

Waiver report

Request to waive the CPR's no 7.1, 8.1 and 8.2 for various purchases that the Sport and Active Lifestyles service require.



Report of Service Improvement Officer

Report to Head of Sport and Active Lifestyles

Date: 2nd February 2018

Subject: Request to waive Contract Procedure Rules 7.1, 8.1 and 8.2 in order to procure a variety of goods and services required by the Sport and Active Lifestyles 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: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. The Sport and Active Lifestyles service purchase a number of low and intermediate value goods and services annually, where the requirement is to obtain three tenders under Contract Procedure Rules (CPRs). In the instances highlighted in this report, this procedure is impractical as research has ensured that there is no competition in the marketplace for each organisation identified.
2. The expected value of these contracts is £82,500 per annum.
3. This report identifies the goods and services required and seeks approval to waive CPRs 7.1, 8.1 and 8.2 in a single report in order to ensure an efficient use of staff time and resources.

Recommendations

4. The Head of Sport and Active Lifestyles is recommended to approve the waiver of Contracts Procedure Rules no 7.1, 8.1 and 8.2. and enter into 12 month contracts with the following organisations without seeking competition –
- (i) **Institute of Swimming (IOS):** *For the provision of staff training working in and around the swimming pools to Swim England's guidelines. The contract is due to commence on the 2nd February 2018 and expire on the 1st February 2019 with an estimated contract sum of £15,000.*
 - (ii) **Fin2Fit:** *A specialist swim class where participants wear mermaid style fins. 'Fin2Fit' are a brand, and the only one of their type that has accreditation with Swim England. Therefore no other competitor is available that meets the required industry standards. The contract is due to commence on the 2nd February 2018 and expire on the 1st February 2019 with an estimated contract sum of £9,000.*
 - (iii) **Community room hire:** *The Sport and Active Lifestyles service require the use of various venues in order to provide a full programme of activities in the community. The activities organised in these premises tend to be for service users who are unable to attend leisure and wellbeing centres for a variety of reasons. Therefore the location in the community is important. The contract is due to commence on the 2nd February 2018 and expire on the 1st February 2019 with an estimated contract sum of £15,000.*
 - (iv) **Later Life Training** – *'Later Life Training' 'Later Life Training' provide the entire training pathway for Exercise Instructors who work with people who have mobility problems. They deliver Level 2, Level 3 and Level 4 training that is recognised by Cimspa and REPS. There is no other company that provides that training pathway or level of training across the UK. The contract is due to commence on the 2nd February 2018 and expire on the 1st February 2019 with an estimated contract sum of £17,000.*
 - (v) **Pump and Pool:** *'Pump and Pool' provide the maintenance of pool vacuum cleaners that are used in swimming pools. A representative of the Sport and Active Lifestyles service recently researched the market to obtain 3 quotes for the service and maintenance of the pool vacuum cleaners. However it became clear following this investigative work that 'Pump and Pool' were the only provider able to offer the service for these particular products in the UK. The contract is due to commence on the 2nd February 2018 and expire on the 1st February 2019 with an estimated contract sum of £7,700.*
 - (vi) **Core Business Services:** *'Core Business Services' provide a licence which enables software provider XN Leisure to operate the ordering system correctly. No other provider is approved by XN to operate the ordering system. The contract is due to commence on the 2nd February 2018 and expire on the 1st February 2019 with an estimated contract sum of £11,000.*
 - (vii) **Kirklees Active Leisure:** *Leeds City Council do not have a pool that is designed for the development of synchro training. Neighbouring authority 'Kirklees Active Leisure' are the closest organisation able to offer a specialist pool. The contract is due to commence on the 2nd February 2018 and expire on the 1st February 2019 with an estimated contract sum of £2,000.*
 - (viii) **First Aid Industry Body:** *The FAIB are an organisation who are responsible for regulating first aid training carried out by local authorities. As the industry*

regulator the service is required to use this body. The contract is due to commence on the 2nd February 2018 and expire on the 1st February 2019 with an estimated contract sum of **£1,500**.

- (ix) **Facebook:** The Sport and Active Lifestyles marketing team uses different forums in order to promote the various campaigns that are delivered throughout the year. Facebook has a greater reach and historically provides exposure to a larger demographic than other social media providers. This traffic is constantly monitored by the marketing team. The contract is due to commence on the 2nd February 2018 and expire on the 1st February 2019 with an estimated contract sum of **£300**.
- (x) **Dive Gym Equipment:** 'Dive Gym Equipment' are the only UK based company recognised by Swim England who import, install, service and maintain the specialised duraflex board that the high level divers based in the city, require in order to maintain their high level training schedule. The contract is due to commence on the 2nd February 2018 and expire on the 1st February 2019 with an estimated contract sum of **£1,500**.
- (xi) **Swatch:** 'Swatch' provide the annual servicing of the swimming pool time clock at the John Charles Centre for sport Aquatics centre. A representative of the Sport and Active Lifestyles service recently researched the market to obtain 3 quotes for this service. However the only UK based organisation who had the skills and expertise for this requirement was 'Swatch' The contract is due to commence on the 2nd February 2018 and expire on the 1st February 2019 with an estimated contract sum of **£2,500**.

