

MUNICIPAL YEAR 2017/2018 REPORT NO.

MEETING TITLE AND DATE:
EMT

REPORT OF:
Director of FRCS

Contact officer and telephone number:
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Agenda - Part:	Item: KD 4659
Subject: Procurement of an Out of Hours Telephone Service	
Wards: All	
Cabinet Member consulted:	

1. EXECUTIVE SUMMARY

The Council is required to provide access to services for residents, outside of ordinary working hours. For this report, out of hours is defined as each weekday from 17.00hrs through to 9.00hrs, weekend cover provided from Friday 17.00hrs through to Monday morning 9.00hrs, and the cover arrangements required for all public holidays.

The statutory services which require out of hours access are

- housing make safe repairs service
- adult social services - assessments
- children's social services – assessments
- emergency housing services
- noise nuisance

This aspect of the Council's telephony service is provided by an external company, procured and managed through a pan-London partnership of boroughs. This company - GDIT – has given notice that it is withdrawing from this aspect of service delivery at the end of the contract period (Sept 2018)

This report is setting out the details of the pan London procurement exercise to seek an alternative out of hours telephony service provider and requesting approval to participate in a shared out of hours customer call handling service.

This joint procurement exercise has been led by Ealing Council with a consortium of London Local Authorities and housing providers. Following a full procurement exercise, the successful tenderer is Capita Business Services Limited, following a full procurement and competitive dialogue exercise.

2. RECOMMENDATIONS

This report recommends

- acceptance of the outcome of the joint procurement exercise led by Ealing Council
- entering into the proposed agreement for a period of seven years.
- To delegate to the Director of Law and Governance) the authority to agree the terms of the service agreement between the Council and the chosen provider, a memorandum of understanding (MOU) with the other participating organisations and any other agreement in connection therewith.

3.BACKGROUND

The out of hours telephony service is currently provided by GDIT for 12 London Boroughs / ALMOs, with the contract procured and managed by London Borough of Ealing. The current contract is due to end on 30th September 2018, with no option to extend.

Enfield has been part of the current contract for the past eight years and has participated throughout the current procurement process, agreeing the specification and participating in the competitive dialogue process.

Following this process, Ealing has recommended the award of the contract for a replacement out of hours telephony contract to Capita, on a five-year term, with the option to extend twice, each for a further twelve months.

The OJEU notice was issued on 19th January 2017, and the competitive dialogue process included thirteen meetings held over a course of four months.

Bidders had four weeks to submit their bids, following the end of dialogue, and the tender return date was Monday 18th September 2017. The evaluation criteria were:

Secondary Criteria for ISDS	Weightings for ISDS % (a)	Score out 10 (b)	Percentage score (c)=(b/10) *a
Quality Score			
MS1: Management and Training of call handling staff	5.00%		
MS2: Your Contract Management	5.00%		
MS3: Equalities and Vulnerability	5.00%		
MS4: Your compliance with the specification	5.00%		
MS5: Dealing with complaints	5.00%		
MS6: Innovation including IT aspects	5.00%		

MS7: Mobilisation- both initial and for new joiners	5.00%		
MS8: Business continuity	5.00%		
MS9: Environmental Management	2.50%		
MS10: Economic Sustainability	2.50%		
Contract Derogations are acceptable but final drafting is ongoing			
Price Score			
	50%	N/A	50%

There are no other framework agreements that Enfield could join.

The structure of the arrangements will be governed by;

- a. An overarching agreement
- b. Services agreements
- c. Memorandum of Understanding

Current Contractual Arrangement

There is an existing contract for an Out of Hours call handling service, which has provided major financial and service benefits for Enfield and the twelve participating organisations. Ealing has been the lead organisation in respect of management and contract owner since the first contract, providing a joint Out of Hour's service in October 2008. The current contract commencement date was October 2012 and is due to expire on the 30th September 2018.

The current service is delivered under the framework agreement which commenced in October 2012 and is provided by General Dynamics Information Technology Limited (GDIT) from a call centre located in South Yorkshire.

The Lead Client Contract Monitoring role has been assigned to Ealing by agreement of the current participating organisations. The key objectives for this role are to:

- Drive down costs;
- Monitor contract performance;
- Produce service quality reports for the partnership and Ealing's Contract Board;
- Offer legal and finance advice and support to the partnership in our role as the lead borough;
- Oversee both management and contract board meetings;
- Support individual participating organisations with service changes and delivery;
- Negotiate and liaise with all parties;
- Continuously drive improvement with the service delivery model;
- Manage the partnership funding and budget for the contract; and
- General contract monitoring activity.

The participating organisations are required to make monthly financial contribution towards this role. This is used to fund the monitoring role, undertake the best value review in year three and run the procurement. This fee is dependent on the number of

organisations participating, so Enfield's share could increase, or decrease, depending on the number of partners.

4. ALTERNATIVE OPTIONS CONSIDERED

Option 1: Capita/Ealing procured service

Advantages:

The service has been through an exhaustive procurement process, the service has already invested in the specification and selection of provider. There are low client management demands as the contract is managed by Ealing. The share of the total management fee is partly determined by the number of partners. There is a high-quality service and client management with continuity of client. This is a low-risk option.

