

Finance and Resources Committee

10am, Thursday, 27 August 2015

Waiver Report for Servicing and Repairs Contract

Item number	7.23
Report number	
Executive/routine	
Wards	

Executive Summary

This report seeks the approval of the Finance and Resources Committee to approve the waiver of contract standing order to allow the extension of current contracts for service and repair to enable the creation of a new contract/framework through a tendering process. The term of the contract extension will be 31 August 2015 to 1 December 2015.

Links

[Coalition pledges](#)
[Council outcomes](#)
[Single Outcome Agreement](#)

Recommendations

- 1.1 It is recommended that the Finance and Resources Committee approve the waiver reports attached in Appendix 1.

Background

- 2.1 The Council has a statutory duty to maintain and service the equipment provided by its Community Equipment Store to people with illness and disabilities in their own home.
- 2.2 The City of Edinburgh Council has several servicing and maintenance contracts in place, which have expired or are due to expire.
- 2.3 After a review, all servicing and maintenance provision will come under one single Framework Agreement, which will be tendered for in collaboration with Midlothian Council, East Lothian Council, West Lothian Council, Scottish Borders Council and NHS Lothian. Due to the time taken to set up this collaboration, there will be a gap in service contracts expiring and the new tender being ready.

Main report

- 3.1 There have been different contracts for servicing and maintenance of a range of equipment, however, the intention is to include servicing and maintenance of all equipment under one Framework Agreement. This should create savings and facilitate contract management. We anticipate that the initial savings will be approximately £80,000 per annum.
- 3.2 Delays in servicing of equipment could leave service users and carers at risk of injury.
- 3.3 The consolidation of contracts and collaboration with other local authorities has caused a delay, which will result in a gap between the current contracts and the implementation of the new Framework Agreement.
- 3.4 It is in the best interests of service users and the Council to extend the contract to mitigate the identified risk.

Financial impact

- 4.1 The Framework Agreement (estimated value £415,819 per annum and £1,663,276 over 4 years) is scheduled to be in place for 1 December 2015 and will include the following equipment:

- Mobile hoists £58,610
- Mattresses £43,477

• Beds	£99,608
• Powered seating for adults and children	£56,730
• Powered shower seating	£11,326
• Ceiling track hoists	£10,233
• Bath hoists auto lifts	£ 3,335
• Bath seats	£ 8,000
• Powered solo toilet raisers	£ 2,000
• Powered bidet toilets	£65,000
• Stair lifts	£57,500

- 4.2 The existing waiver for stair lifts (Advanced Stair lifts) and powered bidet toilets (Total Hygiene) will expire on 31 August 2015. An extension to these waivers is sought to cover the period between the expiry date and the new Framework Agreement being in place, approximately 4 months, 31 August 2015 to 1 December 2015. This is built into existing budgets and partners are re-charged based on usage of the service. Any budgetary concerns are raised at quarterly Management and Finance group meetings throughout the year.

Risk, policy, compliance and governance impact

- 5.1 There is a risk that the extensions to the current contracts could be deemed to constitute new contracts and therefore be in breach of the procurement rules, primarily based on the increased value in the contract, as noted above. However, as there are a number of current contracts and the value of each is a proportion of the overall total value of £ 415,819, none of the extensions exceeds the current EU thresholds.
- 5.2 An aggrieved potential bidder could raise an action in the Sheriff Court or Court of Session to seek the set aside of the contract extension and to obtain an award of damages. If the Court did rule in favour of an aggrieved potential bidder, the risk of a significant award of damages would be low. However, the successful challenge itself would have an adverse reputational impact on the Council. The resultant setting aside of the contract would necessitate a new procurement exercise.
- 5.3 Although there is a risk of a successful legal challenge, this risk is deemed to be low. The market will also be aware that the Council is retendering the opportunity under OJEU Open procedure, as published in our Prior Indication Notice of 29 May 2015, and it is therefore likely that potential bidders will wait to bid for the opportunity. On balance, granting the extension carries the lesser risk.

Equalities impact

- 6.1 There is no relationship to the public sector general equality duty to the matters described in this report and no direct equalities impact arising from this report.

Sustainability impact

7.1 As part of the contract, the providers are required to evidence their environmental policy.

Consultation and engagement

8.1 We have collaborated with NHS Lothian, Borders Council, East Lothian Council, Midlothian Council and West Lothian Council on the specification and evaluation. All are in agreement that this collaboration will give greater purchasing power, which should provide savings.

