

WAIVER REPORT - To approve the waiver of CPR 9.1 and 9.2 to enter into a new contract with the Yorkshire Purchasing Organisation (YPO) without seeking further competition, for a period of up to 7 months from 1 September 2022

Date: 25 July 2022

Report of: Chief Officer Civic Enterprise Leeds

Report to: Director of Resources

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

- Catering Leeds is responsible for the supply of meals to approximately 220 sites, mainly primary schools. In order to supply the meals, there is a requirement for grocery items. This value is estimated at £700,000 for this 7 month contract. The current arrangement with the YPO for the provision of groceries has been in place since 2010. Use of the YPO continues to demonstrate best value for money, and it is recommended that Leeds City Council (the Council) continue with the current arrangement for a further 7months.
- In order to determine best value for money benchmarking exercises have taken place which show that using the YPO continues to offer a minimum of £200,000 savings against alternative suppliers over the 7 month period. In addition, the YPO give annually a rebate, loyalty vouchers, discount on purchases and P-card rebate which equates to just over £44,000.
- The YPO is a central purchasing body for the purposes of the Public Contracts Regulations 2015 (the Regulations) and the Council is able to purchase goods directly from a central purchasing body without the need to go out to further tender, as the YPO has already procured the goods in accordance with the Regulations.
- This arrangement will require a waiver of CPR 9.1 and 9.2 which states that competition is required for procurements valued over £100,000 and that at least four written tenders should be invited.
- The award will support the health and wellbeing of school children across Leeds. A key objective within the Best Council plan 2020-2025 is to build a Child Friendly City. One of the baseline entitlements of a Child Friendly City and contributes directly to the outcomes identified to "improve healthy lifestyles" and "encourages healthy eating" and "increase uptake of free school meals".

Recommendations

1. The Director of Resources is recommended to approve the waiver of CPRs 9.1 and 9.2 to enter into a new contract with the YPO, without seeking further competition, for a period of up to 7 months, commencing on 1st September 2022 with an estimated value of £700,000.

Why is the proposal being put forward?

- 1 This report seeks approval from the Director of Resources to waive CPR's 9.1 and 9.2 in order to enter into a new contract with the YPO, without seeking further competition, for the purchase of grocery items for a period of up to 7 months from 1st September 2022.
- 2 YPO have indicated that, after internal consultation, they will stop the direct delivery of grocery provisions, from their Wakefield depots, by 31 March 2023.

What impact will this proposal have?

Wards Affected: Please state the specific wards affected here. If city-wide, state "All" for clarity.

Have ward members been consulted? Yes No

- 3 The Council currently has an arrangement with the YPO which is due to come to an end on 31st August 2022. The YPO is a central purchasing body for the purposes of the Regulations and the Council is able to purchase goods directly from a central purchasing body without the need to go out to further tender, as the YPO has already procured the goods in accordance with the Regulations.
- 4 A benchmarking exercise has been undertaken to determine whether continuing with this arrangement represents best value for money to the Council going forward. Paragraph 5 and 6 below, details the benchmarking exercise that has taken place, and demonstrates that to continue to use the YPO for the purchase of grocery items, will make savings for the Council.
- 5 The result of the benchmarking suggests that purchasing through the YPO, continues to offer substantial savings against a leading national wholesaler.
- 6 This demonstrates that continuing to use the YPO still offers a saving of at least £200,000 for this 7 month period, under the current arrangement. As with previous benchmarking this does not take into account either potential delivery costs from new suppliers, or the YPO rebate and loyalty bonus.
- 7 A summary is attached as confidential Appendix A (Original Benchmarking Report Summary) – (Benchmarking Grocery Items) which is confidential under regulation 10.4 (3). This summarizes the total annual cost savings for discounts, YPO rebates, loyalty bonuses and P-card rebate to be just over £44,000 for this 7 month period.
- 8 The YPO will continue to work closely with the Council to identify and achieve further savings during this shortened contract period.
- 9 The revised proposal from the YPO, indicate a continuing saving would increase before delivery and additional rebates, It is thought that by not continuing to trade with YPO would lead to significant increases in costs during this period.
- 10 The YPO has agreed to offer a discount on their brochure prices, based on the summer 2022 YPO catalogue for a seven month period for all items on the 'Leeds Price List & Order Form'. Price changes will occur as the YPO update their catalogue, but the Council will continue to receive this discount. They have further offered a 1% discount on all items not on the 'Leeds Price List & Order Form'
- 11 The YPO have taken a decision that they no longer wish to continue with selling food direct and will be winding down their operations. The report, therefore, only requests a period of time to cover this winding down period and allow for a new contract to be procured.

What consultation and engagement has taken place?

- 12 Consultation has taken place with school kitchens to determine requirements and with colleagues from Procurement and Commercial Services (PACS), including PACS Legal.

What are the resource implications?

- 13 Once the contract is awarded there are no additional resource requirements from catering services or PACS

What are the legal implications?

- 14 This decision to waiver CPR 9.1 and 9.2 is a key decision and is included on the list of forthcoming decisions and is therefore subject to call-in.
- 15 The Appendices to the report are Exempt/Confidential under Access to Information Procedure Rules 10.4 (3). The public interest in maintaining the exemption in relation to the confidential Appendix outweighs the public interest in disclosing the information and financial details which, if disclosed would adversely affect the business of the Council and the business affairs of a number of individual companies
- 16 The YPO is a central purchasing body for the purposes of the Regulations and the Council is able to purchase goods directly from a central purchasing body without the need to go out to further tender, as the YPO has already procured the goods in accordance with the Regulations.
- 17 Although there is no overriding legal obstacle preventing the waiver of CPR 9.1 and 9.2, the content of the report should be noted. In making their final decision, the Director of Resources should be satisfied that the approved course of action represents best value for the Council.

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

- 18 The YPO purchase goods and services on behalf of a large number of public bodies and as a result has immense buying power for products which are required under this contract. As the YPO are a central purchasing body under the Regulations they undertake the procurement exercise for the goods, works and services they offer to other public bodies in full compliance with the requirements of the Regulations.
- 19 Should the recommendation contained in this report not be approved it will mean the Council will have to purchase its groceries without any contractual arrangements in place, until such time as a contract could be procured and awarded.

Does this proposal support the council's 3 Key Pillars?

Inclusive Growth

Health and Wellbeing

Climate Emergency

- 20 Using YPO will support inclusive growth of food provision and usage, to support client requirements, through such schemes as Bronze Award "Food for Life".

- 21 By utilising a contract with the YPO, there are assurances that contract procedure rules have been followed. Further the items purchased by the Council will benefit the health and wellbeing of service users, as they will consist of healthy and nutritious products which will be of benefit to all users of the council's catering services, but especially for school meals and adult social care settings

22 The council will work with the YPO to ensure that where possible products chosen are as climate friendly as possible.

Options, timescales and measuring success

a) What other options were considered?

23 Tendering out to the marketplace was considered, but not taken forward due to the likelihood of increased costs based on benchmarking across other suppliers.

b) How will success be measured?

24 Success is measured in providing a cost efficient and compliant contract for the purchase of grocery items.

25 Regular supplier reviews and benchmarking will ensure the contract continues to offer value for money. The YPO are a compliant supplier under the regulations.

c) What is the timetable for implementation?

26 If approved the award will need to be in place prior to the expiry of the current arrangement on 31 August 2022

Appendices

27 Appendix A – Benchmarking Grocery Items (confidential)

28 Appendix B – (appendix 1 for waivers)

Background papers

None