetings and all issues have been resolved prior to completion of the works and handover.
- 3.4. A key benefit of directly engaging with these contractors is that the warranties for the works are with the same contractor for the entire project thus making the enforcement of these warranties simpler, quicker and more successful. This is particularly relevant on the roofing projects as there can often be issues with regard to warranties where different contractors have carried out works on the same roof space. This typically occurs where any leaks, defects or problems occur around the join of the works which can result in making it difficult in identifying who is accountable for rectifying the issues. This process can be time consuming and can impact upon the relationship with the end user and the Authority.
- 3.5. Another advantage of this approach is that the end users are able to maintain a relationship and have a single point of contact with the contractor; this has been shown to improve engagement and co-operation with key personnel within the school setting historically. In addition to this, as the timescales for completion of works on site is typically condensed and has critical milestones that cannot be amended there is a significant benefit of the contractors being aware of the constraints and restrictions to the respective school sites. This encourages a smoother and more timely delivery of the works during the school holiday period, thus reducing the disruption during term time.
- 3.6. In addition to this, all of the contractors that the programme is seeking to directly appoint are based in West Yorkshire which supports the Council priority of engaging local contractors, supporting the local economy and creating work opportunities for local people.
- 3.7. As mentioned at 2.2, the programme this year is projects across 43 schools, so should the waiver of CPR 9.1 and 9.2 with respect to the projects mentioned above be approved, the project team are still seeking to engage the market to source competition at a number of other schools ensuring that value for money is achieved across the programme holistically.

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

- 3.8. The key risk to not approving this waiver request is that if a different contractor was successful for the final phases of these projects this could cause issues with warranties, in particular with roofing where different contractors have carried out works on the same roof space it is difficult to identify who is accountable to rectify any issues such as leaks or defects.
- 3.9. By not approving this waiver request there will be additional schemes to tender as part of the programme, which could result in a reduced level of competition and poor rate of tender returns due to the volume of schemes being tendered over the coming months. In addition to this, should the appropriate contractors not be secured at the earliest opportunity, there is a risk that the schemes may not be delivered due to the limited capacity within the supply chain to carry out the works within the required period.

### **Advertising**

- 3.10 The previous phases of these schemes were originally procured through Construction line. Construction line is a government endorsed database which enables suppliers to register to tender for opportunities across a range of works and consultancy sectors. The above contractors were originally identified through a randomly generated list of contractors that met the specific needs of the project in terms of its value, location, scope etc. The individual tendering opportunities were then published and managed via YORtender, the Council's e-

tendering module. Following the successful competitive tendering of the works and completion on site, contractors were evaluated on their performance in a number of areas, including, financial aspects such as submission of account information etc, and operational criteria such as management of the works on site, adherence to the programme, compliance with the specifications etc. Due to the positive performance data collated for each project, the successful tenderers were then invited to tender, competitively, for the second phase of the works following the same procurement process that was adopted for the previous phase. The aforementioned contractors were then successful in tendering for the next phase of the works. This contract opportunity has not been advertised. The contract value is below the current EU threshold, so there is no requirement for the contract to be tendered in accordance with the Public Contracts Regulations but there is a requirement to comply with the Council's Contract Procedure Rules.

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

4.1.1 Officers in PPPU have consulted with senior colleagues in Children and Families and NPS (designer and technical advisor with respect to the work programme) who are fully in support of this approach due to the reasons mentioned in section 3 of this report. Leeds Building Services have also been approached with respect to the delivery of these projects, as per CPR 3.1.4, and have declined these specific projects.

4.1.2 The Chief Procurement Officer has been consulted and agreed with the proposed Waiver.

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

4.2.1 The recommendations within this report do not have any direct nor specific impact on any of the groups falling under equality legislation and the need to eliminate discrimination and promote equality.

