

**Report of: Head of Operations, Leeds Building Services**

**Report to: Director of Resources and Housing**

**Date: 18<sup>th</sup> January 2019**

**Subject: Approval to waive CPRs 9.1 and 9.2 to enter into a range of temporary contracts to support Leeds Building Services delivery**

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 waiver report seeks approval to waive CPRs 9.1 and 9.2 to enter into a range of temporary contracts to support Leeds Building Services delivery
- 1.2. This waiver is being submitted to ensure the continuity of all services on a temporary arrangement whilst work progresses to establish the full requirements for both Housing & Non-Housing contracts prior to, and during, the process of undertaking of several competitive procurement exercises to establish compliant, fit for purpose contracts, most of which will be subject to individual separate reports and Key Decisions.
- 1.3. Approval to establish these temporary contracts without the need for competition is being requested due to the absence and unavailability of specialist procurement resource in the Authority, at the point these contracts should have been reviewed for re-procurement purposes.
- 1.4. The LBS Procurement Team within Resources & Housing are now working to a coordinated, comprehensive workplan to deliver compliant contracts, and this is documented and managed through the LBS Procurement Strategy Workplan.. However, these interim measures are essential to allow time to review the most efficient, cost effective way of procuring without compromising service or quality, as well as ensuring compliance with Council policies, and EU procurement regulations where necessary.
- 1.5. The length of each individual contract will vary between 9 to 15 months including provisions to extend, and this has been planned to allow sufficient time for a review to be conducted to identify services which may need to be consolidated into the proposed long term Multi-Trades Contracts scheduled to commence in April 2020

- 1.6. The anticipated benefits from the long term Multi Trade contracts (separate contracts will be let to cover both the Housing and Non-Housing) is that additional capacity and support will be available to ensure that the ISP has the necessary means to allow works to be fully completed, whilst being managed and provided under compliant value for money, fit for purpose contracts which provide a consistent and reliable delivery of high quality services to building locations across the city.
- 1.7. In creating and procuring the long term Multi Trade contracts, LBS needs to establish compliant and sufficient contractual arrangements in order to supplement the workforce, and therefore the temporary contract agreements being sought in this waiver are to provide an interim solution to provide this support, and to allow sufficient time to finalise the strategy of rationalising and consolidating existing arrangements, as well as to ensure compliance with the Council's CPRs and to minimise the risk of off contract spend.
- 1.8. The estimated spend of this proposed waiver will be approximately £6.5m across the 19 individual contracts required to be put in place, however none of the individual contracts themselves will exceed the EU threshold for works and therefore we will not be in breach of EU Regulations in relation to competition. As a result the decision to put this contract in place is a Key Decision and will be subject to call-in
- 1.9. This waiver falls under the Forward Plan notification for Approval to waive CPRs 9.1 and 9.2 to enter into a range of temporary contracts to support Leeds Building Services delivery published on 3<sup>rd</sup> August 2018.

## **2. Purpose of this report**

- 2.1. The purpose of this report is to seek approval to waive CPRs 9.1 and 9.2 to enter into a range of temporary contracts to support Leeds Building Services delivery

## **3. Background Information**

- 3.1. The existing contracts with these contractors have used all permitted provision to extend and have no further official extensions available. However, all existing contractors will be requested to provide ongoing various services & works in line with the existing contract terms & conditions until a new procurement exercise can be completed to cover each service.
- 3.2. It is essential that Leeds Building Services continue to use these existing contractors, and in doing so this document is seeking a waiver for the contracts to be re-established for the durations as documented in appendix 'A'.
- 3.3. All current contractors have the relevant experience in supplying the Council's requirements therefore continued use of these existing contractors will ensure that the positive working relations with Leeds Building Services is maintained.
- 3.4. During the temporary contract periods, work will be undertaken to establish clarity of the full requirement and scope for both Housing & Non-Housing requirements prior to competitive procurement.

## **4. Main issues**

- 4.1. The overall strategy of consolidating an increased number of single contracts into the proposed Multi-Trades housing and Civic contracts has resulted in a large amount of current existing individual contracts being close to their natural expiry dates.

- 4.2. As these contracts will expire before compliant procurement processes can be undertaken, there is a risk that without support of this waiver to put in place interim measures, ongoing high levels of non-contract spend will be incurred to ensure continuation of services, which may also put the Council at risk of challenge from other contractors.
- 4.3. The LBS Procurement Team within Resources & Housing are working to address the situation as quickly as possible. However, these interim measures are required to allow time to review the most efficient, cost effective way of procuring without compromising service or quality.
- 4.4. The overall strategy will result in the reduction of the contractor base and administration costs as the current single Contracts are consolidated into the Multi Trade Contracts to commence in April 2020, whilst also allowing the team 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

## **5. Corporate considerations**

- 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 contractors.
- 5.2. As part of the work on the wider procurement project a stakeholder engagement plan will be developed. Tenant and leaseholder consultation and engagement will also be undertaken in relation to any procurements where this is required.

## **6. Equality and diversity/cohesion and integration**

- 6.1. As part of the on the wider project, an assessment of equality diversity cohesion and integration impacts will be undertaken.