Disadvantages:

Whilst it is possible to leave with 12 months' notice there is a penalty payment for each uncompleted year of the contract.

Mitigation:

Better gatekeeping for non-emergency calls could allow the service to reduce demand.

Option 2: Enfield to run its own procurement

Advantages:

This would allow creation of a simplified specification to reduce supplier risk, increase number of interested bidders and allow Enfield to join provider's existing services. There could be potential to create a framework contract for others to join.

Disadvantages

This could be resource-intensive to run the procurement, and limited capacity means there would be opportunity cost of loss of other projects displaced.

There is a risk that the timescales available are now too short and there is no fall-back option.

Savings may not be material

Option 3: Bring the service in-house

Advantages:

There may be possible economies of scale if run in conjunction with Community Alarms, CCTV, and potential Adult Services/IT out of hours cover.

Potential to create a service for other LAs to join (if there is a market).

Better utilisation of existing resources such as accommodation and IT.

Disadvantages:

Very difficult to deliver for the current price

No immediate interest from other authorities

Risk that time is short and there is no fall-back option

Option 4: Purchase the service from another Local Authority

Advantages:

Possible economies of scale if run in conjunction with Community Alarms, CCTV, and potential Adult Services/IT out of hours cover.

Potential to create further economies of scale should other LAs decide to join

Good PR of joint working.

Disadvantages:

Resource intensive to find a partner and agree service levels/terms

Risk that time is short and there is no fall-back option

5. REASONS FOR RECOMMENDATIONS

Choosing the pan-London procured option provides the best mix of service delivery, value for money, and risk mitigation.

COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS

6.1 Financial Implications

Although the pan – London contract will bring an increase in costs compared to the current GDIT contract it is likely to be the best option available. The final cost will depend on how many authorities join the scheme. There are no other framework agreements which Enfield could join and with limited time until the expiration of the current contract it is doubtful the service could be brought in house or that Enfield could run its own procurement exercise.

6.2 Legal Implications

Section 111 of the Local Government Act 1972 permits local authorities to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of their functions. Furthermore, The Council has a general power of competence under section 1(1) of the Localism Act 2011 to do anything that individuals may do, provided it is not prohibited by legislation and subject to Public Law principles.

The Council has a fiduciary duty to look after the funds entrusted to it and to ensure that its Council tax and rate payer's money is spent appropriately. For that reason, the Council must carefully consider any project it embarks to ensure that it is making decisions based on a proper assessment of risk and rewards/outcomes. The Council must keep a clear audit trail of its decision to award these services to demonstrate that best value has been, and will continue to be, obtained for the Council.

As the value of the contract is above the EU threshold amount, the Council must comply with the Public Contracts Regulations 2015 ("PCRs"). Officers have confirmed that a fully compliant competitive dialogue process has been carried out in accordance with the PCRs.

The Council must also comply with all requirements of its Constitution including the Contract Procedure Rules ("CPRs"). Although the procurement process is being led by Ealing Council, these rules still apply, and the Council will remain legally and financially accountable for its obligations. Officers should note that:

- (a) approval from the P&C Board is required before the commencement of procurement. Officers are unable to confirm that such approval was obtained, however the proposal was subsequently agreed by the procurement board on 1st March 2018;
- (b) if there is doubt as to the contractor's financial viability, the advice of Financial Management Services must be sought prior to any contract award;
- (c) as the anticipated contract value exceeds £250,000, this is a Key Decision and the Council must comply with the Key Decision procedure. In cases of urgency, Rule 15 and/or 16 of the Council's Constitution must be adhered to. Officers advise that a waiver form has been submitted pursuant to Rule 16; and
- (d) all legal agreements arising from the matters described in this report must be approved in advance of contract commencement by the Director of Law and Governance. The contracts must be executed under seal and originals retained by Legal Services for secure storage.

The Council must be mindful that TUPE may apply to the current and any future service provision change, and appropriate steps should be taken to protect the Council's interests.

Legal have reviewed the Service Agreement and the Memorandum of Association which mirror the provisions of the Overarching Agreement.

6.3 Procurement Implications

All procurement must follow the Councils Contract Procedures Rules and be in line with PCR's and EU regulations.

All frameworks must be legally compliant with regulations and be open to the Council to use. The use of the framework must be in line with the framework regulations to ensure legally compliant.

A competitive procurement exercise was undertaken by the London Borough of Ealing using the competitive dialogue procedure under the Public Contract Regulations 2015.

The competitive dialogue procedure permits negotiations with the bidder identified as having submitted the tender presenting the most economically advantageous tender to be carried out to confirm financial commitments or other terms contained in the tender to finalise the contract. Any such clarification, specification, optimisation, additional information or negotiations must not involve changes to the essential aspects of the tender or the

procurement where such changes are likely to distort competition or cause discrimination.

