

Report of Section Head Property & Development (Legal Services)

Report to City Solicitor – Legal Services

Date: 19th June 2018

Subject: Approve the waiver of CPR 8.1 and CPR 8.2 to enter into a new contract with Bircham Dyson Bell without seeking further competition, for a period of 16 months.

Are specific electoral wards affected?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, name(s) of ward(s):		
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
If relevant, access to information procedure rule number:		
Appendix number:		
<p>Note: This report will be made public. Therefore you should not include commercially sensitive information in the body of the report but attach it as a separate appendix. Please note that the overall price of the contract will not normally be regarded as commercially sensitive information.</p>		

Summary of main issues

1. Leeds City Council is committed to improving local air quality in Leeds in order to improve the health of its citizens. This ambition and commitment will only be fulfilled with the help of businesses and residents across our city to make changes to their behaviour and the way they travel.
2. On 24th June 2018, Leeds City Council will be reporting to its Executive regarding the proposed Clean Air Zone and authority to commence Statutory Consultation on the range of measures proposed in the final charging scheme.
3. The Council, in complying with the Environmental Act 1995 ("The Act") Air Quality Direction 2007 ("Direction") it must prepare and submit to the Secretary of State a full business case by 15th September 2018 of its preferred approach.
4. The business case must include all details of the package including the Charging scheme which will be promoted in the city. The Charging Scheme is being advanced under the Transport Act 2000 and is an Order which will require confirmation by the Secretary of State. The Order must be drafted in accordance with this Act

5. The drafting of the Order requires specialist legal skills and experience of this particular field in order that it incorporates all relevant facts required under the Act. Bircham Dyson Bell (“BDB”) have been identified as the leading Parliamentary Agents who have the requisite legal skills and experience needed to draft the Order for confirmation.

Recommendations

6. The City Solicitor is recommended to approve the waiver of contracts procedure rules 8.1 and 8.2 and award a contract to Bircham Dysons Bell in the sum £30,0000. The contract shall commence on the 20th June **2018** and expire on the 19th October 2019 to take into account any further amendments required to the Order by the Secretary of State prior to confirmation.

1 Purpose of this report

- 1.1** This report seeks approval from the City Solicitor (Legal Services) to approve the waiver of CPR 8.1 and CPR 8.2 and award a contract with BDB (without seeking further competition), for the drafting and finalisation of the charging scheme Order pursuant to the Transport Act 2000 to be submitted, alongside the full business case pursuant to the Direction, in September 2018.

2 Background information

- 2.1** Clean air is vital for health, quality of life and the environment around us. Polluted air can have a harmful effect on the health of Leeds residents, reducing life expectancy and increasing health inequalities.
- 2.2** In order to improve air quality across the city, Leeds City Council needs its residents and businesses to make small changes in their behaviour to reduce emissions.
- 2.3** Clean Air Leeds ran a positive city-wide campaign for National Clean Air Day on 15th June 2017, and the brand has also been used to promote Phase 1 of the Clean Air Zone consultation – which has received the highest number of responses of any council-run consultation previously.
- 2.4** Leeds City Council has plans (and funding) for a further four, six week, campaigns over the next 12 months in order to continue the momentum and also to promote Phase 2 of the Statutory Clean Air Zone consultation:
- 2.4.1** Promotion of Phase 2 of the Clean Air Zone consultation will include;
- (i) Communications and city-wide engagement for the second National Clean Air Day in June 2018;
 - (ii) Two further 6 x week behaviour change campaigns;
 - (iii) Targeting the impacted sites in Air Quality Management Area (AQMA) hotspots of Morley and Kirkstall for 4 weeks of each of the 4 campaigns; and
 - (iv) Some of the secured sites on inside bus panels to be used by the Council's White Rose Energy communications campaign.
- 2.5** The Air Quality Regulations 2010/1001 have brought Directive 2008/50/EEC in to Domestic Law. Regulation 26 of the Air Quality Regulations include a requirement for the Secretary of State to draw up and implement an air quality plan to achieve the relevant limit or target value of pollutants in ambient air within the shortest possible time.

- 2.6** The Air Quality Plan was published in July 2017 and requires Authorities to set out their initial plans for improving air quality by the end of October 2017 and their final plan by the summer of 2018. Failure to meet these deadlines could be scrutinized or challenged by way of a public law challenge.
- 2.7** On 20th December 2017 Leeds City Council was issued with a Direction that the Council prepare and submit to the Secretary of State a full business case by 15th September 2018 in connection with its duties in respect of air quality under Part 4 of the Environmental Act 1995 and as part of the UK Plan in tackling roadside nitrogen dioxide concentrations 2017. The full business case must set out detailed proposals for a scheme which is the preferred measure to deliver compliance in its area within the legal limit value of nitrogen dioxide in the shortest possible time. Under s85(7) of the Act it is the duty of the council to comply with the Direction given.
- 2.8** The business case must contains 6 main strands in the submitted information to achieve compliance with legal limits of nitrogen dioxide. Under s5(b) and (c) of the Direction the Council is required to confirm that all public consultation necessary in respect of the scheme identified in the Councils business case has been completed. The Council intends to commence formal statutory consultation as per the recommendation in this report which concludes on 11 August 2018 Thereafter the Council intends to fully analyse the responses and present summaries of these responses to its Executive in accordance with s5(c) of the Direction before submission of the final business case to the Secretary of State.
- 2.9** The Statutory Consultation for the Clean Air Zone, which is part of the Council's scheme pursuant to s170 of the Transport Act 2000 will fully consult with local people, the relevant representatives of local persons with regard to business, language and accessibility to information who are directly affected by the scheme in order that the appropriate and material responses are gathered during the six week consultation period. The requirements for consultation and charging schemes permit authorities to undertake consultation as they consider appropriate and this formal stage of consultation represents a second and final focused consultation for the public so the Council gathers the right information in formulating a final scheme for the city.
- 2.10** Phase 2 represent the Statutory Consultation element of the process in finalising a charging scheme for the City. The responses collated during this process are instrumental to shaping the draft order for the Clean Air Zone.

