

Approval to waive Contracts Procedure Rules 9.1 and 9.2 to directly award a contract for a Main Production Contractor for the Black Music Festival.

Date: 17th March 2023

Report of: Community Activities Officer

Report to: Chief Officer, Parks & Countryside with delegated authorisation to waive Contract Procedure Rules.

Will the decision be open for call in? Yes No

Does the report contain confidential or exempt information? Yes No

Brief summary

Black Music Festival has taken place in Potternewton Park and surrounding streets for over 25 years and is the City's largest fringe event attracting an audience of over 20,000.

Plans are being developed to procure the services of a production company to provide all the infrastructure required such as stages, power, and lighting to host Black Music Festival. Parks & Countryside are currently working with colleagues in Procurement and Commercial Service and to create a framework during 2023 so a formal tender process can be undertaken early 2024 and a framework agreement be put in place for a minimum of 3 years. While undertaking this process, it is now sought to waive Contract Procedure Rules 9.1 and 9.2 to directly award a contract to Grace & Tailor Ltd with a value of up to £150,000. Estimated infrastructure costs equating to £100,000 and additional monies available to draw upon post event for unknown operational materials such as fuel which has accrued due to an ever changing economic position.

Contracts Procedure Rule 27 requires that a decision to waive the Contracts Procedure Rules is made by the relevant Director through the delegated decision process. The purpose of this report is to brief the decision maker on the waiver that has been recommended so that they may be satisfied it represents value for money or is in the Council's best interests.

Recommendations

The Chief Officer, Parks and Countryside with delegated authorisation is recommended to:

- Approve a waiver of Contracts Procedure Rules (CPR) 9.1 and 9.2 (over £100k – High Value Procurements) to directly award a contract to Grace & Tailor Ltd with a contract value of £150,000 for a main production contractor for the Black Music Festival. The contract shall commence on the 1st April 2023 and expire on 30th November 2023

What is this report about?

- 1 Leeds West Indian Carnival has taken place in Potternewton Park and surrounding streets for over 55 years and is the City's largest event attracting an audience of over 100,000. The event is managed by the Council with artistic content and the history of its cultural heritage being delivered by the Leeds West Indian Carnival Committee. Black Music Festival, the artistic content of the fringe event held the day prior to the Carnival is delivered by Black Health Initiative.
- 2 It is worth noting that the management team for this event is very small in comparison to the scale of the event. In 2017, an audit of the Council's management arrangements was undertaken to identify pressures and to provide assistance in creating a sustainable event with the required control mechanisms and the provision of using specialist services where required.
- 3 Legislation surrounding the management of events has changed significantly in recent years, granting the implementation of a Leeds City Council holistic multi-agency safety advisory approach has assisted in supporting the event management, however, it has also identified the requirement for increased counter terrorism measures, infrastructure, medical provision, security, and formal traffic management arrangements, creating additional management pressures.
- 4 Considering the recommendations of the audit report, Parks and Countryside are proposing to procure the service of a production company to provide all the infrastructure required to host Black Music Festival, such as stages, power, and lighting. Parks & Countryside are currently working with colleagues in Procurement and Commercial Services (PACS) to create a framework agreement during 2023 and formal tender process be undertaken later in 2023 and a contract be awarded to commence in April 2024 for a minimum of 3 years.
- 5 This method was due to be trialled in 2020 in readiness to create a framework, however unfortunately, the coronavirus pandemic impacted on the event and the original timeframes being worked to with regards to procurement. Approval was sought to award a contract for the 2022 event with a value of up to £150,000 met through existing revenue budgets and 2023's event cost will be met the same way. The intention is to create a comprehensive framework but taking into account the complexities of undertaking a formal procurement process; this will not be completed in time for the 2023 event. It is for these reasons that a waiver of CPRs 9.1 and 9.2 is required

What impact will this proposal have?

- 6 This proposal will enable the appointment of a specialist production company to begin planning and procuring the necessary infrastructure to host the Black Music Festival for 2023 while Parks & Countryside work with PACS to establish a framework and undertake the formal tender process and awarding the contract for 2024. This will allow key members of the team involved to focus on the overall event management planning and meet the demands of fulfilling around 700 third-party event requests for events and activities on the Council's land.

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

Health and Wellbeing

Inclusive Growth

Zero Carbon

- 7 The Council is committed to the future of Black Music Festival. The Best Council Plan for 2022-2025 includes commitments to tackle poverty and reduce inequality. The Black Music Festival embodies many of the city & Council's ambitions including:

- Culture – focussing on enhancing the image of Leeds through major attractions and events.
- Safe, Strong Communities – building thriving and resilient communities.
- Child Friendly City – improving social, emotional, and mental health and wellbeing.

8 The proposal will make a contribution to the following Best Council Plan priorities:

- Health and wellbeing by supporting healthy, physically active lifestyles.
- Safe, strong communities by continuing to hold a long-standing community inclusive event, showcasing community resources for local people and visitors from further afield.
- Growing the cultural sector through promoting and sharing the heritage of the first West Indian Carnival fringe event held in the UK, ensuring that it can be more widely experienced for future years.
- Child Friendly Leeds through improving health and wellbeing, a fun and entertaining cultural event and a place for children to exercise the 5 main senses through music, dancing, cuisine and community cohesion.
- The proposal would help achieve the Key Performance Indicator of allowing more people to enjoy green spaces through various events and activities.