By including all UK Councils and Housing Sector Arm's Length Management Organisations (ALMO) who offer an out of hours service in the OJEU it is the intention to make this a national service.

7. KEY RISKS

Key issues for Enfield and associated mitigations have been identified.

In addition to the risks addressed in the body of the report, Ealing have identified the following risks:

Key Risks	Risk Mitigation
Investment (one-off implementation costs)	<p>The bidders were asked to identify these costs separately within their Detail Financial Model and incorporate them into their bid price.</p> <p>This was because the participating organisations had no funding set aside to pay for any implementation before start of the contract.</p> <p>These costs have been depreciated on a straight-line basis across the five-year period.</p>
Annual Management Fee (Fixed Cost)	<p>The management fee has been capped at £1,500 per month per participating organisations (£18,000 per annum). This is so as to control the level of management (including overheads) fee the contractor can set aside in the contract.</p> <p>In addition, the management fee has been banded so that participating organisations can receive a discount as the number of participants' increase and provide protection for the contractor if the number of participants fall.</p>
Price and Volume	<p>The key financial risk for both the participating organisations and the contractor is a substantial drop in the total call volume. The contractor has based call volume price on estimated volume (250,000 per year) and any significant change to this could have an impact on the viability of the contract.</p> <p>The competitive dialogue process allowed us to ensure that risk based pricing assumptions were reasonable. Through this process the following mitigations have been put in place in protecting both sides:</p> <p><i>a) Change control mechanism</i></p> <p>The contractor can put forward a financial claim for a lump sum to cover any deficit in the Service Provider's commercial position consisting of fixed costs, variable costs, overheads, implementation costs and profit margin as defined in the Defined Financial Model for the participating organisations to review and if agreed to pay the contractor the lump sum where call volume falls below 250,000 calls in any one year.</p>

	<p><i>b) Call volume drop due to change by an individual participating organisation</i></p> <p>Where call volumes drop is due to a change triggered by an individual organisation then the participating organisation will pay for the cost associated with the loss of contractual income.</p> <p><i>c) Drop in call volume due to other factors</i></p> <p>Where the call volumes have dropped due to other factors the participating organisations will review the business case and supporting evidence from the contractor and upon agreement the costs associated with this will be equally split across all the participating organisations.</p>
Impact of Exit of a Participating Organisation	<p>The financial impact of any participating organisation existing has been protected by the participating organisation having to;</p> <ul style="list-style-type: none"> • provide 12 months' written notice to terminate its services agreement; and • pay its remaining share of the implementation costs. <p>Having in place the above exit clause allows the contractor reasonable time to adjust their operating model to manage within the revised call volumes and contract price and mitigate the cost consequences for the participating organisations.</p>
Inflation	<p>An inflation adjustment was offered to avoid risk-based pricing which would have led to poorer value for money.</p> <p>An annual inflation at RPIX will be payable from Year 2.</p>
Volume Discount	<p>In addition to protection of a drop-in call volume the participating organisations will receive a discount in the following year where the total volume in previous year exceeds the level in the Defined Financial Model.</p> <p>This financial benefit will be equally split across all the participating organisations.</p>
TUPE	
ICT	<p>The current system is owned by GDIT and requires development to move to a cloud-based platform.</p> <p>A new system has been developed on behalf of the participating organisations by the contractor who will work on moving it to a new platform which should make it more viable for future development.</p> <p>To protect the participating organisations in incurring future implementation costs upon re-procurement the new ICT platform will be owned by the participating organisations but held on the contractor's network.</p> <p>The contractor will be required to develop and manage the system within the contracted price.</p> <p>Where the overarching agreement and all the services agreements are terminated early by the Council on one year's notice and the participating organisations or by the contractor (on 2 years' notice) any remaining costs relating to the call handling IT system which has not been recovered will be paid to the contractor before the IT system is transferred.</p>
Change in Contractors	<p>To ensure that the contract is sustainable over the contract term the contractor will be required to:</p>

Business	<ul style="list-style-type: none"> ensure that it continues comply with the financial and technical requirements set out in the SQ and any change in the ownership requires the new owner to meet the requirements the financial and technical requirements set out in the SQ before the changes of ownership is agreed by Ealing and the participating organisations. <p>Assignment of the Overarching agreement and services agreements is not permitted unless all services agreements are assigned to the same person at the same time and who must have a presence in the UK.</p>
Termination	The contractor has rights to terminate the contract on one years' notice (to allow for re-procurement).

8. IMPACT ON COUNCIL PRIORITIES

8.1 Fairness for All, Growth and Sustainability, Strong Communities

Entering into the new contract will ensure the continuation of a cost-effective out of hours telephone service for residents.

9. EQUALITIES IMPACT IMPLICATIONS

None

10. PERFORMANCE MANAGEMENT IMPLICATIONS

None

11. HEALTH AND SAFETY IMPLICATIONS

None

12. HR IMPLICATIONS

TUPE obligations to GDIT will be addressed by Capita.

13. PUBLIC HEALTH IMPLICATIONS

None

Background Papers

None

MUNICIPAL YEAR 2018/2019 REPORT NO.