Background reading/external references

None

Michelle Miller

Chief Social Work Officer

Contact: Linda Bertram, Community Equipment Service Manager

E-mail: linda.bertram@edinburgh.gov.uk | Tel: 0131 529 6300

Contract Standing Orders – Waiver Approval Form

CPS use only:	
Waiver number:	
Waiver Register updated:	
Contract Register updated:	
Buyer's Pool:	

Directorate (select from menu)	Health & Social Care			
Service	Community Equipment Service			
Service Manager	Linda Bertram			
Supplier Name	Total Hygiene Ltd			
Waiver Type (select from menu)	Direct Award			
Contract Name and Ref (if Extension) (Name and Unique Code from Contract Register)	CT0431: Unique code is 100002235 Waiver 443			
Justification (select from menu)	Council's Best Interests			
Waiver Level (select from menu)	More than £25,000 & less than £250,000			
Proposed duration of Waiver (Where no specific dates apply, the current financial year will be used)	Start date:	30/06/15	End date:	31/12/15
Waiver Value (£)	Full Value of Waiver:		£65000	
Is the Waiver for the Appointment of a Consultant?	No			
Is this a "repeat" Waiver?	Yes	<p>Purchase order 1839932 is incomplete as the amount on it exceeds the current waiver contract. There is already a waiver set up for £26,866.73, however £27,196.72 worth of orders have already been released.</p> <p>Because the waiver has been exceeded, new purchase orders created for Total Hygiene Ltd will not be automatically processed.</p> <p>The contract is for "supply and service and repair of electronic bidet toilets to Total Hygiene Ltd"</p>		
Waiver Summary This text will be copied into the quarterly public report to Finance and Resources Committee NB Please limit your summary to no more than 70 words	<p>Approval of this Waiver of Contract Standing Orders is sought to allow the extension of current contracts for Supply, Service and repair of electric bidet toilets to enable the creation of a new contract/ Framework Agreement with the complete revision of specifications (to include provision for bariatric clients) and consolidation of the requirements from all five participating Councils through a compliant OJEU tendering process.</p>			
Full background and justification to support approval process Please include resource and budget implications.	<p>The CES has an existing contract with Total Hygiene Ltd which has expired. We now require to go out to contract tender specifically for bidet toilets. Until this time it is essential that CES need to be able to have a supply and maintenance temporary contract to ensure the council are compliant with H&S legislation and ensure clients are able to use the equipment safely. If we are unable to maintain these items, the council will be in breach of legislation and putting clients at risk.</p> <p>A specific costing and quotations for the following have been sought from Total Hygiene for supply, service and repair.</p> <p>CES currently has 132 electronic bidet toilets in situation in client homes across the city.</p> <p>CES have completed a Procurement Requirement Form (PRF) via the Orb in order to engage Commercial & Procurement Services assistance with developing a new contract for these goods.</p> <p>Until the tender is complete CES will need to have a contract for the next 7 months (31st December 2015) to supply, service and repair bidet toilets totalling approx £65,000.00 expenditure.</p> <p>The cost can be accommodated by the existing approved revenue budget for 3011,3021 and 3031 Aids and adaptations, service and repair for CES cost centre 67931.</p>			

Risk Review Please outline reputational, legal and service risks of waiving/not waiving the CSOs. For example, risk of legal challenge from another provider or to service continuity. You must include an assessment of risk level (High, Medium, Low) and mitigating actions.		The risks of waiving the CSOs are as follows: The council will be in breach of H&S legislation and putting clients at risk within their own home. The risk of challenge is low as the market for this specialised equipment as last time we tendered we only received one bid because it is specialised, and we are in the process of developing a tender to which all suitably qualified suppliers would be able to bid for.	
Future arrangements Please outline the planned actions to enable compliance with CSOs on this spend, including dates to review progress		A new contract/Framework Agreement for this requirement as a separate lot (excluding supply), is being constructed in partnership with four other Councils and NHS Lothian, starting on 1 December 2015. Regular contract management reviews will be an integral feature of the specification to ensure the benefits of economies of scale, and streamlined services are secured. Provision for Bariatric clients will be made available as a development in light of demographic trends.	
CPS Category Manager NB: the Service is responsible for liaison with CPS on Waiver requirements		Signature:	Date:
Approval Level (please select from the menu in accordance with the Waiver Level above) NB: if value is over £250k, please contact the CPS Category Manager for guidance		>£25,000 and <£250,000 - Service Director and Director of Corporate Governance	
Approved by:	Head of Service / Service Director: (As required)	Signature:	Date:
	CPS Manager / Corp. Governance Director: (As required)	Signature:	Date:

