

Report of: Head of Commercial Management, Leeds Building Services

Report to: Director of Resources and Housing

Date: 20th November 2018

Subject: Approval to waive Contract Procedure Rules CPR9.1 and 9.2 to enter into a short term agreement with suppliers previously contracted on the Building & Specialist Materials Supply contract

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

1. Summary of main issues

- 1.1 This report seeks the approval to enter into an interim short term agreement with contractors previously appointed to the Building & Specialist Materials Supply contract, in order to continue the supply of Civic Estate Building Materials
- 1.2 This waiver is the result of a previous procurement exercise, which did not conclude successfully due to the withdrawal of the intended provider during contract negotiations
- 1.3 The proposed interim short term agreement will be for a period of 6 months with an option to extend for a further period of up to a maximum of 3 months, pending the completion of a new procurement exercise which is currently being undertaken, and will be subject to a separate report and Key Decision.
- 1.4 The estimated spend of this proposed agreement will be approximately £2.7m across the 32 contractors previously appointed to the Building & Specialist Materials Supply contract. As a result the decision to put this contract in place is a Key Decision and will be subject to call-in
- 1.5 This waiver falls under the Forward Plan notification for Approval to waive Contract Procedure Rules CPR9.1 and 9.2 to enter into a short term agreement with suppliers previously contracted on the Building & Specialist Materials Supply contract to continue the supply of Civic Estate Building Materials published on 19th October 2018
- 2.1 The purpose of this report is to seek approval to enter into an interim short term agreement with contractors previously appointed to the Building & Specialist Materials Supply contract, in order to continue the supply of Civic Estate Building Materials

- 3.1 LBS currently purchase a wide range of building construction materials through a number of different suppliers in order to deliver an efficient and effective service to its customers across the City for its Civic Estate responsive repairs and maintenance programme.
- 3.2 This spend is currently off-contract as the previous contract for Civic Estate store expired on 14th April 2018
- 3.3 Approval to call off from a compliant framework to award a contract for a Managed Store solution was given in July 2018, and a formal procurement exercise was carried out to appoint a leading supplier to manage the Civic Estate store and provide building construction materials to LBS for Civic Estate works, however this procurement did not conclude with a successful contract mobilisation and award due to the withdrawal of the intended provider in October 2018 during contract negotiations.
- 3.4 The rationale given for the withdrawal was that the preferred supplier felt that they were unable to offer any value to the Council given the specialist nature of the Civic materials, and the potentially short duration of this interim contract, which was only intended to be a 1+1 term contract
- 3.5 In order to allow sufficient time to undertake a second procurement, and to reduce non-contract spend, we are seeking to re-establish contractual arrangements with those contractors appointed to the previous Building & Specialist Material Supplies framework
- 3.6 We intend to use the requested period of 6 months + 3 months to allow us time to undertake a lessons learnt exercise to identify any shortcomings on our part in the failed process, prior to commencing the new Procurement exercise. This will also ensure we allocate the time to better understand our requirements so these can be clearly specified to our potential supplier from the outset.
- 3.7 An options appraisal for the new procurement exercise has already been undertaken, and a suitable and compliant framework route has been identified. Approval to utilize this route will be the subject of a new separate report and Key Decision.

- 4.1 Expenditure against Building & Specialist Materials is currently off-contract and non-compliant
- 4.2 Leeds City Council has a duty to maintain the quality and safety of Council properties, and as such the Council needs to be able to respond immediately to requests for repairs, faults or works required, which needs to be supported by a supply of Building & Specialist Materials for the Civic estate
- 4.3 We currently rely on the expired framework suppliers to provide these materials and to our knowledge there are no quality issues with these suppliers.
- 4.4 Time needs to be taken to understand the full & detailed requirement of the Managed Stores service to enable LBS procurement to develop a complete and accurate work scope for the new contract to support what is delivered directly by Leeds Building Services.
- 4.5 The proposed approach will establish an interim short term agreement with the proposed suppliers, whilst working towards a compliant procurement for a new contract which will:
- Ensure that standard rates on pricing and quality are agreed, giving consistency across the service.
 - Introduce more effective performance and contract management.
 - Reduce any potential non-contract spend to ensure compliance with the Council's Procurement Strategy and Contract Procedure Rules.
 - Enable us to review current arrangements, so we can develop and finalise an accurate scope of work and then commence a compliant procurement and put the appropriate contract in place.
 - Fully develop the requirement and scope of the Civic Managed Stores contract
- 4.6 The interim short term agreement will be on the same terms as the previously expired Building & Specialist Materials Supply contract
- 5.1 Procurement & Commercial, Heads of Service at Leeds Building Services, Projects, and Leeds Building Services operational teams have discussed the risks involved and are providing support with the option to put in place temporary arrangements for these service provisions with these suppliers.
- 5.2 The contractors appointed to the previous framework will be consulted, pending approval of this waiver, to seek their agreement to enter into the proposed short term agreement on the same terms as the previous framework.