ACTION TO BE TAKEN UNDER DELEGATED AUTHORITY

OPERATIONAL DECISION OF:

Executive Director –
Resources

Agenda – Part: 1	KD Num: 4601
Subject: Contract Award for the provision of Water, Wastewater and Ancillary Services for Corporate Buildings and Open Spaces	
Wards: All	

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1. EXECUTIVE SUMMARY

- 1.1 The water market in England was deregulated in April 2017. Through deregulation the Council's water supplies were automatically transferred from Thames Water to Castle Water, leaving the Council without a contract. To comply with Public Contract Regulations 2015, Enfield Council requires a contract for a water retailer.
- 1.2 Enfield Council's current annual water/wastewater spend is ~£360k. This includes corporate buildings, libraries, parks, public conveniences, cemeteries, depots and day centres but excludes schools and housing. Schools will have an opportunity to buy into the corporate contract under Service Level Agreement arrangements. Residential supplies are not currently subject to competition.
- 1.3 In this newly deregulated market, the most economically advantageous approach is to collaborate with other authorities.
- 1.4 Enfield Council is a member of the London Energy Project (LEP). The LEP is a group of 36 wider public sector, local and NHS authorities (primarily in London) that work together to use their collective spending power to achieve, better commercial outcomes and bespoke service specifications, reduce procurement, contract operation and back-office costs and minimise risk. The LEP is a shared service, designed for and delivered by the public sector, with a Delivery Team that sits within Haringey Council. Collectively, LEP members spend ~£20m on water per annum and the aggregation is expected to be used by more than 30 authorities.
- 1.5 In 2017 the LEP Team managed an extensive pre-market engagement programme with >60 authority stakeholders; three Central Purchasing Bodies (CPB) (public sector buying organisations) and five water retailers to establish the best route to market.

- 1.6 Following evaluation, the recommended option for a Pan-LEP solution was The Crown Commercial Service (CCS) Water, Wastewater and Ancillary Services Framework (RM3790), Lot 3, One Stop Shop, with Yorkshire Purchasing Organisation (YPO) carrying out a further mini-competition, based on an impartial evaluation of the quality and flexibility of the framework and the CPB service and price.
- 1.7 This collaborative procurement strategy was presented to and approved by Enfield Council's Procurement and Commissioning Board 23rd November 2017.
- 1.8 In February 2018, YPO conducted the further competition for Water, Wastewater and Ancillary Services on behalf of the LEP, issued under Lot 3 of the CCS Framework RM3790. Five compliant bids were received, demonstrating a good level of interest from the market.
- 1.9 The LEP conducted a thorough, impartial evaluation across a wide range of mandatory and discretionary price and quality criteria. Quality was also evaluated separately by an authorities' staff panel. Following these rigorous checks, the Pan-LEP contract was awarded to Anglian Water Business (National) Ltd, trading as Wave, on the basis that it represents best overall value for money.
- 1.10 The opportunity to make significant cashable savings against the total invoiced contract price in the market is low, because the non-competitive (wholesaler) element makes up to 90% of the overall invoice value. Therefore, quality/reliability of service and reducing back office costs and consumption are the key drivers for savings.
- 1.11 The Pan-LEP Water Contract commencement date is 1st May 2018 and terminates 30th April 2022. By signing a Customer Access Agreement with YPO, which has been endorsed and is supported by the LEP, LEP member authorities may place an order and enter into a contract with Wave for a minimum of two years, with an option to extend for a further period of up to two years, providing the contract ends on or before 30th April 2022. Each authority will have a separate contract with the water retailer.
- 1.12 The LEP Team is acting as Project Executive and is supporting this procurement exercise on behalf of the LEP group, providing coordination between YPO and Customers.
- 1.13 This report seeks the approval of the Executive Director – Resources to enter into a two-year contract for the provision of Water, Wastewater & Ancillary Services with Anglian Water (National) Ltd trading as Wave, from 1st November 2018 – 31st October 2020, with an estimated total contract value of ~£720k.
- 1.14 This report recommends that the Executive Director – Resources signs the Water, Wastewater and Ancillary Services Customer Access Agreement with YPO (endorsed and supported by the LEP), so that an order can be raised with Wave for Water, Wastewater and Ancillary Services.

2. RECOMMENDATIONS

- 2.1 It is recommended that the Executive Director – Resources approves the award of the contract for the Provision of Water, Wastewater and Ancillary Services to Anglian Water Business (National) Ltd, trading as Wave, on the basis that it represents overall value for money, following a thorough evaluation of quality and price.
- 2.2 It is recommended that the Executive Director – Resources approves and signs the Customer Access Agreement with Yorkshire Purchasing Organisation (YPO), which is endorsed and supported by the LEP, to enter into a contract for Water, Wastewater and Ancillary Services with Wave, following the further competition conducted on behalf of The London Energy Project, issued under Lot 3 of the Crown Commercial Service (CCS) Framework Agreement RM3790.
- 2.3 It is recommended that the Executive Director – Resources approves the liability cap in the Customer Access Agreement, which apart from specific circumstances (such as death, personal injury, fraud or fraudulent misrepresentation) limits liability by either party under this contract to 125% of the rebate charges due over the preceding twelve months. The Customer Access Agreement is endorsed and supported by the LEP.
- 2.4 It is recommended that the Executive Director – Resources approves the award of a two-year contract from 1st November 2018 – 31st October 2020 for the provision of Water, Wastewater and Ancillary Services to Anglian Water Business (National) Ltd trading as Wave, with the estimated contract value of £360k per annum and a total estimated contract value of £720k for a two-year period.

