

# Waiver of Contracts Procedure Rule 9.1 and 9.2 to directly award a contract for the restoration works of the Victoria Hall in the Town Hall, The Headrow, Leeds.

Date: 23<sup>rd</sup> May 2023

Report of: Head of Arts, Events and Venues

Report to: Director of City Development

Will the decision be open for call in?  Yes  No

Does the report contain confidential or exempt information?  Yes  No

## Brief summary

This report seeks approval to waive the Contract Procedure Rules (CPR) 9.1 and 9.2 High value procurements (over £100,000). The report will outline the reasons for this waiver and previous tender details carried out prior to requesting this waiver.

The Arts, Events & Venues Service in collaboration with Procurement and Commercial Services (PACS) colleagues have carried out a tender to the open market and this has led to responses that cannot be taken forward for reasons outlined further in the report.

If this waiver is not approved, works restoring the Victoria Hall will not be able to take place. This could lead to potential reputational damage to the Council due to delays in re-opening the Town Hall and potential revenue reductions over the extended closing period. In addition, the Council will lose a grant of £249,810 from the National Heritage Lottery Fund to support the decorative restoration.

## Recommendations

- a) The Director of City Development is requested to approve this report to waive CPR 9.1 and 9.2 (Over £100k – High Value Procurements) in order to award a contract directly to sole trader Robert Woodland & Son for a value of £338,000.00. The proposed contract is set to commence on 3<sup>rd</sup> July 2023 and expire on 31<sup>st</sup> March 2025 with no options to extend.

## What is this report about?

- 1 This report seeks approval to waive CPR 9.1 and 9.2 to award a contract directly to Robert Woodland & Son for the Restoration of the Victoria Hall. The waiver is required to ensure works to restore the decoration scheme in the Victoria Hall are carried out to the historical standards required and to the budget provided by the Council and National Heritage Lottery Fund (NLHF).

- 2 A full tender exercise was carried out in June 2022 with contractors chosen after an open Expression of Interest (Eoi) on YORtender was carried out. The expression of interest resulted in 8 contractors who wished to be part of a tender for the works. Each contractor as part of the Eoi provided their experience of carrying out historical restoration works, and the Council provided details of the historical nature of the works and expectations required. This was to ensure that those who did express interest had the relevant skills and experience to carry out the type of specialist work required.
- 3 A total of 8 Contractors were invited to tender on 10<sup>th</sup> June 2022 with a submission date of 27<sup>th</sup> July 2022. During the tender period, the Council advertised a bidders day to all interested bidders allowing them to come to the Town Hall and visit the Victoria Hall to view the site and works required and ask any questions. After the bidders day, a number of contractors responded to say that they would be unable to bid for the works due to their size and complexity and timescales involved.
- 4 The tender submission date was the 27<sup>th</sup> July 2022 and the Council received a total of 2 bids. From the 2 bids submitted, it was quickly established that one of the submissions was non-compliant as the bidder had not submitted any of the quality or pricing documents required as part of the tender process. The other submission was compliant, however the price submitted by the tenderer was over budget and simply not affordable.
- 5 Discussions with service area, PACS and PACS Legal colleagues focused on options available to the Council to move the project forward. Initial discussions focussed on any increase available in the budget, however this was not possible due to financial pressures on the Council and the initial budget for the works was supported by a grant from NLHF which made up half of the budget allocated to the works. Further discussions looked at reducing the scope of the works which would reduce the overall cost. However, this was discounted as the Victoria Hall scheme does not contain packages of works that are not in some way linked or in direct connection with other areas of the Town Hall. Therefore, this would lead to contrasting levels of decoration that would ensure areas left without any restoration would stand out. Those areas would also potentially carry on deteriorating which could potentially lead to damage to newly refurbished areas.
- 6 Although the bid from Robert Woodland & Son was non-complaint, the price which they quoted as part of their submission for the works was under the agreed budget. This quote would provide the full scope of works and to the required historical standard as set out in the advertised tender documentation.
- 7 The option of going out to re-tender to the open market has been discussed, however as a full tender exercise has already been carried out, it is not felt that this would increase the number of submissions and the price may increase further on that submitted in July 2022. If the re-tender is not successful, this would then further reduce the timescale for carrying out the works, potentially leading to delays in re-opening the Town Hall on time and therefore have a financial and reputational impact on the Council.
- 8 The waiver of CPR 9.1 and 9.2 to allow a direct award to sole trader Robert Woodland & Son would enable the works to be completed in Victoria Hall within the allocated budget. Restoration of the decorative scheme has also been scheduled to take place while the building is closed to the public for wider refurbishment works and the renewal of the Leeds Town Hall organ. If there is any further, significant, delay to the restoration works, it will severely impact on the completion of the other project work taking place in the building, which in turn could delay the planned re-opening of the building.

