

Exceptions Report

This form is to be completed by the commissioning service or department for all proposals seeking an exception from the requirement to tender. If you are not seeking exemption or exception and your proposal has a total value above £25,000 you must complete a **Commissioning Form**.

Title	Supply of Triple-Stack Recycling Trolley Boxes	PROCUREMENT TEAM USE ONLY	
Head of Service:	Tony Ward	Officer	Simon Beech
Manager:	Jamie Lees	Priority	High
Report Completed by:	Jamie Lees	Category	Goods
Date:	01/09/2022	Received	06/09/2022
Total Estimated Value:	£1,916,750	Complete by	06/09/2022
		Est Hrs Required	1

Name of Contract: Purchase of triple-stack recycling containers.

Proposed Contractor: IPL Plastics Inc

Timescales

Date	Milestone
23/09/2022	Contract start
22/09/2025	Contract end
n/a	Extension option
n/a	Contract end after extension option taken

Type	Copy and paste:
Goods	<input checked="" type="checkbox"/>
Services: services not subject to the 'light touch regime' (i.e. most services)	<input checked="" type="checkbox"/>
Light Touch Regime: certain social, health, education & other services subject to the 'light-touch regime'	<input type="checkbox"/>
Works	<input type="checkbox"/>

Outline

Briefly describe the background

The Council is changing its recycling collection service to the WG preferred model in 2023. This involves the use of triple-stack recycling units by Denbighshire households. This project, and the associated expenditure, have already received Cabinet approval. This report seeks approval to order the receptacles in September 2022, for delivery in 2023, in order to secure financially advantageous terms. Under WG guidance, the Council has budgeted £3.4m for purchase of these units and all other containers, but the proposed supplier is currently offering to supply for £1,916,750 for a confirmed order. The total cost for all containers is around £3.6m, meaning a shortfall of approximately £209k.

Justification

Please state the relevant exception criteria as listed in CPR 2.9 or 2.10 (e.g. 2.9.3 iv)

2.9.3ii

State the grounds for exception as relevant to the specific criteria:

There is only one supplier of a compartmentalised recycling container system with demountable boxes of the type that the Council has committed to use. Officers had expressed interest in a competing product in development in 2020 but that supplier has since been acquired by IPL (the proposed supplier in this report).

Details of why compliance with finance and contract procedure rules is not possible

The proposed supplier has this week advised that supplies of the trolley system can currently be secured at the lowest unit price offered during two years of discussions with officers (£39 vs. £43 budgeted unit price). An offer of £39 per unit to deliver the goods in 2023 is the preferred option of the Project Team but still involves a quick decision that precludes normal procurement timescales. It is understood that the current price (£39 per unit) is due to the supplier having both production capacity and raw material available to deliver product during Q4 of this financial year. The quoted price will be held for all product delivered to DCC under this contract.

Details of any previous exception form submitted for the same contract:

N/A.

Finance

Copy and paste:



Capital Funding Source	Amount
Welsh Government Support Funding to enable collection blueprint compliance	£1,916,750
	£ -
Total Capital Funding:	£1,916,750
Revenue Funding Source	Amount
	£
	£
Total Revenue Funding:	£
Estimated Total Value:	£1,916,750
Estimated Annual Value	£1,916,750
Cost Code	T07020C1F6

If the contract is a collaboration with external partners the figures quoted should include the total contract value not just the Local Authority element.

Community Benefits

Copy and paste:



Are you including community benefits?

Yes No

If Yes, provide details below: If No, state why community benefits have not been included

The proposed value of the order is £1,916,750 million and officers propose to follow up options for community benefits with the supplier.

Note: Community Benefits must be included for all contracts for the value of £1,000,000 and over.

Procurement Route

Explain the procurement process you intend to follow:

The supplier has submitted a quotation for the triple-stack boxes to DCC's specification, i.e. capacity of boxes, colours, artwork and delivery requirements. As IPL is the only supplier of such a receptacle, no further sourcing work is proposed. Waste officers will work with the corporate legal and procurement team to draw up an appropriate form of contract for the supply of the goods and to include a requirement for the supplier to set out their suit of community benefits they will offer, based on DCC priorities.

Risk Assessment

If this exception form is approved:

If things go wrong, what is the operational risk to the Local Authority?	Low
If things go wrong, what is the reputational risk to the Local Authority?	Low
If things go wrong, what is the financial risk to the Local Authority?	Medium

Explain the risks and or the impact if this exception form is not approved:

The risks are largely based around non-supply or late supply of the product. This could result in delay to the roll-out of the new collection service meaning the current (blue bin) service would have to be continued. Operationally, this can be catered for so the risk is considered low. Project delays have potential for damage to DCC's reputation although the risk is considered low as the project currently enjoys a relatively low profile. The financial risk to DCC is considered medium because of the contract value of £1.91 million.

If this form is not approved officers there is a risk of incurring higher purchase costs due to the rising costs of materials and fuel.

Risk Mitigation

For risks which have a medium or high risk, state steps to be taken to minimise the risk:

The proposed purchase of the triple stack boxes is well in advance of the proposed 2023 roll-out date minimising the risks linked to late delivery. Payment will only be made to the supplier on receipt of the goods so, despite the level of spend, the risks linked to insolvency etc. are effectively mitigated.

Consultation with Members

Please confirm that relevant members have been informed where the decision has implications for a particular locality.

Copy and paste:

Yes

No

If Yes, please list member's names below and details of any feedback incorporated.