3. BACKGROUND

- 3.1 Since April 2017, business customers in England can select who provides retail water and wastewater services to their organisation as a result of water market deregulation. The Public Contract Regulations 2015 require contracting authorities to compete these services (this has been confirmed by the Crown Commercial Procurement Policy Unit).
- 3.2 Deregulation aims to introduce competition into the market place to encourage improvement and innovation to products and services and better value for money for customers. Water suppliers (wholesalers) sell water and waste water supplies/services to licensed retailers. These elements can be contracted separately or through a single retailer who will package these services to include billing, payment and customer services, along with other products such as water efficiency

advice, leak detection, advanced metering etc. The value of the retail service is on average 6% of the overall water and waste water contract value.

- 3.3 Enfield Council is a member of the London Energy Project (LEP), a shared Energy Category Management resource, funded through direct authority contributions. The LEP is a group of 36 wider public sector, local and NHS authorities (primarily in London) that work together to use their collective spending power to achieve better commercial outcomes and service specifications, reduce procurement, contract operation and back-office costs and minimise risk. Enfield Council pays £7,750 per year to be an LEP member, which is proving good value for money.
- 3.4 The LEP is designed for and delivered by the public sector, with a Delivery Team that sits within Haringey Council that acts as an intelligent client function to support a coordinated Work Programme. The LEP's mission is that all authorities can achieve greater benefits more quickly and with reduced risk than if acting alone or in small groups. Operating on a cost recovery basis only, the LEP's work is funded directly by authorities under collective governance, which ensures that it retains an independent and impartial position and has no vested interest in any buying organisation, broker/agent or supplier.
- 3.5 Currently, LEP authorities are served by several different water companies, primarily, Castle Water Ltd, Affinity for Business (Retail) Ltd and SES Business Water (Sutton and East Surrey Water Services Ltd). Enfield Council is predominantly served by Castle Water with a very small number of supplies located in the far north western corner of the borough, being served by Affinity.
- 3.6 The majority of local authority water/wastewater supplies will be classified as non-household and therefore must be competed, the notable exception being most housing supplies.
- 3.7 Collectively, LEP members spend ~£20m on water per annum. Enfield Council's annual water/wastewater expenditure is approximately £360k (excluding schools).
- 3.8 In 2017 the LEP Team managed an extensive pre-market engagement programme with over 60 authority stakeholders, three Central Purchasing Bodies (CPBs) (public sector buying organisations) and five water retailers to establish the most appropriate route to market in order to achieve overall best value, affordable prices, quality services, social value and innovation for LEP authorities in the newly deregulated water market.
- 3.9 The findings were that a single retailer providing both:

- water and waste water retail services – primarily invoicing, payment, customer services and,
- ancillary services – tariff optimisation, leak detection, metering and water demand services

provided the best potential to deliver efficiency, financial and consumption savings, rather than solely for retail services.

3.10 The LEP Team reviewed whether authorities should:

- tender their own requirements through an OJEU process,
- conduct a further competition for their own requirements through a Central Purchasing Body (CPB) framework, or whether the

LEP should on behalf of its member authorities:

- tender LEP members' requirements through an OJEU process
- conduct a further competition for members' requirements through a CPB framework

3.11 The LEP's findings were that:

- The LEP aggregation was prestigious and offered optimum value by attracting maximum competition and leverage.
- A CPB framework gave enough flexibility for the overall requirement to be met and achieved a lower cost of procurement
- A single water and waste water retail service provider for all LEP member authorities would deliver better outcomes for everyone, including an authority focussed service specification with clear service level agreements and key performance indicators, improved terms and conditions and the potential for enhancements, such as dedicated LEP customer services and account management provided by the retailer at no additional cost and enhanced services, such as technology deployment trials.

3.12 The LEP Team reviewed two CPB frameworks and five lots to establish which could meet LEP category objectives. (i) The CCS Water, Wastewater and Ancillary Services Lot 3, One Stop Shop, YPO mini-competition and (ii) Laser Lot 1, Water Supply and Sewerage Services, mini-tender, were the preferred options for further evaluation and included:

- Water and waste water retail services – primarily invoicing, payment, customer services; and,
- Ancillary services - proactive account management, tariff optimisation, leak detection, metering and water demand services (potential to deliver efficiency, financial and consumption savings).

