

# Approval to waive Contracts Procedure Rules 8.1 and 8.2 to directly award a Contract for the Supply, Installation, Dismantling and Removal of Christmas Trees.

Date: 17<sup>th</sup> July 2023

Report of: Natural Environment Manager

Report to: Chief Officer, Climate Energy & Green Spaces

Will the decision be open for call in?  Yes  No

Does the report contain confidential or exempt information?  Yes  No

## Brief summary

1. In July 2022, the then Chief Officer, Parks & Countryside approved the waiver of Contracts Procedure Rules 8.1 and 8.2 (intermediate value procurement) to enable the direct award of the contract to Elveden Farms Limited to supply, install, dismantle and remove the city's Christmas Trees 2023/24 for the sum of £35,000.
2. For several years the supply of the city's Christmas Trees was procured through a competitive tender exercise by Parks and Countryside's Forestry section on behalf of City Lights and several internal and external services. On delivery, these trees were installed by the Forestry Section in time for Christmas Lights to hang the lights and then, dismantled and disposed of by the Forestry Section after Christmas Lights had taken the lights down after the festive season.
3. Over the last few years, the capacity of the Forestry Section to undertake the role of installation, dismantling and disposal of the Christmas trees has been brought in to question due to the increase in the number and severity of winter storms. The Forestry Section operate a 24/7 emergency on call/call out system to attend to tree emergencies. This duty takes precedence over all others and, last year in particular, the sections resources were fully stretched as they attended to tree emergencies during back-to-back 'named storms' during January and February. This led to major delays in dismantling and disposing of Christmas trees.
4. The 5-year Supply of Christmas tree contract with the supplier Elveden Farms Limited ended in December 2021. Due to the aforementioned pressures on resources, going forward it was decided to make changes to the service delivery model and in doing so conduct a short-term pilot scheme and test the ability of Elveden Farms Limited to supply, install, dismantle and dispose of the city's Christmas trees for the 2022/23 festive season.

5. The whole process was closely monitored by the Forestry team and several 'snagging' issues were identified, which meant that the operation, whilst ultimately, successful, did not progress as smoothly as had been hoped.
6. It has, therefore, been decided to make necessary changes to the scope and processes and seek approval to enter into a new pilot with Elveden Farms Limited for a period of 2 years, which will be closely monitored.
7. This report requests that the Chief Officer, Climate Energy & Green Spaces approves the waiver of Contracts Procedure Rules 8.1 and 8.2, to directly award a contract to Elveden Farms Limited to supply, install, dismantle and dispose of the City's Christmas trees 2023/24 and 2024/25. The contract will commence on 27<sup>th</sup> October 2023 (installation of the City Square tree<sup>1</sup>) and shall terminate on 8<sup>th</sup> March 2025.

## Recommendations

It is recommended that:

- a) the Chief Officer, Climate Energy and Green Spaces approves the waiver of Contracts Procedure Rules (CPR) 8.1 and 8.2 (between £25,000 and £100,000 - Intermediate Value Procurement) to enable the direct award of a contract to Elveden Farms Limited ('Elveden') to supply, install, dismantle and remove the city's Christmas Trees 2023/24 and 2024/25 for the sum of £88,940.
- b) The contract will commence on 27<sup>th</sup> October 2023 (installation of the large, 43' tree in time for Christmas Lights switch on in Early November) and shall terminate on 8<sup>th</sup> March 2025.

## What is this report about?

1. This report recommends approval from the Chief Officer, Climate Energy & Green Spaces (CE&GS) to waive CPR 8.1 and 8.2 which requires competition to be sought and at least three written tenders to be invited for procurements valued at or over £25k but below £100k. Authorisation is required to directly award a contract to Elveden to supply, install and dismantle and dispose of the city's Christmas trees 2023/24 and 2024/25.
2. CE&GS' Forestry section, on behalf of City Lights and several internal and external services, has historically provided all elements of the managed service following supply of the Christmas trees by an external provider. However, pressure caused by inclement weather over the winter period on resources within the Forestry section means the service can struggle to viably continue to deliver the installation, dismantling and disposing of Christmas trees going forward. Therefore, a new service delivery model for an external provider to deliver these services was 'piloted' during the 2022/23 festive season. This initial 'pilot' project took place between 28<sup>th</sup> October 2022 and 6<sup>th</sup> March 2023. Whilst this was ultimately, successful several errors occurred which required the Forestry section to step in to ensure success. These errors were recorded and discussed in detail with the supplier. By carrying out this Lessons Learned exercise, both parties feel that these were simply 'teething problems' related to the introduction of new processes and that by revising the requirements within the 'Pilot' and by clarifying further roles and responsibilities these potential issues can be avoided in the future 'pilot'.

<sup>1</sup> A Christmas Tree will not be installed in City Square for Christmas 2023/24, due to the Leeds 2023 art installation. An alternative location is being considered for this Christmas.

