

Request to vary the end date of the contract 25203 supply of frozen foods using Regulation 72 (1) (e)

Date: 3/1/2023

Report of: Deputy Chief Officer, Head of Catering and Fleet Services

Report to: Chief Officer Civic Enterprise Leeds

Will the decision be open for call in? Yes No

Does the report contain confidential or exempt information? Yes No

Brief summary

Request to vary the end date of contract 25203 the supply of frozen foods from 31 March 2023 to 31 July 2023 using Regulation 72 (1) (e) of the Public Contracts Regulations (2015)

- Due to the unexpected end of the direct supply of groceries by YPO, there are insufficient resources within CEL to deal with two major contract renewals and ensure allergen details are properly analysed, ensuring child safety
- This variation to the contract will support front line council in delivering their services.

Recommendations

- a) The Chief Officer Civic Enterprise Leeds is recommended to approve the variation of end dates of contract 25203 Supply of Frozen Foods by JJ Foodservice Ltd from 31 March 2023 to 31 July 2023 by using Regulation 72 (1) (e) of the public Contracts Regulation (2015). The estimated value for the variation of the contract dates is expected to be under £450,000.

What is this report about?

- 1 The current contract 25203 supply of frozen foods is due to expire 31 March 2023, with no further option to extend.
- 2 Due to YPO unexpectedly withdrawing from the direct delivery of groceries from 31 March 2023, there are insufficient resources available to ensure food safety around all the potential change in products and associated allergen declarations.
- 3 Regulation 72 (1) (e), states –

“Contracts and framework agreements may be modified without a new procurement procedure in accordance with this Part in any of the following cases – (e) where the modifications, irrespective of their value, are not substantial within the meaning of paragraph (8);

Paragraph (8) states:- “A modification of a contract or a framework agreement during its term shall be considered substantial for the purposes of paragraph (1)(e) where one or more of the following conditions is met:—

 - (a) the modification renders the contract or the framework agreement materially different in character from the one initially concluded;
 - (b) the modification introduces conditions which, had they been part of the initial procurement procedure, would have—
 - (i) allowed for the admission of other candidates than those initially selected
 - (ii) allowed for the acceptance of a tender other than that originally accepted, or
 - (iii) attracted additional participants in the procurement procedure;
 - (c) the modification changes the economic balance of the contract or the framework agreement in favour of the contractor in a manner which was not provided for in the initial contract or framework agreement;
 - (d) the modification extends the scope of the contract or framework agreement considerably;
 - (e) a new contractor replaces the one to which the contracting authority had initially awarded the contract in cases other than those provided for in paragraph (1)(d).”
- 4 Regulation 72 (1) (e) allows the contract to be varied by up to 10% of the original contract value. This original contract value was for £5,000,000. The estimated value of this variation is £450,000, which is within the 10% variance allowed.
- 5 The report asks that under Regulation 72 (1) (e), the contract end date is varied from 31st March 2023 to 31st July 2023. The supplier JJ Foodservice Ltd have agreed to this proposed change subject to Council approval.
- 6 The Food Tech Office currently maintains over 2,500 special dietary requirements for school age pupils. They will need to review and amend records for all products associated with any contract changes and inform all Catering Leeds sites. Agreeing to this contract variation, will allow the food tech team to safely process allergen information from new product specifications, which will allow the continued safe feeding of clients with special dietary requirements.
- 7 Not to approve this request to vary the contract end dates risks non-compliant spend, higher prices, and potentially affect continuity of supply.
- 8 The current supplier JJ Foodservice Ltd, have indicated they are happy for the end date of the contract to be varied.
- 9 The contract continues to offer good value for money, as demonstrated in appendix A – benchmarking (confidential). This report is deemed confidential under Access to Information Procedure Rule number: 10.4(3)

What impact will this proposal have?

- 10 Approving the variation to contract 25203 for the supply of frozen foods will ensure the council will continue to have a compliant contract.
- 11 Having a compliant contract in place will ensure the council can continue to access quality frozen foods for a variety of council departments to meet their front-line service requirements. This includes the provision of school meals, including free school meals
- 12 If a contract variation is not approved, the Council will be subject to non-compliant spend and potentially significantly higher prices.
- 13 The maintenance of allergen details for products is a key driver in providing healthy and nutritious meals to school pupils who have a special dietary requirement. Not allowing the variation poses a significant risk in Catering Leeds Food Tech team in providing the correct information of allergens in a timely manner.
- 14 Discussions have taken place with colleagues in PACS to ensure this variation to contract end date is compliant with the regulations.

How does this proposal impact the three pillars of the Best City Ambition?

Health and Wellbeing

Inclusive Growth

Zero Carbon

- 15 i) The contract will ensure catering services can continue to offer healthy meal choices to all citizens of Leeds.
- ii) The council will continue to work with JJ Foodservice Ltd successful bidder to reduce environmental impact of the contract. This will, where possible, using greener vehicle, sourcing produce close to Leeds and making fewer deliveries.

What consultation and engagement has taken place?

Wards affected:

Have ward members been consulted?

Yes

No

- 16 PACS legal have been consulted and advised that Regulation 72 (1) (e) is appropriate in varying the contract end dates.

What are the resource implications?

- 17 Leeds Catering and PACS have resources available to vary the contract end dates once approval is given.

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

- 18 i) A key risk is to ensure that the end dates for the contract for the Supply of Frozen Foods are varied in a compliant manner.
- ii) Not to vary the contract end date risks the council having to incur non-compliant spend with higher costs.
- iii) Not to vary the contract end date also risks pupils who have special dietary requirements from receiving inappropriate foods for their dietary needs

What are the legal implications?

- 19 PACS have advised there are no legal implications to vary the existing contract for the supply of frozen foods using Regulation 72 (1) (e)
- 20 Due to the value, this request is a significant operating decision, and is not subject to call in.

Options, timescales and measuring success

What other options were considered?

- 21 Originally it had been planned to reprocur the frozen foods contract with a 1 April 2023 start date. However, with YPO withdrawing from the direct delivery of groceries, a new contract must be sourced for that category of food. The workload and timescales for the analysis of new product, and the associated allergens, would be too great for the Food Tech team to process and feel confident in ensuring all sites are informed of the updates to products and their associated allergens.

How will success be measured?

- 22 Success will be measured maintaining a compliant contract that meet the requirements of the council for the supply of frozen foods, whilst offering good value for money

What is the timetable and who will be responsible for implementation?

- 23 The variation to the contract end dates needs to be in place for 1 April 2023.
- 24 The Head of Catering and Fleet services will be responsible for implementation

Appendices

- Appendix A – Benchmarking (Confidential)

Background papers

- None