- 3.13 The CCS/YPO Water, Wastewater and Ancillary Services Lot 3, One Stop Shop and LASER Lot 1, Water Supply and Sewerage Services, mini-tender were both found to have the capability to deliver LEP category objectives and authority business requirements; the framework Terms and Conditions (T&Cs) were similar, the retailer supply base was broadly the same, there was scope to input LEP service standards and Key Performance Indicators and flexibility to evaluate retailer capability/quality at mini-competition.
- 3.14 The CCS framework is larger, being a collaborative tender with six purchasing organisations: Yorkshire Purchasing Organisation (YPO), The Energy Consortium (TEC), Eastern Shires Purchasing Organisation (ESPO), North East Procurement Organisation (NEPO), West Mercia Energy and the Ministry of Defence). The contract ID is RM3790. The Terms & Conditions are comprehensive with the ability to vary Service Level Agreements (SLAs), Key Performance Indicators (KPIs) and Terms and Conditions (T&Cs) at mini-competition/call-off stage. Maximum price caps were also submitted and set at initial tender stage.
- 3.15 LASER and YPO offered similar levels of support for the LEP authorities' mini-competition; supporting data input, service specification and evaluation criteria, managing the procurement process, tender analysis and contract award, contract set-up and provision of management information.
- 3.16 YPO's fees were lower than LASER's fees for retailer and additional services. Although it should be noted that CPB fees are a very small proportion of the overall contract value.
- 3.17 Based on an impartial evaluation of the quality and flexibility of the framework and the CPB service and price (e.g. a review of framework Terms and Conditions, retailer supply base, Key Performance Indicators and fee for use) CCS Water, Wastewater and Ancillary Services Lot 3 RM3790 One Stop Shop, was selected with YPO conducting the further competition to secure a retailer for the Pan-LEP water contract.
- 3.18 The business case for Enfield Council to be part of the Pan-LEP water procurement project was presented to and approved by the Procurement and Commissioning Board on 23rd November 2017.
- 3.19 On 10th January 2018 the Executive Director - Resources approved the recommendation to proceed with the Pan-LEP joint procurement of water through the CCS Framework for Water, Wastewater and Ancillary Services RM3790, the further competition to be managed by YPO to appoint a single water retailer and signed a Memorandum of Understanding (not legally binding) with YPO to manage the mini-competition.

- 3.20 On 8th February 2018, YPO, on behalf of LEP Contracting Authorities, took the requirements for Water and Wastewater to market, via a Further Competition under Lot 3 of the Framework (RM3790), to secure the most economically advantageous provider.
- 3.21 Five compliant bids were received, demonstrating a good level of interest from the market. A thorough evaluation was conducted by the LEP across a wide range of mandatory and discretionary price and quality criteria. Quality was evaluated separately by an authorities' staff panel to ensure that price did not alter the perception of quality; moderation meetings were held and facilitated by the LEP over a five-day period, to discuss the relative strengths and weaknesses of each tenderers' submission and to agree a score according to the tender criteria.
- 3.22 The successful tenderer was Anglian Water Business (National) Ltd trading as 'Wave', achieving the highest overall score; attaining the highest weighted score for quality and the highest average quality score.
- 3.23 It must be noted that the successful tenderer's overall price was not the lowest. However, following rigorous quality checks, the LEP is confident that Anglian Water Business (National) Ltd (Wave) submitted the most economically advantageous bid and has the capability to deliver the services to the required standard. Retailers with lower priced submissions did not fully demonstrate that they would be able to deliver the services to the required standards.
- 3.24 The opportunity to make significant cashable savings against the total invoiced contract price in the market is low, because the non-competitive (wholesaler) element makes up to 90% of the overall invoice value. Therefore, quality/reliability of service and reducing back office costs and consumption are the key drivers for savings.
- 3.25 YPO awarded the contract to Anglian Water Business (National) Ltd trading as Wave on 1st May 2018 and the contract will expire on 30th April 2022.
- 3.26 It is recommended that Enfield Council secures a two-year contract with Anglian Water Business (National) trading as Wave from 1st November 2018 – 31st October 2020, with the option to extend for a further period up to, but no longer than, 30th April 2022. A separate report will be required to secure a contract extension.
- 3.27 The two-year contract value is ~£720k.
- 3.28 Schools will have an opportunity to buy into the corporate contract under Service Level Agreement arrangements, but local authorities need not assume any management activity or debt liability for the schools concerned.

3.29 This report seeks approval to award the contract following the YPO mini-competition and recommends that the Executive Director of Resources:

- signs YPO's Water, Wastewater and Ancillary Services Customer Access Agreement (RM3790), endorsed and supported by the LEP, enabling Enfield Council to place an order and enter into a two-year contract with the winning supplier, Wave.

4. ALTERNATIVE OPTIONS CONSIDERED

4.1 Do nothing. The option of doing nothing has not been considered, since The Public Contract Regulations 2015 dictate that authorities will be required to conduct a competitive process to select a retailer for water and wastewater services.