## What impact will this proposal have?

- 9 This proposal will allow the restoration of the decoration scheme to the Victoria Hall to be carried out to the required historical standards and within the budget allocated to the scheme from the Council and the NHLF.
- 10 The proposal will allow the appointment of a contractor with a cost-effective bid for the works that covers the full scope of works, subject to appropriate due diligence and financial health checks being carried out prior to contract award.
- 11 The appointment of Robert Woodland & Son would ensure that the contractor has the historical restoration skills required and the experience of working on historical restoration projects across the country in listed buildings. There are restorations required to the organ pipework and Robert Woodland & Son has relevant experience of carrying out historical restoration on organs and associated pipework.

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

Health and Wellbeing

Inclusive Growth

Zero Carbon

- 12 Restoring Victoria Hall to the earliest decorative scheme will provide a range of benefits that will actively support the Council's 3 pillars. Extensive restoration of the decorative scheme will present a huge opportunity that will help to create a first-class visitor venue especially when the project combines with the wider refurbishment works taking place in Leeds Town Hall and the renewal of the Town Hall organ. As a premier destination, the venue will promote future economic growth by increasing client hire and audience reach. In turn this activity will boost the local economy. The Council's investment in the heritage and historical value of the venue will also make a positive statement about one of the city's most iconic buildings.
- 13 A newly restored performance hall will actively promote health and wellbeing of audiences and visitors. Rather than experiencing cultural and commercial activity in a worn and dirty environment, audiences will be able to enjoy the space as it was originally intended. In addition, the NLHF grant will also support a far-reaching community engagement programme designed to engage with a wide range of people. The engagement will comprise of talks and lectures, practical workshops for families and young people and the commission of a new artwork by Leeds based Pyramid of Arts. This inclusive programme will further promote the wellbeing of the participants.
- 14 The restoration work will also reverse years of urban pollution and the effects of insensitive redecoration projects. This once in a lifetime project will protect the decorative scheme for a significant amount of time and drastically reduce the need for regular short-sighted interventions that will consume more energy and use more resources over the longer term.

## What consultation and engagement has taken place?

Wards affected:

Have ward members been consulted?

Yes

No

- 15 Consultation has been carried out with decorative artists and conservationists to ascertain the right approach and best practices. Hirst Conservation have carried out extensive laboratory testing of paint samples taken from Victoria Hall, and this has provided an insight into previous decorative works in the space. Consultations have also been carried out with leading, expert decorative artists who have advised on repair and restoration work needed along with estimated costings. Their feedback highlighted the poor condition of the decorative scheme throughout

Victoria Hall and drew attention to the at-risk areas. This initial process supported the application to the NLHF submission.

- 16 Further consultation has taken place with colleagues in PACS and PACS Legal to discuss other options available and ensure that the waiver is supported.

### **What are the resource implications?**

- 17 The total cost of the restoration project is £388,000.00. This includes a community engagement project, marketing and evaluation costs. The NLHF grant is £249,810 with the remaining funds coming from existing and ringfenced budgets within the Town Hall's refurbishment budget – which has been signed off and approved. There will be no new financial or budget pressure on the Council to match fund the NLHF grant.
- 18 The cost to restore the decorative scheme is relatively low when considering the benefits it will provide, and the specialist nature of the works required. Currently, Victoria Hall is worn and tired and this has been noted by audience members. If this deterioration continues, this will result in potentially deterring people from using the building and could have a significant impact on future revenue for the Council. Further deterioration could lead to more costly damage to Victoria Hall and potential injury to Council workers or visitors to the hall.
- 19 If approval of the waiver is not given, this may delay the restoration scheme and have adverse impacts on the re-opening of the Town Hall, leading to further loss of revenue and bad publicity for the Council
- 20 If the restoration works cannot be carried out, this may lead to overall higher costs from small patching works to areas of Victoria Hall.

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

- 21 There are reputational risks to the Council from not carrying out these works, with direct contrasts being made between the restored Town Hall, the restored organ and the damaged, poor condition of Victoria Hall.
- 22 There would also be revenue risks to the Council from not having the Town Hall and Victoria Hall open on previously agreed dates as events and bookings could not be made available until the site was fully re-opened. This would lead to a significant loss of revenue for the Council of approximately £15,000 per week.