3 Main issues

Reason for contracts procedure rules waiver

- 3.1** It is recommended that BDB are appointed to commence drafting the Order as they are considered to be the most appropriate supplier for this work, taking into account their experience of drafting charging scheme orders under the Transport Act 2000 which include:

- (i) acting as lead advisors for Nottingham City Council in relation to implementation of its Work Place Levy;
- (ii) advising the Mayor of London's office on its Ultra Low Emissions Zone which the Mayor of London has proposed introducing the city's Ultra Low Emission Zone (ULEZ) in April 2019.

- 3.2** A review of the WYLAW Framework has identified only one Parliamentary Agent who does not have the specific expertise and fundamentally, experience for this particular work required for Leeds City Council.
- 3.3** BDB are identified as retaining the appropriate legal skills to undertake the drafting and finalisation of Order and it is therefore recommended that CPRs 8.1 and 8.2 are waived on this occasion, to ensure that this work can be undertaken urgently in order to meet the Direction.

Consequences if the proposed action is not approved

- 3.4** If a decision was taken to open the procurement to competition and require three or more written tenders, this would result in tenders from Parliamentary Agents who do not have the experience of charging schemes implemented in the UK as BDB are the lead advisors in these schemes. To open procurement to competition would result in tenders from non-qualified or inexperienced respondents. There is a real risk that such a delay will prejudice the Council in presenting a draft Order to the Secretary of State as part of its full Business case and **not meet the Direction**. Compliance with the Direction is required.

Advertising

- 3.5** It is not proposed to advertise this opportunity due to the reasons set out in section 3 above.

4 Corporate considerations

4.1 Consultation and engagement

- 4.1.1** Councillor James Lewis has been consulted regarding the proposal and is in support of the recommendation. The Director of Resource and Housing has been consulted and approved the appointment subject to the City Solicitors approval. It was not deemed necessary to consult with members of the public when taking this decision as it relates to the drafting of a legal Order.

4.2 Equality and diversity/cohesion and integration

- 4.2.1** An informal analysis of this procurement has found that it is unlikely that this decision will have any impact on equality and diversity/cohesion and integration as it relates to the

drafting of a legal order.

4.3 Council policies and best council plan

- 4.3.1** This procurement meets the Health & Wellbeing, Transport & Infrastructure and Low Carbon ambitions of the Best Council Plan by committing to improve air quality through a behavioural change campaign which will improve the health of residents, increase public transport patronage and contribute to reducing emissions across the city.

4.4 Resources and value for money

- 4.4.1** The funding for this procurement has been secured from internal budget for the Clean Air Zone. The estimates provided are appropriate taking into account similar work that has been undertaken by BDB for other Councils.

4.5 Legal implications, access to information and call-in

- 4.5.1** Although this decision relates to a spend less than £100,000 and within approved budgets, this decision requires a waiver of Contracts Procedure Rules and is therefore a significant operational decision in accordance with Rule 27.2 of those Rules and will be published on the Council's website in accordance with Executive and Decision Making Procedure Rules 4.3.1. .
- 4.5.2** As a significant operational decision to be taken by an officer this decision will not be subject to Call In.
- 4.5.3** There are no grounds for treating the contents of this report as confidential with the Council's Access to Information Rules
- 4.5.4** Awarding a contract directly to Bircham Dysons Bell in this way could leave the council open to potential claims from other providers to whom this contract may 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 a value above £10K may be of interest to providers in other Member States, and if it would, the opportunity should be subject to a degree of European wide advertising. It would be up to the Council to decide what degree of advertising was appropriate and, 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.
- 4.5.5** The City Solicitor has considered this and due to the relatively small value of the contract and the specialist nature of the services to be provided, is of the view that the scope and nature of the services is such that it would not be of interest to suppliers in other EU Member States

4.5.6 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.

4.5.7 Although there is no overriding legal obstacle preventing the waiver of CPRs 8.1 and 8.2, the above comments should be noted. In making their final decision, the City Solicitor should be satisfied that the course of action chosen represents best value for money.

4.5.8 Risk management

4.6.1 The risk of not proceeding with the decision to waive CPRs 8.1 and 8.2 will result in a delay and presentation of a draft Order alongside the Full Business case will mean that the Council does not meet the 15th September compliance date. The Direction is clear that under s85(7) of the above Act it is the duty of the council to comply with the direction given. This risk cannot be managed as it requires legal compliance on the specified date.

5 Conclusions

5.1 In summary, it is considered that approval to appoint Bircham Dyson Bell Media without seeking further competition will enable the Council to start drafting the Order for Leeds Clean Air Zone and thereby meet the deadline for submission to the secretary of State of 15th September 2018.

6 Recommendations

6.1 The City Solicitor is recommended to approve the waiver of contract procedure rules)8.1 and 8.2 and award a contract to Bircham Dyon Bell n the sum of £30,000. The contract shall commence on the 20thth June **and** expire on the 19th October 2019 to take into account any further amendments required to the Order by the Secretary of State.

7 Background documents

7.1 None.