

Report from Head of Facilities Management

Report to Director of Resources and Housing

Date: 1st March 2018

Subject: To approve the use of Regulation 32 (9) of the Public Contracts Regulations 2015 and directly award contracts for the supply of trade waste and recycling services to the existing suppliers for a period of 9 months from the 1st July 2018

| | | |
|--|---|--|
| 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 checked="" type="checkbox"/> Yes | <input 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

This report is regarding the award of contracts for the 3 individual lots, which as a whole make up the trade waste and recycling contract. The Council Trade Waste Contract provides waste disposal and recycling services to all Council properties (non domestic) for the purpose of managing council commercial waste and confidential waste destruction services.

The main Lots (Lot 1 & Lot 2) for Wheeled Bin Services, and Corporate Skips Services are to be directly awarded to the current contractor for these services, Associated Waste Management. Lot 3 is for Confidential Waste Destruction and is also to be awarded to the current contractor, M.J. McCarthy Ltd. There are no performance or quality concerns with either of the current service providers.

The contracts are important to ensure the council conforms to current Environmental Legislation, and manages its own waste in a sustainable and legal manner. The existing contract is due to expire on the 30th June 2018 however the OJEU contract notice published when this contract was procured included the following narrative;

“Tenderers should note that if the council wish to carry out new services at the end of this contract, which are a repetition of the services detailed in this notice, then those additional

services may be awarded using the negotiated procedure without publication of a notice in accordance with regulation 14 (1) (d) (ii) of the Public Contracts Regulations 2006". This provision is substantially repeated in Regulation 32 (9) of the Public Contracts Regulations 2015 which states –

“Additional ground relevant to new works or services which repeat similar ones

(9) The negotiated procedure without prior publication may be used for new works and services consisting of the repetition of similar works or services entrusted to the economic operator to which the same contracting authority awarded an original contract, provided that such works or services are in conformity with a basic project for which the original contract was awarded.

As a result we are allowed to award these contracts direct to the current providers without seeking further competition yet still in compliance with the Public Contracts Regulation 2015.

Recommendations

The Director of resources and Housing is recommended to approve the use of Regulation 32 (9) of the Public Contracts Regulations 2015 and directly award contracts for the Supply of Trade Waste and Recycling Services across the 3 Lots to –

Lot 1 to Associated Waste Management for the period 1st July 2018 to 31st March 2019 in the sum of £284,000;

Lot 2 to Associated Waste Management for the period 1st July 2018 to 31st March 2019 in the sum of £453,000; and

Lot 3 to M.J. McCarthy Ltd for the period 1st July 2018 to 31st March 2019 in the sum of £39,000

1. Purpose of this report

1.1 The purpose of this report is to seek approval to use of Regulation 32 (9) of the Public Contracts Regulations 2015 and directly award contracts for the supply of waste collection and treatment services to the existing suppliers for a period of 9 months from 1st July 2018, to ensure continuation of commercial waste and recycling services to Council Properties and Depots.

2. Background information

2.1 The council's trade waste contract provides waste disposal and recycling services commercial waste. 96 schools also access the contract for LOTS 1 and 2 the contract provides a wheeled bin service to council premises for standard waste and recycling services, a corporate level skip waste service, and confidential waste destruction services. Lot 3 - Confidential waste is contracted to M.J. McCarthy Ltd, and Lots 1 and 2 covering the other commercial waste services are contracted to Associated Waste Management (AWM). This corporate level contract is currently managed through the Civic Enterprise Leeds and budgeted as part of general building services across council properties.

- 2.2 The previous procurement exercise was restricted procedure advertised in the OJEU in November 2012 for a period of 1.7.2013 to 30.6.16 with an option to extend by 2 x 12 months. It was advertised with a value of £5.5 million. Leeds Beckett University was included in this contract however they have elected to now manage their own waste collection contract and will not to be included in any future contracts. There was initially a LOT 4 which was for WEEE items but that lot wasn't included in the extension periods.
- 2.3 There are no performance or quality concerns with the current service providers. The contracts are important to ensure the council conforms to current environmental legislations and manages its own waste in a sustainable and legal manner. It is also important to maintain a confidential waste destruction service to deal with sensitive documents requiring disposal in line with the council's responsibilities under the Data Protection Act.
- 2.4 The above existing contracts are now due to expire on 30th June 2018.

3. Main issues

- 3.1 The council trade waste contract provides waste disposal and recycling services to all council properties (non-domestic) for the purpose of managing council commercial waste and confidential waste destruction services is due to expire on the 30th June 2018. The contract can also be accessed by schools of which 96 have taken the opportunity to use it since 2013. Lot 1 and Lot 2 (wheeled bin services, and corporate skips services) were originally awarded to Associated Waste Management with Lot 3 (confidential waste) being awarded to M.J. McCarthy Ltd.
- 3.2 To allow time for a review of the lots and full procurement exercise to be completed it is proposed to directly award new contracts directly to the existing service providers without seeking competition on a 9 months basis from 1st July 2018. We can award direct to the existing providers as the current contract contained the following narrative;

Tenderers should note that if the council wish to carry out new services at the end of this contract, which are a repetition of the services detailed in this notice, then those additional services may be awarded using the negotiated procedure without publication of a notice in accordance with regulation 14 (1) (d) (ii) of the Public Contracts Regulations 2006.

