

Award of Contract for the Delivery of Official Control Food Interventions (47105) by an External Contractor

Date: 24th March 2022

Report of: Food and Health Team Manager

Report to: Chief Officer, Elections and Regulatory

Will the decision be open for call in? Yes No

Does the report contain confidential or exempt information? Yes No

What is this report about?

Including how it contributes to the city's and council's ambitions

- Leeds City Council currently supports its statutory duty to deliver Official Control food interventions using an external contractor. The existing joint contract between Leeds City Council, Bradford MDC, and Wakefield MDC with Osborne Richardson Limited (DN313404) expires on the 31st March 2022.
- A full joint procurement and evaluation exercise has been undertaken in collaboration with Bradford MDC and Wakefield MDC.
- The tender was evaluated on a quality/price separated basis. Osborne Richardson Limited has met the required quality thresholds and as the lowest price bidder has been determined to meet the requirements for the delivery of the new contract from 1st April 2022.
- The new contract Official Control food interventions (47105) will be for 24 months (1st April 2022 to 31st March 2024), with the option of extending for a further two 12-month periods (1st April 2024 to 31st March 2025 and 1st April 2025 to 31st March 2026).
- In accordance with Contract Procedure Rules 18, the purpose of this report is to seek Chief Officer Elections and Regulatory approval to award the new contract for the provision of Official Control food interventions to Osborne Richardson Limited.
- Delivery of the food intervention programme facilitated by the contract will support delivery of the Council's statutory duties under food safety legislation and fully supports the Council's policies on public health protection, priorities on Health and Wellbeing and reducing health inequalities.
- The use of external contractors to deliver routine food hygiene interventions enables internal officers to prioritise and support ongoing delivery of Leeds City Council's COVID-19 Outbreak Management Plan, and local authority post-pandemic recovery plans.

Recommendations

- a) The Chief Officer Elections and Regulatory is recommended to note the content of this report and approve the appointment of Osborne Richardson Limited to deliver the new contract for Official Control food interventions (47105).
- b) The new contract Official Controls Food Interventions (47105) will be for 24 months (1st April 2022 to 31st March 2024), with the option of extending for a further two 12-month periods (1st April 2024 to 31st March 2025 and 1st April 2025 to 31st March 2026). The total value of the contract, including both options to extend for all participating local authorities is £487,920. The estimated annual value of the Leeds City Council component is £71,980. The total value for Leeds over the full length of the contract, including taking up both 12-month options to extend, is £287,920.

Why is the proposal being put forward?

- 1 The Food Safety Act 1990 and associated legislation places a statutory duty on local authorities as Food Authorities to carry out Official Controls and other food regulatory duties in relation to food and food premises within their area.
- 2 Under the Food Standards Act 1999, the Food Standards Agency (FSA) are designated as the Competent Authority responsible for the management and oversight of Food Authorities delivering Official Controls across England. This includes setting the service standards Food Authorities must follow in the Food Law Code of Practice, Practice Guidance, and Local Authority Framework Agreement documents.
- 3 Under the FSA Food Law Code of Practice and Local Authority Framework Agreement, Food Authorities must implement and maintain a risk-based intervention programme which includes the physical inspection of premises. This forms a vital part of the regulatory system that maintains food safety and assurance throughout the food chain, protects public health, and enables international trade in food products. A function of the FSA is to monitor and audit the performance of Food Authorities delivering Official Controls against these service standards and delivery of intervention programmes.
- 4 Following an inspection, premises are risk-rated based on the inspection findings to determine a next visit date, the risk, and priority for future inspections. Individual premises are rated A to E, with A being highest risk and E being lowest. This information is used to produce the risk-based intervention programme each financial year (1st April to 31st March) to determine the premises to be visited that year. Newly registered food premises that have yet to be inspected are classed as being 'unrated'. They are also included in the inspection programme in addition to fully rated premises as they are required to be physically inspected before being given a risk-rating.
- 5 Leeds City Council currently have approximately 8600 registered food premises in its area requiring inspection (including rated and un-rated premises) and pre-pandemic delivered in the region of 2,500 inspections annually. Given the complex technical and legal nature of the function, inspections and other food related regulatory work can only be delivered by officers satisfying qualification and technical competency requirements outlined in the Food Standards Agency Food Law Code of Practice, limiting the internal resources available to deliver this function.
- 6 Therefore, the Food and Health Team supports its statutory obligations to deliver Official Control food interventions using an external contract. The existing joint contract between Leeds City Council, Bradford MDC, and Wakefield MDC with Osborne Richardson Limited (DN313404) expires on the 31st March 2022.

