

**Report of Acting Head of Service**

**Report to Chief Officer Environmental Services**

**Date: 24th September 2018**

**Subject: Invocation of Contract Procedure Rule 8.1 and 8.2 – Provision of a Winter Works Service by Continental Landscapes Ltd**

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**

- Leeds City Council has a requirement to carry out leaf-fall clearance on a seasonal basis in the autumn/early winter months. If this work is not done there could be significant risk to the Council from accident claims.
- The work involved is considerable and labour intensive and requires specialist equipment such as leaf blowers. The peak demand is during November/December. The Council's grounds maintenance contractor, Continental Landscapes, has seasonal peaks and troughs in work, with a major trough occurring in the winter months. Continental Landscapes have been procured through a significant competitive tendering process previously.
- Following negotiation and in line with previous years, Continental Landscapes have offered to deliver the service for a fee. The delivery of the service in-house, utilising agency staff or paying overtime to LCC staff would be more expensive than the cost of using Continental staff. There is also the added advantage to the city of retaining skilled, experienced and locally knowledgeable staff currently working with Continental on seasonal contracts, as well as direct savings associated with management and supervision of leaf-clearance activities and use of Continental vehicles, equipment and garaging facilities. The fee falls within the budget set aside for this work.
- The plan is to eventually fully absorb this work into the existing resources. Our operational and supervisory capacity is not yet sufficient enough to risk this approach and there remain a number of staff on "old" contracts/JDs which is restricting our flexibility. There are also a significant number of operational staff currently operating with "reasonable adjustments", some vacancies that we are currently recruiting to and a number of long term sickness absences.

**Recommendations**

- The Chief Officer of Environmental Services is recommended to approve the waiving of Contracts Procedure Rules 8.1 and 8.2 and award a contract direct to Continental Landscapes without seeking competition for the provision of winter works up to the value of £60k to commence on the 15<sup>th</sup> October and complete on the Friday 21<sup>st</sup> December 2018.

## **1 Purpose of this report**

- 1.1 This report is to waive Contract Procedure Rules (CPRs) 8.1 and 8.2 in order to contract with Continental Landscapes Ltd for the provision of winter works up to the value of £60k to commence on the 15<sup>th</sup> October 2018 and complete on the 21<sup>st</sup> December 2018.

## **2 Background information**

- 2.1 Continental Landscapes Ltd are the Council's contractor for the provision of grounds maintenance services.
- 2.2 This largely grass cutting work is seasonal in nature with peaks in summer and troughs in winter. This leads to inefficient use of resources, both human and equipment/plant in the winter months. Crucially, it also can result in discontinuity of service with experienced staff being lost to Continental Landscapes over the period, which can be disruptive at the beginning of the new season.
- 2.3 Environmental Action Services have a requirement for seasonal leaf-clearance services in the late autumn/winter months. The work is necessary to ensure the council is meeting its duty to do all it can to make public paths and roads safe for both pedestrians and vehicles. The clearance of leaf-fall from areas of Leeds had historically been supported by using temporary agency staffing and ad-hoc hired vehicles. The Cleaner Neighborhoods Team 2018/19 budget provision for this additional, seasonal capacity is £99k; which includes staffing, supervision, equipment and all vehicle related costs. Building on the successful arrangements over previous years where Continental undertook leaf-clearance work using their staff, supporting our own staff's efforts – the service has again negotiated a competitive rate for this work with Continental. The outcome of this negotiation is that Continental Landscapes will provide the staffing and vehicles to support the leaf-fall clearance operations and other winter works (such as vegetation cut back in ginnels and delittering of areas prior to the first contracted cut of 2018). We will then have the option to extend the arrangement depending on service need. Consequently a waiver is requested for £60k. Any additional works such as vegetation cut back in ginnels and delittering of areas prior to the first contracted cut of 2018 can be extended until February 2018 this will be subject to an additional quotation which will be provided in due course.
- 2.4 There is a view that the annual clearance of leaves and vegetation could be interpreted as the part of the necessary maintenance of land/grounds. However, having taken advice in relation to expanding Continentals work to cover the above, the advice remains that the Grounds Maintenance contract is not currently clear enough to include this work as a variation and therefore a waiver is required in order to ensure compliance with Contract Procedure Rules.

## **3 Main issues**

### **Reason for Contracts Procedure Rules Waiver / Invocation**

- 3.1 Critically, the offer and confirmation of external provision from Continental to undertake leaf-clearance was made at a point where time did not allow a tendering exercise. The work outlined has to commence in October/ November and the only other option would have been to deliver the service in-house, at significant extra cost and using temporary staff resources. This does not constitute best value for money. The winter programme is reviewed annually based upon need and budget. Due to the current staffing levels in the service along with core service expectations we have made the decision to use Continental to support the de-leafing programme.

