

Report to the Cabinet

Meeting to be held on Thursday, 14 May 2020

Report of the Head of Service - Procurement

Part I

Electoral Divisions affected:
(All Divisions);

Request Approval to Extend Existing Contracts in Response to Covid-19 Outbreak

(Appendix 'A' refers)

Contact for further information:

Rachel Tanner, Tel: (01772) 534904, Head of Service - Procurement,
rachel.tanner@lancashire.gov.uk

Executive Summary

Given the unprecedented circumstances brought about by the COVID-19 outbreak the Procurement Service has undertaken an urgent review of contracts expiring that would otherwise have been re-procured in the next 6 to 12 months. Proposals for those contracts have been considered in accordance with Procurement Policy Note 01/20 'Responding to COVID-19' and this report identifies those contracts meeting the criteria for extension with the incumbent supplier.

Approval will enable the Council to extend contracts and permit the Procurement Service to:

- Ensure its focus is maintained on essential category management activities, namely the supply of PPE.
- Where resource permits redeploy staff to support essential services outside of the Procurement Service.
- Undertake full tendering processes to put new contractual arrangements in place at a later date.

This is deemed to be a Key Decision and the provisions of Standing Order C21 have been complied with.

Recommendation

Cabinet is asked to:

- (i) Approve the extension of the contracts as set out in this report and detailed in Appendix 'A'.
- (ii) Authorise Directors and Heads of Service to determine the length and number of extensions within the maximum scope permitted by this report.

This decision should be implemented immediately for the purposes of Standing Order C29 as any delay could adversely affect the execution of the county council's responsibilities. The reason for this is that the decision has been designated as business critical by Corporate Management Team, and any delay in its implementation would have an adverse effect on the operations of the county council.

Background and Advice

Given the unprecedented circumstances brought about by Covid-19 the Procurement Service has undertaken an urgent review of contracts expiring that would otherwise have been re-procured in the next 6 to 12 months.

The majority of 'business as usual' new tendering activity is for the time being to be regarded as non-essential in the context of maintaining a focus on providing the essential services which support the most vulnerable people in Lancashire.

Where the council has a need to maintain continuity for the delivery of goods, works and services, the council must generally procure contracts in accordance with the Public Contract Regulations 2015 (PCRs). Where the council, due to circumstances beyond its control, is unable to procure new contracts by undertaking a compliant tender exercise, the PCRs permit extension or modification of existing contracts if certain conditions are met. The most relevant provision of the PCRs in the circumstances is Regulation 72(1)(c).

Proposals for contracts expiring have therefore been considered in accordance with Cabinet Office Guidance (Procurement Policy Note 01/20 'Responding to COVID-19') and Regulation 72(1)(c) PCR.

Regulation 72(1)(c) sets out the following:

Contracts ... may be modified without a new procurement procedure ... in any of the following cases:

(c) where all of the following conditions are fulfilled:

- (i) the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen;*
- (ii) the modification does not alter the overall nature of the contract;*
- (iii) any increase in price does not exceed 50% of the value of the original contract or framework agreement.*

This report identifies those contracts meeting the criteria for modification with the incumbent supplier. Further specific considerations in respect of certain contracts are dealt with in the "Legal" section below.

It is vital that in respect of those contracts the council:

- (a) limits any contract extension or other modification to what is absolutely necessary to address the circumstances of the COVID-19 outbreak;
- (b) limits any contract extension or modification to fall within the boundaries of Regulation 72(1)(c) of the PCRs; and
- (c) keeps a written justification that satisfies the above conditions, with reference to the specific facts;
- (d) publishes a notice in the Official Journal of the European Union in respect of each extended contract confirming reliance upon this ground.

Where an extension is requested in this report it is proposed that this is taken forward on the basis that the Director/Head of Service will be authorised to determine length and number of extensions within the maximum scope permitted by this report.

The contracts concerned are detailed at Appendix 'A', the table below summarises the extensions by procurement category:

Category of spend	Value of maximum extension requested	Number of contracts	Average length of maximum extension requested (from March 2020)
<i>Care and Public Health</i>	£6,769,180	7	Up to 12 months
<i>Construction & Assets</i>	£13,032,100	11	Up to 13 months
<i>Corporate</i>	£1,296,500	8	Up to 8 months
	£20,629,030	26	

Approval will enable the Council to extend contracts and permit the Procurement Service to:

- Ensure its effort is maintained on essential category management activities, namely the supply of PPE, which has diverted a significant number of staff away from their usual areas of focus.
- Where resource permits redeploy Procurement staff to support essential services outside of the Procurement Service.
- Undertake full tendering processes at a later date to put new contractual arrangements in place.

Consultations

Relevant heads of service and key operational staff have been consulted in drawing up the proposals included within this report.

Implications:

This item has the following implications, as indicated:

Legal

The relevant provisions of the Public Contract Regulations are set out in the body of this report. Subject to the Council complying with the prescribed limits for the proposed contract extensions/modifications and the requirements of Regulation 72(1)(c) generally, the extension of contracts recommended in this report will be undertaken in a lawful manner and in compliance with recent Cabinet Office guidance.

In respect of the county council's Procurement Rules ("the Procurement Rules") the recommended extensions are outwith the provisions of those rules. Pursuant to paragraph 14.2 of the Procurement Rules, decisions taken contrary to the Procurement Rules must be taken by Cabinet.

The report identifies two contracts (row 2 and row 16 of Appendix 'A') which, due to the value of the proposed extension, exceeds the 50% cap on increase in value as set out in Regulation 72(1)(c). However, due to the initial value of the contracts falling below the financial threshold to which the full PCR provisions apply, the council must instead consider the general EU Treaty principles (equality of treatment, transparency, mutual recognition and proportionality). The council considers that the extension of these contracts are, given the unforeseen circumstances, a necessary and proportionate response to ensuring continued service delivery.

The report also identifies certain contracts that have already expired. In each of those cases, the supplier has continued to provide the services to the council and the council has continued to pay the supplier. In each case, the council and the supplier have conducted themselves in accordance with the terms and conditions of the contract and have intended that the contractual arrangement should continue through a course of dealings. For the avoidance, any contract extension will therefore be made on the terms of the existing contract.

Financial

The estimated value of the contracts are set above and individually at Appendix 'A'.

List of Background Papers

Paper	Date	Contact/Tel
-------	------	-------------

None

Reason for inclusion in Part II, if appropriate

N/A