- 7 A Find a Tender Service (FTS) compliant competitive tender exercise has been carried out. The tender documents were published on YORtender and advertised via Find a Tender Service on 20th January 2022, with a submission deadline of 2nd March 2022. Tender requirements were for submission of a standard selection questionnaire (SSQ - a due diligence document), method statements, price schedule and social value commitments via the use of the Social Value Portal.
- 8 The tender evaluation was conducted by a panel of officers from the Food and Health Team, Communities, Housing and Environment, Leeds City Council; Food Safety Team, Health and Wellbeing, Bradford MDC; and the Food Safety Team, Regeneration and Economic Growth, Wakefield MDC. The overall scoring process was undertaken on a consensus basis and overseen by Procurement and Commercial Services (PACS).
- 9 One tender submission, from Osborne Richardson Limited, was received by the deadline and evaluated in line with the methodology as detailed within the Tender Instructions. The method statement responses exceeded the minimum quality threshold set out with no issues identified. The panel then reviewed the pricing schedule.
- 10 The detailed breakdown and outcome of the evaluation, scoring of the bid received, and proposed pricing rates are provided in the confidential appendices Appendix 1: Evaluation Matrix and Appendix 2: Current and Proposed Rates for Official Control Food Interventions.
- 11 Appendices 1 and 2 in this report are confidential and exempt under Access to Information Procedure Rule 10.4(3) as they contain information relating to the business affairs of organisations involved throughout the process. It is felt that if this is disclosed this would, or would be likely to, prejudice the commercial interest of the Council.
- 12 Due diligence checks of the SSQ concerning health and safety, finance, references, and insurance were undertaken, all of which were deemed to be satisfactory.
- 13 The purpose of this report is to seek approval from the Chief Officer Elections and Regulatory to approve the appointment of Osborne Richardson Limited to deliver the new contract for Official Control food interventions (47105). The new contract will be for 24 months (1st April 2022 to 31st March 2024), with the option of extending for a further two 12-month periods (1st April 2024 to 31st March 2025 and 1st April 2025 to 31st March 2026).
- 14 The use of external contractors has been found to be a cost-effective method to support delivery of the intervention programme and enable the Council to meet its statutory duties. Overall, contractor performance up to March 2020 when routine inspections were suspended due to COVID-19 priority work was good, with local authority requirements being met.
- 15 The Food and Health Team also deliver the Council's statutory functions under the Public Health (Control of Disease) Act 1984 and associated regulations. As part of the Council's COVID-19 pandemic response, this has included public health enforcement work, investigation of complaints, and investigation of outbreaks associated with workplaces and commercial premises which were prioritised during the public health emergency.
- 16 The intermittent closure and legal restrictions imposed on food businesses and the hospitality industry during the COVID-19 pandemic, along with the need for the Food and Health Team to prioritise delivering its public health functions, resulted in the routine inspection programme being postponed from March 2020 to 30th June 2021. During the pandemic period there was also a substantial increase in new food businesses registering with the authority, resulting in an increased number of new and unrated premises requiring an initial inspection.
- 17 The Food Standards Agency have now issued guidance to Food Authorities on recovery planning and priorities, with routine food hygiene inspections resuming from 1st July 2021 and being carried out based on risk. However, the suspension of routine inspections, intermittent premises closures and the increase in new food businesses has resulted in significant backlogs

of food hygiene inspections that now need to be carried out to deliver the local authority's statutory duties and protect public health. The new contract will directly support the delivery of these inspections.