3. For many years, Elveden delivered the supply element of the city's Christmas Tree Contract. In 2022/23, we accepted a quotation from them to supply, install and then dismantle and remove all of the required Christmas Trees. Several things went wrong during the delivery of this contract and, whilst everything ended successfully, we have worked with Elveden to iron out the 'teething problems' and mitigate any future risks. Following the Lessons Learned exercise the scope and service requirements of the first pilot have been revised in order to create a second pilot that will require Elveden to supply all 36 of the city's trees, but only install, take down and remove 30 trees. Due to access issues and need for flexibility, the remaining 6 trees, including the large 13m City Square Tree, will be installed by the Forestry section. The Forestry section will then take down and remove these 6 trees after the Festive season.
4. The City Square Tree will be delivered direct to site and the provider will ensure that delivery complies with all relevant health and safety requirements and that this is fully coordinated with the Forestry section.
5. The other 35 trees will be supplied and delivered to The Arium on Thorner Lane, from where Elveden's team will collect 30 of them and take them to the individual sites for installation. The remaining 5 trees, which have been identified and agreed with Elveden, will be collected by the Forestry section and installed at designated locations.
6. Elveden will dismantle and take away all 30 trees that they installed by 8<sup>th</sup> March 2024 and 2025 respectively.
7. The proposal is a change to the model that we tried to deliver for the 2022/23 season, which was to trial the full outsourcing of the Christmas Tree contract. It is felt that this amended model is more nuanced and will work better for the Council. Nonetheless, the team wishes to run this contract as a second pilot for the 2023/24 and 2024/25 seasons. This is a trial to test how effectively the full outsourcing of the Christmas tree contract will work. Following the delivery of this contract during the 2023/24 season, year 1 of this pilot, the successes will be measured and fed into the development of the future specification. Due to a mobilisation period including a lead time for placement of the order for trees, required in July in preparation for delivery in October the following season, there is insufficient time to complete a Year 1 Lesson Learned exercise and complete a competitive procurement exercise. Hence, the requirement for a 2-year pilot which gives sufficient time to test the success of the delivery of the service model and then procure a new contract. A full competitive tender exercise will be undertaken commencing summer 2024 where, a longer-term arrangement will be put in place.

### What impact will this proposal have?

Wards affected: n/a

Have ward members been consulted?       Yes                       No

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

Health and Wellbeing               Inclusive Growth               Zero Carbon

8. The proposal will make a contribution to the following Best Council Plan priorities:
9. Growing the cultural sector through promoting events and celebrations which can be widely experienced.

10. Support overall health and wellbeing for Council residents and visitors by improving the environment and experience in and around the city during the festive period.

### **What consultation and engagement has taken place?**

11. It is not considered that the content of this report or the recommendations made will have a significant impact on any particular ward or community, and as such the only consultation to date has been with the Chief Officer, Climate Energy & Green Spaces.

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

12. The cost of delivery the contract is £88,940.
13. This will involve internal resources working alongside Elveden. The contract will be managed by officers from the Forestry section, Climate, Energy & Green Spaces.
14. Members of the regional Strategic Procurement Group (SPG) were consulted via email prior to last year's trial contract, to ensure that we were receiving value for money. This group includes neighbouring local authorities.

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

15. If the recommendation to award as described within this report is not approved, then the Council will risk being in a position where no formal contractual arrangements are in place. It is important that a reliable provider that guarantees pricing and maintains service standards is put in place. The risk of not having appropriate arrangements has both an internal resource and financial impact.
16. If the supply of the Christmas Trees and the service to install them are not undertaken within the required timescales, this will lead to significant disruption and delays in the light switch and other festive events on within and around the City. Consequently, this will have an impact on the public experience and wellbeing in addition to political ramifications regarding the city's festive offering.
17. To manage this, consideration has taken place to identify the most appropriate solution for successful and cost-effective delivery for the Council and the proposal is deemed the best value solution.

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

18. This is a Significant Operational Decision which is not subject to Call-In but will be published on the register of decisions.
19. Consultation and advice have been sought with Procurement and Commercial Services.
20. Awarding this contract directly to Elveden could leave the Council open to a potential claim from other potential providers, to whom this contract could be of interest, that the Council has not been open and transparent as the opportunity is not being advertised and at least three written tenders invited. In terms of transparency, it should be noted that case law suggest that the Council should always consider whether contracts of this value should be subject to a degree of advertising.

21. It is up to the Council to decide what degree of advertising would be appropriate. Furthermore, consideration has been given to the subject-matter of the contracts, estimated values, the specifics of the sector concerned (size and structure of the market, commercial practices, etc.).
22. The Chief Officer, Climate Energy & Green Spaces should consider this risk of challenge. However, due to the uncertainties of the service delivery model required, below the threshold value and short-term nature of the pilot it is felt it would be of little interest to other suppliers if an opportunity was published on Find a Tender Service for one season. However, once the contract has been awarded, an Award Notice will be published on Find a Tender Service as required by Regulation 112 of the Public Contracts Regulations 2015.
23. There is a risk of an ombudsman investigation arising from a complaint that the Council has not followed a competitive procurement exercise in accordance with its own CPRs, resulting in a loss of opportunity. 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. However, it is considered that this risk is low.
24. Although there is no over-riding legal obstacle preventing the waiver of CPRs 8.1 and 8.2 using the authority set out in CPR 1.3, by awarding direct contracts to the named contractor without seeking competition, the contents of this report should be noted. In making the final decision, the Chief Officer, Climate Energy & Green Spaces should be satisfied that this proposal represents best value for money to the Council.

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

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

25. A competitive tender exercise was considered, but due to the change in delivery model, uncertainties with regards to the services requirements and performance measures, it was felt a pilot to trial the services was required before a longer-term arrangement was introduced.

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

26. Success will be measured through how smoothly the contract is delivered from an operational perspective e.g., turnaround times, safety, aesthetics, and quality trees being installed.
27. The expected outcome is to improve the visitor experience, enhance the festive aesthetic and attract a larger footfall of visitors in and around the city during the festive period.
28. During this trial period a competitive procurement exercise will be carried out to deliver this service from 2025/26.

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

29. The contract will commence on 27<sup>th</sup> October 2023 (installation of the City Square tree) and shall terminate on 8<sup>th</sup> March 2025. Engagement with Elveden is to commence end of July 2023 in order to begin to mobilise the contract.
30. The Natural Environment Manager and the Forestry Operations Manager will oversee the contract delivery and contract management.

## **Appendices**

- EDCI

### **Background papers**

- None.