

Report of Executive Manager Regeneration (Town Centre, Heritage and Buildings)

Report to Director, City Development

Date: 10 September 2018

Subject: Town and District Centres Public Art Project: Request for Waiver of Contract Procedure Rule 8.2, in accordance with Contract Procedure Rule 27, to award a contract to East Street Arts for commissioning and delivering of Kirkstall Public Art project under the Town and District Centres scheme

Are specific electoral wards affected? If relevant, name(s) of ward(s): Kirkstall	<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? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. This report seeks approval for waiver of Contract Procedure Rules so that East Street Arts can be commissioned to design and deliver a piece of public art for Kirkstall district centre. This request supersedes previous approval to waive CPR given by the Director of City Development on 14/01/2016.
2. East Street Arts is a local arts organisation and has an excellent track record in undertaking and completing public art projects under Town & District Centres regeneration scheme and within other regeneration areas in Leeds. Arts projects are best commissioned by negotiation within a cost envelop as opposed to competitive tendering. This allows for client and community input in selecting design, material, orientation and hosting and helps meeting stakeholder expectations and engineer community involvement and ownership.

Recommendation

3. This report seeks waiver of Contract Procedure Rule 8.2, in accordance with Contract Procedure Rule 27, so that an appointment without competition for the commissioning and delivery of the Kirkstall Community Arts Project can be awarded by contract to East Street Arts, Leeds

1 Purpose of this report

- 1.1 This report seeks approval to waive Contract Procedure Rule 8.2 in accordance with Contract Procedure Rule 27, so that the appointment without competition for the commissioning and delivery for Kirkstall Public Art Project can be made through a contract to East Street Arts to the value of £50,000.

2 Background information

- 2.1 The Council has made £700,000 available to tackle economic decline faced by town, district and local centres.
- 2.2 The key criteria for the T&DC 2 programme is that schemes were to:
- Be for the economic regeneration of town, district and local centres
 - Be linked to the achievement of council priorities
 - Not create any additional revenue implications for the Council
- 2.3 The Communities Team (formerly known as the Area Support Teams) were invited to nominate two district centres in their areas for improvements and justification in the form of a business plan was completed and consequently checked against prescribed criteria and three specific schemes were chosen for T&DC investment:
- Harehills lane in East North East Area
 - Dewsbury Road in South South-East Area
 - Kirkstall Road in West North West Area
- 2.4 Each District Centre was allocated £200,000 for a scheme. The Programme is led by Regeneration Services working with officers from the Communities Team, Economic Development, Highway Service and Planning Service.
- 2.5 Overall supervision and decision-making of the programme is provided by a Programme Board consisting of senior officers from the Communities' Team, Regeneration Service, Highways, Parks and Countryside and Finance.

3 Main issues

3.1 Reason for contracts procedure rules waiver

- 3.1.1 Contract Procedure 8.2 states that for intermediate value procurement (value of between £10k - £100K) requires at least three written tenders to be invited. Contract Procedure Rule 8.3 stipulates that any decision to waive this rule must be made by a Chief Officer in accordance with CPR27.
- 3.1.2 Commissioning of public art is not as straightforward as a standard procurement of construction work which is based on work specifications, competitive bids from potential contractors and choosing the contractor that offers the lowest price.
- 3.1.3 Previously the Director of City Development agreed to waive CPR 8.2 to award a contract to local arts organisations namely East Street Arts and the Tetley without competition for three community public arts projects in the three TDC2 district centres namely Harehills Lane, Dewsbury Road and Kirkstall Road. This was signed on 14/01/2016.
- 3.1.4 For Kirkstall, The Tetley was commissioned and worked in partnership with Leeds City Council to draw up an artist brief and to select a suitable artist. Although over 60 applications were received none of the artists produced a proposal that was acceptable to the judging panel, made up of a local ward member, council officers, local residents and businesses. As a result, the commission was terminated.