1 Purpose of this report

- 1.1 The purpose of this report is to seek approval from the Head of Sport and Active Lifestyles to wave CPRs 7.1, 8.1 and 8.2 for the purchase of goods and services described at section 3 of this report and to enter into a 12 month agreements with the organisations listed without seeking competition.

2 Background information

- 2.1 Leeds City Council's Sport and Active Lifestyles Service require the goods or services of a variety of partners in order to operate and provide a service for its members within Leeds. The majority of these goods and services are procured via a full tender process or following the response of 3 competitive quotes.
- 2.2 However there are some goods or services that can only be adequately provided by one particular supplier and therefore it is not practical to obtain 3 tenders in accordance with CPR's,
- 2.3 Previously, orders raised directly with the suppliers listed at section 3 below have been deemed non-compliant with CPRs (as competition has not been sought) resulting in "one off" waiver reports being written for each individual contract, taking time and resources away from service provision.

3 Main issues

3.1 Reason for contracts procedure rules waiver

- 3.1.1 The reason for this waiver is to ensure compliance with CPRs. Producing one waiver report annually for these goods and services saves time and resources involved in obtaining individual waivers for each contract.
- 3.1.2 The organisations listed below are covered under this waiver. The contracts that require to be waived are as follows:
- (i) **Institute of Swimming (IOS)**: *For the provision of staff training working in and around the swimming pools to Swim England's guidelines. The contract is due to commence on the 2nd February 2018 and expire on the 1st February 2019 with an estimated contract sum of £15,000.*
 - (ii) **Fin2Fit**: *A specialist swim class where participants wear mermaid style fins. 'Fin2Fit' are a brand, and the only one of their type that has accreditation with Swim England. Therefore no other competitor is available that meets the required industry standards. The contract is due to commence on the 2nd February 2018 and expire on the 1st February 2019 with an estimated contract sum of £9,000.*
 - (iii) **Community room hire**: *The Sport and Active Lifestyles service require the use of various venues in order to provide a full programme of activities in the community. The activities organised in these premises tend to be for service users who are unable to attend leisure and wellbeing centres for a variety of reasons. Therefore the location in the community is important. The contract is due to commence on the 2nd February 2018 and expire on the 1st February 2019 with an estimated contract sum of £15,000.*
 - (iv) **Later Life Training** – *'Later Life Training' 'Later Life Training' provide the entire training pathway for Exercise Instructors who work with people who have mobility problems. They deliver Level 2, Level 3 and Level 4 training that is recognised by Cimspa and REPS. There is no other company that provides that training pathway or level of training across the UK. The contract is due to commence on the 2nd February 2018 and expire on the 1st February 2019 with an estimated contract sum of £17,000.*
 - (v) **Pump and Pool**: *'Pump and Pool' provide the maintenance of pool vacuum cleaners that are used in swimming pools. A representative of the Sport and Active Lifestyles service recently researched the market to obtain 3 quotes for the service and maintenance of the pool vacuum cleaners. However it became clear following this investigative work that 'Pump and Pool' were the only provider able to offer the service for these particular products in the UK. The contract is due to commence on the 2nd February 2018 and expire on the 1st February 2019 with an estimated contract sum of £7,700.*
 - (vi) **Core Business Services**: *'Core Business Services' provide a licence which enables software provider XN Leisure to operate the ordering system correctly. No other provider is approved by XN to operate the ordering system. The contract is due to commence on the 2nd February 2018 and expire on the 1st February 2019 with an estimated contract sum of £11,000.*

- (vii) **Kirklees Active Leisure:** Leeds City Council do not have a pool that is designed for the development of synchro training. Neighbouring authority 'Kirklees Active Leisure' are the closest organisation able to offer a specialist pool. The contract is due to commence on the 2nd February 2018 and expire on the 1st February 2019 with an estimated contract sum of **£2,000**.
- (viii) **First Aid Industry Body:** The FAIB are an organisation who are responsible for regulating first aid training carried out by local authorities. As the industry regulator the service is required to use this body. The contract is due to commence on the 2nd February 2018 and expire on the 1st February 2019 with an estimated contract sum of **£1,500**.
- (ix) **Facebook:** The Sport and Active Lifestyles marketing team uses different forums in order to promote the various campaigns that are delivered throughout the year. Facebook has a greater reach and historically provides exposure to a larger demographic than other social media providers. This traffic is constantly monitored by the marketing team. The contract is due to commence on the 2nd February 2018 and expire on the 1st February 2019 with an estimated contract sum of **£300**.
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- (xi) **Swatch:** 'Swatch' provide the annual servicing of the swimming pool time clock at the John Charles Centre for sport Aquatics centre. A representative of the Sport and Active Lifestyles service recently researched the market to obtain 3 quotes for this service. However the only UK based organisation who had the skills and expertise for this requirement was 'Swatch' The contract is due to commence on the 2nd February 2018 and expire on the 1st February 2019 with an estimated contract sum of **£2,500**.

