

Report of: Business Officer (Waste Management Contract)

Report to: Deputy Chief Officer Waste Management

Date: 27 September 2019

Subject: Waiver of Contract Procedure Rules (CPR) 8.1 and 8.2 to award an interim garden waste processing contract to North Yorkshire County Council.

| | |
|---|---|
| Are specific electoral wards affected? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| If yes, name(s) of ward(s): | |
| Has consultation been carried out? | <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 |
| Will the decision be open for call-in? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| Does the report contain confidential or exempt information? | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| If relevant, access to information procedure rule number: | |
| Appendix number: | |

SUMMARY

1. Main issues

- Leeds City Council (referred to as 'LCC' or 'the Council') is currently in a contract with SJB for composting of garden waste under the Recycling and Composting Framework (9KBA – M62F2H, 4th Year Call Off DN323246) at the SJB facility at Esholt in Bradford. SJB is the commercial arm of Yorwaste, North Yorkshire County Council (NYCC)'s arm's length waste management company.
- The contract has been extended by 6 months but is due to expire at the end of September 2019. The contract allows LCC to further extend the contract, however SJB are unable to continue to deliver the service to LCC because the current position is that SJB are planning to wind up their operations at this point due to the commercial impacts of changes in their relationship with Yorkshire Water (YW) from whom they lease the Esholt site, and this key disposal outlet for the Council will not be available from October for the kerbside garden waste collection service.
- The emerging position and uncertainty around the potential future unavailability of this site has resulted in delays in the Council's long-term procurement for garden waste composting capacity due to the need to carry out further market engagement in order to inform strategy and maximise market interest. A proposal has been presented by NYCC to continue to offer Esholt temporarily to LCC and City of Bradford Council (who are in a similar position to LCC) on a fixed site fee basis rather than a price per tonne rate in order to bridge this intervening period. By

using this option and sharing the site fee with Bradford Council for October and November 2019, small savings are expected to be realised in relation to the budgeted position and kerbside collections are able to finish for the year uninterrupted. The site would be operated by Yorwaste during this period.

- Chief Officer approval is required to waive CPR 8.1 and 8.2 using the authority set out in CPR 1.3. CPR 8.1 requires competition for procurements valued between £25 - £100K and CPR 8.2 requires at least three written tenders.

2. Best Council Plan Implications (click [here](#) for the latest version of the Best Council Plan)

- The appropriate contracting of key waste services supports the delivery of sustainable infrastructure under the Best Council Plan with the specific aim of reducing waste and increasing recycling.
- A waiver to allow the conclusion of kerbside garden collections also indirectly supports a number of other priorities. Appropriate waste collection services help to avoid anti-social behaviour and environmental crime issues which allows safe, strong communities and friendly city priorities to succeed.

3. Resource Implications

- A flat rate of £30,000 per month for October and November 2019 is an overall saving for the Council of approximately £6,800 across the 2 months when compared to the budgeted position.
- The contract management of the contract awarded as a result of the waiver will be undertaken by the Waste Management Contracts Team. The requirements of the longer term contract have also been identified in the Waste Management procurement strategy.

RECOMMENDATIONS

The Deputy Chief Officer for Waste Management is recommended to note the contents of this report and approve the waiver of CPRs 8.1 and 8.2, using authority set out in CPR 1.3, to permit a direct interim contract award to NYCC for the provision of composting facilities at Esholt for a period of two months (1 October to 30 November 2019). The contract is valued at £60,000.

1. PURPOSE OF THIS REPORT

- 1.1 Contract Procedure Rule (CPR) 27.1 requires that a decision to waive CPRs is made by the relevant Chief Officer through the delegated decision process.
- 1.2 The purpose of this report is to brief the Deputy Chief Officer on the waiver that has been recommended so that he may be satisfied it represents the best course of action for the Council.

2. BACKGROUND INFORMATION

- 2.1 The Council have used the SJB facility at Esholt for over 10 years, and it has been an important site for the vehicles operating out of the Council's Henshaw depot and collecting in the North West of the city.
- 2.2 The site itself is owned by YW and historically SJB have worked in partnership with YW to provide a solution to deal with sewage sludge through blending with the compost to produce a nutrient rich product for deployment on nearby agricultural land. The Environment Agency have determined this is no longer an acceptable process and as a result YW are utilising alternative technologies which mean they no longer have a need for SJB in terms of their own waste treatment process.

3. MAIN ISSUES

- 3.1 Since being made aware of changes that would be necessary to the NYCC business model as a result of the move away from co-composting, discussions have been ongoing with LCC in an attempt to identify a solution that makes the best use of the site and is advantageous to all parties.
- 3.2 The emerging position and uncertainty around the potential future unavailability of this site has resulted in delays in the Council's long-term procurement for garden waste composting capacity due to the need to carry out further market engagement in order to inform strategy and maximise market interest. A proposal has been presented by NYCC to continue to offer Esholt temporarily to Leeds City Council and City of Bradford Council (who are in a similar position to Leeds) on a fixed site fee basis rather than a price per tonne rate in order to bridge this intervening period. By using this option and sharing the site fee with Bradford for October and November 2019, small savings are expected to be realised in relation to the budgeted position, and kerbside collections are able to finish for the year uninterrupted, since the kerbside collection service does not operate during December, January and February.
- 3.3 The offer from NYCC allows tipping at Esholt under a flat site fee of £60,000 per month that will be split equally between Leeds and Bradford Councils. The site operations themselves will be delivered by Yorwaste, owned by NYCC, rather than SJB who will be no longer operating the site.
- 3.4 By securing the site for October and November the kerbside garden waste collections for the year can be concluded uninterrupted which is an operational priority for the Council. A longer term Dynamic Purchasing System (DPS) for garden waste processing can then be put out to the market for the collections in Spring 2020.