This form must be completed by the relevant Service Manager in consultation with Commercial and Procurement Services – see available guidance on the Orb

NB: The signed Waiver Approval Form should be scanned as a PDF and emailed to waivers@edinburgh.gov.uk

Contract Standing Orders – Waiver Approval Form

CPS use only:	
Waiver number:	
Waiver Register updated:	
Contract Register updated:	
Buyer's Pool:	

Directorate (select from menu)	Health & Social Care			
Service	Community Equipment Service			
Service Manager	Linda Bertram			
Supplier Name	Advanced Stairlifts Ltd			
Waiver Type (select from menu)	Direct Award			
Contract Name and Ref (if Extension) (Name and Unique Code from Contract Register)	Contract ref CT0402: Unique code is 100002359			
Justification (select from menu)	Council's Best Interests			
Waiver Level (select from menu)	More than £25,000 & less than £250,000			
Proposed duration of Waiver (Where no specific dates apply, the current financial year will be used)	Start date:	30/06/15	End date:	31/12/15
Waiver Value (£)	Full Value of Waiver:		£57500	
Is the Waiver for the Appointment of a Consultant?	No			
Is this a "repeat" Waiver?	Yes	Purchase order 1834667 is incomplete as the amount on it, £4,410.00, exceeds the contract, CPA1811120, that it has been raised against. CPA1811120 for waiver 482 is for £23,950.00; the cumulative amount on the CPA with purchase order 1834667 is £25,703.15. The contract is for 'Provision of equipment and adaption's to people with illnesses' and the supplier is Advanced Stairlifts Scotland Limited.		
Waiver Summary This text will be copied into the quarterly public report to Finance and Resources Committee NB Please limit your summary to no more than 70 words	Approval of this Waiver of Contract Standing Orders is sought to allow the extension of current contracts for Supply, Service and repair of stair lifts, lifting platforms, through floor vertical lifts to enable the creation of a new contract/ Framework Agreement with the complete revision of specifications (to include provision for bariatric clients) and consolidation of the requirements from all five participating Councils through a compliant OJEU tendering process.			
Full background and justification to support approval process Please include resource and budget implications.	The Community Equipment Store has a statutory duty to maintain and service the equipment provided to people with illness and disabilities in their own homes. Currently the City of Edinburgh Council has a contract with Advanced Stair lifts limited which expires on 31 st August 2015. A new contract tender process will be set up however a waiver needs to be signed off for a period from 30 th June 2015 to 31 st December 2015 to cover the tender period. A cost of £23,950.00 based on previous months service and purchase costs with Advanced was the initial amount estimated to be able to cover the period of the previous waiver from 23 rd Jan 2015 – 31 st August 2015. To date we have exceeded this original budget ahead of fulfilment. The cost can be accommodated by the existing approved revenue budget for 3011 Aids and adaptations for CES cost centre 67931			
Risk Review Please outline reputational, legal and service risks of waiving/not waiving the CSOs. For example, risk of legal challenge from another provider or to service continuity. You must include an assessment of risk level (High, Medium, Low) and mitigating actions.	The risks of waiving the CSOs are as follows: Delays or prevention of the provision of servicing of equipment would leave clients at risk of injury or unsafe in their homes and carers at risk of injury, consequently the Council potentially being liable. The risk of challenge is diminished by the publication of a Prior Information Notice (PIN) on 29.05.15 inviting expressions of interest in this contract opportunity across all five lots including this requirement.			

Future arrangements Please outline the planned actions to enable compliance with CSOs on this spend, including dates to review progress		A new contract/Framework Agreement for this requirement as a separate lot (excluding supply), is being constructed in partnership with four other Councils and NHS Lothian, starting on 1 December 2015. Regular contract management reviews will be an integral feature of the specification to ensure the benefits of economies of scale, and streamlined services are secured. Provision for Bariatric clients will be made available as a development in light of demographic trends.	
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Approved by:	Head of Service / Service Director: (As required)	Signature:	Date:
	CPS Manager / Corp. Governance Director: (As required)	Signature:	Date:

This form must be completed by the relevant Service Manager in consultation with Commercial and Procurement Services – see available guidance on the Orb

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