

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

Policy and Resources Cabinet Board

25th July 2017

Report of the Head of ICT and Corporate Procurement

Stephen John

Matter for Decision

Wards Affected: All

Supply of Groceries, Provisions and Frozen Foods

Purpose of the Report

1. To seek approval to extend the current framework arrangements ("current arrangements") in relation to the supply of groceries, provisions and frozen foods (the "Services") for a period of up to 6 months from 1st November 2017 in accordance with the reasons set out below.

Executive Summary

2. The report seeks authorisation to exclude the requirements of competition, to suspend Rule 2.1 of Neath Port Talbot County Borough Council (the "Council")'s Contracts Procedure Rules ("CPRs") and to make direct awards to the current suppliers as set out in the table under 'Background' below.

Background

3. The following table sets out details of the current and proposed arrangements for the Services together with the estimated expenditure for an extension based on a full 6 months extension:

Suppliers	Expiry date of Current Arrangements	National Procurement Service Framework for the Service ("NPS Framework") current proposed 'Go Live' Date	Proposed end extension date (based on full 6 months extension)	Estimated value of spend for full 6 month extension (based on 6 months' spend: 1st August 2016 - 31st January 2017)
1. Holdsworth	31/10/2017	27th November 2017	30/04/2018	£343,297.10
2. Castell Howell	31/10/2017	27th November 2017	30/04/2018	£66,249.16

4. The Current Arrangements were the subject of the following:

4.1 A Board Report to Policy and Resources Cabinet Board on 31st March 2016 (the "March 2016 Report") which granted authority for the Council to make a direct award to the Suppliers for a period of 6 months from 1st May 2016 including an option to extend up to a maximum of a further 6 months.

4.2 A Board Report to Policy and Resources Cabinet Board on 8th March 2017 (the "March 2017 Report") which granted authority to extend the direct award for up to 6 months extension from 1st May 2017.

5. The March 2016 Report and March 2017 Report were necessitated to ensure continuity of supply as the National Procurement Service (the "NPS") failed to complete its procurement exercises in line with its pipeline 'Go Live' dates.

6. The NPS 'Go Live' date of 3rd August 2016 stated in the March 2016 Report also did not materialise and therefore the option to extend up to a maximum of a further 6 months provided in the March 2016 Report was implemented in order to ensure continuity of supply.

7. The NPS 'Go Live' date of June 2017 stated in the March 2017 Report also did not materialise and therefore the option to extend up to the maximum 6 months was implemented to ensure continuity of supply.

8. The NPS latest 'Go Live' date for the NPS frameworks in relation to the Services is now given as 27th November 2017.

9. For the reasons set out below, in order to ensure continuity of supply of the Services, it is necessary to further extend the Current Arrangements for a period of up to 6 months from 1st November 2017.

10. The reasons:

10.1 The continuity for the supply of groceries, provisions and frozen food is at risk between the end of the Current Arrangements (31st October 2017) and the proposed 'Go Live' date of the NPS frameworks.

10.2 To allow sufficient time in which to make an award under the NPS frameworks including, if required, undertaking mini-competitions and to allow for the implementation of new contracts.

Financial Impact

11. From the information set out above the estimated cost of the purchase of the Services from the two Suppliers for an extension period based on a full six months period is: £409,546.26

Equality Impact Assessment

12. There is no requirement under the Constitution for an Equality Impact Assessment on this item.

Workforce Impacts

13. Continuity of the Services is critical to ensure the efficient administration and facilitation of the Primary Schools' menu rotation procedures, and the efficient

management and provision of service of all other Council service users in relation to the Services.

Legal Impacts

14. Given the estimated cost of the purchase of the Services for the proposed extension period is £409,546.26:

15. Consideration must be given to the requirements of the Public Contract Regulations 2015, which requires that contracts over the value of £164,176 for this particular type of service should be tendered competitively in the Official Journal of the European Union.

16. Members should note that the proposed extension will be entered into without a procurement exercise being undertaken and attention is drawn to the risks of the process of entering into these agreements with no competitive process.

17. Failure to comply with these rules may lead to a claim and the agreement being rendered ineffective by the Courts. Advice from the Cabinet Office is that “the impacts of a successful ineffectiveness claim are clearly very high”. This could involve both the cancellation of current contractual arrangements and/or the threat of a financial penalty determined by the Courts.

18. However, it would be contended that the risk of challenge is somewhat limited here as it is the Council’s intention to utilise the proposed NPS frameworks for the eventual appointment of service providers and this exercise will be undertaken at the earliest opportunity.

19. In addition, the Council must ensure that suitable contractual arrangements can be put in place for the provision of the Services without delay and to ensure continuity is not disrupted for the Councils’s service users currently using the present Suppliers.

20. In addition, the Council must comply with its own internal CPRs which provide that the Council will, whenever possible put a contract of this value out to open tender.

21. Rule 2.1 of the CPRs provides that where the value of the contract is over £50,000 tenders shall be invited using whichever of the tender procedures referenced is deemed appropriate. As part of the Recommendations, an exclusion of the CPRs will be sought.

Risk Management

22. This Report seeks to minimise the risk to the Council by ensuring continuity of the supply of the Services from the Suppliers for a period of up to six months following the expiry date of the current arrangements for the Services.

Consultation

23. There is no requirement under the Constitution for external consultation on this item.

Recommendations

It is recommended that:

24. That the requirements of competition are excluded and Rule 2.1 of the CPRs is suspended.

25. That authority is given to extend the current arrangements for a period of up to 6 months from 1st November 2017.

Reasons for Proposed Decision

26. To ensure continuity of the provision of the Services from the Suppliers pending the implementation of new contracts under the NPS Framework.

Implementation of Decision

27. It is proposed for the three day call in period to apply.

Appendices

28. N/A.

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