## **7. Council and policies and best council plan**

- 7.1. The service contributes to providing good quality affordable properties, and effective maintenance of the Civic estate by ensuring that the appropriate services are available and properties can be maintained to a safe and high standard, this links to the city priority of meeting housing needs and ensuring residents feel safe in their home.

## **8. Resources and value for money**

- 8.1. The aim of the strategy is to improve value for money by ensuring agreed standards in terms of quality & price as well as ensuring robust contract management arrangements are in place
- 8.2. The overall strategy will result in the reduction of the contractor base and administration costs as the current single Contracts are consolidated into the Multi Trade Contracts to commence in April 2020.
- 8.3. Reductions in pricing structures will be achieved by competitively tendering Multi-trade and single contracts over the course of this exercise.

## **9. Legal implications, access to information and call-in**

- 9.1. The decision to enter into interim short term agreements with these contractors does represent 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 interim short term agreements these contractors could leave the Council open to a potential claim from other contractors 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 contractors from other EU member states and, if it could, the opportunity should be subjected to a degree of EU wide advertising.
- 9.3. 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.
- 9.4. 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.
- 9.5. 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. Risk management**

- 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 contractors.
- 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 existing work programmes, whilst being provided with the opportunity to establish robust and fit for purpose contracts through compliant procurement routes.

## **11. Conclusions**

- 11.1. Formalising service provisions with the existing contractors will ensure that the Council has compliant contracts in place, in accordance with CPRs, through approval of this waiver.
- 11.2. Using previously contracted contractors whose performance record is proven, will help LBS achieve best value, and will avert high levels of non-contract spend

- 11.3. Approval of this waiver will allow sufficient time to develop and implement the wider LBS procurement strategy including the amalgamation of some of the services used into the Multi-Trade Contracts.
- 11.4. This waiver is interim whilst we work urgently to address the situation with compliant procurements. The approval of this waiver would ensure the current programme of LBS activity/work can continue.
- 11.5. Approval of this waiver will provide an interim solution to allow sufficient time to finalise the strategy of rationalising and consolidating existing arrangements under longer term Multi Trade contracts, as well as specialist services under independent contract, and will ensure compliance with the Council's CPRs and will minimise the risk of off contract spend.

## **12. Recommendations**

- 12.1. The Director of Resources and Housing is recommended to note the content of this report and to approve the request to waive CPRs 9.1 and 9.2 to enter into a range of temporary contracts to support Leeds Building Services delivery
- 12.2. The length of each temporary contract will vary, and this has been planned to allow sufficient time for a review to be conducted to identify services which can be consolidated into the proposed long term Multi-Trades Contracts scheduled to commence in April 2020, and which services will require individual contracts due to the specialist nature of the works and services involved.

## **13. Background documents**

N/a

## Appendix A

### LBS Civic (Non Housing) Contracts

Service	Area	Waiver & Period Required	Interim Contract Start Date	Interim Contract End Date	Estimated Total spend across all existing Suppliers	New Arrangement
<b>Multi-Trades</b>	<b>Civic (Non-Housing)</b>	Waiver for 12 Months from 1st April 2019, with an option to extend for a further period of up to three months <b>(3 x Suppliers)</b>	01/04/2019	31/03/2020	£1,410,000.00	New Contract Start date – <b>April 2020</b>
<b>Electrical Works</b>	<b>Civic (Non-Housing)</b>	Waiver for 15 Months from 1st January 2019, with an option to extend for a further period of up to three months <b>(4 x Suppliers)</b>	01/01/2019	31/03/2020	£157,000.00	Consolidation into Multi-Trades Civics contract to start in April 2020.
<b>Tarmac &amp; Groundworks</b>	<b>Civic (Non-Housing)</b>	Waiver for 15 Months from 1st January 2019, with an option to extend for a further period of up to three months <b>(2 x Suppliers)</b>	01/01/2019	31/03/2020	£520,200.00	Consolidation into Multi-Trades Civics contract to start in April 2020.
<b>Roofing – Tile &amp; Slate</b>	<b>Civic (Non-Housing)</b>	Waiver for 14 Months from 1st February 2019 with an option to extend for a further period of up to three months <b>(5 x Suppliers)</b>	01/02/2019	31/03/2020	£584,000.00	Consolidation into Multi-Trades Civics contract to start in April 2020.
<b>Roofing – Felt &amp; Asphalt</b>	<b>Civic (Non-Housing)</b>	Waiver for 14 Months from 1st February 2019 with an option to extend for a further period of up to three months <b>(Suppliers as above)</b>	01/02/2019	31/03/2020	<b>Included in Above Figure</b>	Consolidation into Multi-Trades Civics contract to start in April 2020.
<b>Glazing – Windows &amp; Doors</b>	<b>Civic (Non-Housing)</b>	Waiver for 14 Months from 1st February 2019 with an option to extend for a further period of up to three months <b>(3 x Suppliers)</b>	01/02/2019	31/03/2020	£120,200.00	Consolidation into Multi-Trades Civics contract to start in April 2020.

