

CABINET

19 February 2018

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| Title: Procurement of Water Services for Corporate and Non-Domestic Council Buildings | |
| Report of the Cabinet Member for Finance, Growth and Investment | |
| Open Report | For Decision |
| Wards Affected: None | Key Decision: Yes |
| Report Author: Leeann Kenny, Energy Officer | Contact Details: Tel: 020 8227 2017 E-mail: leeann.kenny@lbbd.gov.uk |
| Accountable Director: Robert Overall, Director of My Place | |
| Accountable Strategic Director: Claire Symonds, Chief Operating Officer | |
| Summary: <p>The water market for business customers was deregulated in England from April 2017 and, in order to comply with Public Contracts Regulations 2015, the Council is seeking to procure retail services associated with water supply and sewerage services and other ancillary services.</p> <p>The deregulation of the retail component of the water market aims to introduce competition and, therefore, the Council is now eligible to choose its supplier of retail services. The value of this retail service is, on average, 6% of the overall water and waste water contract value. The Council's average total expenditure (wholesale and retail) on water and waste water services is £380,000 per annum and, therefore, the retail element to be covered by this procurement equates to circa £23,000 per annum.</p> <p>On behalf of London local authorities, the London Energy Project (LEP) carried out a review which suggested that the most economically advantageous approach would be to appoint a single water and waste water retailer to meet multi-site authorities' business requirements for back-office and water efficiency products and services, with each authority having a separate contract. The LEP proposed that this should be achieved via a mini-competition, organised by the Yorkshire Purchasing Organisation (YPO), to access a call-off contract(s) through the Crown Commercial Services (CCS) Framework for Water, Wastewater and Ancillary Services.</p> <p>The contract term is for two years with an option to extend for a further two years, giving a total contract value of c.£92,000. Although this is below the contract threshold requiring Cabinet approval, the advice received is that Cabinet approval should be sought.</p> | |
| Recommendation(s) The Cabinet is recommended to: | |

- (i) Approve the Council's participation in the mini-competition process, led by Yorkshire Purchasing Organisation (YPO), to identify and select a supplier to meet the Council's retail water requirements with effect from April 2018, in accordance with the Council's Contract Rules and the strategy set out in the report; and
- (ii) Authorise the Chief Operating Officer, in consultation with the Cabinet Member for Finance, Growth and Investment and the Director of Law and Governance, to finalise any specific terms of the contract with the preferred bidder, award and enter into the call-off contract under the Framework Agreement, and do all things necessary to facilitate the execution, implementation and operation of the contract and an extension agreement(s)

Reason(s)

To assist the Council in meeting its priority of a "Well run organisation" and comply with procurement regulations.

1. Introduction and Background

- 1.1 Until April 2017, the Council was provided with water by Essex and Suffolk Water and waste water was managed by Thames Water. In April 2017, Thames Water transferred all its retail activities for business customers to Castle Water. The Council's water supply is now with Northumbria Water Group (NWG) which is the parent company of Essex and Suffolk Water.
- 1.2 Deregulation aims to introduce competition into the market place to encourage improvement and innovation to products and services and better value for money for the customer.
- 1.3 Retail suppliers can compete for the custom of all eligible customers. These licensed retailers are responsible for primarily invoicing, customer services and meter reading. These elements can be contracted separately or through a single retailer who will package these services along with other products such as water efficiency advice, leak detection, advanced metering etc. The value of the retail service is on average 6% of the overall water and waste water contract value.
- 1.4 The LEP is a group of 36 authorities (primarily in London) that together spends approx. £0.5b p.a. on energy and water. The group's principal purpose is to use authorities' combined spending power to minimise risk; reduce procurement, contract operation and back-office costs and achieve better commercial outcomes. LEP's work programme is coordinated and managed by a shared intelligent client team hosted by Haringey Council, which operates on a cost-recovery only basis under collective authority-led governance. LEP is able to maintain its independent, market-neutral position through direct member authority contributions.
- 1.5 The LEP Team managed a pre-market engagement programme with over 60 authority stakeholders, 3 Central Purchasing Bodies (CPBs) (public sector buy in organisations) and 5 water retailers to establish what products, services and innovation are available within the retail market, whether these will meet local authority multi-site business requirements, how to best attract market interest and

obtain competitive pricing and whether a Pan-LEP water retailer contract will provide authorities with better value and the opportunity to develop and shape this market.

1.6 The conclusions are:

- This is a newly deregulated and still immature market;
- the Council is eligible to choose its supplier of retail services. This is only 6% of the overall contract value. The rest of the contract value (94%) can be linked to the wholesalers. The water wholesale market will remain regulated until April 2020
- the most economically advantageous approach is to collaborate with other authorities;
- a pan-London water procurement approach has been arranged by LEP;
- the cooperated members will carry out a mini competition to call off from the CCS Framework for Water, Wastewater and Ancillary Services;
- the mini-competition will be organised by YPO;
- The total value of the contact is approximately £1,520,000 (£380,000 p.a), but we are only procuring the retail component, so that actual spend on the contract will be approximately £92,000 (£23,000 p.a). This is for a total of four years, a two-year contract with a possible two-year extension (4 x 12 months).

