


Cabinet 5 March 2014	 TOWER HAMLETS
Report of: Stephen Halsey, Head of Paid Service and Corporate Director, Communities, Localities and Culture	Classification: Unrestricted
Highways Contract Reprocurement	

Lead Member	Cllr Ohid Ahmed (Deputy Mayor)
Originating Officer(s)	Fiona Heyland Head of Waste Strategy, Policy & Procurement Margaret Cooper, Head of Transport & Highways
Wards affected	All wards
Community Plan Theme	A Great Place to Live
Key Decision?	Yes

Executive Summary

- 1.1 The Council's current provision for Highway maintenance and planned major works is currently commissioned as five separate contracts which are due to expire at the end of June 2014. In June 2013 the Council issued an OJEU Notice to procure replacement contracts. The procurement process progressed smoothly to Tender stage but is now experiencing some difficulties as Tenderers within this sector have little experience of bidding in relation to the Community Benefits that have been included as part of the contractual requirement. The Tender return date was originally set for 3rd February however, given the complexity of the issues that have been raised and the need to issue some revised Tender documentation, it was necessary to extend the Tender period through to 24th February. This action was agreed by CMT on 4th February to ensure that the opportunity to deliver outputs that benefit the community as set out in the Procurement Policy Imperatives is maximised.
- 1.2 Extending the tender deadline would effectively make it impossible to start the new contract by the time that the current contracts are due to expire since the amount of time left for the incoming contractor to mobilise the new services would be insufficient to secure new plant and materials and conclude TUPE arrangements. Extending the current contracts by a period of no more than 3 months is therefore proposed as the most appropriate action to mitigate the risks to the Council of not being able to commence the new contract as expected on 1st July 2014.

Recommendations:

The Mayor in Cabinet is recommended to:

1. Approve the extension of current Highways Contracts outlined in paragraph 3.1 of the report, for a maximum of 3 months.
2. Authorise the Service Head - Legal Services to execute all necessary contract documents to implement this decision.

1. REASONS FOR THE DECISIONS

- 1.1 In June 2013 the Council issued an OJEU Notice to procure replacement Highways contracts. The procurement process progressed smoothly to Tender stage but is now experiencing some difficulties as Tenderers within this sector have little experience of bidding in relation to the Community Benefits that have been included as part of the contractual requirement.
- 1.2 The Tender return date was originally set for 3rd February however, given the complexity of the issues that have been raised and the need to issue some revised Tender documentation, it was necessary to extend the Tender period through to 24th February. This action was agreed by CMT on 4th February to ensure that the opportunity to deliver outputs that benefit the community as set out in the Procurement Policy Imperatives is maximised.
- 1.3 Extending the Tender period has reduced the amount of time left for the incoming contractor to mobilise the new services, to the extent that it will not be possible to start the new contract by the time that the current contracts are due to expire. Extending the current contracts by a period of no more than 3 months is proposed as the most appropriate action to mitigate the risks to the Council of not being able to commence the new contract as expected on 1st July 2014. As the delay facilitates the acquisition, through the contract process, of community benefits specific to local training, employment and the local economy it is considered a pragmatic measure worth taking.

2. ALTERNATIVE OPTIONS

- 2.1 Utilise access to other collaborative contracts in the period between expiry of existing contracts and start of the new contracts : this option has also been dismissed for the majority of works other than ad hoc individual projects since it would have unacceptable impacts on the employees of incumbent contractors who have established TUPE rights.
- 2.2 Maintain the proposed start date of July 1st 2014 by extending the Tender period and reducing the contract mobilisation period. Reducing the amount of time for the incoming contractor to mobilise the new services will unfairly favour the incumbent contractors and therefore risk challenge from others who could not be reasonably expected to mobilise to start the new contract in less than 3 months.

3. DETAILS OF REPORT

- 3.1 The Council's current provision for Highway maintenance and planned major works is currently commissioned as five separate contracts:
- Carriageway Maintenance Works
 - Footway Maintenance Works
 - Major Planned Highway Works (capital works)
 - Gully Cleansing works
 - Street Lighting Maintenance Contract
- These contracts are due to expire by 30th June 2014.
- 3.2 On 10th June 2013 the Council issued an OJEU Notice to commence the re-procurement of these services under one procurement process but with the services offered in the following 4 Lots:
- Lot 1 - Carriageway & Footway Maintenance and Gully Cleansing
 - Lot 2 - Highways Major Works
 - Lot 3 - Street Lighting Maintenance
 - Lot 4 – Street Lighting Replacement Programme
- 3.3 The Council received a total of 15 on time PQQ responses and 1 PQQ response that was received late. On 11th November the Council notified the outcome of the PQQ evaluation process, advising 11 companies that they had been successful in being shortlisted to Tender. Following a short delay the Invitation to Tender and Tender document pack was issued to the 11 successful companies on 4th December 2013 and the Tender phase of the procurement process commenced.
- 3.4 Following the approval of the Procurement Policy Imperatives at Cabinet in January 2013, the Council has implemented the requirement to deliver additional community benefits, through the Council's contracts, that support local employment, local apprentice placements and the local supply chain.
- 3.5 As the Tender has progressed it has become clear through feedback from the bidders that some aspects of the tender specification could be improved further and that there was a need to prepare more detailed interpretive guidance to support the contractor's approach to the development of their community benefits programme. In order to ensure that the procurement process successfully continues to completion, that it delivers value for money, that it delivers the Council's aspirations for community benefits and that it minimises the risk of any potential challenge it was considered necessary to provide Tenderers with comprehensive guidance on the Council's expectations and issue revised Tender documents for this part of the contractual requirement.
- 3.6 In order to allow the Council time to work up a suitable response to the questions and determine a revised approach to the Community Benefits requirement, including the preparation of revised Tender documents, CMT agreed at its meeting of 4th February to extend the Tender return date to 24th February. This would then allow Tenderers sufficient time to digest and incorporate the revised requirements into their Tender responses.