- 3.1.5 East Street Arts is a contemporary arts organisation located in Leeds since 1994. It is a highly acclaimed group with a national reputation. It is a registered charity supported by the Arts Council, Leeds City Council, Creative Europe and the Esme Fairburn Charity. It supports future artists to develop their work, participation and engagement.
- 3.1.6 The prime reasons for using this local organisation is to give ownership of the artwork to local people, allowing the expression of local aspirations, and to ensure that local history, heritage and materials are recognized and used in the creation of any artwork. Local knowledge and understanding as well as contacts among local people is very important in consolidating the brief, design and implementation of the artwork so that it is suitable for the area and enjoyed by those who live, work and visit the area.
- 3.1.7 East Street Arts have indicated they have an artist, Rebecca Appleby who is local and specializes in clay and sculptural ceramics. Her themes extend to the continental exploration of contemporary urban landscape art that mimics the manufactured process of industry and occurrences in nature. Her work has been exhibited in the UK and abroad. She made a presentation to the judging panel about her background and ideas and the feedback was positive.
- 3.1.8 To further expand upon the experience of East Street Arts, they have a track record of undertaking and completing public commissions for Leeds City Council and the wider Leeds area. Specifically as part of regenerating deprived areas, they were commissioned to do a gateway public art project for Chapeltown Road and they produced a big C working with local people that was highly acclaimed the local community.
- 3.1.9 Recently, East Street Arts completed two arts installations (sculptures) on Harehills Lane namely "Hare of Harehills" installed at the Compton Centre and the "Big "H" installed near the Harehills commercial gateway. Both have received positive attention and reviews by the local community and further afield.
- 3.1.10 East Street Arts is a "not for profit" organisation running as a community enterprise. The work undertaken gives added benefits to Leeds city and its communities by increasing art development capacity within the community and added recognition for East Street Arts and the communities in which they work.
- 3.1.11 There are no other local arts organisations with this level of capacity and experience to undertake the whole of this commission, with the exception of The Tetley who have agreed to finish its involvement with the Kirkstall project. The Tetley have suggested that the council should consider its options and progress the project as it sees fit. The service continue to work with The Tetley on other projects.

3.2 Consequences if the proposed action is not approved

- 3.2.1 If the request for the waiver of the relevant CPRs is not approved, it is likely that the complexity and cost of the project will rise and lead to a delay as a result this project may then have to be abandoned, potentially resulting in reputational damage for the council.
- 3.2.2 The project may need to be procured in two stages: i) Produce, with attendant design fees, initial options for the judging panel and ii) Procure a contractor by competitive tendering to produce the chosen design and install the artwork in the selected location. At this stage a variety of scenarios could occur such as the tender return is higher than the pre-tender estimate, problems with design outlined by the contractor, choosing a suitable contractor resulting in intensive work with the clients, and any supplier, particularly those who may not be from Leeds. This would all add to the timescale and costs.

3.2.3 The major risk is that a tender process will attract limited interest or organisations which are not geared up to take on the rigors of this commission. This will result in a competitive prices which may be higher than a fixed price obtained through waiving the relevant CPR.

3.3 Advertising

3.3.1 No advertising was required as this was the subject of the original approved waiver titled "District Centres Public Art Project: Request for waiver of contract Procedure Rule 8.2, in accordance with contract Procedure Rule 27, signed by the Director of City Development on 14/01/2018.

3.3.2 For this project, the benefits derived by offering the opportunity to tender for this work are outweighed by the benefits of letting this contract by negotiation to a contractor/organisation who has been already involved with a similar project and has local knowledge and experience.

3.3.3 The risk of not advertising and potential resulting complaints and challenges from organisations were weighed up against the advantages of using a contractor in terms of programming, design work, site constraints and value for money. It was concluded that the Council would have good justifiable reasons for this waiver.

3.3.4 An additional requirement for advertisement has been considered that delay by further developing and implementing the project would occur due to the procurement process and the benefits achieved by the delays outweigh the reputational risk to the Council.

