**BIRMINGHAM CITY COUNCIL**

**URGENT CONTRACT AWARD REPORT – CoronaVirus Outbreak**

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| **Report to:** | **Interim Chief Finance Officer and Acting City Solicitor** |
| **Report of:** |  |
| **Date of Decision:** |  |
| **SUBJECT:** |  |

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| **1. Purpose and Decision(s) recommended:** |
| That the Interim Chief Finance Officer and the Acting City Solicitor;   1. Authorises the award of contract to XXXXXXXXXXX for the provision of (insert goods / services) for the estimated sum of £xx over a period of (insert duration), commencing (insert contract start date). 2. Notes that due to the unforeseen need to procure the [goods/services] urgently [and due to the value being below the threshold where the Birmingham Business Charter applies] the Council’s Social Value Policy is not being applied to this contract. The contract [would/would not] be caught by the Living Wage policy [*if it would be caught..include either “*but urgency prevents application” or “and the contractor already pays the required level to comply”] . |

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| **Lead Contact Officer**: | Contact Officer and Title, Department, Directorate |
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| E-mail address: | [name@birmingham.gov.uk](mailto:name@birmingham.gov.uk) |

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| **2. Justification for Contract Award** |
| Birmingham City Council has activated its Business Continuity and Emergency Plans in response to the CoronaVirus outbreak. In order to ensure continuity of critical services the Council is exercising use of regulation 32(2)(c) and regulation 72 (1) under the Public Contract Regulations 2015 to enable contracts to be awarded and order to be placed with suppliers to ensure continuity of critical services and supplies.  In these circumstances the Council needs to procure (insert goods / services) under PCR Regulation 72(1) (Extending or modifying a contract during its term) sets out the following:  *Contracts … may be modified without a new procurement procedure … in any of the following cases:*  *(c) where all of the following conditions are fulfilled:*  *(i) the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen;*  *(ii) the modification does not alter the overall nature of the contract;*  *(iii) any increase in price does not exceed 50% of the value of the original contract or framework agreement.*  Note:   * Multiple modifications are permissible, however each one should not exceed the 50% of the original contract value. * You should also consider (subject to capacity) limiting the duration and/or scope of the modification and running a procurement for longer-term/wider scope requirements alongside it. * There are other grounds available under regulation 72 for extending contracts, including: if the proposed variation has been specifically provided for in the contract (regulation 72(1)(a)); where a change of contractor cannot be made for economic or technical reasons (regulation 72(1)(b)), and where the modifications are not substantial (regulation 72(1)(e)) * If more than one ground is applicable this may lower the legal risk and therefore you should ensure all relevant grounds are included in your written justification.   OR (delete as applicable) |

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| In these circumstances the Council needs to procure (insert goods / services) under PCR Regulation 32(2)(c) (Direct award due to reasons of extreme urgency) which sets out:  *The negotiated procedure without prior publication may be used for public works contracts, public supply contracts and public service contracts in any of the following cases: ...*  *(c) insofar as is strictly necessary where, for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures or competitive procedures with negotiation cannot be complied with.*  *… the circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority.*  Remember to demonstrate in this report that the following tests have all been met:   1. There are genuine reasons for extreme urgency, eg:    1. you need to respond to the COVID-19 consequences immediately because of public health risks, loss of existing provision at short notice, etc;    2. you are reacting to a current situation that is a genuine emergency - not planning for one. 2. The events that have led to the need for extreme urgency were unforeseeable, eg:    1. the COVID-19 situation is so novel that the consequences are not something you should have predicted. 3. It is impossible to comply with the usual timescales in the PCRs, eg:    1. there is no time to run an accelerated procurement under the open or restricted procedures or competitive procedures with negotiation;    2. there is no time to place a call off contract under an existing commercial agreement such as a framework or dynamic purchasing system. 4. The situation is not attributable to the contracting authority, eg:    1. you have not done anything to cause or contribute to the need for extreme urgency.   OR (delete as applicable)  In these circumstances the Council needs to procure (insert goods / services) under PCR Regulation 32(2)(c) (Direct award due to absence of competition or protection of exclusive rights) which sets out that the negotiated procedure without prior publication may be used:  *(b) where the works, supplies or services can be supplied only by a particular economic operator for any of the following reasons: ...*  *(ii) competition is absent for technical reasons,*  *(iii) the protection of exclusive rights, including intellectual property rights,*  *… but only where no reasonable alternative or substitute exists and the absence of competition is not the result of an artificial narrowing down of the parameters of the procurement.*  The justification for this contract is due to [competition being absent for technical reasons e.g. there is only one supplier with the expertise to do the work, produce the product or with capacity to complete on the scale required; or, the protection of exclusive rights, including intellectual property rights e.g: (i) the supplier owns those rights (including intellectual property rights) or (ii) it has the exclusive right to exploit intellectual property rights.  Note that this is only when:   1. there is no reasonable alternative or substitute available; and 2. the contracting authority is not doing something which artificially narrows down the scope of the procurement e.g. by over-specifying the requirement.   A separate assessment of the above should be carried out before undertaking any repeat procurement to ensure these tests have been met. |

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| 1. **Critical Services Supported by this contract award** |
| This requirement for an urgent award of contract will support the delivery of the following critical services to the Council:   * Insert list of services that the contract award will support.   You should limit your requirements to only what is absolutely necessary both in terms of what you are procuring and the length of contract. |

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| 1. **Financial Implications:** |
| The estimated cost of the goods / services / works is (£x per month/in total). This has been estimated from current levels of spend on this service (or other basis if used.)  The cost will be funded from the approved budget for XXXX or the XXXX service/grant award within (XX) Service Directorate **or** The Covid19 emergency project code XXXXXXX is linked to Cost Centre XXXXX and the budget holder is XXXXXXX (delete as applicable)  The latter project code is strictly for directorate emergency spend over and above BAU spend as a result of Covid19.  Note: It is important that contracting authorities continue to achieve value for money and use good commercial judgement during any direct award. If prices are higher than would be expected in a regular market, note this and whether any contractual mechanisms have been considered to ensure that they have the ability to secure pricing reductions through the life of the contract. |

**Recommendations Approved by:**

Rebecca Hellard……………………………………….                             Date…………..

Interim Chief Finance Officer (or their delegate)

Suzanne Dodd…………………………………….                                    Date……………

Acting City Solicitor (or their delegate)

**Copies of all signed award Reports must be submitted to** [DPR@birmingham.gov.uk](mailto:DPR@birmingham.gov.uk) **for probity and audit purposes.**