

Waiver request

Contract Award for Whittington Park Community Centre



Version	Date	Approved
1.5	16.11.15	PH

Guidance for waiver requests

A waiver is a business case seeking permission and providing justification to go outside the normal procedures of the Council.

The waiver report will need to include comments from finance, legal services and strategic procurement.

The justification section for the *waiver* report should include:

- **Background:** the circumstances leading up to the request for waiver (cause for the waiver). Please state if there is an existing contract in place. If there is, state the length of the contract.
- **Description:** include a clear positive statement of need, and if this is a statutory service or not. Include how you propose to monitor the contract. State if your contract has a corporate contracts database number.
- **Risks:** including the possibility of financial risks; and/or the possibility of a break of the service.
- **Value for money information:** detailed information on the benefits from the service provided against its cost. The current annual value (and length) of the contract and the cost of waiver period. Please demonstrate effectiveness of the contract.
- **London Living Wage (LLW) consideration:** a LLW consideration report must be completed in either instance and attached with this waiver request.
- **Social Value consideration:** please consider how this waiver contributes to the economic, social and environmental well-being of the borough.
- **Benchmarking:** to provide a demonstrable standard against which the contract can be measured or assessed.
- **Start date and end date of current or previous contract:** please also state if the contract has expired.

Authorisation

- Please ensure financial comments are included before emailing your waiver justification to the Strategic Procurement Team (SPT): procurement@islington.gov.uk
- SPT will then arrange for procurement and legal comments to be included and return to you for your Service / Corporate Director approval.
- Please return authorised waiver to SPT for final approval.
- SPT will return fully authorised waiver to you where you can then instruct legal to proceed with any relevant contract terms.

Contents:

A waiver is a business case seeking permission and providing justification to go outside the normal procedures of the Council.

For waivers between £25,000 and £300,000: the Service Director (or Head of Service in their absence) will need to approve.

For waivers above £300,000: the Corporate Director (or Service Director in their absence) will need to approve.

Waiver title	Contract Award for Whittington Park Community Centre
Existing contract number and name (if applicable)	n/a
If there is an existing contract, please confirm the following details	
No existing Contract	
Reason for waiver request	<p>To appoint Cuttle Construction as the principal contractor to deliver the Whittington Park Community Centre project.</p> <p>Cuttle Construction were the successful contractor of a compliant and competitive procurement exercise undertaken by an external consultant on behalf of Whittington Park Community Association.</p> <p>Whittington Park Community Association had intended to sign and manage the contract with Cuttle Construction directly. However, both parties have now agreed that Islington will sign the contract with Cuttle Construction in order to have greater control over the scheme for which Islington is the primary funder and freeholder of the building.</p>
Department	Community Wealth Building
Value	1,214,620.00
Has a LLW consideration report been completed and attached to this waiver request?	Cuttle Construction has confirmed that the London Living Wage will be paid under this contract.
Waiver duration (months)	12 months
Start date of waiver	11/11/2021

End date of waiver	11/11/2022
Date waiver submitted	04/11/2021
Author	Graham Hughes Project Manager, Community Wealth Building

1. Justification for request for waiver

The purpose of this waiver is to seek approval to directly appoint Cuttle Construction as the principal contractor for the delivery of the Whittington Park Community Centre (WPCC) project. As principal contractor, they will be responsible for delivering the project as set out in the tender information.

Cuttle Construction were the successful contractor of a compliant and competitive procurement exercise undertaken by an external consultant on behalf of Whittington Park Community Association.

Whittington Park Community Association had intended to sign and manage the contract with Cuttle Construction directly. However, both parties have now agreed that Islington will sign the contract with Cuttle Construction in order to have greater control over the scheme for which Islington is the primary funder and freeholder of the building.

When considering how to procure these works two options were deemed to be the most feasible. The first was to retender the work using Islington's procurement structure. This would have given Islington greater certainty over the process used to manage the procurement of the principal contractor and the evaluation of the tender returns. However, the time required to undertake a second procurement exercise would likely risk more external funders withdrawing their support due to inaction. There is also no guarantee that retendering would provide a more competitive price for the works. Increased costs for labour and materials because of Covid-19 could result in a higher construction cost than currently presented, putting the project budget at risk.

