

Report of: Business Officer (Waste Management Contract)

Report to: Deputy Chief Officer Waste Management

Date: 20th September 2019

Subject: Waiver of Contract Procedure Rules (CPR) 9.1 and 9.2 to award new interim contract to SIMS Metal Management for the collection and recycling of scrap metal and lead acid batteries (LAB) and also to WEEElink for the collection and reprocessing of waste electrical and electronic equipment (WEEE)

Are specific electoral wards affected? If yes, name(s) of ward(s):	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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? If relevant, access to information procedure rule number: Appendix number:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

SUMMARY

1. Main issues

- The Council is currently in two contracts with Sims Metal Management for the collection and recycling of scrap metal and lead acid batteries (LAB) from the Household Waste Recycling Sites (HWRCs). The council is also in a separate contract with WEEElink for the collection and recycling of waste electrical and electronic equipment (WEEE) from the HWRCs. All three contracts expire at the end of September 2019.
- The scrap and WEEE contracts are intrinsically linked because large domestic appliances (LDAs), which are classified as WEEE, are collected by Sims in the scrap skips on the HWRCs. Sims then provide the evidence as to what has been collected and recycled to WEEElink to allow the Council to meet its obligations under the WEEE Directive.
- A procurement exercise is underway for three replacement contracts but has been delayed. The incumbent suppliers are willing to continue with current arrangements for up to 8 months to allow the procurement to be concluded. All contracts have a zero cost to the Council but scrap metal represents a significant income and an interim contract will protect approximately £173,000. LAB also represents an additional income of approximately £21,000.

- Chief Officer approval is required to waive CPR 9.1 and 9.2 using the authority set out in CPR 1.3. CPR 9.1 requires competition for procurements valued over £100K and CPR 9.2 requires at least four 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.
- An interim contract for these wastes and subsequent procurement for a longer term solution also indirectly support a number of other priorities. Appropriate services helps to avoid anti-social behaviour and environmental crime issues which allows safe, strong communities and friendly city priorities to succeed.

3. Resource Implications

- The interim contract places no additional pressure on the budget for October 19 to May 20 as existing contract prices are maintained. The contracts are zero cost to the Council.
- The completion of the procurement exercise and the subsequent contract management of the awarded contracts will be undertaken by the Waste Management Contracts Team. The requirements of both the interim and longer term contract have 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 9.1 and 9.2, using authority set out in CPR 1.3, to permit direct contract awards to Sims Metal Management and WEEElink. The interim contracts have zero cost to the Council.

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 existing contracts for scrap and LAB were set up in 2013, extended in 2017, and have been delivered without significant issue. The pricing mechanism for the contracts are based on a market tracked rates so as the price for scrap or LAB has fluctuated in that period, the price per tonne of income received by the Council aligns accordingly.
- 2.2 The existing WEEE contract was set up in 2015 and was deliberately timetabled to terminate at the same time as the scrap contract. It is delivered by WEEElink under a producer compliance scheme (PCS) so has a zero cost to the Council. The PCS works on the principle that the evidence of recycling WEEE can be traded,

which as a result requires detailed reporting and an obligation on the Council to make all WEEE recycling evidence available to the PCS.

- 2.3 Large domestic appliances, a stream of WEEE, are recycled in the scrap skips to make the most of the space available on the HWRCs. The income for recycling LDAs comes into the Council in the same way as scrap income, however, Sims are contractually compelled to make the evidence of recycling LDAs available to WEEELink.

3. MAIN ISSUES

- 3.1 There are existing contracts in place for recycling scrap metal, lead acid batteries and WEEE that is collected on the Council's HWRCs. The contracts are well established and have been performed well by the existing suppliers. The continued provision of services to recycle these materials are an important part of the overall makeup of HWRCs.
- 3.2 The three existing contracts are due to end shortly and the procurement for replacement contracts has been delayed. Both the suppliers are prepared to continue with business as usual for a period of up to 8 months to allow the procurement exercise to be concluded.
- 3.3 The scrap and LAB contracts represent an income for the Council that needs protecting and although the WEEE contract has a zero value the interconnectivity between the WEEE and scrap contracts mean that a continuation of existing arrangements represents the best course of action for the Council.

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 contracts. This report forms part of that process.
- 4.3.2 The issues being discussed within this report and the subsequent contracts that will be awarded 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 to help maintain the services provided at Leeds City Council's HWRCs. 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 This demonstrates efforts made to combat 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 Sims Metal Management Ltd have agreed to hold their current prices for the interim contract period of the scrap and LAB contracts. These are market tracked rates that were established through a competitive tender exercise and the Council will continue to benefit from the value for money they provide. The interim scrap contract represents an income for the Council of approximately £173,000 and LAB of £21,000.
- 4.5.2 WEEElink deliver a free of charge service under a Producer Compliance Scheme. The services that are delivered to residents as part of this arrangement will continue uninterrupted and will continue to link with SIMs to fulfil our legislative obligations.
- 4.5.3 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.

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 Although the financial value of these three contracts are zero to the Council, awarding these three contracts directly to these contractors could leave the Council open to a potential claim from other providers, to whom this contract could be of interest, that Leeds City Council has not been wholly transparent as the opportunity is not being advertised and at least four written tenders invited.
- 4.6.3 However, due to the zero value and short-term nature of the contracts, it is unlikely that the scope and nature of the contracts are such that they would be of interest to other providers. The decision has been taken in the context of this service being subject to a tender exercise undertaken in the near future.
- 4.6.4 There is a risk of an ombudsman investigation arising from a complaint that Leeds City 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.

4.6.5 Although there is no over-riding legal obstacle preventing the waiver of CPRs 9.1 and 9.2 using the authority set out in CPR 1.3, by awarding direct contracts to these contractors 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 the course of action chosen represents best value for money to 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 formal contractual arrangements are in place for dealing with a number of key recyclate streams collected by the Council.
- 4.7.2 A risk register has been developed and will continue to be maintained through the interim contract and the longer term procurement. 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 contracts without seeking competition. This risk is mitigated by the opportunity for the suppliers to be included in an opportunity to tender for the longer term procurement that will follow.
- 4.7.4 It is important that a reliable outlet that secures appropriate income and maintains service standards is preserved. The risk of not having appropriate arrangements has both an operational impact considering front line services and a financial one in terms of spot pricing and lack of contract security.

5. CONCLUSIONS

- 5.1 Appropriate interim contracts are required to maintain key services and protect an important income source for the Council, by waiving CPRs and continuing with existing suppliers an effective contract can be put in place without risk to either.

6. RECOMMENDATIONS

The Deputy Chief Officer for Waste Management is recommended to note the contents of this report and approve the waiver of CPRs 9.1 and 9.2, using authority set out in CPR 1.3, to permit direct contract awards to Sims Metal Management and WEEElink. The interim contracts have zero cost to the Council.

7. BACKGROUND DOCUMENTS¹

- 7.1 In compiling this report no additional background papers were used.

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?

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 checked="" type="checkbox"/>	<input type="checkbox"/>	Yes	No
Other (please provide summary here)	<input type="checkbox"/>	<input type="checkbox"/>	Yes	No
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