

TRAFFORD COUNCIL

Report to: Executive
Date: 22 February 2017
Report for: Decision
Report of: Executive Member for Economic Growth, Environment and Infrastructure

Report Title

Proposal for the procurement of Water, Wastewater, and Ancillary Services

Summary

The report provides information on the proposal for Trafford Council to procure and subsequently award a contract for the supply of water, wastewater, and ancillary services, together with associated timelines.

Recommendation(s)

1. That the contents of the report are noted.
2. That Trafford Council procures a provider or providers, to supply water, wastewater and ancillary services.
3. That the Corporate Director for Economic Growth Environment and Infrastructure be authorised to approve a proposal to proceed with an award of the contract(s) by Trafford Council for the provision of water, wastewater, and ancillary services.

Contact person for access to background papers and further information:

Name: Richard Roe (Director of Growth and Regulatory Services)
Extension: 4265

Background Papers: None

Relationship to Policy Framework/Corporate Priorities	This report contributes to a number of Corporate Priorities, in particular: Economic Growth and Development and Low Council Tax and Value for Money
Financial	The annual spend on water supply across the Council estate is estimated at £313.7k. There is a further spend of £818.5k for schools. This totals £1.1m per annum. Market intelligence suggests that a saving of between 1% and 3% could be expected on a

	competed contract following market deregulation, with further savings possible from 2020 following an Ofwat review.
Legal Implications:	Trafford Council has a duty to ensure that the procurement of water, wastewater and ancillary services is in compliance with the Public Contracts Regulations 2015. Trafford Council will be required to mitigate risks and undertake the compliant procurement activities in line with the timescales, as identified in the report.
Equality/Diversity Implications	No Implications Identified
Sustainability Implications	Not Applicable
Resource Implications e.g. Staffing / ICT / Assets	As set out in the report
Risk Management Implications	Not Applicable
Health & Wellbeing Implications	Not Applicable
Health and Safety Implications	Not Applicable

1.0 Background

- 1.1 The water market in England has mostly operated as a series of regional monopolies which means that currently due to market regulation, businesses and non-household water users are only able to buy their water from their regional water supplier and as such market competition cannot be facilitated due to the regulated market monopoly.
- 1.2 The water supply market is being deregulated from April 2017. The main effect of market deregulation means that businesses and eligible non-household users in future will not be able to contract directly with the water wholesaler (United Utilities) in this region, instead they will have to contract and source their water supply through a retailer. This means that from 1st April, businesses and eligible non-household water users, including public authorities and public sector organisations such as schools, will have the ability to choose their supplier of water, wastewater and ancillary services. 'Eligible' customers are non-household premises that pay business rates. This also means that public authorities and public sector organisations will be required to assess their current contractual arrangements and develop a strategy for the procurement of their future water, wastewater and ancillary services supplies.
- 1.3 The introduction of more competition into the marketplace is likely to increase incentive for suppliers to reduce costs or provide better services. Scotland is already deregulated, and most wholesalers have created retail arms, each of which will have access to our regional wholesaler, creating a competitive market place. Future competition in the market will provide businesses and eligible non-household water users with an opportunity to secure best value in the provision of their water, wastewater and ancillary services
- 1.4 The wholesale market will continue to be regulated by the Water Service Regulation Authority ('Ofwat') and so deemed rates will be very similar, if not the same, as current rates.

- 1.5 Where there is an intention award a contract, the value of which is in excess of the current EU threshold of £164,176, Public bodies and entities governed by public law must ensure compliance with the Public Contracts Regulations 2015 in sourcing its preferred supplier.
- 1.6 In accordance with the Public Contracts Regulation 2015, Trafford Council are required to undertake a procurement exercise to source a new supplier as of 1st April 2017. Trafford Council is unable to compliantly procure a supplier before 1st April for the reasons set out in this report.
- 1.7 Under the current regional supply contract arrangements, any business or eligible non-household customer which has not alternatively sourced and contracted for its water supply from 1st April will automatically transfer onto a rolling contract, with deemed rates, with their wholesalers retail arm. In this region this will result in a continued contractual arrangement between Trafford Council and Water Plus, which is the joint venture entity between United Utilities and Severn Trent.
- 1.8 Whilst the automatic transfer of contracted supply to Water Plus, from 1st April 2017 is not compliant with the Public Contracts Regulations 2015, and therefore there is a risk of legal challenge relating to the award of the non-compliant contract to Water Plus, the level of risk and likelihood of any such challenge being successful is considered to be minimal. The situation that Trafford Council finds itself now in, is due to circumstances wholly beyond the Council's control and it is a situation that all public authorities now find themselves in. An evaluation of the Council's options at this point, leaves no other viable option but to proceed as per the proposals contained in this report. To pursue any alternative option is likely to result in financial and business risks, at a consequence to the Council. Trafford Council will be required to mitigate the risks associated with the temporary non-compliant activity by ensuring that a compliant contract can be awarded as soon as reasonably practicable to do so and in line with the timescales identified in the report.