3.3.5 It was concluded that the Council would have good justifiable reasons for this waiver.

4 Corporate considerations

4.1 Consultation and engagement

4.1.1 The local community, traders, local elected members, and the Communities Team were all consulted at the initial development of the Kirkstall Community Art Project. A judging panel has been formed (outlined in 3.4) and they are supportive of the type of procurement being proposed so that East Street Arts can be appointed.

4.2 Equality and diversity / cohesion and integration

4.2.1 Any proposed public artwork would contribute to promoting equality and diversity coupled with a new set of lamp post banners designed by school pupils that will promote community cohesion.

4.3 Council policies and city priorities

4.3.1 This project will help to deliver the Best Council Plan aspiration to "enjoy greater access to green spaces, leisure and the arts." This approach includes growing the cultural and creative sector, ensuring that public art can be created and experienced by everyone and enhancing the image of Leeds through major events and attractions. The Kirkstall TDC2 community arts project provides the opportunity for the creative sector to be involved from inception to completion. The artwork will be installed in a public space and can be seen by car users, pedestrians and users of Kirkstall Leisure Centre and finally, the art can be promoted and enjoyed through such local events as Kirkstall Festival and Kirkstall Art Trail.

The procurement methods (waiver) will ensure that more time is given for community engagement.

4.4 Resources and value for money

- 4.4.1 The total budget expenditure available for implementing this project is £50000 divided between fees (community engagement, artist /management) and construction and installation of the artwork.
- 4.4.2 East Street Arts has shown in previous projects that they are able to work to a budget.

4.5 Legal implications, access to information and call in

- 4.5.1 The Chief Procurement Officer has advised that it would be lawful for the Council to waive Contract Procedure Rule 8.2, in accordance with Contract Procedure Rule 27, in these circumstances, provided that the Relevant Chief Officer of City Development Directorate is satisfied that there are compelling reasons to do so.
- 4.5.2 This decision is an operational decision and is not subject to call-in but requires publication. The report does not contain any exempt or confidential information under the Access to Information Rules.
- 4.5.3 In approving this waiver without subjecting the contract to competition, there is a risk of challenge to the Council from other potential providers that it has not been wholly transparent and that they may have been unfairly denied the chance to tender for this opportunity. In terms of transparency it should be noted that European case law suggests that contracts of this value should be subject to a degree of advertising if it is considered that it would be of interest to contractors operating in another Member State. 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.
- 4.5.4 The Executive Manager Regeneration (Town Centre, Heritage and Buildings) has considered this and, based on the content of this report, is of the view that the scope and nature of the services is such that it would not be of interest to contractors in other EU member states.
- 4.5.5 Although there is no overriding legal obstacle preventing the waiver of Contract Procedure Rule 8.1 and 8.2, the above comments should be noted. In making their final decision, the Chief Officer (Asset Management & Regeneration) should be aware of the risk of challenge to the Council and be satisfied that on balance the course of action chosen represents Best Value for the Council.

4.6 Risk Management

- 4.6.1 Risks to the overall scheme delivery will be monitored through a risk log and will be reported to and managed through a regular highlight report to the Programme Board.


5 Conclusions

- 5.1 East Street Arts is the preferred organisation to contract and complete TDC2 Kirkstall Community Arts project. East Street Arts should be appointed through this waiver (without competition) to be under contract for the development and delivery of this project. Their experience and knowledge shows they are capable of handling this commission and working in partnership with Leeds City Council.

6 Recommendations

- 6.1 The Chief Officer (Asset Management & Regeneration) is recommended to approve the waiver of the following Contract Procedure Rule(s):

Contract Procedure Rule 8.2- Intermediate Value Procurements (Tenders) in accordance with Contract Procedure Rule 27, for the award of contract to East Street Arts for commissioning and delivery of Public Art under the Kirkstall Community Public Arts Project in the sum of £50,000.

AUTHORISED SIGNATORY		DATE: 20/9/18
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