

# NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

## Policy and Resources Cabinet Board

1st November 2017

### Report of the Head of ICT and Corporate Procurement

Stephen John

#### Matter for Decision

Wards Affected: All

## Supply of Fresh Pasteurised Liquid Milk

### PURPOSE OF REPORT

- 1 To seek approval to put arrangements in place to ensure the continuation of the supply of Fresh Pasteurised Liquid Milk (the "Services") utilising the provisions of the Welsh Purchasing Consortium (the "WPC Framework") for a period of 6 months from 16th 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's (the 'Council) Contracts Procedure Rules ("CPRs") and to make a direct award to the current supplier Ddol Fach Dairy (the "Supplier").

### BACKGROUND

- 3 The Framework commenced on the 16<sup>th</sup> November 2015 for a period of two years, with the option of a further two years extension, such option having not been implemented due to

the commencement of the National Procurement Service Framework for the Supply and Distribution of Fresh Food and Beverages (Including Frozen Meat) (the “NPS Framework”) on 29<sup>th</sup> August 2017.

- 4 The due date for the end of the WPC Framework is 15<sup>th</sup> November 2017.
- 5 The NPS Framework allows for call off contracts to be made via method of either Direct Award or Further Competition exercise.
- 6 Having undertaken a price benchmarking exercise between the four providers appointed to the NPS Framework, the difference in price between the top three providers was negligible and therefore the benchmarking exercise failed to establish a framework provider that could offer the best value for the Service to enable a direct award to be made.
- 7 Therefore it is determined necessary that the Council undertakes a further competition exercise to appoint a framework provider that offers best value.
- 8 Such further competition exercise will not be undertaken in readiness for commencement of a new framework agreement from 16<sup>th</sup> November 2017 to ensure continuity of service.
- 9 Therefore continuity of the provision of the Service is at risk.
- 10 In order to ensure continuity of service, to allow the Council to undertake a further competition exercise and to have sufficient time for the implementation of a new framework agreement, it is necessary to make a direct award to the Supplier, substantially based on the arrangements under the WPC Framework, for a maximum period of 6 months from the WPC Framework end date of 15<sup>th</sup> November 2017, the duration of such arrangements to be determined by the Head of ICT and Corporate Procurement.
- 11 A direct award substantially based on the arrangements under the WPC Framework will ensure that the Council and the Supplier will be able to work together seamlessly since the current arrangements are familiar to all parties.

## **FINANCIAL IMPACT**

- 12 Subject to service requirements, the potential value for the direct award arrangement of six months is expected to be in the sum of £118,600.
- 13 The framework agreement conditions that applied under the WPC Framework will continue to apply to the direct award arrangement so as to ensure greater certainty of price.

### **EQUALITY IMPACT ASSESSMENT**

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

### **WORKFORCE IMPACTS**

- 15 Continuity of the Service is critical to ensure the efficient administration and facilitation of the Primary Schools' Breakfast Club and School Milk Scheme procedures, and the efficient management and provision of service of all other Council service users in relation to the Services.

### **LEGAL IMPACTS**

- 16 As indicated above, subject to service requirements, the potential value for the direct award arrangement is estimated to be £118,600 for six months and as a result of this, the Council must comply with its own internal CPRs which provide that the Council will put agreements of this value out to tender.
- 17 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 is deemed appropriate. As part of the Recommendations, an exclusion of the CPRs will be sought.
- 18 Therefore, the Council could potentially be exposed to challenge from aggrieved providers who have not had an opportunity to bid for the period of the direct award arrangement. They may wish to challenge this by Judicial Review of the Council's decision.
- 19 The risk of challenge is acknowledged, however, it would be contended that the risk of challenge is somewhat limited as it is the Council's intention to utilise the NPS Framework for the eventual appointment of a service provider and this exercise will be undertaken during the proposed extension period.

- 20 In addition, the Council must ensure that suitable contractual arrangements can be put in place for such services without delay and to ensure continuity is not disrupted and the proposed arrangements would represent best value to the Council.

### **RISK MANAGEMENT**

- 21 This report seeks to minimise the risk to the Council by ensuring continuity of service pending the Council undertaking a further competition exercise to secure a new framework agreement for the service.

### **CONSULTATION**

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

### **RECOMMENDATION**

- 23 It is recommended:
- 23.1 That the requirements of competition are excluded and Rule 2.1 of the Council's Contracts Procedure Rules is suspended.
- 23.2 That authority is given to make a direct award to the Supplier and for the Council to enter into contract with the Supplier for a period of a maximum of 6 months from 16<sup>th</sup> November 2017 to allow the Council to run a further competition exercise which will be undertaken at the same time as the direct award is to be put in place, the duration of such contract to be determined by the Head of ICT and Corporate Procurement.

### **REASONS FOR PROPOSED DECISION**

- 24 To ensure continuity of service from the approved Supplier pending the Council's intended further competition exercise under the NPS Framework and the implementation of a new framework agreement resulting therefrom.

### **IMPLEMENTATION OF DECISION**

- 25 The decision is proposed for implementation after the three day call in period.

## **APPENDICES**

26 None

## **LIST OF BACKGROUND PAPERS**

27 None

## **OFFICER CONTACT**

28 Stephen John, Head of ICT and Procurement  
Telephone: 01639 686218, email: [s.john@npt.gov.uk](mailto:s.john@npt.gov.uk)

29 Diane Spencer, Corporate Procurement Manager  
Telephone: 01639 763929, email: [d.spencer@npt.gov.uk](mailto:d.spencer@npt.gov.uk)