

# Authority to utilise Regulation 72 (1) (b) of the Public Contracts Regulations 2015 to vary the current contract for the provision of building materials.

Date: 6<sup>th</sup> February 2023

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

## Brief summary

Authority to utilise Regulation 72 (1) (b) of the Public Contracts Regulations 2015 to vary the current contract for the provision of building materials with the current provider Wolseley UK Limited and extend the provision for a period of 3 months.

The current arrangement with Wolseley UK Limited is due to expire 31<sup>st</sup> March 2023 with no further opportunity to extend.

Procurement activity has been undertaken to identify a number of replacement suppliers, with mobilisation activity underway. During this activity it has been identified that additional time is necessary to ensure effective demobilisation and mobilisation activity pertaining to logistics, premises, IT, staff training and staff engagement.

## Recommendations

- a) The Director of Resources is requested to approve the proposal to vary the existing contract with Wolseley UK Limited and extend the provision for a period of 3 months in accordance with Public Contract Regulations - Regulation 72 1(b) with an estimated value of £1,000,000.

## What is this report about?

- 1 LBS are seeking approval to vary the end date of the existing contract with Wolseley UK Limited for a period of 3 months in accordance with Public Contract Regulations - Regulation 72 1(b)

- 2 Regulation 72 1(b) of the Public Contract Regulations 2015 states that:
  72. (1) Contracts and framework agreements may be modified without a new procurement procedure in accordance with this Part in any of the following cases:
    - (b) for additional works, services or supplies by the original contractor that have become necessary and were not included in the initial procurement, where a change of contractor—
      - (i) cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement, or
      - (ii) would cause significant inconvenience or substantial duplication of costs for the contracting authority provided that any increase in price does not exceed 50% of the value of the original contract.
- 3 The current arrangement with Wolseley UK Limited is due to expire 31<sup>st</sup> March 2023 with no further opportunity to extend within the current contract.
- 4 Procurement activity has been undertaken to identify several replacement suppliers, with mobilisation activity already underway. During this activity it has been identified that additional time is necessary to ensure effective demobilisation and mobilisation activity pertaining to logistics, premises, IT, staff training and engagement.
- 5 Continuation of this provision is necessary to ensure consistent availability of materials to LBS operatives undertaking responsive, void and planned maintenance work to domestic and commercial properties.
- 6 The additional time is necessary to ensure effective mobilisation to the new providers identified as part of the multiple procurement exercises undertaken in recent months.
- 7 Due to the need for IT interfacing, training requirements and staff engagement it is not considered feasible to procure an alternative provider for the short-term period required for effective mobilisation to the new providers. Continuation with the current provider is considered the only feasible option to ensure effective continuation of provision, whilst maintaining ability to effectively de-mobilise from Wolseley UK Limited and mobilise with the new providers.
- 8 The value of this short-term arrangement is estimated to be £1,000,000, which is below the threshold of 50% required by application of Regulation 72.

### **What impact will this proposal have?**

- 9 Implementing this variation with Wolseley UK Limited will have an estimated value of £1,000,000.
- 10 Failure to implement this variation will result in rushed de-mobilisation and mobilisation activities, potentially disrupting supply provision which would negatively impact the service to customers.

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

Health and Wellbeing

Inclusive Growth

Zero Carbon

- 11 It is not anticipated that continuing this relationship for the short term will have any adverse effect on the ongoing contribution to the Best City Ambition.
- 12 The procurements and resulting work will contribute to the following Best Council Plan objectives –
- a) Housing - Maintaining housing stock is key in ensuring we are supporting tenants in reducing fuel poverty and ensure the right quality of housing. Improving energy performance in homes through maintenance can also contribute to tackling the Climate Emergency
  - b) Good growth – Growing the economy, creating jobs, improving skills, promoting a vibrant city.
  - c) 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 global average surface temperature increases to no more than 1.5c.
  - d) One element is to reduce carbon emissions - Wolseley UK Limited's large infrastructure, wide local network and strong buying power, will continue to contribute in reducing material and transportation costs, i.e. deliver material through its local branch network stores, which in turn will reduce carbon emission and improve service turnaround times (i.e. bring efficiencies).

