

EAST AYRSHIRE COUNCIL

CABINET - 24 OCTOBER 2007

ALTERNATIVE ARRANGEMENTS FOR SUPPLY OF UPVC DOORS FOR CAPITAL PROGRAMME

Report by the Head of Building & Works

1. PURPOSE OF REPORT

- 1.1** The purpose of this report is to apprise Cabinet of the interim arrangements put in place for the provision of UPVC doors due to the liquidation of J P McFadyen (Commercial Contracts) Ltd who were the Council's contracted supplier for UPVC Doors for the Capital Programme and to seek Cabinet approval to continue with these arrangements until such times as new contractual arrangements can be finalised.

2. BACKGROUND

- 2.1** J & S McFadyen Ltd were awarded a four year term contract (subsequently assigned to J P McFadyen (Commercial Contracts) Ltd), following a fully compliant OJEU tendering exercise for the supply of UPVC Doors from 1 November 2004 to 31 October 2008. In early August 2007 J P McFadyen (Commercial Contracts) Ltd ceased trading and subsequently went into liquidation. Building & Works thereafter tried to contact the company to confirm the intentions regarding the Council contract, but without success.
- 2.2** Accordingly, Building & Works advised Procurement of the situation in order that a way forward could be discussed and agreed. Due to the assignation of the contract in 2006 and the many trading names of "McFadyen", it has taken some time to track down the paperwork and confirm through Companies House that J P McFadyen (Commercial Contracts) Ltd has actually gone into liquidation.
- 2.3** Despite the Council not having received any formal notification of the liquidation of J P McFadyen (Commercial Contracts) Ltd, procurement officers were able to traced the Liquidators, Pricewaterhouse Coopers and the Quantity Surveyor appointed by them (Kathleen M Crawford) to act on their behalf in relation to outstanding issues.
- 2.4** Finance has also been notified of the situation and a hold has been placed on all payments which would have been due under the contract until agreement is reached with the Liquidator/Quantity Surveyor as to exactly what monies are still potentially payable.

2.5 Irrespective of the trading position of J P McFadyen (Commercial Contracts) the Council had an ongoing requirement to continue to be able to source UPVC doors to continue with the capital programme works with minimal disruption. This necessarily involved emergency arrangements being put in place given that the Council held little or no stock of UPVC doors. Consideration also had to be given to the making of future contractual arrangements.

3. PROPOSED METHOD OF RESOLUTION

3.1 During the investigative process outlined above, it was ascertained J P McFadyen (Commercial Contracts) Ltd had in fact sub-contracted the manufacture of the UPVC doors to a company in Newtownards in Northern Ireland called Blair Neill Ltd. It was further ascertained that this company was holding a stock of UPVC doors for delivery to East Ayrshire Council.

3.2 On making enquiry, the Council were advised that it could purchase the doors which were due to be supplied to the Council direct from Blair Neill Ltd at less than the cost which would have been due had the doors been provided under the McFadyen contract.

3.3 Accordingly, in an effort to ensure supply the Council proceeded to order an amount of UPVC doors to prevent disruption of ongoing programme works and also to facilitate sufficient time to allow for the creation of alternative contractual arrangements.

3.4 In terms of paragraph 9(2) of Council's standing orders relating to contracts formal approval is required in circumstances where it is intended to negotiate contractual terms with a single party without any element of competition. In essence, the steps already taken to ensure supply, constitute such a negotiated process. However, in all the circumstances, it is appropriate to bring this matter to the attention of Cabinet and seek formal approval for this arrangement to continue until a new contract is placed.

3.5 Accordingly, a new OJEU notice has been placed with a view to a new contract being in place by 1 December 2007. Although the new contract will begin at that date it is not expected that supply of UPVC doors will begin before early January 2008. The ongoing interim arrangements with Blair Neill Ltd are therefore require to remain in place until that time.

4. FINANCIAL/LEGAL & POLICY IMPLICATIONS

4.1 Although, as indicated above, it is expected that will be savings made on the interim arrangements it cannot be finally assessed at this stage as to the exact cost implications for the Council. However, in the event that there are any additional costs, these may be offset against monies which are still due to J P McFadyen (Commercial Contracts) Ltd, and this will be addressed with the Liquidator/Quantity Surveyor.

- 4.2** To meet all relevant procurement legislation, the fully compliant OJEU exercise will allow a contract to be put in place to meet the Council's requirements up to end March 2009, with a one year extension option at the discretion of the Council to allow flexibility.
- 4.3** Paragraph 9(2) of Council's standing orders relating to contracts should be invoked to ensure supply until a new contract is formally put in place.
- 4.4** Procurement have also formally advised the Liquidator/Quantity Surveyor that the Council are establishing alternative contractual arrangements for the supply of UPVC doors as allowed for under the terms of the Council's contract with J P McFadyen (Commercial Contracts) Ltd, Conditions of Contract paragraph H2.

5. CONCLUSION

- 5.1** The approval of Cabinet to the above will allow the Capital Programme to continue without disruption.
- 5.2** By instigating a temporary contractual arrangement with Blair Neill Ltd for the supply of doors up to 31 December 2007, there will be an initial saving to the Council from the previous contract.
- 5.3** A new EU compliant Supply of uPVC Doors can be procured and in place by January 2008.

6. RECOMMENDATIONS

- 6.1** It is recommended that Members:
- i) approve the interim arrangements to maintain the supply of UPVC doors direct with Blair Neill Ltd in accordance with paragraph 9(2) of the Council's standing orders relating to contracts;
 - ii) note the action taken by Procurement to progress an OJEU tendering exercise to ensure continuity of supply from early January 2008;
 - iii) note the requirement to liaise with the Liquidator with respect to settlement of outstanding monies; and
 - iv) otherwise, note the contents of this report.

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10th October 2007