

Report of Asset Management & Regeneration

Report to the Director of City Development

Date: 15 October 2018

Subject: Proposed Waiver of Contract Procurement Rules (CPRs) 9.1 and 9.2 for the Construction of Eight New Market Stalls within the 1981 Hall of Kirkgate Market

Are specific electoral Wards affected? If relevant, name(s) of Ward(s): Little London and Woodhouse	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input checked="" type="checkbox"/> Yes	<input 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: (insert here)	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. Kirkgate Market is part of a vibrant retail offer which reflects the city's diverse and varied cultural profile and complements recent step changes in the city's retail landscape with the opening of Trinity Leeds and Victoria Gate in 2016. These two major retail and leisure destinations move the city towards its Best City Centre vision and its overall aspiration to be the UK's Best City
2. In 2016 the major refurbishment works to preserve areas of historical fabric and improve the offer in Kirkgate Market was successfully completed. Kirkgate Market is now preparing for further major investment with the redevelopment of the George Street shops. It is proposed that Town Centre Securities (TCS) in partnership with the City Council will construct a 126 bed apart-hotel with commercial retail opportunities on the ground floor.
3. TCS has undertaken informal consultation with a number of contractors in respect of the proposed demolition of the existing George Street shops and the subsequent redevelopment. As a consequence of such consultation, TCS has advised that the contractor's hoarding line, to ensure the safe demolition of the existing George Street retail units and the redevelopment of the site as indicated on the attached plan, will impact on 14 stalls in the 1981 Market Hall.
4. The report seeks approval to Waive Contract Procedure Rules (CPRs) 9.1 and 9.2 to allow the construction of eight new market stalls in the 1981 market hall to be used as alternative accommodation for traders impacted by the George Street redevelopment works without the need to invite competitive tenders for their

provision. The report sets out the reasons for seeking approval to Waive CPRs 9.1 and 9.2 and, the consequences if the proposed action is not approved.

Recommendation

- 5 The Director of City Development is requested to approve Waiving Contract Procedure Rules 9.1 and 9.2 to allow the construction of eight new market stalls within the 1981 Market Hall without the need for inviting competitive tenders for their provision.

1 Purpose of this report

- 1.1 The purpose of this report is to seek the Director of City Development's approval to Waive CPRs 9.1 and 9.2 to allow the construction of eight new market stalls within the 1981 Hall to be used as alternative accommodation for traders impacted by the proposed George Street redevelopment works without the need for inviting competitive tenders for their provision.

2 Background information

- 2.1 The Council's Executive Board at its meeting in December 2017 authorised the selection of TCS as the Council's development partner for the proposed redevelopment of George Street. The planning and Listed Building application submitted by TCS for the proposed works was approved on 3 October 2018.
- 2.2 As TCS has continued to refine the proposals for the redevelopment of George Street, officers have held discussions with the company regarding the location of the hoarding line required to facilitate the delivery of the proposed works. TCS has advised that following informal consultation with several contractors, the hoarding line required to ensure the safe delivery of the demolition and redevelopment works will impact on 14 stalls within the 1981 Market Hall (as identified on the attached plan) of which eight are currently occupied by six tenants.
- 2.3 The Director of City Development should note that approval has previously been granted on 4 October 2018 for officers to negotiate with the six tenants referred to in 2.2, in order to secure vacant possession of the stalls affected by the proposed works, incorporating an offer of a tenancy of a new unit. At the same time, officers were authorised to serve upon the six tenants Section 25 Notices under the Landlord and Tenant Act 1954 to secure vacant possession on the grounds of the offer of suitable alternative accommodation and demolition of the vacated stalls.

3 Main points

Reasons for Contracts Procedure Rules Waiver

- 3.1 Currently the Market does not have available stalls within the 1981 Market Hall for the six tenants affected by the planned George Street redevelopment works to relocate to. As such, the Council proposes to construct eight new stalls within close proximity of the stalls impacted by the George Street works on the area marked A on the attached plan.

- 3.2 The Director of City Development should note that Vador has previously manufactured the type of stall specified for Kirkgate Market. It has a number already manufactured which with minor amendments to the specification can be supplied with cost and programme benefits to the City Council.
- 3.3 In order to ensure the remaining new stalls are constructed in a timely manner and that traders are relocated before the commencement of the George Street demolition and redevelopment works, it is necessary to complete the technical design of the new stalls and their construction as soon as possible.
- 3.4 Officers within the Market Service have identified a company (Vador) that can undertake the design and construction works to the Market Service's specification and in the timescale required. The Director of City Development should note that Vador has previously been appointed by the Market Services during the course of the major refurbishment works at the market to provide new green stalls and are, therefore, already familiar with the specification of the stalls and their service requirements. The company has advised that given their previous experience of designing and fabricating stalls for Kirkgate Market, they have the resources immediately available to ensure that the eight new stalls would be erected and available for tenant fit out by no later than May 2019 and, understand the complexity of working in a live environment.

