

CHESHIRE EAST COUNCIL

Cabinet

Date of Meeting:	12 th July 2016
Report of:	Chief Operating Officer
Subject/Title:	Water Procurement
Portfolio Holder:	Cllr Peter Groves - Finance and Assets

1.0 Report Summary

- 1.1 Cheshire East Council spends approximately £2 million per annum on water services across its Corporate and Schools portfolio. The existing regional supplier arrangement for water services is due to change in April 2017 and the English water market will be fully opened to competition.
- 1.2 The region supplier, United Utilities for the whole of Cheshire East, will continue to provide network and distribution services but the retail element will be subject to competitive tendering. Any contract awarded to a retail provider will also include the services provided by United Utilities as the cost of these services will be passed through by the retail provider.

2.0 Recommendations

- 2.1 Cabinet is requested to:
- i) Approve the procurement of water services via the Public Sector Water Strategy Group framework from April 2017.
 - ii) Delegate authority to the Chief Operating Officer, in consultation with the Portfolio Holder for Finance and Assets, to enter into a contract with the successful provider, following a compliant procurement exercise conducted via the Public Sector Water Strategy Group framework, for an initial period of 2 years with the option to extend the contract for two further periods of 1 year (Total 4 years).
 - iii) Delegate authority to the Chief Operating Officer, in consultation with the Portfolio Holder for Finance and Assets, to determine whether to enter into individual Memorandum of Agreements with such Schools and Academies as indicate they wish to participate in the contract (subject to the Council's contract with the successful provider allowing such participation).

3.0 Reasons for Recommendations

- 3.1 The Public Sector Water Strategy Group (WSG) has been set up with the intention of creating a nationally accessible Framework for Water and Sewerage retail services from April 2017, for all Public and Third Sector organisations in England. The WSG is a group consisting of representatives from five Public Sector Buying Organisations; Yorkshire Purchasing Organisation (YPO), Eastern Shires Purchasing Organisation (ESPO), North East Procurement Organisation (NEPO), The Energy Consortium (TEC), West Mercia, and Crown Commercial Services, with support from the Ministry of Defence (MoD).
- 3.2 The English water market, previously restricted to business's using more than 5000 M³ a year, will be fully open to competition in April 2017. Many public sector customers will need to procure a compliant contract following the deregulation of the market in April 2017, in accordance with the Public Contract Regulations 2015 and avoid being allocated to out of contract rates.
- 3.3 Once the proposed provider is selected and if the frameworks' contract terms and conditions allow the Council will be purchasing on behalf of schools and Academies. All such educational establishments will be contacted during the course of the procurement process and their agreement to participate in the contract sought. When the Council enters into the contract with the provider, the Council will enter into Memorandum of Agreement with each of the educational establishments who already have expressed an interest to secure their involvement for the duration of the contract period.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All

6.0 Policy Implications

- 6.1 No significant policy implications

7.0 Financial Implications

- 7.1 Annual expenditure on water volumetric charges and Surface Water & Highways Drainage charges is approximately £2 million.
- 7.2 The Framework is not expected to deliver significant cashable savings to through discounted tariffs, due to the retailers only being able to influence 7% of the total delivered price, which in CEC's case will be £140,000 of its overall £2 million spend.

8.0 Legal Implications

- 8.1 In February 2014 a new EU Directive, Directive 2014/25, was adopted in relation to the procurement of water by entities including public bodies. That Directive has been transposed into the Utilities Contracts Regulations 2016 by the UK Government. These regulations are currently in their draft form but must be incorporated into UK law on 18 April 2016 (the deadline set by the EU in relation to a whole suite of procurement Directives adopted in 2014).
- 8.2 The regulations will apply to Utilities Contracts over £345,028 (for supplies and services).
- 8.2 The aggregate value of the Council's requirement for water services is such that these services must be procured in accordance with EU and National Legislation (so as to comply with the Council's Finance and Contract Procedure Rules) and will require a competitive tender exercise.
- 8.3 The Council has the option to carry out its own procurement exercise or it may make use of a compliantly competed contract put in place by a purchasing body on behalf of public sector bodies (such as a framework agreement).
- 8.4 A framework agreement enables the need for a particular service to be met for a set period of time. The Public Contracts Regulations 2015 allow local authorities to enter into framework agreements with a service provider following a competitive tendering process for a maximum period of four years.
- 8.5 The need to competitively procure water services is new and arises from the change in EU law. The WSG intend to put in place a framework agreement for water services for use by public bodies. Whilst the WSG have not yet published guidance, it is understood that the framework will be let in regional "lots" with several providers per lot. A public body will then enter into a mini-competition with providers on a lot in order to enter into a contract with one provider.
- 8.6 The letting of a contract via a compliantly procured framework agreement and following a mini-competition will satisfy the requirements of the EU regulations and the Council's own CPRs. The contract period (2 years plus the option to extend for two further years) will provide flexibility to withdraw from the contract if necessary.
- 8.7 The framework agreement and the contracts with the providers will be determined within the course of the procurement process put in place by WSG. If the terms of the agreements allow, the Council may be able to offer Schools and Academies the opportunity to participate in any contract the Council put in place with the successful provider. In which case the Council will enter into separate Memorandum of Agreement with each School/Academy MoA to evidence their commitment to participate for the potential duration of the contract (4 years) and so that their volumes can be taken into account.