This provision is substantially repeated in Regulation 32 (9) of the Public Contracts Regulations 2015 which states –

“Additional ground relevant to new works or services which repeat similar ones

(9) The negotiated procedure without prior publication may be used for new works and services consisting of the repetition of similar works or services entrusted to the economic operator to which the same contracting authority awarded an original contract, provided that such works or services are in conformity with a basic project for which the original contract was awarded.

As a result we are allowed to award these contracts direct to the current providers without seeking further competition yet still in compliance with the Public Contracts Regulation 2015.

- 3.3 Discussions have taken place with both of the existing suppliers regarding the costs to continue the service, Associated Waste Management have agreed that subject to being awarded an extension to only increase Lot 2 (skip services) by 3%, with no increase on Lot 1. The 3% increase on Lot 2 items is estimated to increase costs by £10,100. M.J. McCarthy Ltd have agreed subject to being awarded an extension to hold and not increase prices on Lot 3 items.
- 3.4 There are no performance or quality concerns with the current service providers. The contract is important to ensure the council conforms to current environmental legislations and manages its own waste in a sustainable and legal manner. It is also important to maintain a confidential waste destruction service to deal with sensitive documents requiring disposal in line with the council's responsibilities under the Data Protection Act.

4. Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 Consultation has taken place with officers from Facilities Management who have confirmed that there are no performance issues relating to either Associated Waste Management or M.J. McCarthy Ltd. In addition the Projects Programmes and Procurement Unit have advised that each of these lots can be awarded directly to the relevant provider.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 The above considerations in this section are embedded into the procurement procedure, and are considered as a matter of course where appropriate at service delivery.

4.3 Council policies and City Priorities

- 4.3.1 The trade waste contract is essential for sustainable waste management of the council's own commercial waste, and related legal compliance. The way the council deals with its waste is an exemplar to businesses within the Leeds City Region.
- 4.3.2 The contract serves to cover the council's obligations under Section 45 of the Environmental Protection Act, and also the Data Protection Act.

4.4 Resources and value for money

- 4.4.1 The contract is funded across the council at a service user level, as part of standard building services, with a budget appropriate to cover the estimated service costs. Discussions have taken place with both service providers to minimise the impact of any price increases. These discussions have proven to be useful minimising the

impact of any price increases to only LOT 2 items by 3%. This will give a projected increase of £10,100 over the 9 month period.

- 4.4.2 The basis of the contract as a pay by weight contract enables the council to reduce its waste costs by maximising recycling, and improving waste management across the council. Additional rebates exist in the pricing to further increase benefits from improved internal management.
- 4.4.3 Landfill diversion technologies utilised by awarded contractors further reduce cost of waste disposal by avoiding landfill tax charges.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 This is a Key Decision which is subject to call-in and there are no grounds for keeping the contents of this report confidential under the Access to Information Rules
- 4.5.2 There is the potential risk of challenge that the ground for using the negotiated procedure without publication of a notice in accordance with the Public Contracts Regulations 2015 is not justified, and that the Council is simply seeking to circumvent the application of the procurement rules. However, due to the reasons set out in Section 3 of this report it is difficult to see how such a challenge would succeed. In addition, this risk can be diminished further by the publication of a voluntary transparency notice in OJEU immediately after the decision to award the contract has been taken and then waiting 10 days to see if any challenges are made. If no challenges are made the chances of a claim for ineffectiveness being brought are significantly reduced, and would only be successful if the Council had used the negotiated procedure without publication of a notice incorrectly. Further, publishing such a notice will also start time running for any other potential claim for breach of the Public Contracts Regulations 2015, which must be brought within 30 days of the date that an aggrieved party knew or ought to have known that a breach had occurred.
- 4.5.3 These comments should be noted by the Director of Resources and Housing and in making the final decision as to the award of this contract being the best course of action for the Council and should be satisfied that doing so it represents best value for the Council.

4.6 Risk Management

- 4.6.1 This contract award is required to enable continuation of trade waste services, and allow time for a review of the lots and a full procurement exercise to be completed. Losing control of council commercial waste will leave the council open to prosecution by the Environment Agency, and associated clean up costs.
- 4.6.2 The contract will be managed and monitored through Facilities Management, and Information & Knowledge Management to ensure benefits of service are maximised, and compliance is maintained. The contractor's performance will continue to be measured over the 9 months of the contract.

5. Recommendations

- 5.1 The Director of Resources and Housing is recommended to approve the use of Regulation 32 (9) of the Public Contracts Regulations 2015 and directly award contracts for the Supply of Trade Waste and Recycling Services across the 3 Lots to –
- i. Lot 1 to Associated Waste Management for the period 1st July 2018 to 31st March 2019 in the sum of £284,000
 - ii. Lot 2 to Associated Waste Management for the period 1st July 2018 to 31st March 2019 in the sum of £453,000 and
 - iii. Lot 3 to M.J. McCarthy Ltd for the period 1st July 2018 to 31st March 2019 in the sum of £39,000.

6. Background documents¹

None

¹ 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.