This decision has no implications for a particular locality; it relates to the entire county. The Lead Member for Highways, Environment & Facilities Management and Cabinet have been informed of the detail of this report as per the requirements of CPR 2.11.1v (spend of £2,000,001 and over).

Please note: Retrospective approvals will not be considered.

The undersigned authorise the submission of this Exception Form.

TEAM MANAGER:

Jamie Lees
Jamie Lees

Date 01/09/2022

PROCUREMENT TEAM ASSESSMENT**RECOMMENDATIONS:**

With all proposed procurements we have to consider the position under the Public Contracts Regulations 2015 (as amended) (PCR) and the Council's Contract Procedure Rules (CPR).

As this proposed procurement is above the threshold for goods the Public Contracts Regulations 2015 will apply. It would be for the service to justify the direct award of a contract award without a procurement process being undertaken.

I note that as this is 'Welsh Government Support Funding to enable collection blueprint compliance' does a direct award meet the criteria of any conditions?

The exception quoted for this contract is paragraph 2.9.3

ii. the goods, services or works can only be provided by a particular contractor for reasons that are technical, artistic, or connected with the protection of exclusive rights. This should normally be evidenced through publishing a Prior Information Notice (PIN) on Sell2Wales, or through some other means agreed with the Corporate Procurement Team;

A prior information notice was issued on 21st March 2022 with a deadline of 1st April to ascertain the level of interest in the market for this contract. Two companies responded to the PIN 1) MGB Plastics (are now known as IPL) and 2) ESE World Ltd.

Alan L Roberts and Tara Dumas Tara met with ESE World following their expression of interest and found that "their solution did not meet our requirements; partly because it was still developmental but largely because it would involve the use of adapted refuse collection vehicles and would not fit our infrastructure".

Please note the publication of the PIN does not guarantee that there are no other suppliers in the market who could provide these goods and that could potentially legally challenge the council for making this award without a tender exercise being undertaken. The PIN does reduce the risk of a legal challenge being received but does not completely mitigate against it.

Carrying out a tender would provide auditable evidence in the event IPL Plastics Inc were to be the only bidder.

For contracts that exceed £2m in value Cabinet approval is required. Between £1-2m authority can be given via the delegated decision procedure however I understand a cabinet slot has already been requested.

A signed contract is to be put in place.

Karen Bellis should be consulted to see what Community Benefits could be inserted into the contract.

Please note the follow-up actions on the last page of this document for completion.

PROCUREMENT OFFICER

**Simon Beech (On behalf of
Helen Sutton)**

DATE

06/09/2022

LEGAL SERVICES ADVICE

ADVICE:

In accordance with Public Contracts Regulations 2015 all over threshold purchases must be advertised.

Compliance with the public procurement rules is a duty owed by contracting authorities to suppliers. A supplier that suffers a loss as a result of a breach may bring proceedings under the regulations. A court can suspend the award of the contract, set aside the award or award damages for the loss of opportunity.

It is for the service area to consider the risk of challenge from a supplier. I note that the service area consider IPL Plastics to be the only supplier following a PIN notice, although please note that a PIN notice does not alleviate risk of challenge.

Please ensure the direct award does not breach any terms of Welsh Government grant conditions.

If the purchase is approved by relevant offices, please liaise with legal in relation to a goods contract to be signed by both parties. We note that payment is to be made on delivery, it may be necessary to also enter into a vesting agreement for the goods.

Legal Officer

Sue Rees

DATE

06.09.22

AUTHORISATION

N.B: This section is to be completed by the commissioning service following the completion and return of the Procurement Team Assessment (above) and advice of Legal and Procurement Operations Manager. For details of authority to approve exceptions see CPR 2.11

Service response to Corporate Procurement Team Assessment

Please detail your response and plan of actions to the assessment of the Corporate Procurement Team and the advice of the Legal and Procurement Operations Manager. In particular, if you are choosing not to abide by their recommendations please state why not.

Authorisation:

EXCEPTION FORM

TEAM MANAGER: (if within spend authorisation level)

Signature

Date

HEAD OF SERVICE: (Mandatory for all contracts above £25,000)

Signature


Andy Clark

Date

07-09-2022

SECTION 151 OFFICER (Finance): (Mandatory for all contracts above £250,000)

Signature



Date

12/09/2022

MONITORING OFFICER (Legal): (Mandatory for all contracts above £250,000)

Signature



Date

06/09/22

LEAD CABINET MEMBER: (Mandatory for all contracts above £1,000,000)

Signature

Date

N.B: Contracts over £2,000,000 also require Cabinet approval and the completion of a Cabinet report

Rejection:

Rejected by:

Date:

Reasons for the rejection:

EXCEPTION FORM

Action required:

Follow up Actions

Summary of follow up actions to be undertaken by Head of Service & designated author of form	Confirm task completed
<p><i>For completion/updating by Team Manager. Detail here should include where appropriate (but not limited to), the following:</i></p> <ol style="list-style-type: none"> 1. Procurement to confirm validation of bona fide company and D & B Check 2. Service to liaise with the legal team and to ensure there is a contract put in place as soon as possible. 3. Service to obtain copies of the relevant insurance documentation to ensure the Council's minimum insurances are held 4. Service to manage this contract and monitor expenditure and timelines in order that the contract is completed by the due date and that there is sufficient budget. 5. Service to add the contract to add to the Corporate Contracts register and update/expire any previous contracts on CR. 6. Service to send this completed exception form to Corporate Procurement Service. 	<p>Yes / No</p> <p>Yes / No</p> <p>Yes / No</p> <p>Name of responsible officer: _____</p> <p>Yes / No</p>