- 3.2 Continental's existing fleet, which would otherwise be sitting idle, and staffing who would otherwise be made redundant, will be used for this work saving significantly on vehicle hire and staffing costs. Whilst the service could be delivered by the in-house service, the additional costs of vehicles in addition to agency and/or overtime staff costs would make this more expensive than provision being delivered by Continental Landscapes. We estimate that agency staff costs alone would be greater than the price quoted by Continental to provide the full range of leaf clearance work. The Service does not have sufficient operational and supervisory capacity to risk the approach of delivering the de leafing in house as there remains a number of staff on "old" contracts/JDs which is restricting our flexibility. There are also a significant number of operational staff currently operating with "reasonable adjustments", some vacancies that we are currently recruiting to and a number of long term sickness absences.
- 3.3 The provision of the service by Continental Landscapes protects permanent Leeds jobs and means that a number of staff will not be made redundant over the winter months. The provision of permanent jobs in Leeds is obviously a strategic priority for the council. We have been instructed to reduce our reliance on agency staff and this action has delivered on this priority and meant that Continental have retained experienced staff to deliver the leafing service and the service next year.
- 3.4 Assessment of sites for traffic management and delivery and management and supervision is an important task for the delivery of leaf-clearance work. Quite often Continental Landscapes have undertaken grounds maintenance work on the areas in question and have already undertaken the necessary assessments. This has saved significant amounts of management time which would have had to be employed to undertake this work.
- 3.5 Given the above this report recommends that CPRs 8.1 and 8.2 are waived in order for Continental Landscapes Ltd to provide a winter-works service for 2018/19 to the maximum value of £60k.

### **Consequences if the proposed action is not approved**

- 3.6 Should the proposed action not be approved and given the constraints on use of agency staff and over-time payments, leaf-fall clearance work would not be effective. The leaf-fall and arterial route cleaning service would either need to be provided using other contractors and hired vehicles, or tendered out, which would significantly delay the work, and lead to a considerable negative impact on Leeds' street environment.
- 3.7 The cost of providing a leaf-fall clearance service using agency resources (which would be required as there is not capacity within the service to cover this extra work through overtime alone) and overtime would together be higher than the service to be provided by Continental Landscapes; which also includes use of their transport vehicles and key equipment such as leaf-blowers as well as supervision and management of the work being undertaken by Continental staff. The waiver of CPR 8.1 and 8.2 therefore constitutes best value for money and significant extra costs will be incurred by the council if not approved.

### **Advertising**

- 3.8 Due to the reasons set out in paragraphs 3.1 to 3.5 above this tendering opportunity will not be advertised.

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

- 4.1.1 Consultation was undertaken with the Contract Management Team for the Grounds Maintenance contract who are supportive of providing additional winter contract work to Continental Landscapes to help retain the best staff to deliver the Grounds Maintenance work in 2018/19.

## **4.2 Equality and Diversity / Cohesion and Integration**

4.2.1 There are no equality implications for this report.

## **4.3 Council Policies and City Priorities**

4.3.1 As above this waiver delivers value for money and also protects permanent Leeds jobs, both of which are priorities for the council. The work also helps ensure that Leeds communities are clean which is a City Priority.

## **4.4 Resources and Value for Money**

4.4.1 The cost of using Continental provides better value for money in comparison to the estimated in-house costs using hired resources, agency staff and over-time payments. This is in terms of cost, quality/quantity of work undertaken and additional benefits to the delivery of the existing Grounds Maintenance contract for the city. The full budget available for these works will not be used.

## **4.5 Legal Implications, Access to Information and Call In**

4.5.1 This is a Significant Operational Decision and the report is not subject to call in but requires publication. There are no grounds for treating the contents of this report as confidential with the Council's Access to Information Rules.

## **4.6 Risk Management**

4.6.1 Appointing Continental Landscapes 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 would be of interest to providers in other Member States and if it would, subject the matter to a degree of European wide advertising. The Chief Officer of Environmental Services has considered this and, due to the nature of the services being delivered and the relatively low value of this contract is of the view that it would not be of interest to contractors 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 overriding legal obstacle preventing the waiver of CPR 8.1 and 8.2, the above comments should be noted. In making their final decision, the Chief Officer of Environmental Services should be aware of the risk of challenge to the Council and satisfied that the course of action chosen represents best value for money for the Council.

## **5 Conclusions**

5.1 Given the above we believe it is best value for money and best strategically for the council's priorities to waive CPR 8.1 and 8.2 in this case. It is also clear that, unless, in these exceptional circumstances, we waive CPRs 8.1 and 8.2 there will be significant detriment to Leeds' street environment.

## **6 Recommendations**

6.2 The Chief Officer of Environmental Services is recommended to approve the waiving of Contracts Procedure Rules 8.1 and 8.2 and award a contract direct to Continental Landscapes without seeking competition for the provision of winter works up to the value of £60k to commence on the 15th October and complete on the Friday 21st December 2018.

## **7 Background documents**

7.1 None.