The second and preferred option is to directly appoint Cuttle Construction based on the competitive tender managed by WPCA and their appointed consultants. Following a formal evaluation process Cuttle Construction received the highest combined cost and quality score from the tenders received. Directly appointing Cuttle Construction will give Islington, who are the primary funder and freeholder, greater control over the budget. The direct appointment will also give external funders assurance that the project is proceeding and it will enable the works to commence based on the current contract sum.

2. Noted implications (if any)

Finance

London Borough of Islington has allocated approved budget of £984,000. WAPC have confirmed additional contribution to the budget of £611,532 (4.2) bringing the total budget to £1,595,532. This budget is sufficient to cover the contract cost of £1,214,620 (4.2) provided the WAPC contribution is secured.

The project is funded by a combination of council funding and funds raised by Whittington Park Community Association (WPCA) from external sources.

The total budget for the project is **£1,595,532**

Finance Implications: Abdulrazak Kassim, Principal Accountant

Strategic Procurement

There are no direct procurement implications as such associated to this waiver request as the procurement process has been undertaken and concluded by a third party Whittington Park Community Association (WPCA).

In regards to internal approval processes for the contract award to Cuttle Construction the value exceeds the £1m threshold for Capital spend and therefore is an officer key decision, meaning this award will need to be put on the forward plan and the steps to be followed in terms of governance must be adhered to.

The following points are also advised prior to formalising this arrangement with Cuttle Construction;

- That the Service Level Agreement between WPCA and Islington Council that is relevant to this project is reviewed and amended accordingly to reflect the nature of the new undertaking in managing the project;
- That the tender proposal from the Cuttle Construction is amended or novated so it is an offer to Islington not Whittington Park and the associated JCT Contract conditions become an agreement between Islington and Cuttle Construction;
- That the final cost proposal to Islington is fixed, and cost management processes are introduced to monitor spend through implementation to conclusion;
- That any savings realised in relation to the budget are re-allocated proportionately, as Islington are putting up the lion share the expectation would be that Islington would also be taking the lion share of any savings realised.
- That Legal Services are appraised of intentions going forward so that the appropriate level of legal consideration is given to the contractual arrangement between Cuttle Construction and Islington Council to ensure that exposure to the Council is legally covered or mitigated against.
- That agreement to transfer the procurement element from WPCA to Islington to make the identified savings/efficiencies shall be treated as a one off and will not set a precedent on how future cases of a similar nature are to be determined;

Procurement Implications: Nick Eglington, Head of Category Management

Legal

The value of the proposed contract is £1,214,620.00 (Islington contribution £984,000) which is below the Public Contracts Regulations 2015 (the Regulations) threshold for works.

The council's Procurement Rules require a contract of this value to be procured through a formal tender process with a minimum of five (5) written competitive tenders via our internal Procurement team. However, the council's Procurement Rules allow for exceptions where

there are good operational and financial reasons (Rule 3.2). The reasons set out in the report may be considered to provide adequate operational and financial reasons.


The risk of procurement challenge technically exists; however, given that a compliant procurement process was undertaken by the WPCA in accordance with the Regulations, the risk of legal challenge in approving this request for waiver is likely to be low.

Legal Implications by: Mark Ferguson, Contracts Lawyer

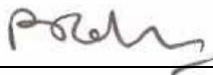
3. Approvals

For waiver requests over £300,000*

Approved by Corporate Director of Community Wealth Building

Name	Stephen Biggs
Date	12/11/2021
Signature	

Approved by Head of Procurement (or approved representative)

Name	Peter James Horlock
Date	12/11/2021
Signature	

- * Waivers over £100,000 are recordable decisions, and a 'Recordable Decision Report' must be completed.
- * Contracts with a value between £500,000 and £2,000,000 revenue, or £1,000,000 and £5,000,000 capital are key decisions which may be taken by Corporate Director or Assistant Chief Executive. Contracts with a value in excess of £2,000,000 revenue or £5,000,000 capital are key decisions which must be taken by the Executive.