What impact will this proposal have?

Wards affected:

Have ward members been consulted? Yes No

- 18 The existing joint contract with Osborne Richardson Limited (DN313404) expires on 31st March 2022. The appointment of Osborne Richardson Limited to deliver the new contract (47105) will support Leeds City Council, Bradford MDC, and Wakefield MDC in delivering Official Control food interventions within their respective authorities from 1st April 2022 until 31st March 2024, and if both options to extend are taken up, until 31st March 2026.
- 19 The Covid-19 pandemic presented significant challenges, new work streams, increased workloads and the need to change service priorities for the Food and Health Team given the need to also deliver the Council's statutory functions under the Public Health (Control of Disease) Act 1984 and associated regulations. Although routine inspection work has resumed in-line with Food Standards Agency guidance, the Food and Health Team's priorities still include this public health enforcement work, investigation of public health complaints, investigation of workplace outbreaks, and supporting the future delivery the Leeds City Council COVID-19 Outbreak Management Plan. The contract and use of contract inspectors to deliver Official Controls will enable internal authorised officers to prioritise this public health work if required in the future.
- 20 The closure and legal restrictions imposed on food businesses during the COVID-19 pandemic, along with the need to prioritise delivery of public health functions, resulted in routine inspections being postponed in March 2020. This created significant backlogs of outstanding inspections that now need to be undertaken, along with a high volume of new food businesses registering with the authority requiring an initial inspection. As of 30th June 2021, there were an estimated 3099 premises requiring inspection before 31st March 2022, 2697 premises between 1st April 2022 and 31st March 2023, and 8512 premises from 1st April 2023 to 31st April 2024. The use of external contractors will directly support the team and authority in delivering these interventions and is a vital part of delivering the Teams post-pandemic recovery plans. Internal officers will be able to prioritise public health functions if required, the team can recover from the impact of the pandemic, and deliver other statutory functions relating to food safety. This includes interventions at high-risk premises and processes, interventions at approved premises and manufacturers, dealing with imported and exported foods, carrying out enforcement action, and dealing with complex high-risk and reactive work where there is an increased risk to public health, including food poisoning outbreaks and major food incidents.
- 21 An Equality, Diversity, Cohesion, and Integration Impact Assessment has previously been completed and was included with the Delegated Decision to approve commencement of the procurement exercise (D54634). The key findings of the assessment are included in the contract specification.

What consultation and engagement has taken place?

- 22 No formal consultation is required
- 23 Participating local authorities and LCC Procurement and Commercial Services have been consulted, have participated in the procurement and evaluation process, and support the contract award to Osborne Richardson Limited.

- 24 Within West Yorkshire there are already well-established partnerships and existing collaboration between the five authorities for food safety as part of the West Yorkshire Food Lead Officers Group. Leeds City Council, Bradford MDC and Wakefield MDC have worked collaboratively during previous joint procurement processes and delivery of contracts, and this will continue with new the contract.
- 25 Bradford MDC and Wakefield are carrying out the necessary consultation within their own local authorities in accordance with their own procurement and governance arrangements.

What are the resource implications?