2. Proposals

2.1 Proposed Procurement Strategy

It is proposed that the Council follow the LEP recommended option of using The CCS Water, Wastewater and Ancillary Services RM3790 Lot 3, One Stop Shop, YPO mini-competition, based on an impartial evaluation of the quality and flexibility of the framework and the Central Purchasing Body (CPB) service and price.

2.2 Outline specification of the works, goods or services being procured.

Lot 1 - Water Supply and Sewerage Services, i.e. associated services in connection with the supply of water and sewerage services

- Account Management including customer service;
- Billing;
- Metering including, Meter Reading (Including acceptance of AMR reads), Management of sites and meters (including new connections and switching);
- Meter installation/removal/resizing/accuracy tests;
- Data Management;
- Roads and Property Drainage;
- Sewerage services including Trade Effluent;
- Emergency Contingency Planning;
- 24/7 Emergency support; and
- Guaranteed standards of Service.

Lot 2 - Ancillary Services, i.e. services for management, conservation, reduction and data management of water consumption in order to deliver environmental improvement, efficiency, financial and consumption savings. NB. Authorities can select to take all or none of the following ancillary services based on their individual authority needs, business requirements and available budget.

- Water Footprint assessment;
- Tariff optimisation and benchmarking;
- Water audit site surveys;
- Leak detection and repair;
- Contingency planning;
- Legionella Risk Assessments;
- Automated Meter Reading;
- Bill Validation; and
- Cost Recovery.

Lot 3 – One Stop Shop (combination of Lots 1 and 2)

2.3 **Estimated Contract Value, including the value of any uplift or extension period**

The total value of the contract is approximately £1,520,000 (£380,000 p.a) this includes wholesale and retail costs, but we are only procuring the retail component due to the de-regulation of the water market, so that actual spend on the contract will be approximately £92,000 (£23,000 p.a). This is for a total of four years, a two-year contract with a possible two-year extension (4 x 12 months).

The values for the contract are estimates as we are still in the process of validating all the water supplies.

The retail component of the contract is 6% of the total value contact value.

2.4 **Duration of the contract, including any options for extension**

At this stage, the optimal contract duration appears to be two years with the option to extend for a further period of up to two years. This is because a contract of less than two years will not represent value for money, as the retailer set-up costs and migration process will be priced into one year, rather than an up to four-year deal. However, the water industry price review will take effect in 2020 and its impact will need to be considered as part of any contract extension, i.e. if the retailer margin is increased, we would need to ensure additional service or a relative reduction in margin can be negotiated as part of any contract extension.

2.5 **Recommended procurement procedure and reasons for the recommendation**

The recommended route is to utilise the Crown Commercial Services Framework as part of the Pan-London collaborative, with the LEP and YPO managing the procurement process on our behalf.

Given the estimated contract value, the recommended option is to procure a contractor via the Crown Commercial Services (CCS) Framework for Water, Wastewater and Ancillary Services, the further competition to be managed by YPO Framework for Water, Wastewater and Ancillary Services, the further competition to be managed by YPO.

2.6 **The contract delivery methodology and documentation to be adopted**

Crown Commercial Service Water, Wastewater and Ancillary Services - RM3790 – Lot 3

Water Supply and Sewerage Services, let by Laser a division of Kent Commercial Services Ltd, Contracting Authority Kent County Council (OJEU Award notice – 2017S132-269790)

2.7 **Outcomes, savings and efficiencies expected as a consequence of awarding the proposed contract**

There is an opportunity to make significant efficiency gains, through consolidated billing, improved contract and account management. Pro-active water management and reduction and tariff optimisation services could deliver reasonable financial savings. The opportunity to make significant cashable savings against the total invoiced water contact price is low, because the non-competitive (wholesaler) element rarely makes up more than 90% of the overall value.

The most significant opportunity for savings and efficiencies comes through the LEP aggregation. Through the coordinated approach to the market, their prestigious portfolio centred around London and the South, gives them the ability to achieve better account management, customer service, contract conditions and terms, reduced supplier margin and subsequently strategic supplier and contract management through the LEP Team.

Compliance with Public Contract Regulations 2015 is required; Cabinet Office guidance suggests that a competitive process should have been followed by April 2018. Therefore, at the very least, a competitively tendered pan-LEP contract enables all authorities to achieve a low-cost/low-resource route to compliance. LEP collective objectives are:

Cheaper (Savings)

Contain costs and reduce price and contractual risks, approaching the market with a common set of requirements that ensure our business is sufficiently attractive to improve commercial, social and environmental outcomes

Better (Commercial & Innovative)

Establish the most appropriate products, services and delivery models that meet the business requirements of LEP's multi-site customers for quality and value – service specifications that are virtually bespoke to authorities without additional costs

Faster (Efficiencies)

Promote and maintain collaboration and the aggregation of Pan-LEP expenditure to reduce procurement, supplier, contract management and back-office costs and enable efficient use of available resources

Stronger Together (Collaboration)

Shape the supply market as a customer group, ensuring we take full advantage of our combined expenditure to improve products and services and introduce innovative commercial models and technology deployment; build business resilience in each authority through shared knowledge and an increased focus on efficient operation, continuous improvement and innovation

2.8 Criteria against which the tenderers are to be selected and contract is to be awarded

A mini-competition weighted 55% for quality and 45% for price, will deliver overall best value. This must be supported by a clear service specification and service levels geared to ensuring terms and conditions are appropriate; SLAs and KPIs are delivered; core services such as consolidated billing and web platform functionality are tested and ancillary services, such as leak detection, AMR installation, emergency planning are fully considered. The competitive element, retailer margin, although a small part of the contract value, will be evaluated on the basis of Wholesale Plus, as this enables a robust and transparent comparison of retailer margin.

