


Cabinet 8 September 2021	 TOWER HAMLETS
Report of: Ann Sutcliffe – Corporate Director, Place	Classification: Unrestricted
Procurement of Highways & Street Lighting Works Contracts	

Lead Member	Councillor Kahar Chowdhury, Cabinet Member for Highways and Public Realm
Originating Officer(s)	Mehmet Mazhar – Head of Highways & Transportation
Wards affected	All wards
Key Decision?	Yes
Reason for Key Decision	Financial threshold (proposal to result in Council incurring Capital expenditure of above £5m)
Forward Plan Notice Published	27 July 2021
Strategic Plan Priority / Outcome	A borough that our residents are proud of and love to live in.

Executive Summary

This report sets out the planned re-procurement of the Council's Highways & Street Lighting Works Contracts as they are due to expire on the 31st March 2022.

Due to activity time dependencies within the procurement project plan timescales, this item, which would normally have been presented as part of the September Cabinet Contracts Forward Plan – Quarter Two (FY2021-2022) and is which now rescheduled for presentation at November Cabinet, is being presented as a standalone item at September Cabinet as procurement is scheduled to start in early October 2021.

Recommendations:

The Cabinet is recommended to:

1. Agree that contract set out in this report may proceed to procurement in October 2021
2. Confirm that contract set out in this report can proceed to contract award by the Corporate Director, Place, after Tender
3. Authorise the Divisional Director, Legal Services to execute all necessary contract documents in respect of the award of contract referred to in recommendation 2 above

1 REASONS FOR THE DECISIONS

- 1.1 It is a requirement of the Council's Constitution that "The contracting strategy and/or award of any contract for goods or services with an estimated value exceeding £250k, and any contract for capital works with an estimated value exceeding £5m shall be approved by the Cabinet in accordance with the Procurement Procedures".

2 ALTERNATIVE OPTIONS

- 2.1 The contract strategy, as outlined in this report, for the procurement of the Highways & Street Lighting Works Contract meets the requirements of the Constitution and provides full visibility of the planned contracting activity in this regard, therefore no alternative proposals are being made.

3 DETAILS OF THE REPORT

Scope of contract

- 3.1 This contract will replace the current highways and street lighting maintenance and improvement works contract (CLC 4371, structured in 4 Lots) that is due to expire on the 31st March 2022 following formally agreed contract extensions, which is essential for the effective delivery of the borough's Highways & Transportation Capital Programme of improvement works as well as the annual rolling programme of highways & street lighting maintenance works. The start date of new contracts on the 4th April 2022 will allow alignment of the contract start/end date with the beginning/end of the fiscal year, bringing about operational benefits for the delivery of programmes, schemes and projects.
- 3.2 As the Highway Authority, Tower Hamlets Council has responsibilities for the borough public highway network, which includes roads, footways, footpaths, highways structures and bridges, street lighting, highways drainage, road markings and signage, among its many highways assets. The Council's statutory obligations under this Authority include a duty under section 41 of the Highways Act 1980 to maintain the highway in a safe condition. This duty will be discharged via this Tendered works term service (suite of) contracts that cover maintenance and improvement of these highways assets.
- 3.3 The contracts require the provision by the contractor of plant, labour and materials in order to deliver the required works and services, in accordance with the Tendered contract terms, conditions and price list.
- 3.4 The current annual value of the existing contracts is £12.1m. The new contract will be structured into 3 individual contract Lots. The new annual value of these contracts Lots will be £15.8m per annum, made up as outlined, below:
- Lot 1 – Carriageway Machine Resurfacing (Contract Value £5m p.a.)
 - Lot 2 – Highways Improvement & Maintenance (Contract Value £7.8m p.a.)

- Lot – 3 Street Lighting Improvement & Maintenance (Contract Value £3m p.a.)

- 3.5 Therefore, the total contract value over the maximum possible term duration of the contract (of 10 years) is potentially up to £158m.
- 3.6 Each contract Lot may be used on a “call-off” basis, meaning that there is no obligation to purchase services, or issue commissions, via these contracts. But, purchases can nonetheless be made by the Council, (as the Employer), on a “call-off” basis via each of the individual Lots, as required.
- 3.7 The contract Lots will also have integral provision of professional services via hourly rate prices submitted for a variety of graded professionals.
- 3.8 By procuring this contract, it will provide a mechanism by which the commitments within the Corporate (Strategic Plan), Transport Strategy and Mayoral Pledges may be delivered.