- 26 Approximately 2,000 interventions in Leeds, 500 in Bradford and 500 in Wakefield rated A to E (including unrated premises) are anticipated to be required each financial year under the contract.
- 27 However, the exact number of interventions carried out during the contract and extension periods will depend on available budgets and budget allocation each financial year, service priorities and annual service plans, and the intervention programme of each participating authority.
- 28 Resources for delivering Leeds City Council's requirements under the contract have been budgeted for £71,980 and are included in the Food and Health Team budget for 2022/2023.
- 29 The total value of the Leeds City Council component over the full length of the contract, including taking up both 12-month options to extend, is £287,920.
- 30 Bradford MDC and Wakefield MDC have each budgeted £25,000 per annum and are responsible for paying directly for their own requirements. The total value of Bradford MDC and Wakefield's component over the full length of the contract, including taking up both 12-month options to extend, is £200,000.
- 31 The combined total value of the contract for all participating authorities is £121,980 per financial year, and £487,920 over the total length of the contract, including both options to extend for 12 months.
- 32 The price evaluation concludes that the tendered rates submitted by Osborne Richardson Limited are higher than rates currently paid for these services under the existing contract. The proposed pricing structure is outlined in Appendix 2: Current and Proposed Rates for Official Food Control Interventions.
- 33 However, the panel have reviewed the position and delivery options available. The panel have determined that this still represents value for money to the authority and is based on the current market rate considering the current economic climate and lack of internal resources to deliver what is a statutory duty.
- 34 As food hygiene interventions can only be delivered by suitably qualified and competent officers, the use of external contractors still represents a cost-effective way of supporting the Council's statutory obligations in lieu of sufficient internal food competent officers being available. Should the local authority have to employ officers to carry out the projected intervention work, it is estimated that 5.7 extra full-time equivalents would be required at Leeds City Council based on National Audit Office guidance, with 8 extra full-time equivalents based on National Audit Office best practice. It should be noted that this estimate is for the 2000 food interventions delivered for Leeds City Council by the contract only, does not include other regulatory enforcement work, or the number of food competent officers required to deliver the full programme of interventions and full food safety functions.

35 Both Wakefield MDC and Bradford MDC have confirmed that the tender submitted still represents values for money based on the current market rate and limited resources to deliver internally. The use of suitably qualified, competent, and experienced contract inspectors ensures value for money, quality is maintained, the reduced need for follow-up work by internal staff, and delivery of Official Food Control interventions.

36 The contract specification includes added value for money following improvements that have been made during the previous contract. This includes audit reporting, contract management, investigation of food complaints, assistance in the development of internal employees, and involvement in delivering public health interventions during visits.

What are the legal implications?

37 The joint procurement exercise and evaluation has been undertaken in accordance with the Procurement Contract Regulations 2015 and the Council's Contract Procedure Rules. Assistance and support have been given by colleagues within Leeds City Council's Procurement and Commercial Services. Following evaluation, the panel believes that the contract should be awarded as set out in the recommendations of this report. Wakefield MDC and Bradford MDC will seek the necessary approval within their authorities in accordance with their own council's governance rules. The Social Value Portal (SVP) has been utilised.

38 Due to the potential value of the contract, competition was sought throughout the tender process and the procurement was advertised under the EU open procedures via the Council's YORtender portal, as well as via the Find a Tender Service. This procurement route was recommended due to the limited market and wanting to attract as much interest as possible.

39 Despite this procurement being carried out following EU regulations, the council will not be required to comply with the standstill period as only one tender was received. This provision is contained within Reg 32 (6B), stating that you do not need to inform all tenderers of the outcome if only one took part, and with Reg 32A(1), (standstill period) only applies if you have tenderers to inform.

40 At £287,920, the full value of the Leeds City Council component is under £500,000 and represents a Significant Operational Decision.

41 The procurement will not be subject to call-in under the Council's constitution.

42 The Chief Officer Elections and Regulatory has delegated authority to approve the contract award and approve the appointment of Osborne Richardson Limited under the Communities, Housing and Environment Sub-delegation scheme.

43 By virtue of Access to Information Rules 10.4.(3) Appendices 1 and 2 attached to this report are restricted as confidential. This is on the basis that they contain information relating to the financial or business affairs of any particular person (including the authority holding that information) which, if disclosed to the public, would, or would be likely to prejudice the commercial interests of that person or of the Council.

44 It is considered that the public interest in maintaining this information as exempt outweighs the public interest in disclosing the information, as disclosure may prejudice the outcome of the procurement process, whilst the details of the tender proposals within the appendices also contain the financial details/business affairs of individual companies.

What are the key risks and how are they being managed?

45 Without support from the contract, Leeds City Council, along with Wakefield MDC and Bradford MDC, would not be able to discharge their statutory duties effectively under food safety legislation.