Service	Area	Waiver & Period Required	Interim Contract Start Date	Interim Contract End Date	Estimated Total spend across all existing Suppliers	New Arrangement
Scaffolding	Civic (Non-Housing)	Waiver for 14 Months from 1st February 2019 with an option to extend for a further period of up to three months ( <b>3 x Suppliers</b> )	01/02/2019	31/03/2020	£107,500.00	Consolidation into Multi-Trades Civics contract to start in April 2020.
Metal Fencing	Civic (Non-Housing)	Waiver for 12 Months from 1st April 2019 with an option to extend for a further period of up to three months ( <b>2 x Suppliers</b> )	01/04/2019	31/03/2020	£42,000.00	Consolidation into Multi-Trades Civics contract to start in April 2020.
Timber Fencing	Civic (Non-Housing)	Waiver for 12 Months from 1st April 2019 with an option to extend for a further period of up to three months	01/04/2019	31/03/2020	£10,000.00	Consolidation into Multi-Trades Civics contract to start in April 2020.
Metalwork	Civic (Non-Housing)	Waiver for 12 Months from 1st April 2019 with an option to extend for a further period of up to three months	01/04/2019	31/03/2020	£7,600.00	Consolidation into Multi-Trades Civics contract to start in April 2020.
Scaffolding – (Emergency & Structural)	Civic (Non-Housing)	Waiver for 9 Months from 1st February 2019, with an option to extend for a further period of up to three months ( <b>3 x Suppliers</b> )	01/02/2019	31/10/2019	£1,000.00	New Contract Start date – <b>November 2019</b>
Drainage	Civic (Non-Housing)	Waiver for 11 Months from 1st February 2019 with an option to extend for a further period of up to three months ( <b>3 x Suppliers</b> )	01/02/2019	31/12/2019	£265,000.00	New Contract Start Date - <b>January 2020</b>

## Appendix A (cont.)

### LBS Housing Contracts

Service	Area	Waiver & Period Required	Interim Contract Start Date	Interim Contract End Date	Estimated Total spend across all existing Suppliers	New Arrangement
<b>Multi-Trades</b>	<b>Housing</b>	Waiver for 12 Months from 1st April 2019 with an option to extend for a further period of up to three months <b>(4 x Suppliers)</b>	01/04/2019	31/03/2020	£1,205,000.00	New Contract Start date – <b>April 1<sup>st</sup> 2020</b>
<b>Timber Fencing</b>	<b>Housing</b>	Waiver for 12 Months from 1st April 2019 with an option to extend for a further period of up to three months <b>(5 x Suppliers)</b>	01/04/2019	31/03/2020	£38,400.00	Consolidation into Multi-Trades Civics contract to start in April 2020.
<b>Electrical Works</b>	<b>Housing</b>	Waiver for 7 Months from 23rd February 2019 with an option to extend for a further period of up to three months <b>(4 Suppliers)</b>	23/02/2019	30/09/2019	£712,500.00	New Contract Start date - <b>October 2019</b>
<b>Roofing – Tile &amp; Slate</b>	<b>Housing</b>	Waiver for 9 Months from 25 <sup>th</sup> February 2019, with an option to extend for a further period of up to three months <b>(4 x Suppliers)</b>	25/02/2019	30/11/2019	£778,000.00	New Contract Start date - <b>December 2019</b>
<b>Roofing – Felt &amp; Asphalt</b>	<b>Housing</b>	Waiver for 9 Months from 25 <sup>th</sup> February 2019, with an option to extend for a further period of up to three months <b>(4 x Suppliers)</b>	25/02/2019	30/11/2019	£778,000.00	New Contract Start date - <b>December 2019</b>
<b>Glazing – Windows &amp; Doors</b>	<b>Housing</b>	Waiver for 12 Months from 25th February 2019, with an option to extend for a further period of up to three months <b>(4 x Suppliers)</b>	25/02/2019	24/02/2020	£270,400.00	New Contract Start date – <b>March 2020</b>

Service	Area	Waiver & Period Required	Interim Contract Start Date	Interim Contract End Date	Estimated Total spend across all existing Suppliers	New Arrangement
<b>Tarmac &amp; Groundworks</b>	<b>Housing</b>	Waiver for 12 Months from 23rd February 2019, with an option to extend for a further period of up to three months <b>(4 Suppliers)</b>	23/02/2019	24/02/2020	£226,000.00	New Contract Start date – <b>March 2020</b>
<b>Scaffolding</b>	<b>Housing</b>	Waiver for 13 Months from 25th February 2019, with an option to extend for a further period of up to three months <b>(3 x Suppliers)</b>	25/02/2019	24/03/2020	£67,400.00	New Contract Start date - <b>April 2020</b>

1. The value of each waiver varies depending on the service, and is the most accurate estimate with the information available at the time of issue of the waiver.
2. As shown under 'New Arrangements' various current contracts are to be consolidated into the Civics Multi-trades contract with the start date estimated as April 2020.
3. The remainder of the contracts have been given staggered start dates to ensure that enough time is given for evaluation at each stage of the procurement.



