

Authority to directly award contract 76830 for the repair of specialist vehicles and equipment to various organisations utilising Regulation 32 (2) (a) of the Public Contracts Regulations 2015

Date: 22nd August 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

- Following approval received to abandon the original procurement exercise and not award a contract for supply of repairs to specialist vehicles and equipment with 16 lots for which there has been a call for competition (open procedure), this request seeks as a consequence, approval to direct award to various organisations for the repair of specialist vehicles and equipment from 1st November 2023 to 31st October 2027 utilising Regulation 32 (2) (a) of the Public Contracts Regulations 2015.
- Previous procurement activity resulted in no 'suitable tenders' as the low number of submissions would be insufficient, in both numbers and specialisms, to deliver the services required to meet the Council's needs and requirements as specified in the procurement documents.
- This direct award contracts will support front line council in delivering their services through the repair and maintenance to the council's fleet of vehicles.

Recommendations

In accordance with Contracts Procedure Rule 10.2, the Chief Officer Civic Enterprise Leeds is recommended to approve the direct award of contract 76830 to various organisations (listed within Appendix 1) for the repair of specialist vehicle and equipment, from 1st November 2023 to 31st October 2027 by using Regulation 32 (2) (a) of the Public Contracts Regulation 2015. The estimated total value for the direct award is expected to be £2,200,000. The recommendation is made on the grounds that no 'suitable tenders' were received in response to the Council's previously tendered invitation to tender for supply of repairs to specialist vehicles and equipment with 16 lots.

What is this report about?

- 1 The report seeks approval to directly award contract 76830 to various organisations (listed within Appendix 1) for the supply of repairs to specialist vehicles and equipment utilising Regulation 32 (2) (a) of Public Contract Regulations 2015. Regulation 32 (2) (a) of Public Contract Regulations 2015 allows for a direct award to organisations in line with the below.
- 2 Regulation 32 (2) (a) states –
Use of the negotiated procedure without prior publication
(2) The negotiated procedure without prior publication may be used for public works contracts, public supply contracts and public service contracts in any of the following cases:—
(a) where no tenders, no suitable tenders, no requests to participate or no suitable requests to participate have been submitted in response to an open procedure or a restricted procedure, provided that the initial conditions of the contract are not substantially altered and that a report is sent to the Cabinet Office if it so requests;
- 3 The definition of ‘unsuitable tenders’ is defined in Regulation 32(3)(a) of the Public Contracts Regulations: “*a tender shall be considered not to be suitable where it is irrelevant to the contract, being manifestly incapable, without substantial changes, of meeting the contracting authority’s needs and requirements as specified in the procurement documents.*”
- 4 The tender 66590 for the repairs to vehicles and equipment sought a decision to abandon the process and this was approved.
- 5 Currently the Council has a contract with several organisations to provide the services required. This contract expired on 31st July 2023 with no options to extend.
- 6 Although the contract has provided value for money across differing repairs, the scope for more areas of activity and increased number of repairs has led to increased non-contract spend.
- 7 The Council recently procured to the open market via YORtender and advertised through ‘Find a Tender Service’ and Contracts Finder for a contract with 16 lots. To attract as many suppliers as possible, this was an increase in scope from the previous tender process for the current contract. The deadline date was extended on two occasions to allow for and encourage more bids, but neither were successful. Unfortunately, only 4 bids were received in response to the Council’s Invitation to Tender, 2 of which were non-compliant (one bidder sent a generic price list and the other sent in their own terms and conditions which when challenged, withdrew from the process) and only 2 compliant bids were received, which in turn would only cover 2 of the lots such that the 2 compliant tenders are manifestly incapable of fulfilling the Council’s requirements without substantial changes and the contract is unworkable with coverage of only 2 lots which is limited in both numbers and specialisms, also genuine competition cannot be obtained, therefore these 2 compliant bids were deemed ‘unsuitable tenders’ and were not capable of acceptance by the Council under the parameters of the tender documents.
- 8 As the above procurement exercise resulted in no ‘suitable tenders’, it is necessary to abandon the procurement exercise and not award a contract for which there has been a call for competition. Under the Public Contracts Regulations 2015, there is no implied obligation on the contracting authority to carry the award procedure to its conclusion. In addition, the tender documents allowed the decision-maker to decide that no contract should be awarded, and the issue of the invitation to tender did not commit the council to award a contract to any tenderer. The bidders will be informed by way of a Notice that the procurement has been abandoned in accordance with Regulation 55(1) of the Public Contracts Regulations 2015.
- 9 Fleet invested resources in speaking to the marketplace, including those organisations the Council currently use to encourage them to participate in the process, prior to the start of the

tender process. The current marketplace is made up of many small local garages who provide an excellent service at prices below the market average, but who were unwilling/unable to commit to the tender process.

- 10 Fleet Services currently operates and manages over 1,300 vehicles, with the size of the fleet growing in recent years. These vehicles are critical in ensuring continued service provision across a variety of council departments. Specialist repairs are a constant requirement to keep the fleet operational.

What impact will this proposal have?