3.1.3 The total cost to the service for all of the above is approximately **£82,500 per annum**.

3.2 Consequences if the proposed action is not approved

3.2.1 Sport and Active Lifestyles staff have researched the options available in the market in order to obtain 3 quotes as per contract procedure rules in each instance highlighted in this report. However they were unable to find alternatives to the companies a waiver would enable us to use. If a waiver is not agreed then agreements will either be entered into 'off contract' which is against council procedures, or not at all which would mean that the service would be unable to function effectively.

3.3 Advertising

3.3.1 For each of the requirements outlined in this report, members of the Sport and Active Lifestyles service have researched the market and concluded that only the

organisations named are able to provide the goods or services required. Therefore it is not proposed to advertise the opportunity to provide these goods or services.

4 Corporate considerations

4.1 Consultation and engagement

4.1.1 Sport and Active Lifestyles staff members have been consulted about the services needs and requirements. The request to waive CPR's no 7.1, 8.1 and 8.2 for the purchase of goods and services described in this report have been made following consultation with the teams affected.

4.1.2 The Projects, Programmes and Procurement Unit are aware of the contents of this report and have provided constructive feedback on its contents. The team's solicitor has reviewed the document and made their recommendations.

4.2 Equality and diversity/cohesion and integration

4.2.1 There are no equality and diversity/cohesion and integration issues with the contents of this report.

4.3 Council policies and best council plan

4.3.1 The contents of this waiver are part of the following council policies:

- Best Council Plan
- Vision for Leeds

4.4 Resources and value for money

4.4.1 Following research carried out by representatives from the Sport and Active Lifestyles service, waiving CPRs 7.1, 8.1 and 8.2. for the purchase of goods and services described in this report is deemed to be the best value for money option available.

4.4.2 The alternative options would be for Sport and Active Lifestyles staff to attempt 3 quotes for each good or service. However as described elsewhere in the report the market has been researched by staff working in the area, and there is no alternative available to these named providers. Therefore the resources and associated cost would almost certainly prove not to be good value for money.

4.5 Legal implications, access to information and call-in

4.5.1 This is a Significant Operational Decision and is not subject to Call In. There are no grounds for treating the contents of this report as confidential under the Council's Access to Information Rules.

4.5.2 Awarding the new contracts direct to the providers 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. In terms of transparency it should be noted that case law suggests that the Council should always consider whether contracts of this value could be of interest to contractors on other EU member states

and, if it could, the opportunity should be subject to a degree of European wide advertising. It is up to the Council to decide what degree of advertising would be appropriate. In particular, 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.

- 4.5.3 The Head of Sport and Active Lifestyles has considered the above and, due to the nature of the services being delivered and the relatively low contract values is of the view that the scope and nature of the services is such that it would not be of interest to providers in other EU member states.
- 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 Although there is no over-riding legal obstacle to preventing the waiver of CPRs 7.1, 8.1 and 8.2 by putting in place this contract, the contents of this report should be noted. In making the final decision, the Head of Sport and Active Lifestyles should be satisfied that the course of action chosen represents best value for money.

4.6 Risk management

- 4.6.1 The risk of following the recommendations of this report are that there might be a supplier for one or more of the goods or services identified. However as staff who work in the sector are aware of the market this is unlikely.
- 4.6.2 The risk of ignoring the recommendations of this report are that operations will be slowed down or even brought to a halt as orders raised are deemed to be none compliant.
- 4.6.3 Alternatively the writing of a number of waiver reports would take significantly longer than just the one. In addition the checking by a senior officer and local member would take their time away from other council business. Therefore there is a risk that not following the contents of this report would take away more resources with a different outcome unlikely.

5 Conclusions

- 5.1 The conclusion of this report is that the waver of CPRs 7.1, 8.1 and 8.2 for the purchase of goods and services described in this report, would be the best course of action in this instance.

6 Recommendations

- 6.1 The Head of Sport and Active Lifestyles is recommended to approve the waiver of Contracts Procedure Rules no 7.1, 8.1 and 8.2. and enter into 12 month contracts with the following organisations without seeking competition –

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7 Background documents

7.1 There are no background documents.