### **4.3 Council Policies and Best Council Plan**

4.3.1 These works will contribute towards the modernisation of school buildings within the city, creating good quality, safe, warm and watertight learning environments for the children of Leeds, supporting the 2016/17 Best Council Plan outcomes for everyone in Leeds to 'Do well at all levels of learning and have the skills they need for life'; 'Be safe and feel safe' and 'Enjoy happy, healthy, active lives'. The works also contribute to the vision in the supporting Children and Young People's Plan 2015-19 to build a child-friendly city with a focus on ensuring all children and young people are safe from harm; do well at all levels of learning and have the skills for life; enjoy healthy lifestyles; have fun growing up; are active citizens who feel they have a voice and influence. In addition, the works will ensure that the Council is complying with its legal responsibilities with regards to health & safety legislation and maintaining occupant safety.

4.3.2 Prior to the exploration of this option Leeds Building Services were consulted, as detailed at 4.1.1 and they declined the opportunity to deliver these specific projects.

### **4.4 Resources and Value for Money**

4.4.1 As detailed at 3.2 it is proposed that prior to entering into a sole supplier relationship for the above schemes, the respective contractors are requested to price the projects in the usual manner to ensure that the costs received demonstrate value for money. Should the situation arise where it is not deemed value for money to directly appoint the contractors detailed there is sufficient time within the programme to tender these projects competitively alongside the other projects in the programme.

## **4.5 Legal Implications, Access to Information and Call In**

- 4.5.1 As a key decision with respect to the approval to deliver the 2017/18 work programme has already been taken, this subsequent decision, proposing the waiver of CPR9.1 and 9.2, should be considered as a Significant Operational Decision and not be subject to call in.
- 4.5.2 Due to the total value of the proposed projects being delivered through this waiver being below the OJEU threshold, these projects are not subject to EU procurement regulations.
- 4.5.3 Giving the work to these contractors without competition could leave the Council open to a potential claim from other contractors, to whom this work could be of interest, that it has not been wholly transparent. In terms of transparency it should be noted that Contracts Procedure Rules suggests that contracts of this value should be subject to a degree of advertising. It is up to the Council to decide what degree of advertising is appropriate. In giving the work to these contractors without competition there is a potential risk of challenge from other contractors who have not been given the chance to tender for this opportunity.
- 4.5.4 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.
- 4.5.5 Whilst there is no legal obstacle preventing the waiver of CPR 9.1 and 9.2, the above comments should be noted when making the final decision, the Director of Children and Families should be satisfied that the course of action chosen represents Best Value for the Council.

## **Risk Management**

- 4.5.6 It is proposed that the risks in relation to these projects are managed in line with the wider work programme. The programme of works will be carried out in accordance with LCC policies and standards. Risk is to be managed through application of 'best practice' project management tools and techniques via the City Council's 'PM Lite' risk methodology. Experienced Project Management resource has been allocated from within Children and Families.
- 4.5.7 Operational risk will be addressed through compliance with CDM Regulations, Building Regulations and HSE requirements, along with close supervision of contractors on site and continual liaison with the respective schools. This will be monitored by NPS and the Client. These procedures will ensure the highest possible standards and control measures in regard to Health & Safety relating to all occupants whilst works are being undertaken.
- 4.5.8 Updated spend profiles are to be reported to the Children and Families Programme, Risk and Control Group on a quarterly basis and approval sought in relation to proposed actions, in order to mitigate any financial risks. Monthly Checkpoint Reports will also be submitted over the period July to September to ensure that there is a full oversight of any issues that may occur during delivery of the individual projects.

## **5 Conclusions**

- 5.1 In conclusion, this report outlines the key benefits associated with waiving CPR 9.1 and 9.2 to directly engage contractors with respect to the delivery of three specific, phased projects in the planned maintenance programme. These projects are Parklands window replacement, Beeston roofing works and Brudenell roofing works. The key benefits of directly engaging the contractors that completed the previous phases at each respective school are in relation to the enforcement of warranties to both workmanship and manufacturers. This approach also encourages a positive relationship between the contractors, client and end users. The report also outlines how value for money will be maintained for these projects and the wider programme.

## **6 Recommendations**

- 6.1 The Director of Children and Families is recommended to approve the waiver of the following Contracts Procedure Rule, subject to the receipt of compliant and value for money tenders, in line with the budget and design freeze estimates, that will be developed as part of the work programme:
- 6.2 Contracts Procedure Rules No 9.1 and 9.2 – High Value Procurements

## **7 Background documents**

- 7.1 None