4. CORPORATE CONSIDERATIONS

4.1 Consultation and engagement

- 4.1.1 It is not considered that the content of this report or the recommendations made will have a significant impact on any particular ward or community, and as such no consultations have taken place.

4.2 Equality and diversity / cohesion and integration

- 4.2.1 An Equality Impact Assessment 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 the Best Council Plan

- 4.3.1 It is paramount that procurement decisions in the authority are undertaken with a view to ensuring openness, transparency and fairness. This includes waivers and their function in respect to CPR compliance. All appropriate governance arrangements will be followed throughout the implementation of the waiver and interim contract. This report forms part of that process.
- 4.3.2 The issues being discussed within this report have specific implications with regards the Council's environmental performance and the aspirations stated within our environmental policy where we are aiming for improved environmental protection. The following are all relevant contributors to meeting the needs of this Council policy:
- Preventing pollution and minimising our environmental impact
 - Taking steps to reduce carbon emissions
 - Improving our resilience to current and future climate change

4.4 Climate Emergency

- 4.4.1 This contract is needed to help maintain the integrity of the waste management services provided by Leeds City Council. The emphasis in contracts of this kind is to maximise adherence to the waste hierarchy where re-use and recycling is selected as the preferred method for dealing with wastes ahead of other waste disposal or treatment technologies.
- 4.4.2 Ensuring continuity in the recycling of garden waste forms part of the Council's efforts to address the climate emergency situation which has been declared in Leeds, and contributes towards the Council's aspiration of becoming a carbon neutral city by 2030.

4.5 Resources, procurement and value for money

- 4.5.1 By implementing an interim contract under a waiver value for money is being delivered for the Council through ensuring both an appropriate short term solution and a robust longer term strategy that introduces market competition in the most appropriate way. There will be a saving of approximately £6,800 for the October and November period compared to the budgeted position.

4.6 Legal implications, access to information, and call-in

- 4.6.1 As a Significant Operational Decision this Delegated Decision Report is not subject to Call-In but will be published on the register of decisions.
- 4.6.2 Awarding a contract direct to NYCC in this way without seeking competition could leave the Council open to a potential claim from other providers, to whom this contract could be of interest, that the Council 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 should be subject to a degree of advertising. 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.
- 4.6.3 4.5.4 The Deputy Chief Officer for Waste Management has considered this and, due to the nature of the services being delivered, the very short-term interim arrangement, and the relatively low contract value, is of the view that the scope and nature of the interim services is such that it would not be of interest to providers in other EU member states.
- 4.6.4 Although there is no overriding legal obstacle preventing the waiver of CPRs 8.1 and 8.2 using the authority set out in CPR 1.3, to award a direct contract to NYCC without seeking competition, the contents of this report should be noted. In making the final decision, the Deputy Chief Officer for Waste Management should be satisfied that course of action recommended represents best value for the Council.

4.7 Risk management

- 4.7.1 If the recommendation to award as described within this report is not approved then the Council will risk being in a position where no operationally viable contractual arrangements are in place for dealing with a key waste stream collected by the Council in the North West of the city.
- 4.7.2 A risk register for garden waste has been developed and will continue to be maintained through the waiver contract. High risks or escalating risks will be brought to the attention of the Deputy Chief Officer for Waste Management.
- 4.7.3 There is a potential risk of challenge from alternate suppliers of the decision to award a contract without seeking competition. This risk is mitigated by the fact that this is a very short-term arrangement, with a relatively low value, and there will be full opportunity for other potential suppliers to be included in the longer term procurement for the DPS that is shortly to be undertaken.

5. CONCLUSIONS

- 5.1 The use of a waiver to allow the conclusion of the 2019 kerbside garden waste season with the availability of the Esholt facility represents the best course of action for the Council, with the contract delivering both savings and continuity of service.

6. RECOMMENDATIONS

The Deputy Chief Officer for Waste Management is recommended to note the contents of this report and approve the waiver of CPRs 8.1 and 8.2, using authority set out in CPR 1.3, to permit a direct contract award to NYCC for the provision of

composting facilities at Esholt for a period of two months (1 October to 30 November 2019). The contract is valued at £60,000.

7. BACKGROUND DOCUMENTS¹

7.1 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.

Appendix

What is your reason for waiving CPRs?

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|---|-------------------------------------|-------------------------------------|-----|----|
| There is a genuine, unforeseeable emergency meaning there is no time to go through a procurement process (e.g. to deal with the consequences of extreme weather). | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Yes | No |
| To purchase supplies or services on particularly advantageous terms due to liquidation/administration. | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Yes | No |
| Requirement to put a contract in place with a current provider whilst a review of the services is completed. | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Yes | No |
| Ran out of time to undertake a new procurement exercise | <input type="checkbox"/> | <input checked="" type="checkbox"/> | Yes | No |
| Other (please provide summary here) Need to secure site to ensure operational viability of the kerbside garden waste collection service in the North West of the city. | <input checked="" type="checkbox"/> | <input type="checkbox"/> | Yes | No |