What consultation and engagement has taken place?

Wards affected: Chapel Allerton

Have ward members been consulted? Yes No

9 Parks & Countryside consulted with colleagues in the PACS to establish which CPRs to waive in order to directly award a contract for a main production company for the Black Music Festival 2023 whilst a competitive procurement exercise is carried out to establish a framework for 2024. Parks & Countryside plan to carry out a competitive procurement exercise in Autumn 2023 to enable the Council to call-off from this framework for future production events.

What are the resource implications?

10 Due to the timescales involved, the Parks and Countryside service do not have the capacity to undertake a compliant procurement process without unduly impacting the event and placing unsustainable pressure on a small number of individuals to complete this process. By awarding a direct contract to a main production company it allows them to dedicate staffing and time to the sourcing of services for Leeds Black Music Festival 2023 at competitive prices to demonstrate best value for money.

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

11 Financial

- Parks & Countryside are managing financial risks by providing a detailed specification of all infrastructure hired and external services booked at this event previously and have reviewed annual budgets to be able to ensure the quotes received are competitive and demonstrate 'best value for money while also taking into consideration inflation and the current economic climate.

Legal

- Health and Safety is paramount when organising an event and as a landowner, the Council must adhere to various pieces of legislation. The legal risk is negated as much as practically

possible by providing a thorough specification of infrastructure and services for an event of this size in conjunction with key agencies such as West Yorkshire Police, the Council's Building Control, the Council's Emergency Planning Team & Yorkshire Ambulance Service.

- There is a risk of an ombudsman investigation arising from a complaint that the Council has not followed reasonable procedures, resulting in a loss of opportunity, however it should be noted that this contract is being awarded for a 12 month period, following a successful trial last year. This additional 12 months will allow a compliant procurement process to take place to establish a new framework agreement which will commence in 2024.

Equality

- The risk has been managed by undertaking a separate Equality, Diversity, Cohesion and Integration Screening.

What are the legal implications?

12 In accordance with CPR 27.2, this is a Significant Operational Decision which is not subject to call-in but will be published on the register of decisions by the Council. The report does not contain any exempt or confidential information under the Access to Information Rules.

The value of the direct award to Grace and Tailor Ltd is below the UK services threshold for the application of the Public Contracts Regulations 2015 (PCRs) for the procurement of public service contracts and therefore it is not subject to the PCRs. However, CPR 9.1 and 9.2 require competition for procurements valued over £100k and the invitation of at least 4 written tenders. A waiver of these CPRs is required to directly award a contract to Grace and Tailor Ltd.

Awarding a contract direct in this way could leave the Council open to a potential claim from other potential providers, to whom this contract could be of interest, that it has not wholly been transparent. In terms and 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 throughout the UK and beyond and, if it could, the opportunity should be subject to a wide degree of advertising.

It is up to the Council to decide what degree of advertising would be 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.

The Chief Officer, Parks & Countryside has considered this and, due to the nature of the services being delivered and the physical location of the event is of the view that the scope and nature of the services is such that it would be of little interest to other providers.

There is a risk of an ombudsman investigation arising from a complaint that the Council has not followed reasonable procedures, resulting in a loss of opportunity. Obviously, the complainant would have to establish maladministration. It is not considered that such an investigation would necessarily result in a finding of maladministration however such investigations are by their nature more subjective than legal proceedings.

Although there is no overriding legal obstacle preventing the waiver of CPR 9.1 and 9.2 to directly award this contract to Grace and Tailor Ltd, in making their final decision, the Chief Officer, Parks & Countryside should note the above comments and be satisfied that the course of action chosen represents best value for the Council.

Options, timescales and measuring success

What other options were considered?

13 The option to consider a specialist production company is an alternative to the existing option of the Council's Bookings and Licensing Team undertaking the procurement role within the team itself which has proven to be too demanding given the limited capacity of the team both while procuring the production and subsequent onsite management during the live events.

How will success be measured?

14 An evaluation was undertaken following 2022's event and it was determined that due to the specialist nature of production required and on-site management during the live event the use of a production company for future events would be very successful.

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

15 The production company will commence work as soon as approval is granted to ensure everything required is in place for the end of August 2023.

16 The contract with Grace & Tailor Ltd shall commence on 1st April 2023 and shall expire on 30th November 2023 and will be managed by the Parks and Countryside Team.

Appendix 1

What is your reason for waiving CPRs?

There is a genuine, unforeseeable emergency meaning there is no time to go through a procurement process e.g. to deal with the consequences of extreme weather.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
To purchase supplies or services on particularly advantageous terms due to liquidation/administration.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Requirement to put a contract in place with a current provider whilst a review of the services is completed.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Ran out of time to undertake a new procurement exercise	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Other (please provide summary here) To procure the service of a production company for the 2023 event to provide all infrastructure required to host Black Music Festival and fringe event, such as stages, power, and lighting while establishing a framework and undertake the formal tender process to award a contract for 2024.	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No

Background papers

- None.