4.2 Individual Authority Tenders and/or CPB Framework Mini-Competition. The option of an individual authority conducting its own tender or mini-competition is not recommended because the risks and costs of tender, including use of staff resources to write the service specification and conduct the tender are not commensurate with potential benefits of retailer service efficiencies and savings; authorities have very few bespoke or unique business/service requirements; and retailers are unlikely to offer an attractive price, service or enhancements for individuals as for the LEP group.

4.3 Following the YPO mini competition and contract award to Anglian Water Business (National) trading as 'Wave', the preferred option is to enter into a Customer Access Agreement with YPO and secure a two-year contract from 1st November 2018 – 31st October 2020. There will be an opportunity to extend the contract for an additional 18 months up to but not beyond 30th April 2022. A separate report will be required to extend the contract. A longer-term contract is not recommended at this time as the water industry's price review will take effect in 2020 and its impact will need to be considered as part of any contract extension business case as well as supplier performance, monitored by the LEP through KPIs and subsequent LEP recommendations.

5. REASONS FOR RECOMMENDATIONS

5.1 Compliance with Public Contract Regulations 2015 is required; Cabinet Office guidance suggests that a competitive process should have been followed by April 2018. Therefore, a competitively tendered pan-LEP contract enables all authorities to achieve a low-cost/low-resource route to compliance.

- 5.2 The LEP Team managed an extensive pre-market engagement programme with over 60 authority stakeholders, three Central Purchasing Bodies (CPBs) and five water retailers to establish what products, services and innovation would be available within the retail market, whether these would meet local authority multi-site business requirements, how best to attract market interest and obtain competitive pricing and whether a Pan-LEP water retailer contract would provide authorities with better value and the opportunity to develop and shape this market.
- 5.3 Following evaluation, the recommended option for a Pan-LEP solution was the Crown Commercial Service (CCS) Water, Wastewater and Ancillary Services Framework (RM3790) Lot 3, One Stop Shop, with Yorkshire Purchasing Organisation (YPO) carrying out a further mini competition on behalf of LEP members. This procurement strategy was approved by Enfield Council's Procurement and Commissioning Board 23/11/17.
- 5.4 Following YPO's mini competition, the LEP conducted a thorough, impartial evaluation across a wide range of mandatory and discretionary price and quality criteria. Quality was also evaluated separately by an authorities' staff panel. Following these rigorous checks, the Pan-LEP contract was awarded to Anglian Water Business (National) Ltd, trading as Wave, on the basis that it represents best overall value for money.
- 5.5 The Pan-LEP aggregated customer base is both extremely attractive and prestigious and therefore offered a significant opportunity for well-priced bids with services that meet LEP business requirements.
- 5.6 The resource that any CPB can afford to dedicate to a large aggregated tender is greater than to individual authority requirements.
- 5.7 Participating LEP authorities will receive the support of the LEP Team throughout the term of the Contract to manage the strategic supplier relationship and contract performance.
- 5.8 The successful provider, Wave, is aware that LEP members and collaborative partners are seeking a low carbon future and are operating in an area with air quality concerns, water scarcity and a stressed sewerage system. Wave will look to build in opportunities for local employment and small businesses, support the community, business, voluntary groups and schools to better manage water consumption and cost and to reduce their impacts on local pollution.
- 5.9 The contract is with a single provider and Ancillary Services can be called-off from that single provider as and when required subject to agreement of a price for delivery of the services. However, for convenience and added protection, many fixed and firm or maximum prices have already been tendered through the further competition e.g.

day rates, additional meter readings etc. A further report will be required to call-off Ancillary Services. The Council is, however, unlikely to benefit from Wave's invest to save service, as this is already being undertaken and achieved through ADSM Ltd and the AquaFund project.

6. COMMENTS OF THE EXECUTIVE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES, AND OTHER DEPARTMENTS

6.1 Financial Implications

- 6.1.1 The estimated value of a two-year Water, Wastewater and Ancillary Services contract with Anglian Water Business (National) Ltd trading as Wave, is £720k. This is an estimate based on actual expenditure incurred in previous years.
- 6.1.2 The exact contract value will not be known until an order is placed with Wave, but it is expected that it will represent overall value for money, following a thorough evaluation of quality and price.
- 6.1.3 The cost will be funded through existing General Fund resources and where necessary, resources set aside to deal with energy costs within contingent items.
- 6.1.4 The opportunity to make significant cashable savings against the total invoiced contract price in the market is low, because the non-competitive (wholesaler) element makes up to 90% of the overall invoice value. Therefore, quality/reliability of service and reducing back office costs and consumption are the key drivers for savings.

6.2 Legal Implications

- 6.2.1 The Water Act 2014 allows all business, charity and public sector customers to choose their supplier of water and waste water retail services. The new market opened on 01 April 2017.
- 6.2.2 In addition, the general power of competence in s.1 (1) of the Localism Act 2011 states that a local authority has the power to do anything that individuals generally may do provided it is not prohibited by legislation and subject to Public Law principles.
- 6.2.3 Water services are subject to the Public Contracts Regulations 2015 (PCR 2015) and, once above a specified threshold (currently £181,302) need to be

tendered in Europe following a procedure set out in the PCR 2015.