9.0 Risk Management Overview of the Water Strategy Group

- 9.1 The financial benefit of this procurement exercise will be limited and a change of supplier could present a risk associated with transferring accounts i.e. completeness of data, account details, continuity of readings and general administration.
- 9.2 The benefits of obtaining a single supplier, electronic billing and consolidated invoicing has already been achieved.
- 9.3 There is a risk that limited experience and knowledge of procuring water and waste supplies could be represented in the tender documents, framework agreement and terms and conditions. WSG will mitigate this risk by carrying out in depth market research and on-going Customer and supplier engagement to determine how to structure and develop the tender documents, focusing on areas which are most important to customers.
- 9.4 Not all billing records are complete and CEC does not have access to all schools billing records particularly after conversion to academy status and they will need to be provided with regular reminders and guidance on how they should prepare for water competition when data is required for a tender process.
- 9.5 The English Public sector is considerably larger than the previously tested Scottish Public sector and some suppliers are concerned that if the majority of Public sectors go to tender at the same time this could limit the number of suppliers able to bid for the business. WSG have acknowledged these concerns and will structure one tender into attractive and manageable lots, or potentially look at one national framework which could be accessed via a further competition process and all suppliers meeting minimum requirements would be appointed. This risk will be managed as the Framework structure is decided by the WSG.

10.0 Background and Options

- 10.1 As stated previously the existing regional supplier arrangement for water services is due to change in April 2017 and the English water market will be fully opened to competition and all non-domestic customers in England will have the option to transfer their business to their chosen Water Retailer in accordance with complying by the Public Contract Regulations 2015. As public sector customers will need to procure a compliant contract following the deregulation of the market in April 2017, and avoid being allocated to out of contract rates, the WSG aims to provide a Framework which will provide Public Sector customers the opportunity to award to the most economically advantageous tender.
- 10.2 The Framework is not expected to initially deliver significant cashable savings to customers through discounted tariffs, due to the Retailers only being able to influence 7% of the total delivered price to the end user, with 93% of the delivered cost being made up of Wholesaler costs. OFWAT estimates that

savings to non-domestic customers is will be around 5% between 2015 and 2020. A collaborative public sector Framework will be able to maximise the delivery of these savings to customers, through shared knowledge, distribution of responsibilities and delivering an attractive Tender to Water retailers. Although savings in the competitive water market in England are likely to be limited initially, there is scope for the English retail margin to increase as competition embeds and the architecture of the market develops.

10.3 The key points for recommending that the procurement is conducted via the WSG Collaborative Public Sector Framework is that it is believed that the authority can take advantage of a number of other service offerings to facilitate savings through other means of efficiencies and added value services. Benefits which a collaborative procurement would be designed to deliver are:

- Transparency and accuracy in pricing
- Billing efficiencies – Single supplier billing, Electronic billing and consolidated invoicing
- Metering – Increased potential for economical fitting of AMR/smart metering and use of associated data.
- Improved customer service and account management
- Water Efficiencies – Competitive environment stimulating the development, availability and affordability of technologies and services to decrease water consumption.
- Provide national Public Sector with a quick, efficient and compliant route to market in a new and developing competitive market.

10.4 Another option would be a formal EU tendering process. Due to the level of spend on water services a re-tender of the contract will inevitably require a formal EU compliant tendering process to be undertaken. The council could go out to tender detailing specific requirements for Cheshire East, however, this is not recommended due to the cost of tendering, which would also be time consuming and extremely demanding on resources. It is considered that there would be no benefit in this approach over and above the collaborative options already available – the Council would be dealing with the same supply market and would not be able to leverage demand without the other Public Sector Bodies.

10.5 Recommendation

For Cheshire East Council to utilise the Public Sector Water Strategy Group framework which is a nationally accessible Framework for Water and Sewage retail services from April 2017.

That a contract be for a maximum period of 2 years with an option to extend by 2 further periods of 1 year each (maximum period 4 years).

11.0 Overview of Year One and Term One Issues

11.1 The contract will be managed by Procurement and Facilities Management.

12.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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