- 11 Approving the direct award for the supply of repairs to specialist vehicles and equipment will ensure the council will continue to have a compliant contract, providing a value for money service.
- 12 The estimated value of the direct award will be £2,200,000 over the 4 years.
- 13 The list of organisations (Appendix 1) will provide Fleet with the capacity and expertise to enable repairs to specialist vehicles and equipment. The list includes the 2 compliant bidders from the original tender exercise.
- 14 Discussions have taken place with colleagues in PACS (Procurement and Commercial Services) to ensure the direct award is compliant with the Public Contracts Regulations 2015.
- 15 Organisations will sign up to the same terms and conditions as was included within the original tender, to ensure compliance with Regulation 32(2)(a) of the Public Contracts Regulations 2015 which requires that the initial conditions of the contract are not substantially altered. They will also be asked to complete documentation akin to that utilised in a tender process.
- 16 If the direct award is not approved, the Council will be subject to non-compliant spend and potentially significantly higher prices and longer waiting times for repairs.
- 17 These comments should be noted by the Chief Officer Civic Enterprise Leeds and in making the final decision should be satisfied that doing so represents best value for the Council.

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

Health and Wellbeing Inclusive Growth Zero Carbon

- 18 i) The contract will ensure Fleet services can continue to provide repairs to specialist vehicles and equipment to frontline services across the Council.
- ii) The council will continue to work with the nominated suppliers to reduce the environmental impact of the contract and keep the vehicles and equipment sustainable, by running more effectively and efficiently.

What consultation and engagement has taken place?

Wards affected:

Have ward members been consulted? Yes No

- 19 PACS Legal have been consulted and advised that Regulation 32 (2) (a) is appropriate in directly awarding a contract for the supply of repairs for specialist vehicles and equipment.
- 20 Consultation has taken place with colleagues in PACS and the Civic Enterprise Leeds Weekly Assurance Meetings.

What are the resource implications?

21 Fleet services and PACS have resources available to execute the direct award for the supply of repairs to specialist vehicles and equipment, once approval is given.

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

22 Not to approve the direct award risks the council having to incur non-compliant spend with higher costs.

23 Not to approve the direct award poses a significant risk to Fleet Services being able to provide repairs for specialist vehicles and equipment to frontline services, in a timely manner.

24 The risks associated with the award of the contract to the list of organisations (Appendix 1) are detailed in the legal implications section of this report.

What are the legal implications?

25 As this decision to award the contract to the list of organisations (Appendix 1) will be treated as a direct consequence of the initial authority to spend and procure, this request is deemed a significant operating decision and is not subject to call in. A previous key decision was taken to support the authority to procure report. There are no grounds for keeping the contents of this report confidential under the Access to Information Rules.

26 The decision to award a contract for the supply of specialist vehicle and equipment repairs is allowed pursuant to Regulation 32(2)(a) of the Public Contract Regulations 2015 (see paragraph 2 of this report). It is considered that the Regulation 32(2)(a) is met due to the circumstances set out in paragraph 6 of this report.

27 Due to the level of spend it is considered that there is the potential risk of challenge, particularly from the 2 non-compliant bidders to the original tender exercise, that there are no real technical reasons justifying the use of the Negotiated Procedure without publication of a Contract Notice in accordance with Regulation 32 (2) (a) of the Public Contracts Regulations 2015, and that the Council is simply seeking to circumvent the application of the rules to award this contract directly. To minimise this risk of procurement challenge, it is advisable to publish a Voluntary Transparency Notice (VTN) on Find a Tender (FTS) and wait 10 days prior to the award of the direct award contracts. If no challenges are made within those 10 days, the risk of challenge is significantly reduced. Further, publishing a VTN will also start time running for any other potential claim for breach of the PCRs, 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.

28 Please note, however, that a Voluntary Transparency Notice can itself be challenged, and cannot be published to 'whitewash' a breach of the Public Contracts Regulations 2015. Thus, where the award of a contract without prior publication is not justified, the Voluntary Transparency Notice will offer limited protection. Therefore, it is prudent to wait the full 30 days to see if any procurement challenges are made before signing the direct award contract.

29 These comments should be noted by the decision maker in making the final decision, and the decision maker should be satisfied that doing so represents best value for the Council.

Options, timescales and measuring success

What other options were considered?

30 To re-procure the contract again to the marketplace, but a different response would not be expected as the current marketplace is made up of many small local garages who are unwilling/unable to bid due to the size of the tender documentation and work involved in bidding. Therefore, it could be argued that the Council has sufficiently tested the market and that a further re-tender at this point is unlikely to achieve a different outcome. Alternatively,

allowing the existing contract to expire without a replacement would lead to increased non-contract spend, and potentially higher prices. Neither of these options were deemed acceptable.

How will success be measured?

31 The continued repair of specialist vehicles and equipment to support the delivery of services across Council services utilising various organisations, many local SME's, providing excellent timely repairs, whilst offering good value for money.

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

32 Once this report has been approved, the bidders will be formally notified of the decision to abandon the original procurement exercise and not award a contract for which there has been a call for competition, and a formal notice will be placed on the Find A Tender Service in accordance with Regulation 55(1) of the Public Contracts Regulations 2015. The direct award of contract needs to be in place for 1st November 2023.

33 The Deputy Chief Officer CEL, Head of Catering and Fleet Services will be responsible for implementation.

Appendices

- Appendix 1 – list of organisations and associated lots

Background papers

- None