

# Request to vary the end date of the framework agreement DN449248 Supply of Liquid Fuels in line with Regulation 72 (1)(e)

Date: 31<sup>st</sup> October 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

The Council's existing framework agreement with Certas Energy UK Ltd has been extended to its maximum point to 30<sup>th</sup> November 2023 with no further options to extend beyond this date.

It is proposed that a new arrangement be put in place using the Yorkshire Purchasing Organisation (YPO) Liquid Fuels & Associated Products framework. The framework is set to start at the end of October 2023, meaning the Council has a short period to evaluate bids as a result of the mini competition, mobilise resources and award the contract before the expiry of the existing framework agreement on 30<sup>th</sup> November 2023.

It is therefore necessary to vary the end date of the current framework agreement by two months from 30<sup>th</sup> November 2023 to 31<sup>st</sup> January 2024 using Regulation 72 (1) (e) of the Public Contracts Regulation (2015). This additional period will allow for a call-off mini competition procedure to be conducted including evaluation and award of contract.

## Recommendations

The Chief Officer Civic Enterprise Leeds is recommended to approve the variation of end dates of the framework agreement DN449248 Supply of Liquid Fuels with Certas Energy UK Ltd for two months from 30<sup>th</sup> November 2023 to 31<sup>st</sup> January 2024 in line with Regulation 72 (1)(e) of the Public Contracts Regulation (2015) with an estimated value of £666,670 under the same terms and conditions and rates.

## **What is this report about?**

- 1 The contract for the supply of liquid fuel is essential for supplying bunkered fuel to the eight fuel depots located citywide. The fuel is used by all the major service users and is essential for the operation of fleet vehicles to carry out front line services such as household waste collection, housing repairs, green space maintenance and passenger transport.
- 2 The purpose of this report is to seek approval to use Regulation 72 (1)(e) of the Public Contracts Regulation 2015 to vary the current framework agreement by two months with an estimated value of £666,670 under the same terms and conditions and rates
- 3 As noted in the brief summary, this will allow sufficient time for the Council to fully evaluate the call-off mini competition submissions procedure utilising the new YPO framework, to ensure we award the contract compliantly and to the bid providing best value. The additional time will also allow for future awards to be met within the timescales allowed by the timing of the award of the framework.
- 4 In formalising this variation the Council is relying on Regulation 72 (1)(e) of the Public Contracts Regulation 2015 whereby contracts and framework agreements may be modified without a new procurement procedure in accordance with this Part in any of the following cases:
  - (e) where the modifications, irrespective of their value, are not substantial within the meaning of paragraph (8);
  - (8) "A modification of a contract or a framework agreement during its term shall be considered substantial for the purposes of paragraph (1)(e) where one or more of the following conditions is met:
    - (a) the modification renders the contract or the framework agreement materially different in character from the one initially concluded;
    - (b) the modification introduces conditions which, had they been part of the initial procurement procedure, would have-
      - (i) allowed for the admission of other candidates than those initially selected,
      - (ii) allowed for the acceptance of a tender other than that originally accepted, or
      - (iii) attracted additional participants in the procurement procedure;
    - (c) the modification changes the economic balance of the contract or the framework agreement in favour of the contractor in a manner which was not provided for in the initial contract or framework agreement;
    - (d) the modification extends the scope of the contract or framework agreement considerably;
    - (e) a new contractor replaces the one to which the contracting authority had initially awarded the contract in cases other than those provided for in paragraph (1)(d)".
- 5 Regulation 72 (1) (e) allows the framework agreement to be varied by up to 10% of the original value of the agreement. This original agreement value was for £16,000,000. The estimated value of this variation is £666,670, which is within the 10% variance allowed.
- 6 The framework agreement continues to offer competitive rates for liquid fuels and the current supplier Certas Energy UK Ltd, have indicated they are happy for the end date to be varied.

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

- 7 Approving the variation to framework agreement DN449248 for the supply of liquid fuels will ensure the council will continue to have a compliant contract in place.
- 8 The fuel is required by all the major service users and is essential for the operation of fleet vehicles to carry out services such as refuse collection, green space maintenance, Highways

operations, housing repairs and passenger transport. This provision will ensure continuation of service delivery to the community

- 9 If the variation is not approved, the Council will be subject to non-compliant spend and potentially significantly higher prices.

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

Health and Wellbeing       Inclusive Growth       Zero Carbon

- 10 The Council will continue to work with the supplier to ensure fuel supplied fully meet all legislation in regard to standards required by manufacturer engines. Additionally, the contract will ensure all vehicles used for the delivery of fuel as well as vehicles operated by Leeds City Council are fully compliant to the latest Euro 6 exhaust emission standards.
- 11 The fuel will be used by Leeds Building Services (LBS) who carry out repairs and maintenance to tenant properties and civic buildings across the city. This enables properties to be maintained to high standards, thus improving the Health & Wellbeing of tenants and users. Similarly, this provision will enable refuse collection service to continue providing essential front line services across the city and keep our neighbourhoods and city centre clean. In addition, fuel provision for passenger transport home to school vehicles for young people with Special Education Needs (SEN) support inclusive growth by enabling their parents and carers to continue in employment where applicable.

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

Wards affected: All Leeds City Council wards

Have ward members been consulted?       Yes       No

- 12 Procurement & Commercial Services (PACS) legal have been consulted and advised that Regulation 72 (1) (e) is appropriate in varying the contract end dates.
- 13 Senior Officers in the service areas and their representatives have been consulted regarding the proposed variation and have agreed with this approach.

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

- 14 The estimated variation value is £666,670 over the two month period based on the agreed rates. Actual spend may vary depending on the quantity of fuel required.

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

- 15 A key risk is to ensure that the end dates for the framework agreement for the supply of liquid fuels are varied in a compliant manner.
- 16 Not to vary the framework agreement end date risks the council having to incur non-compliant spend with higher costs.
- 17 The cost of fuel is anticipated to increase due to the market trends and conditions. Therefore, by working in partnership with the supplier, the council can regularly review the risks and plan mitigation strategy accordingly.
- 18 The contract will continue to be managed by the Operations Team in Fleet Services who will raise any concerns that may arise during contract delivery as per the existing arrangements.

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

19 PACS have advised there are no legal implications to vary the existing framework agreement for the supply of liquid fuels using Regulation 72 (1) (e).

20 This decision is taken as a direct consequence of a previous key decision taken on 03/10/19 “authority to procure a contract for the supply of liquified fuels “ and then subsequent significant operational decisions .This decision is treated as a Significant Operational Decision and not subject to Call-in.

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

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

21 The option not to vary the expiry dates has been considered. However, the new YPO Liquid Fuels & Associated Products framework is not set to start until late October 2023 so the Council will not have sufficient time to carry out the call-off procedure, bids evaluation, contract award and transition to potentially a new supplier before the expiry of the existing agreement on 30<sup>th</sup> November 2023. Therefore, it was best to vary the existing agreement for a 2 month period which will allow the Council to set up a new arrangement in regard to the supply of liquid fuels.

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

22 Success will be measured by maintaining a compliant framework agreement that meet the requirements of the Council for the supply of liquid fuels, whilst offering good value for money

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

23 The implementation of this variation is sought and will thus enable notification and implementation before the end of the current framework agreement on 30<sup>th</sup> November 2023 ensuring provision remains in place through until 31<sup>st</sup> January 2024

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

## **Appendices**

- None

## **Background papers**

- [Council and democracy \(leeds.gov.uk\)](https://leeds.gov.uk)