

Decision by Portfolio Holder



Report reference: CTS-001-2018/19
Date of report: 05 February 2019

**Epping Forest
District Council**

Portfolio: Contract and Technical Services
Author: Susan Stranders (4197) **Democratic Services:** J. Leither
Subject: Waive of Procurement Rules to secure the ongoing services of a specialist contaminated land consultancy.
Decision:

In accordance with the Council's Procurement Rule 19 Negotiated Contracts: not to seek three quotes to secure the ongoing services of a specialist contaminated land consultancy for a total contract value less than £250,000.

ADVISORY NOTICE:

*A Portfolio Holder may not take a decision on a matter on which he/she has declared a Pecuniary interest.
A Portfolio Holder with a non-pecuniary interest must declare that interest when exercising delegated powers.*

I have read and approve/do not approve (delete as appropriate) the above decision:

Comments/further action required:

Signed: Councillor N Avey

Date: 7th February 2019

<i>Non-pecuniary interest declared by Portfolio Holder/ conflict of non-pecuniary interest declared by any other consulted Cabinet Member:</i> None	<i>Dispensation granted by Standards Committee:</i> Yes/No or n/a N/A
Office use only: Call-in period begins: 7 th February 2019	Expiry of Call-in period: 14 th February 2019

***After completion, one copy of this pro forma should be returned to
Democratic Services IMMEDIATELY***

Reason for decision: The Council needs to continue to use several environmental consultancies to deal with the work related to the discharging of contaminated land conditions as attached to planning consents. The Council's spend with one of the companies is approaching £25,000 where three quotes are required in line with the Procurement Rules. The market has been strongly tested but the availability of good consultants prepared to do the work and offering value for money is limited. It is therefore important to secure the ongoing services of Gemco Ltd whose future accumulative spend is likely to be over £50,000 but less than £250,000.

Options considered and rejected:

1. To approach further consultants to obtain the required number of quotes.

Background Report:

1. As part of the restructure, the main technical responsibility for ensuring potentially contaminated land is dealt with through the planning process was planned to be transferred in September 2018 from Planning Services to the new Contracts and Technical Group. However, in June 2018 the Council's long serving Contaminated Land Officer retired and it was decided to bring the transfer forward. At the time of the transfer there was approximately 80 outstanding reports dating back from January 2018 plus the consistent incoming day to day work.
2. The only way of dealing with the work was to secure the services of several environmental consultancies who were either known to the Council and/or who were on a professionally recognised framework or register. The Engineering, Drainage and Water Team (EDWT) eventually managed to secure five consultancies with varying rates to deal with the work. Other consultants were approached but for various reasons either did not want the work or were too expensive. One or two that started the work latterly withdrew. Please refer to the resource section of this report for total expenditure as at 8th January 2019.
3. One company, Gemco Ltd, who offer very good value for money has had the capacity to take on a greater proportion of the work. As a result, the spend with this company is now just below the threshold of £25,000 where three quotes should be obtained for the work. However, the Council is already using four other consultancies and has already carried out market testing.
4. Advice from the Procurement Officer has been sought. In the longer term the EDWT will draft and go out to Tender with a view to enter into a contract with several consultants. In the short term and given that we were unable to recruit to the Contaminated Land Officer's post it is essential that we continue using the services of the consultancies we already have on board.
5. The Procurement Rules give bands for Contract Categories between: 1. £25,000 - £50,000 and 2. £50,000 - £250,000 - for both a minimum of three tenders should be invited. The reason the decision is being sought not to seek three quotes 'for a total contract value less than £250,000' and not the lower category is:
 - i). Expenditure with Gemco Ltd is likely to rise above £50,000 for the planning related work before the tender process is completed; and
 - ii). It is planned that Gemco Ltd will carry out some additional work relating to monitoring gas at an ex landfill site – as required by the Council's statutory duties under Part IIA of the Environmental Protection Act 1990. The quote obtained for this work is between £10,000 to £15,000.

The spend with Gemco Ltd is very likely to breach the upper limit of £50,000 in Contract Category 1. but the upper limit of £250,000 in Contract Category 2. will not be breached under the current arrangement.

6. Therefore, in accordance with the Council's Procurement Rule 19 Negotiated Contracts approval is being sought to continue to use Gemco Ltd for specialist contaminated land work for a total contract value of more than £50,000 but less than £250,000 and not to seek further quotes.

Resource Implications:

Below is the expenditure from June 2018 to 8th January 2019 (reports date back from January 2018).

Consultant	Cost
A	£11,501.70
B	£1,089.00
Gemco	£22,373.10
M	£2,687.40
ME	£5,629.00
Total	£43,280.20

The budget is currently being met by Planning Services, utilising the underspend for the vacant Contaminated Land Officer's post and some of the income from the 20% increase in planning fees rise from January 2018, which the Government insists must be used to fund planning related costs.

Legal and Governance Implications:

National Planning Policy Framework (NPPF)
Environmental Protection Act (EPA) 1990
Duty of Care

Safer, Cleaner and Greener Implications: Pollution of the land, water and air are inherent issues that need to be addressed to ensure the district is greener and sustainable. It is essential to ensure that land undergoing development in the district poses no risk to the development, human health, ground and surface waters.

Consultation Undertaken:

Procurement Officer

Background Papers:

None

Impact Assessments:**Risk Management:**

The inability to effectively deliver both the statutory functions relating to contaminated land (as required by the NPPF and EPA 1990) is highlighted in the Contract and Technical Services Action Plan. These potentially contaminated land sites must be properly dealt with, either proactively or reactively, to ensure that risks are minimised to developers, occupiers, the public, the environment, ground and surface waters.

The Council must meet deadlines as set by the NPPF. There is significant reputational risk to the Council if this work is not carried out properly and in a timely manner. Development may be delayed. Property/land is at risk of being blighted and house sales could be affected if these important environmental issues are not addressed in line with Government Guidance at the development stage.

Key Decision Reference (Y/N): N

Equality Analysis:

The Equality Act 2010 requires that the Public-Sector Equality Duty is actively applied in decision-making. This means that the equality information provided to accompany this report is essential reading for all members involved in the consideration of this report. The equality information is provided at Appendix 1 to the report.