

**Report to the Chief Officer (Highways and Transportation)**

**Date: 10th March 2020**

**Subject: Waiver Report to seek a waiver of CPRs 8.1 and 8.2 in order to Procure Consultants through Hays for Geotechnical Work without seeking competition.**

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 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 of main issues**

1. This report sets out the case for waiving Contract Procedure Rules: 8.1 requirement for competition and 8.2 – waive the requirement to seek 3 tenders. The current Framework Contract for the provision of specialist resource and expertise has been unsuccessful in delivering candidates with the essential experience and knowledge to complete project work to the required standards. The Geotechnical Department has had to seek additional help in finding the appropriate skill set outside the Council's available means to ensure programme delivery. A new tender for the provision of these services is being developed, however in the meantime this waiver will allow the Geotechnical Department to maintain progress against its current caseload.

The geotechnical team have initiated several recruitment campaigns in recent times but to no avail. There is a considerable risk to programme delivery, reputation and loss of business and income should this waiver fail.

## **Recommendations**

1. The Chief Officer (Highways and Transportation) is requested to:
  - i) approve the waiver of Contract Procurement Rule No 8.1 and 8.2 - Intermediate Value Procurements to allow Leeds City Council to enter into a contract directly with consultants Hays Specialist Recruitment Limited.
  - ii) approve the appointment to begin on 04.04.2020 and terminate on 3.03.2021
  - iii) spend to be based on a schedule of rates to be a maximum of £80,000 over the contract term

### **1. Purpose of this report**

- 1.1 This report sets out the reasons for recommending that the Chief Officer (Highways and Transportation) approves the waiver of Contract Procedure Rule 8.1 and 8.2 to enter into a contract with Hays Recruitment Ltd until 31st March 2021 without seeking competition and is capped at £80,000.

### **2. Background information**

- 2.1 Currently the Geotechnical team is facing an unprecedented workload. The schemes presented are increasingly becoming more complex in nature and the Geotechnical Team uses the current arrangement with several specialist providers to source additional expertise for various Civil Engineering projects.
- 2.2 Due to the increasing demand on these services and the opportunity to assist other local authorities in delivering key projects in their area, the decision has been made to allow the Geotechnical Team to source such expertise through alternative providers. In this instance Hays Recruitment has sourced this expertise and this will enable the team to deliver against key objectives. We have had full approval of the business case from Human Resources (HR)
- 2.3 A new contract to enable the use of consultancies for specialised Civil Engineering works in areas of high demand and with particular expertise would benefit the Highways and Transportation Department. A wider scoping framework to provide such expertise should be considered for future procurements.

### **3. Main issues**

#### **3.1 Reason for Contracts Procedure Rules Waiver**

- 3.1.1 Our current framework of providers has been unable to source the expertise needed at this time and as a result of this we seek to procure this solution through Hays Recruitment until such time as a new contract is formalised. As a result, the waiver of Contract Procurement Rule No 8.1 and 8.2.

#### **3.2 Consequences if the proposed action is not approved**

- 3.2.1 The expertise required to deliver specialist Geotechnical solutions is in high demand due to the current volume of schemes under construction both locally and nationally. Securing this expertise is key to keeping ongoing projects on track for both desk studies and ground Investigations. To lose the ability to source this additional help would hinder our ability to complete works.
- 3.2.2 There is a significant risk that if we were to not use this agency resource delays will impact on the wider project delivery programmes for Highways & Transportation schemes, resulting in additional costs and delays to the delivery of schemes. This will further increase the risk of reputational damage and could mean loss of revenue from other Local Authorities.

## **4. Corporate Considerations**

### **4.1 Consultation and Engagement**

- 4.1.1 This is an operational decision that is primarily related to the support of service provision within Highways and Transportation so no consultation has taken place with elected members or the wider community.

### **4.2 Equality and Diversity / Cohesion and Integration**

- 4.2.1 The use of this third party engineering resource is currently not applicable for an Equality, Diversity, or Cohesion and Integration Screening Impact assessment. These do not need to be undertaken at this time.