Consequences if the proposed action is not approved

- 3.5 If the proposed recommendation is not approved, the alternative course of action would be to seek to procure the design, fabrication and installation of the required stalls through open competition. No approved list for the manufacture and installation of such stalls exists. As such, officers would need to identify four companies who can supply stalls to the specification required and then to invite the companies to submit a quote for their supply. This course of action would potentially delay their installation, such that they would not be available in time to allow the prospective tenants to fit out the new stalls and to relocate in the desired timescale.

Advertising

- 3.6 The Director of City Development should note that no advertising will be undertaken with regard to the proposed design, fabrication and installation on site of the eight new stalls. However in compliance with CPR 9.8, the contract entered into with Vador will be recorded.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 The Executive Member for Regeneration, Transport and Planning has been consulted and is supportive of the recommendation contained in the report.
- 4.1.2 The George Street/Kirkgate Market Infrastructure Programme Board is supportive of the recommendation contained in the report.
- 4.1.3 The Council's Procurement Team have been consulted and are supportive of the recommendations contained in the report.

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 An Equality Impact Screening has been undertaken and, following consultation with the Council's Equality Team, there is no requirement for a full assessment.

4.3 Council policies and City Priorities

4.3.1 The continued improvement of Kirkgate Market is consistent with the Best Council Plan 2015 – 2020 in terms of promoting good growth, growing the economy, creating jobs, improving skills and promoting a vibrant city.

4.4 Resources and value for money

4.4.1 The cost of designing, fabricating and constructing the eight new stalls is estimated to be in the region of £135,000 inclusive of client contingency and will be funded from existing budget provision, Capital Scheme No. 16811PUR.

4.4.2 The costs provided by Vador for designing, fabricating and constructing the new stalls on site is considered to offer value for money as the company already has existing knowledge of the Council's requirements, their form of fabrication, service requirements and an understanding of the complexity of working in a live environment which another company would have to spend time developing. In addition, the company has advised that they are able to commence the commission immediately, thus avoiding material price inflation that may arise if the service had to be tendered over a period of several months.

4.5 Legal Implications, Access to Information and Call In

4.5.1 The proposal contained in the report constitutes a Significant Operational Decision and is not subject to Call In.

4.5.2 The Council's Procurement Unit has advised that it would be lawful for the Council to Waive CPR's 9.1 and 9.2 in these circumstances provided that the Director of City Development is satisfied that there are compelling reasons to do so.

4.5.3 The Director of City Development should note that CPR's 9.1 and 9.2 state 'where no appropriate Independent Service Provider, existing provider or approved framework agreement exists, competition in the form of four written tenders will be invited for procurement with an estimated value at or over £100k.

4.5.4 Awarding a contract direct to the Vador 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 should be subject to a degree of advertising if it is considered that they may be of interest to other providers.

4.5.5 It is up to the Council to decide what degree of advertising would be 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.

- 4.5.6 Although there is no overriding legal obstacle preventing the Waiver of CPR's 9.1 and 9.2, the above comments should be noted. In making the final decision, the Director of City Development should be satisfied that the course of action proposed represents best value for the Council.

4.6 Risk Management

- 4.6.1 There is a risk that the proposed cost as estimated will exceed the budget available. The risk cannot be completely mitigated until the company has completed the design for the new stalls and undertaken required surveys on site and, as such, the level of contingency provision allowed is commensurate with the risk identified.
- 4.6.2 If the new stalls are not constructed in a timely manner such that they are available for occupancy by the six traders affected by the planned George Street works, there is a risk that the Council's action to secure vacant possession will be unsuccessful. The risk can be mitigated by Waiving CPR's 9.1 and 9.2 to allow the design, fabrication and construction of the stalls to be completed and available for occupancy before the trader's tenancy of the stalls affected by the proposed works end.

5 Conclusion

- 5.1 For the reasons detailed in this report, the Waiver of CPR's 9.1 and 9.2 to allow for the appointment of Vador to design and construct eight new stalls in the 1981 Market Hall without inviting competitive tenders is essential to ensure the tenants affected by the George Street demolition and redevelopment works have the opportunity to relocate to the new stalls in sufficient time prior to the George Street works commencing on site.

6 Recommendation

- 6.1 The Director of City Development is requested to approve Waiving Contract Procedure Rules 9.1 and 9.2 to allow the construction of eight new market stalls within the 1981 Market Hall without the need for inviting competitive tenders for their provision.