2.9 How the procurement will address and implement the Council's Social Value policies

The contract will contribute to the Social Value by ensuring water and waste supplies to council buildings, schools and communal housing supplies are accurately billed in a timely manner allowing for better budget management and control of council budgets.

The ancillary services provided as part of this contract will help the Council identify water leaks and high consuming sites earlier than has been previously possible allowing us resolve water issues in a quicker more efficient timeframe.

3. Options Appraisal

3.1 Do Nothing

This is not an option; legal advice has been issued by the Cabinet Office stating that all local authorities must go out tender for their retail water supplies

3.2 LEP (London Energy Project) option

This is our preferred option of using The CCS Water, Wastewater and Ancillary Services Lot 3, One Stop Shop, YPO mini-competition. Following the mini-competition a sole water provider will be appointed for the delivery of both water and waste services.

3.3 Laser procurement only service (POSO)

We did investigate the possibility of using the Laser, however this option would not give us the same economies of scale as the LEP option and we would be entering this agreement on our own with LEP support.

3.4 Conduct our own open market procurement

Given that the water market is so new and that we have no experience in procuring water we felt that this option was a higher risk option and for that reason it was discounted. We would also not benefit from any increased purchasing power by entering into an agreement on our own.

4. Waiver

4.1 Not applicable to this procurement.

5 Equalities and other Customer Impact

5.1 There are no specific implications.

6. Other Considerations and Implications

6.1 **Risk and Risk Management** - The best value and lowest risk option for the council is to follow the London Energy Project (LEP) recommendation. 30 other authorities are taking part in the LEP procurement process. This pan authority approach will allow the council to capitalise on the best deal possible through combined purchasing power.

7. Consultation

7.1 The proposals in this report were considered and endorsed by the Council's Procurement Board on 15 January 2018.

8. Corporate Procurement

Implications completed by: Euan Beales, Head of Procurement

8.1 The proposed procurement route to market is to collaborate through the London Energy Partnership (LEP). The collaboration appears to be supported by a majority of London Authorities, which should drive economies of scale.

8.2 The LEP would tender the requirements on the Councils behalf, but the Council is not committed to award. However, the part of the process that is being procured makes up a minimal part of the overall water cost but would be managed under a strict set of terms and conditions.

9. Financial Implications

Implications completed by: Lance Porteous, Principal Accountant

9.1 Water related costs are factored in to relevant service budgets. Any savings arising with this contract will benefit those service areas..

10. Legal Implications

Implications completed by: Derron Jarell, Regeneration Project Lawyer, Law & Governance

- 10.1 Under the Water Act 2014 the water market for business consumers opened up in April 2017, at which point the Council is allowed to switch its current water provider at any time, but has to do so under a competitive process, after giving the current provider reasonable notice.
- 10.2 The contents of this report constitute a Key Decision, which requires the Officer to enter the Procurement Strategy Report on the Forward Plan.
- 10.3 The Council has the power to under Section 111 of the Local Government Act 1972 to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions. Additionally, the Council is empowered to enter into contracts for the discharge of its legal powers (section I Local Government (Contracts) Act 1997). The Council moreover has a general power of competence under section 1(1) of the Localism Act 2011 to do anything that individuals generally may do, provided it is not prohibited by legislation and subject to Public Law principles. These stated powers enable the Council to enter into the MoU with YPO.
- 10.4 The nature and value of these services are such that they are subject to the full tendering requirements of the Public Contract Regulations 2015 (PCR15). However, as noted in the body of the report, the Council's agent (i.e. LEP) will use a valid existing framework agreement, which was established following an EU compliant tendering process and established to allow local authorities to use for their own requirements. The tendering requirements of the PCR15 are therefore satisfied. The body of the report sets out a summary of the process which will be followed when undertaking further competition under the framework. Approval of a call-off contract with the identified supplier for the contract of supply/service following a mini competition would be in accordance with the Council's Contract Rules (CR) 33 and 50.
- 10.5 Calling-off contracts from legitimately procured framework agreements meets the requirements of both the CR and the Public Contracts Regulations 2015 provided the Council was named or was part of an identifiable group cited in the original OJEU notice.
- 10.6 In view of the proposed contract value(s) for the supply/service exceeding £100,000.00 the contract(s) must be under seal.

Public Background Papers Used in the Preparation of the Report:

- OFWAT water market de-regulation website:
<https://www.ofwat.gov.uk/regulated-companies/markets/business-retail-market/>

List of appendices: None