- 6.1 An Equality, Diversity, Cohesion and Integration Screening document has been completed. No adverse impacts have been identified

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- 7.1 This provision will link into the following elements of the 'best Council Plan'
- Inclusive Growth – Supporting growth and investment by ensuring LBS as an internal service provider is in a position to contribute to the maintenance and investment of public stock.
 - Culture – LBS support the community in maintaining cultural properties such as leisure centres, museums and other public attractions ensuring the facilities are safe and available to the public of Leeds.
 - Child-Friendly City – LBS provide a responsive maintenance to schools within the city ensuring that young people have adequate access to their educational facilities including the improvement of catering facilities.
- 8.1 Mobilisation costs will be minimal as we are already utilising the proposed list of contractors to supply the Council with Civic Estate Building Materials
- 8.2 The aim of this interim short term arrangement is to improve and evidence value for money by ensuring agreed standards in terms of quality & price as well as ensuring robust contract management arrangements are in place.

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- 9.1 The decision to enter into an interim short term agreement with these contractors does represents a key decision. Therefore, it is believed that the decision to enter into the agreement with these contractors is taken through the delegated waiver process to ensure that the decision taken is transparent and accountable.
- 9.2 Formalising this interim short term agreement with suppliers from the expired framework could leave the Council open to a potential claim from other suppliers to whom this contract could be of interest to, 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 could be of interest to suppliers from other EU member states and, if it could, the opportunity should be subjected to a degree of EU wide advertising. 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. However, due to the location and nature of the services being delivered, it is felt that this opportunity would not be of interest to providers in other EU member states.
- 9.3 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.
- 9.4 Although there are no overriding legal obstacles preventing the waiver of CPR 9.1 and 9.2 the above comments should be noted. In making their final decision, the Director of Resources and Housing should be satisfied that the course of action chosen represents best value for money.

- 10.1 If this waiver is not approved there will be ongoing high levels of non-contract spend incurred which may also put the Council at risk of challenge from other suppliers.
- 10.2 This waiver will ensure that Leeds Building Services are in a position to maintain their ability to effectively manage the assets. It will also provide more clarity and certainty on those assets that require maintenance and repair to support planning on how the service will be delivered and who by in the future.
- 10.3 This waiver will ensure that LBS effectively manages these contractors to get the support they need to avoid any disruptions to the Civic Estate responsive repairs and maintenance programme whilst being provided with the opportunity to establish a robust and fit for purpose contract through a compliant procurement route.
- 11.1 Owing to the failed procurement exercise to establish a Managed Stores solution for the Civic Estates Building and Materials supply, we need sufficient time to run a replacement robust and compliant procurement, whilst having confidence that a formal agreement is in place to cover supply of the specialist Building Materials
- 11.2 Using previously contracted suppliers whose performance record is proven, will help LBS achieve best value, and will avert high levels of non-contract spend
- 11.3 An options appraisal for the new procurement exercise has already been undertaken, and a suitable and compliant framework route has been identified. Approval to utilize this route will be the subject of a new separate report and Key Decision.
- 11.4 This waiver is interim whilst we work urgently to rectify the situation with a compliant procurement. The approval of this waiver would ensure the current Civic Estate responsive repairs and maintenance programme of works can continue.**Recommendations**
- 12.1 The Director of Resources and Housing is recommended to note the content of this report and approve the waiving of Contract Procedure Rules CPR9.1 and 9.2 to enter into a short term agreement with suppliers previously contracted on the Building & Specialist Materials Supply contract to continue the supply of Civic Estate Building Materials.
- 12.2 The short term agreement will be for a period of 6 months starting January 2019 with an option to extend for a further period of up to a maximum of 3 months

13 Background documents

N/a