- 3.7 The knock on effect of the revised return date is that it allows insufficient time for contract mobilisation before the existing contract arrangements expire. Thus the incoming contractor is likely to be unable to effectively deal with the TUPE transfer of staff and secure the necessary plant and equipment to commence the services within the current required timeframe. This necessitates the requirement to extend the existing contracts by three months to restore the lead in time for mobilisation. This would cover the period of the Tender return and provide additional contingency in the process to cover any further unforeseen technical delays.
- 3.8 In conclusion, as it is now unlikely that the procurement process for the new Highways contracts can be satisfactorily completed with a timeframe that would allow the incoming contractor to mobilise the new contracts before the current contracts expire, it is recommended that Cabinet approve the extension of the current Highways contracts for a period of no longer than 3 months.

4. COMMENTS OF THE CHIEF FINANCE OFFICER

- 4.1 The report seeks approval to extend the contracts for the provision of the Highway maintenance and planned major works currently commissioned by a period of no more than 3 months. Under the circumstances set out in Section 3 of the report, this is deemed to be the most appropriate action to mitigate the risks to the Council of not being able to commence the new contract as expected on 1st July 2014. The extension of the current contracts will be met from existing resources within the Highways and Transportation budget.

5. LEGAL COMMENTS

- 5.1. The Council has a responsibility to maintain the highways in accordance with its statutory duty found under section 41 of the Highways Act 1980. The Council also has the power to exercise its functions by purchasing the service provision from bodies that are external to the Council, provided that in accordance with the Local Government Act 1999 the Council obtains best value.
- 5.2. For the purposes of the Public Contracts Regulations 2006 which subjects purchases to the ambit of European Law the subject matter of the contracts constitute "Works". Where the cost of the Works is greater than the European Threshold then the contract should be subject to a full European Tender.
- 5.3. The current proposal is to give a three month contract to each existing provider without subjecting this to competition which on the face of it could lead to a challenge by a third party that they should be given the opportunity to bid for this work. Such a challenge may arise even though the value of the 3 month contract is below the European Threshold. However, the Council's obligations under the Public Contracts Regulations 2006 must be weighed against the need for the Council to continue to maintain highways in accordance with the statutory duty outlined above. In the circumstances

outlined in the report, it appears reasonable for the Council to grant an extension in order to complete the competitive exercise.

- 5.1. When considering whether to extend the contracts, the Council must have due regard to the need to eliminate unlawful conduct under the Equality Act 2010, the need to advance equality of opportunity and the need to foster good relations between persons who share a protected characteristic and those who don't. There is information in the report relevant to these considerations.

6. ONE TOWER HAMLETS CONSIDERATIONS

- 6.1. The tender process requires bidders to demonstrate how they intend to contribute towards achievement of the Procurement Policy Imperatives in their tender submissions which will be considered as part of the evaluation process. The purpose of the recommended extension to the tender period is to provide additional information on this matter to bidders and allow time for further consideration in their submissions.

7. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT

- 7.1 The tender process requires bidders to address environmental and sustainability objectives in their tender submissions which will be considered as part of the evaluation process.

8. RISK MANAGEMENT IMPLICATIONS

- 8.1 The proposals outlined above will reduce the risk of failing to deliver against the procurement imperatives. It will also reduce the risk of legal challenge from bidders and remove the risk, having extended the procurement period of failing to allow enough time for contract mobilisation before existing contracts terminate.
- 8.2 Without an extension to the current contracts, the Council could find that it is unable to discharge its statutory responsibilities for Highways services which could lead not only to increased insurance claims but possible intervention from the Department for Transport.

9. CRIME AND DISORDER REDUCTION IMPLICATIONS

- 9.1 None.

10. EFFICIENCY STATEMENT

- 10.1 The purpose of this procurement is to achieve maximum value for money in the delivery of highways services through a competitive tendering process. The extension is recommended to protect achievement this objective.
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Linked Reports, Appendices and Background Documents

Linked Report

- NONE

Appendices

- Equality Analysis Quality Assurance Checklist

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

- NONE

Officer contact details for documents:

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Originating Officers and Contact Details

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