- 6.2.4 Yorkshire Purchasing Organisation, a central purchasing body, carried out a mini competition on behalf of London Energy Project (LEP) under the Crown Commercial Services Water, Wastewater and Ancillary Services Framework Agreement (RM3790) Lot 3. Procurement via a Framework Agreement is an approved procurement procedure under the PCR 2015. Moreover, Regulation 37 of the PCR 2015 allows for a Contracting Authority to acquire services by using a Framework Agreement which has been concluded by a central purchasing body, as is the case here. The Contract will be based on the call-off terms and conditions as set out in the Framework Agreement.
- 6.2.5 The Council's Contract Procedure Rules (see CPR 4) also permit the use of Framework Agreements for procurement.
- 6.2.6 The award of the Contract will be a Key Decision and, as such, must comply with the Council's governance process for Key Decisions including publication of the contract in the Forward Plan (See CPR 1.22.4).
- 6.2.7 The Director has power to approve the recommendations under CPR 1.22.

6.3 Procurement Implications

- 6.3.1 The Public Contracts Regulations 2015 (PCR) require that wider public sector, local authorities and NHS bodies making a purchase where the contract value is likely to exceed £181,302, the OJEU threshold for supplies and service contracts, must carry out an OJEU compliant Procurement Process.
- 6.3.2 Under Regulation 37 of PCR a Contracting Authority can carry out an OJEU compliant procurement process by using a 'framework agreement concluded by a central purchasing body'.
- 6.3.3 This procurement process was compliant. The contract was awarded on a Most Economically Advantageous Basis, through a Further Competition for Water, Wastewater and Ancillary Services, issued under Lot 3 of the Crown Commercial Service Framework Agreement RM3790 Water, Wastewater and Ancillary Services. The further competition for a single supplier was conducted by YPO (a Central Purchasing Body) on behalf of the London Energy Project (LEP), its

Participating Authorities (present and future) and collaborative partners which were named in the further competition.

6.3.4 To create a robust procedure, a decision was taken to invoke a voluntary ten-day standstill period following notification of award to suppliers. No challenge was received during this period and the Contract was then formally awarded to Anglian Water (National) Ltd trading as Wave, with a commencement date of 1st May 2018.

6.3.5 The business case was presented to and approved by the Procurement and Commissioning Board on 23rd November 2017.

7. KEY RISKS

If a water contract is not secured imminently, Enfield Council may be in breach of the Public Contracts Regulations 2015.

Collaborative procurement managed by the London Energy Project is a robust and compliant route to market and includes bespoke London Energy Project (LEP) service specifications and Key Performance Indicators, which together with the support of the LEP throughout the term of the contract to manage the strategic supplier relationship and contract performance, minimises risk. YPO and CCS will be available to provide further support on contractual and framework terms and conditions.

In addition to this, only a two-year contract is recommended at this stage. This will allow the Energy Manager to review supplier performance before recommending any contract extension.

The water industry's price review will take effect in 2020 and its impact will need to be considered as part of any contract extension business case, together with supplier performance, monitored by the LEP through KPIs and subsequent LEP recommendations.

8. IMPACT ON COUNCIL PRIORITIES

8.1 Fairness for All

Through best practice procurement, competitive prices will be sought for all supplies pertaining to this contract.

8.2 Growth and Sustainability

The Energy Management Team is part of the Sustainability Service. Through Sustainable Enfield, the Sustainability Service is helping the Council deliver a wide range of strategic sustainability projects, a number of which focus on 'managing your energy' and water. This includes the AquaFund project, a shared savings' scheme managed by Advanced Demand Side Management Ltd. which drives down water

consumption and costs through effective analysis, remedial works and conservation measures. Best practice water procurement is an integral part of this process.

The winning Retailer, Wave, is aware that LEP members and collaborative partners are seeking a low carbon future and are operating in an area with air quality concerns, water scarcity and a stressed sewerage system. Wave will look to build in opportunities for local employment and small businesses, support the community, business, voluntary groups and schools to better manage water consumption and cost and to reduce their impacts on local pollution.

8.3 Strong Communities - Positive

Securing value for money contracts will protect the Council's reputation in the local community.

9. EQUALITY IMPACT IMPLICATIONS

An equality impact assessment/analysis is not relevant or proportionate for the approval of a new two-year contract for the supply of water to corporate sites that will ensure value for money for all consumers. However, it should be noted that the any contracts awarded should include a duty on the successful provider to assist us with meeting our obligations under the Equalities Act 2010.

10. PERFORMANCE MANAGEMENT IMPLICATIONS

Participating authorities will receive the support of the London Energy Project (LEP) team throughout the term of the Contract to manage the strategic supplier relationship and contract performance. Yorkshire Purchasing Organisation (YPO) and Crown Commercial Service (CCS) will be available to provide further support on contractual and framework terms and conditions.

11. PUBLIC HEALTH IMPLICATIONS

There are no public health implications inherent to managing a tender process.

Background Papers

None