## What consultation and engagement has taken place?

Wards affected:

Have ward members been consulted?

Yes

No

- 13 Consultation has taken place with internal stakeholders including Trade Unions, LBS Staff, Finance, HR, CEL management team, PACS Legal, Project Team and commissioning services.
- 14 The organisations who have been involved in any of the tender exercises have also been consulted about the delay in starting the new arrangements.

## What are the resource implications?

- 15 Retaining the services of Wolseley UK Limited through a new contract will ensure best use of the internal resources currently engaged to monitor and manage the effective running of this contract, and to ensure an uninterrupted supply of materials to the business.
- 16 This contract will support the LBS direct delivery workforce with the provision of materials required to complete their housing and non-housing responsive repairs and maintenance programme.
- 17 LBS operatives are already trained in, and familiar with the process of ordering, collecting, and receiving materials through Wolseley UK Limited therefore no additional resource training time would be required.
- 18 As the current supplier remains our preferred supplier, TUPE will not apply in continuation of this provision.
- 19 There are no additional financial implications in contracting with Wolseley UK

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

20 There are no key risks anticipated in continuation of this provision. Risks pertaining to the demobilisation and mobilisation of the new contracts are being managed by LBS as part of the larger Merchant Project team activity and form the basis for this variation.

## **What are the legal implications?**

- 21 The value of this decision is £1,000,000 and is therefore a Key Decision which is subject to call in. There are no grounds for keeping the contents of this report confidential under the Access to Information rules.
- 22 The modification of the contract end date and value is permissible under the Public Contracts Regulations 72 -modification during the terms of the contract. When contracts are varied on reliance on Regulation 72(1)(b), it is a requirement to submit a modification notice to Find a Tender (FTS) to alert the market that a modification to the contract has taken place (or is to take place). Once the notice is published on FTS it will start time running for bringing a claim for a breach of the Public Contracts Regulations 2015, which must be brought within 30 days of the date that an aggrieved party knew, or ought to have known, that a breach had occurred. The service will ensure a modification notice to that effect will be published. As detailed in paragraphs 4 to 7 inclusive, the complexities of this matter and the need for continued access to building supplies means that only Wolseley can meet the requirements at this time and therefore other options are absent for technical reasons. Identifying and contracting with another supplier such as through a tender exercise would cause significant inconvenience and duplicate costs for the contracting authority because of the resources and time needed to undertake a tender and to support the provider to develop the necessary knowledge and understanding. The value of the variation is considerably less than 50% of the value of the original contract.
- 23 The risk of challenge is considered as very low and will be somewhat diminished by the publication of the Modification Notice.
- 24 The Legal implications of not continuing this provision would be non-contract spend exceeding the FTS thresholds set out in the Public Contract Regulations and service failure.
- 25 The arrangement will continue upon the same Terms and Conditions, no changes are anticipated.
- 26 There are considered to be no legal obstacles preventing this decision being taken.
- 27 These comments should be noted by the Director of Resources and in making the final decision should be satisfied that doing so represents best value for the Council.

## **Options, timescales and measuring success**

### **What other options were considered?**

28 The option to continue with the current expiration date has been dismissed due to the challenges associated with effective mobilisation to new suppliers.

### **How will success be measured?**

29 The continuing availability of materials, and successful mobilisation to new suppliers will determine the success of this variation.

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

- 30 The variation will need to be implemented prior to the current expiration date of 31<sup>st</sup> March to ensure compliance and continuation of service provision.
- 31 LBS will work in conjunction with PACS and the Construction & Housing Procurement Team to implement the variation to Wolseley upon the same Terms and Conditions they are currently operating.

## **Appendices**

- None

## **Background papers**

- Original Wolseley Contract ATP - <https://democracy.leeds.gov.uk/ieDecisionDetails.aspx?ID=52816>
- Replacement Merchant ATP - <https://democracy.leeds.gov.uk/ieDecisionDetails.aspx?ID=55424>