- 46 The procurement process and risks will be managed in consultation with Procurement and Commercial Services. An Equality, Diversity, Cohesion, and Integration Impact assessment along with a Data Protection Impact Assessment have been completed as part of the procurement process with key findings included in the contract specification.
- 47 If the request to award the contract to Osborne Richardson Limited is not given, the Council will not meet its requirements to provide Official Controls and meets its obligations to complete a food hygiene intervention programme. This will lead to audit by the Competent Authority, the Food Standards Agency.
- 48 As the Competent Authority overseeing delivery of Official Controls, the failure by the Council to meet the Food Standards Agency Code of Practice and Local Authority Framework Agreement intervention requirements would result in referral to the Food Standards Agency Board. The Board has the power to institute the service to the full standards on the Council's behalf and fully recharge the cost to the local authority including disbursement and on-costs.

Does this proposal support the council's three Key Pillars?

Inclusive Growth Health and Wellbeing Climate Emergency

- 49 Maintenance of an effective food intervention programme facilitated by the contract fully supports the Council's policies on public health protection, priorities on Health and Wellbeing, reducing health inequalities, and pandemic recovery.
- 50 The use of external contractors to support delivery of routine food hygiene interventions enables officers to prioritise, if necessary, the Food and Health Teams role in the Leeds City Council COVID-19 Outbreak Management Plan and deliver its public health enforcement functions.
- 51 The food, hospitality and retail sectors are a key part of the City's economy. Ensuring food premises are safe and legally compliant are important parts of re-opening both the City and the economy following the pandemic.
- 52 At Full Council on 27th March 2019 Leeds City Council passed a motion declaring a Climate Emergency. In addition, the Leeds Climate commission have proposed a series of science-based carbon reduction targets for the City so that Leeds can play its part in keeping the global average surface temperatures increase to no more than 1.5°C. The outcomes of the contract support the City's ambitions to reduce risk of climate change. As contractors carry out multiple inspections a day, the use of contractors reduces the number of single car journeys being made to deliver the intervention programme.

Options, timescales and measuring success

What other options were considered?

- 53 Due to the specific and specialist nature of the services required under the contract, along with strict qualification and competency requirements for officers delivering this work, there are no internal service providers and only a very limited number of suitable internal officers. Gaining food competency requires completion of a relevant qualification, for example an Environmental Health Degree or Masters (two to four years), followed by approximately two years post-graduate specialist technical training and professional development before full competency is achieved. These limit both the number of officers currently available internally within the authority and the ability to quickly train staff to deliver this work in the short-term.
- 54 In lieu of internal providers and sufficient internal resources, the option to use external contractors provides qualified and competent officers to support delivery of the statutory function and delivery of the intervention programme during the length of the contract.

55 There are also no existing frameworks or contracts in place that will meet the specific needs of the service when the current contract expires on 31st March 2022.

How will success be measured?

56 The Food Standards Agency monitor delivery of local authority intervention programmes via the Local Authority Enforcement Monitoring System. The Food and Health Team must submit an annual statutory return at the end of each financial year outlining the enforcement work, inspections carried out and their performance in delivering their intervention programme. This is run annually and is used to monitor performance.

57 Ultimate success and delivery by Osborne Richardson Limited will be measured by the ability to deliver the inspections required in the programme as part of the annual Local Authority Enforcement Monitoring System reporting process.

58 To monitor ongoing progress and delivery during each financial year, the contract specification includes several quality assurance and key performance indicators. This includes specified time-limits for carrying out inspections and submitting post-inspection documentation, quality assurance processes and audit on inspection documents, reports and visits, quarterly performance reports on delivery of local authority requirements, and quarterly performance and quality assurance meetings with the contract provider.

What is the timetable for implementation?

59 The current contract expires on 31st March 2022. The new contract will start and be in place with Osborne Richardson Limited from 1st April 2022.

Appendices

60 Appendix 1: Evaluation Matrix (confidential)

61 Appendix 2: Current and Proposed Rates for Official Food Control Interventions (confidential)

Background papers

62 None