### **4.3 Council Policies and best Council plan**

- 4.3.1 The proposed procurement of this expertise will provide the Geotechnical Team with valuable civil engineering expertise which is required on many of the jobs that are conducted within the team.
- 4.3.2 This additional resource will also benefit the wider team in sharing expertise gained through experience in interpreting and evaluating complex and high value project work.
- 4.3.3 This Waiver supports the Highways and Transportation service in its contribution to the Council's Best Council Plan 2019-20-21 objectives. Becoming a more efficient and enterprising council', improving outcomes delivering an efficient and healthy organisation enabling people to do well at all levels, to learn and improve.

#### Climate Emergency

- 4.3.4 Climate Emergency, Hays Recruitment UK and Worldwide has satisfied the FTSE4 Good Index Series and continue monitor and engage with local and national climate change aspirations. Incentives such as 'Switch It Off' video conferencing and recycling reduces carbon footprint. Year on Year employee Green House Gases (GHG) emission per tonne CO<sub>2</sub>e has fallen from 1.66 in 2018 to 1.58 in 2019.

4.3.5 In addition this specialist resource and expertise through Hays Recruitment will enable the Geotechnical team to fulfil and influence a more positive role against Leeds City Councils Climate Emergency targets.

#### **4.4 Resources and Value for Money**

4.4.1 The total cost of the works is around £80,000.00 per annum is considered to represent good value for money. The funding will be allocated from the existing Geotechnical Team Budget.

#### **4.5 Legal Implications, Access to Information and Call In**

4.5.1 The report is not subject to Call In and there are no grounds for treating the contents of this report as confidential with the Council's Access to Information Rules.

4.5.2 Awarding the contract directly to Hays Specialist Recruitment UK in this way could leave the Council open to a potential claim from other suppliers to whom this contract could be of interest 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 on other EU member states and, if it could, the opportunity should be subjected to a degree of 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

4.5.3 The Council has tried to source its requirements through the current provider but has not been able to. It should be noted that the current provider does not have an exclusive right to provide these services.

4.5.4 The Chief Officer (Highways and Transportation) has considered paragraphs 5.5.2 and 4.5.3 and due to the fact that the requirement is for highly specialised consultants is of the view that the scope and nature of the services is such that it would not be of interest to providers in other EU member states, and it is considered that the risk of challenge identified at paragraph 4.5.2 above is extremely low.

4.5.5 Although there is no overriding legal obstacle preventing the waiver of CPR 8.1 and 8.2 the above comments should be noted. In making the final decision, the Chief Officer (Highways and Transportation) should be satisfied that the course of action chosen represents best value for money.

#### **4.6 Risk Management**

4.6.1 There are no recognised risks in proceeding with this exercise, all relevant mitigation has been carried out to minimise any potential risk to the business.

4.6.2 There remains a risk that a complaint could be raised that the Council has not followed reasonable procedures, resulting in a loss of opportunity, which could potentially give rise to an Ombudsman Investigation, however it's considered that this risk is very low as all current providers have been given opportunity to source the expertise required.

## **5.0 Conclusions**

5.1.1 The use of Hays Recruitment UK to secure this expertise is the only practical way of completing the outstanding workload that we currently have in the Geotechnical Team until a new contract is procured to ensure that workloads and deadlines are met within the team and that specialist resource can be called on demand to deliver highly desirable fee paying projects.

5.1.2 We are currently mid-way through a recruitment campaign in an effort to fulfil these full time positions.

## **6. Recommendations**

6.1 The Chief Officer (Highways and Transportation) is requested to approve:

- i) approve the waiver of Contract Procurement Rule No 8.1 and 8.2 – Intermediate Value Procurements to allow Leeds City Council to enter into a contract directly with consultants Hays Specialist Recruitment Limited.
- ii) approve the appointment to begin on 04.04.2020 and terminate on 3.03.2021
- iii) spend to be based on a schedule of rates to be a maximum of £80,000 over the contract term

## **7. Background documents<sup>1</sup>**

7.1 None.