

registration of a report requesting a waiver or the invocation of contracts procedure rules

N.B. This proforma is used to register all reports seeking a waiver of the council's contracts procedure rules (CPRs) or where CPRs are being invoked under exceptional circumstances. This proforma is completed by the procurement unit and internal audit after receipt of a draft report from the client. By the power vested in us, our comments (see below) represent the opinion of the director of resources. These observations and recommendations must be taken into consideration if redrafting is necessary. If no revisions are required, the original report must be submitted to the 'client' director alongside these comments so that they can make an informed decision as to whether the proposals should be upheld.

registration detail

report title: Leeds Arena project, additional fee payment to Cobbetts LLP

for consideration by the director/chief officer of: city development

registration number: 2308

originator: Chris Coulson

telephone number: 74459

date received by procurement unit: 01/08/11

comments of the corporate procurement unit and the internal audit division

procurement unit - comments

It should be noted that it is a requirement of European case law that contracts of this value are subject to a degree of advertising. It is up to the council to decide what degree of advertising is 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.

In approving the waiver without competition, there is a risk of challenge from other potential providers who have not had the chance to bid for this contract. That said, Cobbetts have already completed at least some of their additional duties and there is merit in continuing with them based on their comprehensive background knowledge of the previous legal work undertaken for the arena project. The rationale underpinning the need to retain various consultants for the scheme for longer than originally envisaged is the fact that there were affordability issues with the original arena proposals, which needed to be addressed through further focussed work.

The director of city development should be satisfied that 'best value for money' is being obtained.

internal audit division - comments

There is a Risk of third party challenge from providers who have not been able to bid for the work. However as noted in point 6.2 of the report it makes sense that Cobbetts should provide the additional work as they have been working on the scheme since 2007 and taking in to account the knowledge they have gained of the project over the last four years.

There is also a risk that Value for Money cannot be demonstrated without undertaking a tendering exercise. Point 1.6 of Appendix 1 states that 'In terms of ensuring the Council achieves value for money for the additional work, the fee rate to be charged by the company is based on the daily rates that the company originally quoted when they successfully tendered for the area appointment through a competitive OJEU procurement process, however the only way to conclusively demonstrate value for money is by undertaking a tendering exercise.

The director of city development should only approve the waiver if satisfied that the benefits of the proposed course of action outweigh the risks outlined above.

In the opinion of the director of resources, amendments (as detailed above) are/are not* necessary prior to submission of the report to the departmental director. Under contracts procedure rules (see CPR 37.1), if the comments of the director of resources are not in agreement with the proposals, the client director must not make the decision but must refer the matter to the 'city solicitor' for a final decision.

signed by an officer within the procurement unit:

Peter Leighton-Jones

date: 04/08/11

signed by an officer within the internal audit division:

Tayba Amber

date: 09/08/11

copy must be retained on file by the procurement unit

comments returned to client by e-mail - date: 09/08/11

* delete as appropriate