2.0 Proposed Procurement Activity

- 2.1 The Crown Commercial Service (CCS) is a public buying organisation, who are experienced at creating national framework agreements for wider public body use. CCS working with other public buying organisations such as: YPO, ESPO, NEPO and expert organisations such as: West Mercia Energy and The Energy Consortium, are currently establishing a framework: the Water Distribution and Related Services ("the Framework"), which will provide a compliant route to market for public bodies looking to procure water supply, waste water services and ancillary services. The Framework will be available for use by public bodies from April 2017.
- 2.2 STAR Procurement has led discussions around the future procurement of water, wastewater, and ancillary services with its respective partners, and also across AGMA authorities, and there is an appetite for a collaborative approach to the future procurement of water, wastewater, and ancillary services.
- 2.3 It has been agreed by AGMA Procurement Heads, that STAR Procurement will lead on the administration of an AGMA wide aggregated competition (including subsidiaries and partners, and schools) from the Framework on behalf of participating authorities for their water, wastewater, and ancillary service needs.
- 2.4 In general terms, the advantages of using the Framework include:

- No requirement to run an OJEU process.
- Contract support team - The scale of portfolios, brings significant benefits from supplier performance on billing, dispute resolution, dedicated personnel to manage accounts etc.
- Confidence in process – A significant number of local Authorities and Public Bodies use the Framework.
- No procurement cost to use arrangement.
- there is usually an offer a rebate for use of such Frameworks.

Having regard to the above, it is considered that accessing this Framework will offer public bodies the best value for money in current market situation.

- 2.5 A working group will be created that will consist of a number of representatives from the participating AGMA authorities and associated bodies. The group will work with STAR Procurement to agree a collaborative specification of requirements, and to undertake an evaluation of the bids received as a result of the competition.
- 2.6 STAR Procurement is continuing work with AGMA authorities and associated bodies to promote interest, ascertain aggregate spend details, and increase the levels of the participation of AGMA Authorities and associated bodies in the procurement process.
- 2.7 There is also scope to include Leisure Trusts across AGMA in this procurement process, and work is being undertaken by STAR Procurement to ascertain their interest and desire to join the collaborative procurement exercise.
- 2.8 The aggregated competition will: reduce procurement duplication across AGMA authorities; achieve efficiencies and realise benefits of economies of scale; and also test Framework providers on how they will deliver the specific requirements of each participating authority or associated body.
- 2.9 It is proposed that, whilst requirements will be aggregated for the purposes of the Framework competition, each participating authority or associated body, will be required to enter into its own contract with the successful bidder(s) following the conclusion of the competitive procurement process. The future contracts will be based on a total contract term of two years and seven months, therefore any contract entered into as a result of the competition would expire in March 2020. This will give the participating authorities and associated bodies the benefits of a reduced pricing during the contract period (following an Ofwat Price Review of the wholesale pricing), and also the stability of arrangements whilst the market establishes itself and develops.
- 2.10 For the reasons documented in this report, Trafford Council is unable to administer any alternative procurement exercise which could be concluded prior to April 2017. It is therefore proposed that:
- 2.10.1 from 1st April service provision will continue to be provided to Trafford Council pursuant to the automatic transfer of the current contract, with deemed rates, by Water Plus, the joint venture entity between United Utilities and Severn Trent; and
- 2.10.2 STAR Procurement will lead on a procurement exercise under which, the water supply, waste water services and ancillary services requirements of the participating AGMA Authorities (including subsidiaries and partners, and schools) will be aggregated for the purposes of administering a competition

under the Framework. The administration of a competition under the Framework can commence as of April 2017; and

2.10.3 upon conclusion of the competitive exercise, Trafford Council will award a new contract under to the successful Framework provider(s) as of 1st August 2017.

- 2.11 It is proposed that STAR Procurement, in consultation with the STAR Legal Services, shall on the basis of the Framework terms and conditions, shall negotiate the terms of a contract which could be used by participating authorities once the competition has been concluded.
- 2.12 It is proposed that, the Corporate Director for Economic Growth Environment and Infrastructure, in consultation with the Director of Legal and Democratic Services, shall approve the terms of a contract between Trafford Council and the successful bidder(s).
- 2.13 It is proposed that, the Corporate Director for Economic Growth Environment and Infrastructure shall, utilising an officer key decision, approve the proposals to proceed with an award of the contract(s) by Trafford Council for the provision of water, wastewater, and ancillary services.

