

Report of Head of Service

Report to Director of Resources and Housing

Date: 12th February 2019

Subject: To approve a direct contract award under Regulation 32 (9) of the Public Contracts Regulations 2015 and directly award a contract for the supply of trade waste and recycling services to the existing supplier for a period of 9 months from 31st March 2019.

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: 10.4.(3) Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. The existing corporate buildings waste and recycling contract arrangement expires on 31st March 2019. The contract consists of three distinct Lots. Lot 1 provides wheeled bin service for the waste collection, disposal and recycling to LCC buildings, Lot 2 consists of a Skip service for the removal of trade waste generated by LCC's Service areas and Lot 3 is for confidential waste destruction.
2. Approval to start a new procurement exercise for all Lots was signed by the Director of Resources and Housing on the 20th July 2018.
3. North Yorkshire County Council (NYCC) contacted Leeds City Council (LCC) in August 2018 to discuss providing the service for Lot 1 only. Meetings were held between LCC Officers and NYCC Officers and it was established that a collaboration agreement could be beneficial to all stakeholders.
4. In order to facilitate time for negotiations it was decided to remove Lot 1 from the procurement exercise and tender the Lots for Skips Service and Confidential waste on their own.

5. Unfortunately it was not possible to reach agreement with NYCC and negotiations came to an end in December 2018.
6. The existing arrangements end with the present contractor on 31st March 2019 and therefore advice has been sought from procurement and commercial services on the possibilities for further awards from the existing contract framework.
7. The proposal is to make a direct award under Regulation 32 (9) of the Public Contracts Regulations 2015.
8. A contract variation of 9 months would provide the necessary time to fully review the service and decide on a suitable delivery model.

Recommendations

The Director of Resources and Housing is recommended to approve a direct award under Regulation 32 (9) of the Public Contracts Regulations 2015 and directly award a contract for Lot 1 of the trade waste to Associated Waste Management for the period 1st April 2019 to 31st December 2019 to the value of £420k.

1 Purpose of this report

- 1.1 This report seeks approval from the Director of Resources and Housing to approve a direct award under regulation 32 (9) of the public Contracts Regulation 2015. The award will be for a full 9 months from the 1st April 2019 until the 31st December 2019.
- 1.2 The award will provide the time needed to conduct a review of the existing service waste streams and then carry out a full procurement exercise that will cover the following:-
- The service meets the needs of service users.
 - The service provided is efficient and economical.
 - Provides control over the budgets and potential to generate further efficiencies through recycling opportunities.
 - Flexibility on changes to the service if and when required.
 - Time for a full procurement exercise.
 - Time for mobilisation

2 Background Information

- 2.1 The current council trade waste contract provides waste disposal and recycling services to all non-domestic council properties including schools for the purpose of managing council buildings waste, trade skip waste as well as confidential waste and is due to expire on the 31th March 2019.
- 2.2 The present arrangement also covers occupiers of premises in Leeds wanting to arrange collection of their commercial and industrial wastes and who are signposted towards this Agreement by the Council in order to fulfil the Council's obligations under section 45 of the Environmental Protection Act. It also covers Leeds charities and other establishments who are entitled to free collection as defined by the Controlled Waste Regulations.
- 2.3 The agreement comprises of three main Lots. Lot 1 consisting of a wheeled bin service for collecting, recycling and disposal of building waste and recycles to LCC buildings. Lot 2 comprises of a skip collection service for trade waste generated by LCC departments and finally Lot 3 which is the service for confidential waste destruction.
- 2.4 The contract is presently serviced by two suppliers with one supplier providing the services for Lot 1 and Lot 2 and a specialist supplier providing the service for Lot 3, confidential waste.

- 2.5 Officers from Procurement & Commercial Services, Waste Management and Facility Management started the scoping for the new contract at the beginning of June 2018. Approval to start a new procurement exercise for all Lots was signed by the Director of Resources and Housing on the 20th July 2018
- 2.6 A bidder's day was advertised on Yortender and held on the 9th August to engage the market and encourage feedback from SMEs as to how the contract could be scoped to encourage further tendering opportunities. They were supplied with questionnaires for feedback and an indicative pricing schedule to show the potential cost of their services.
- 2.7 Subsequently, Officers from NYCC contacted LCC Officers to enquire about the tender and expressed an interest in Lot 1 for the wheeled bin service.
- 2.8 Officers from LCC and NYCC attempted to reach an arrangement that benefited both parties through a Collaboration Agreement.
- 2.9 Officers had a reasonable expectation that the discussions would be successful and due to the need to meet procurement timescales separated Lot 1 from the original tender and pursued the collaboration agreement with NYCC. Lot 2 and 3 of the contract have been tendered separately.
- 2.10 Unfortunately, by December 2018, the discussions with NYCC were not successful and LCC needed to look at alternative ways of providing the Lot 1 service.
- 2.11 The existing arrangements ends with the present supplier on 31st March 2019 and therefore advice has been sought from Procurement and Commercial Services on the possibilities for further awards from the existing contract framework.
- 2.12 The proposal is to make a direct award through Regulation 32 (9) of the Public Contracts Regulations 2015.
- 2.13 A contract variation of 9 months will provide the necessary time to review the service on incorporating further waste streams.
- 2.14 There are no performance or quality concerns with the current service provider. The contract is important to ensure the council conforms to current environmental legislations and manages its own waste in a sustainable and legal manner.

3 Main Issues

- 3.1 Lot 1 of the council waste contract provides wheeled bin services for the waste disposal and recycling services to all council properties (non-domestic) including 95 schools. The framework contract for Lot 1 was awarded to AWM and expired on the 30th June 2018.
- 3.2 A direct award was approved for 9 months from the 1st July 2018 using the negotiated procedure without publication of notice in accordance with regulation 32 (9) of the Public Contract Regulations 2015. This award comes to an end on 31st March 2019.