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

- 23 The waiving of any CPR is a Significant Operational Decision as a minimum and a report is required to meet the Council's obligations of transparency, openness and to show that the matter referred for consideration properly falls within CPRs. There are no grounds for keeping the contents of this report confidential under the Access to Information Rules.
- 24 The value of this waiver and decision means this is a Significant Operational Decision, and this report would not be subject to call in.
- 25 The value of the contract detailed in this report is below the UK threshold for the application of the Public Contracts Regulations 2015 for the procurement of works and therefore is not subject to the above-threshold procurement rules. However, CPR 9.1 and 9.2 requires competition for procurements valued above £100,000 and the invitation of at least four written tenders. A waiver of these CPRs using the authority set out in CPR 1.3 and the process set out in CPR 27 is required to award a contract directly to a contractor. CPR 27 requires that a decision to waive the CPRs is made by the relevant Director through the delegated decision process. The purpose of this

report is to brief the relevant Director on the waiver that has been recommended so that they may be satisfied it represents the best course of action for the Council.

- 26 Awarding this contract directly to Robert Woodland & Son could leave the Council open to a potential challenge from other contractors, to whom this contract could be of interest, due to the fact that the Council has not advertised the opportunity to open market and invited at least four written tenders. However, the Council has carried out a fully compliant open tender process in June 2022 which was advertised on YORtender and Find a Tender Service. Even so, in giving the work to Robert Woodland & Son without inviting a further competition, there is a potential risk of challenge from other contractors who have not been given the chance to tender for this opportunity. However, the risk of any challenge from another contractor is deemed to be low based on the reasoning behind the proposed contract award set out in this report.
- 27 In terms of transparency, it should be noted that case law suggests the Council should always consider whether contracts of this value should be subject to a degree of advertising. It is up to the Council to decide what degree of advertising would be appropriate. As previously mentioned, this opportunity was advertised as an open tender in June 2022 which ultimately led to only 2 bids being submitted, one of which was non-compliant and the other which was considerably over the allocated budget for the works.
- 28 Consideration has been given to the subject-matter of the contract, estimated value, the specifics of the sector concerned (size and structure of the market, commercial practices, etc.), the Commercial and Development manager is of the view that the scope and nature of the work is such that it would take too long to conduct another full tender exercise and would potentially lead to further submissions over the budget available or lack of submissions due to a reduced timescale for carrying out the works to enable the Town Hall to open on time. Due to the scale and very specialist nature of the work that is required, the Commercial and Development Manager is of the view that it would take too long to conduct another full tender exercise and would potentially lead to further submissions over the budget available or lack of submission due to the reduced timescales for carrying out the works to enable the Town Hall to open in time. The restoration works are such a niche requirement that obtaining contractors with sufficient skills and expertise in this area, would be difficult and extend the period of the works beyond the opening of the Town Hall. Out initial tender was carried out with these contractors and did not provide a sufficient response to support a further tender.
- 29 Although there is no overriding legal obstacle preventing the waiver of CPR 9.1 & 9.2, the content of the report should be noted. In making their final decision, the Director of City Development should be satisfied that the approved course of action is in both the Council's and the public's best interests and represents value for money for the Council.

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

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

- 30 Another full re-tender was considered; however, this would delay works starting on site and could again potentially lead to bids that are over the allocated budget. This delay could also potentially lead to Robert Woodland & Son taking on other work and becoming unavailable, rather than accepting the contract for the works at Victoria Hall.
- 31 Using an Internal Service Provider was considered as an option; however, this was discounted due to the niche nature of the work and the historical restoration work required being of a specialist nature.

- 32 Using a third-party framework has also been considered, however due to the specialist nature of the works no appropriate frameworks could be found that covered historical decoration requirements for the specialised nature of the works to be carried out.
- 33 Consideration was given to value engineering the scope of works to reduce the cost of the works priced. However, this would then lead to areas of the Victoria Hall being restored and others standing out with a different decoration scheme not in keeping with those areas decorated.
- 34 An option to approach the main contractor restoring the Town Hall and ask them to appoint a contractor to restore the Victoria Hall, however this was discounted as the budget would be unavailable to obtain the full restoration required. The grant funding from the NLHF may also not have allowed such an option to be carried out and the removal of this funding would mean to scheme could not go ahead at all or would lead to the Council covering all the costs for the works.

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

- 35 The contractor will be required to establish the earliest artistic intention for the decorative features in Victoria Hall and then repair and fully restore these elements. Success will be measured with clear expectations from the works being set with contractors and regular works updates and meetings with the contractor. Clear targets and timelines will be set in the programme of works as part of the specification to the contract to measure the success of the works on-site. In addition, the contractor will be required to engage with a public engagement programme as part of the project approved by NLHF. This will include talks and presentations and engagement with an extensive evaluation process. Success will be measured by the delivery of a wide-ranging digital archive made available to the public following completion of the project.

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

- 36 January 2023, approval to waive CPR 9.1 and 9.2 to directly award a contract to sole trader Robert Woodland & Son.
- 37 Works are anticipated to start on-site in July 2023 in the Victoria Hall.
- 38 Responsibility for implementation of the works will sit with the Commercial and Development Manager with support from colleagues in PACS.

### **Appendices**

- None.

### **Background papers**

- None.