3.0 Timescales for Implementation

- 3.1 It is intended that the collaborative competition will be concluded, providing each participating authority and associated body with the opportunity to enter into its own contract(s) , by August 2017.
- 3.2 The high level and indicative timetable below sets out the actions required by STAR Procurement and participating AGMA authorities and associated bodies. This timetable is subject to change based on the varying factors of working across the number of intended collaborators:

Date Completed	Activity	Responsibility
February 2017	Executive approval	Participating AGMA authorities / Associated bodies
February	Communication to Traded Service Team for sending to Schools (after Cabinet decisions received)	STAR Procurement
February to May	Competition Documents Finalised	STAR Procurement, sign off by participating authorities and associated bodies
May / June	Invitation to Quotes Sent	STAR Procurement
June / early July	Quotes Returned	Bidders
Mid / Late July	Evaluation	Participating AGMA Authorities and associated bodies, moderated by STAR Procurement
Late July	Award Reports Signed Off	Authorities and associated bodies

Mid July	Contract Signed / Sealed at Council	STAR Procurement
1 st August 2017	Contract Commences	Authorities and associated bodies s to manage Contract after

- 3.3 The decision to defer the commencement of a competition under the Framework is based on knowledge of the fact that other public bodies, in the same situation as the participating AGMA authorities, are also likely to be seeking to utilise the Framework in the same way that is proposed by Trafford Council in this report and at the same time. A competition under the Framework in March would mean the participating AGMA authorities will be competing with a number of other buyers, and the strength of our aggregated requirements may be compromised. For example, if a bigger collaborative group (such as the London Councils) are administering a competition under the Framework at the same time, the AGMA collaborative competition may lose its attractiveness in terms of spend comparatives. This may result in less favourable bid submissions. By commencing the competition slightly later STAR Procurement can seek to minimise any direct competition with other purchasing authorities, and can aim to take advantage of any lessons learnt from earlier competitive processes.
- 3.4 The deferral of the commencement of the competitive exercise to May/June has been determined on the basis of ensuring that the participating authorities get the best value deal possible and the proposed timeline has been discussed and agreed across AGMA Heads of Procurement.

Other Options

Do Nothing:

In accordance with the Public Contracts Regulation 2015, Trafford Council are required to undertake a procurement exercise to source a new supplier as of 1st April 2017.

The automatic transfer of contracted supply to Water Plus, from 1st April 2017 is not compliant with the Public Contracts Regulations 2015.

To allow the continued provision of water, wastewater and ancillary services by Water Plus, is not an option as this would significantly increase and prolong the risk of a successful legal challenge of the award of a non-compliant contract.

Trafford Council administers its own compliant procurement exercise now:

This is a new market that is currently establishing structures and developing. There are significant risks associated with the instability of such a new market and it is likely that, during the initial stages, that the market will be flooded with buying organisations.

If Trafford Council commenced its own procurement exercise at this stage, it would be in direct competition with larger public buying organisations, like CCS and YPO, who are also looking to establish foundations in a developing market. In such a scenario, Trafford Council would be unlikely to generate favourable or quality responses during its own competitive exercise as suppliers are more likely to focus bidding strategies at larger

organisations looking to establish national frameworks, which in turn will generate more business for suppliers.

It should be noted that market suppliers have delayed the CCS/YPO procurement activities whilst they align themselves with their environment and prepare themselves adequately for a competitive tendering environment.

Trafford Council commences administration of its own compliant procurement exercise in April 2017:

If, based on the reasons detailed in the option analysis above, Trafford Council, postpones the commencement of its own procurement exercise until April and then commences its own procurement exercise, the point at which the Framework will be operative, the Council is likely to face issues of competition with other larger “more attractive” purchasing groups. The Framework will be newly established and it is likely that a large number of public authorities will take the same course of action as is proposed in the report. This, if it materialises, will mean that supplier focus will remain on the influx of purchasing utilising the Framework to competitively access the market.

It should also be noted that, the administration of its own procurement exercise by Trafford Council at such a time when there is already a compliant route to market via the Framework, undoubtedly amounts to a duplication of effort and resources and a failure to recognise, and capitalise on, the benefits realised by the Framework as detailed in this report.

Consultation

The proposal contained in this report do not require formal consultation

Reasons for Recommendation

In accordance with the Public Contracts Regulation 2015, Trafford Council are required to undertake a procurement exercise to source a new supplier as of 1st April 2017. Trafford Council is unable to compliantly procure a supplier before 1st April for the reasons set out in this report.

The proposed temporary continuation of the supply of water, wastewater, and ancillary services from Water Plus, during the period commencing on 1st April 2017 and expiring on 31st July 2017, will provide a period of time during which STAR Procurement can administer a compliant procurement exercise which will result in competitive packages of service realised through an aggregated purchasing exercise and it provide Trafford Council access to a secure contractual arrangement for the future supply of water, wastewater, and ancillary services from 1st August 2017 until March 2020.

Key Decision (as defined in the Constitution): Yes

If Key Decision, has 28-day notice been given? Initially; then meeting date brought forward, so default notice published.

Finance Officer Clearance PC
Legal Officer Clearance DA

CORPORATE DIRECTOR'S SIGNATURE *(electronic)*

Helen Jones

To confirm that the Financial and Legal Implications have been considered and the Executive Member has cleared the report.