- 3.3 To allow time for a review of Lot 1 and conduct a procurement exercise of LCC waste contract, it has been decided to award a further direct contract of 9 months to the existing service provider using *Regulation 32 (9)*. *This permits repeat orders of services in the circumstances described in section 4.5 below.*
- 3.4 Discussions have taken place with the existing supplier Associated Waste Management to continue with the Lot 1 service. They have agreed subject to an award of 9 months to an increase for the waste treatment and disposal but with the 'lift rate' for the collection service remaining the same. The proposed rise will be equivalent to a 3% uplift over the whole contract value.
- 3.5 There are no performance or quality concerns with the current service provider.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 Consultation has taken place with officers from Facilities Management who have confirmed that there are no performance issues relating to Associated Waste Management. In addition Procurement and Commercial Services Legal Section have advised that Lot 1 of the existing Waste Contract can be awarded directly to existing service provider.
- 4.1.2 The project team led by Facility Management have consulted with relevant stakeholders from across the Council.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 An Equality Impact Assessment screening has been completed and it is not considered that the content of this report or the recommendations made will have any impact on any specific individual or group in terms of equality, diversity, cohesion and integration.

4.3 Council Policies and Best Council Plan

- 4.3.1 The council trade waste contract is essential for sustainable waste management of the council's own commercial waste, and related legal compliance. The way the council deals with its waste is an exemplar to businesses within the Leeds City Region.
- 4.3.2 The contract serves to cover the council's obligations under Section 45 of the Environmental Protection Act.

4.4 Resources and Value for Money

- 4.4.1 The contract is funded across the council at a service user level, as part of standard building services, with a budget appropriate to cover the estimated service costs.

- 4.4.2 Discussions have taken place with the service provider to minimise the impact of any price increases. These discussions have proven to be useful minimising the impact of any price increases to only the waste disposal which will be equivalent to a 3% uplift on the whole contract value.

The basis of the contract as a pay by weight contract enables the council to reduce its waste costs by maximising recycling, and improving waste management across the council. Additional rebates exist in the pricing to further increase benefits from improved internal waste management.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 This is a Key Decision which is subject to call-in and there are no grounds for keeping the contents of this report confidential under the Access to Information Rules

- 4.5.2 The OJEU contract notice published when the original contract was procured included the following narrative;

“Tenderers should note that if the council wish to carry out new services at the end of this contract, which are a repetition of the services detailed in this notice, then those additional services may be awarded using the negotiated procedure without publication of a notice in accordance with regulation 14 (1) (d) (ii) of the Public Contracts Regulations 2006”.

This provision is substantially repeated in Regulation 32 (9) of the Public Contracts Regulations 2015 which states –

“Additional ground relevant to new works or services which repeat similar ones

The negotiated procedure without prior publication may be used for new works and services consisting of the repetition of similar works or services entrusted to the economic operator to which the same contracting authority awarded an original contract, provided that such works or services are in conformity with a basic project for which the original contract was awarded.

- 4.5.3 The procedure can be used within 3 years of the expiry of the original contract (March 2018). If this provision applies we are allowed to award these contracts direct to current providers without seeking further competition yet still in compliance with the Public Contracts Regulation 2015. This is a second direct award using this procedure but is within the 3 year time limit.
- 4.5.4 There is the potential risk of challenge that the ground for using the negotiated procedure without publication of a notice in accordance with the Public Contracts Regulations 2015 is not justified, and that the Council is simply seeking to circumvent the application of the procurement rules. However, due to the reasons set out in Section 3 and section 4 of this report it is difficult to see how such a challenge would succeed. In addition, this risk can be diminished further by the

publication of a voluntary transparency notice in OJEU immediately after the decision to award the contract has been taken and then waiting 10 days to see if any challenges are made. If no challenges are made the chances of a claim for ineffectiveness being brought are significantly reduced, and would only be successful if the Council had used the negotiated procedure without publication of a notice incorrectly. Further, publishing such a notice will also start time running for any other potential claim for breach of the Public Contracts Regulations 2015, which must be brought within 30 days of the date that an aggrieved party knew or ought to have known that a breach had occurred.

4.5.5 These comments should be noted by the Director of Resources and Housing and in making the final decision as to the award of this contract being the best course of action for the Council and should be satisfied that doing so it represents best value for the Council.

4.6 Risk Management

4.6.1 This contract award is required to enable continuation of Lot 1 of the trade waste service and allow time for full review of the service. Losing control of council commercial waste will leave the council open to prosecution by the Environment Agency, and associated clean-up costs.

4.6.2 The contract will be managed and monitored through Facilities Management with the support of Waste Management to ensure benefits of service are maximised, and compliance is maintained. The contractor's performance will continue to be measured over the 9 months of the contract.

4.6.3 Please refer to 4.5.4 above in Legal Implications section.

5.0 Conclusions

5.1 The current contract for Lot 1 wheeled bins service which deals with the council's internal wastes is due to expire on 31st March 2019. Continuation of a reliable and sustainable waste management service at Council buildings is essential and this award will ensure that the service is maintained until a new arrangements or contract is in place.

6. Recommendations

6.1 The Director of Resources and Housing is recommended to approve a direct award under Regulation 32 (9) of the Public Contracts Regulations 2015 and directly award a contract for Lot 1 of the trade waste to Associated Waste Management for the period 1st April 2019 to 31st December 2019 to the value of £420k.

7.0 Background documents¹

None

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.