Contracting approach

- 3.9 Due to the value of the contract and in line with thresholds set out in the Public Contracts Regulations 2015 (as amended), the Tender will be openly advertised. The OJEU restricted procedure will be followed that enables short listing of a minimum of 5 bidders who have submitted an Expression of Interest and responded to Pre-Qualification Questionnaire that enables them to be shortlisted (or not) before an Invitation to Tender is issued. The scheduled procurement will commence in October and be advertised digitally via the London Tenders Portal.
- 3.10 The form of contract that will be used will be the New Engineering Contract 4 (NEC4), term service contract, with the partnering (collaboration) option linked to Key Performance Indicators (KPIs), which are referenced in paragraphs 3.12 and 3.13, below.
- 3.11 A contract duration (or term) of 10 years (made up of 7 core years plus 1+1+1 extension years linked to attainment of contract KPI’s and achievement of performance targets) allows a Tenderer to make a long term investment into the borough and hence provide more competitive prices to the benefit of the Council. The length of the term (potentially up to 10 years in total) will allow Tenderers to submit more competitive bids than if the contract term was shorter, as the greater amount of works purchased over a longer term could be offset against the contractor’s initial capital investment costs, thus reducing their risk of making a reasonable profit thus resulting in the submission of keener prices by them in order to win the contract/s.
- 3.12 The KPI’s will be linked to the contract term extensions. There will be quarterly and annual assessments that will determine this. Subject to satisfactory performance (in line with the agreed KPI targets), the term of the contract beyond the core 7 years may be extended by a further 3 years in single year increments, subject to the outcome of the overall annual assessment of performance on KPI’s. This could allow the full 10 year term to

be achievable. However, any additional single year term extension may be awarded once two successive years of good performance (measured via the KPI's) has been achieved, with effective credit being built up in 6 month increments. Therefore, subject to good performance it may be possible to award additional single year term extensions in years 2, 4 and 6 of the contract term. If the contractor's performance falls below the agreed set targets, then there may be a reduction in contract term in 6 month increments. This does not take away the Council's right (as the Employer) to terminate any of the contracts at any given time, if not satisfied with the overall performance of the contractor/s, and any remedial action fails to deliver improvement.

3.13 The KPI's will have annual targets that will incrementally increase year on year to ensure that there is continuous improvement throughout the term of the contract. There will be quarterly reviews culminating in annual reviews that determine whether the contract term is extended or reduced from the core 7 year term. It is proposed that the KPI's will address the following areas:

- Customer (local residents and businesses) satisfaction
- Resources & performance: Starting and completing works to agreed programme
- Timely submission of invoices
- Health and safety record
- Environmental performance (including recycling materials, waste reduction, site sustainability and carbon reduction)
- Social Value (including local employment, local apprenticeships that link with the Tower Hamlets Looked After Children Strategy)

3.14 The Tender submissions will be evaluated for each of the contract Lots on a 60:40 split, quality:price basis, (i.e. with 60% of the total available marks being awarded for quality and 40% of the marks being awarded for price). For each Lot, the quality evaluation will be based on an assessment of a combination of the Tenderers quality submission and a panel interview of select members of the team that they propose to resource the contract with.

3.15 As part of the Tender submission, the bidders will be required to submit a figure for the percentage discount they would offer if they were successful in being awarded more than one contract Lot

4 EQUALITIES IMPLICATIONS

4.1 Equalities and diversity implications, and the other One Tower Hamlets issues, are addressed through the tollgate process, and all contracting proposals are required to demonstrate that both financial and social considerations are adequately and proportionately addressed. The work of the Strategic Procurement Board and Corporate Procurement Service ensures a joined-up approach to the Council's procurement activities.

4.2 Additionally, as part of the Tender evaluation process, Tenderers will be asked to address equalities in their submitted Method Statements, which will be assessed as part of the non-financial criteria.

- 4.3 Pedestrians and users of public transport, particularly vulnerable users and people with mobility impairments are disproportionately affected by poorly maintained surfaces. Continuous investment in the maintenance of the highways infrastructure, delivered via this contract, will improve accessibility and ensure people can move around safely and easily throughout Tower Hamlets' public highways.

5 OTHER STATUTORY IMPLICATIONS

Best Value implications

- 5.1 As part of its commitment to best value, the Council is committed to ensuring that there is good governance and effective management of resources in terms of economy, efficiency and effectiveness with a focus on continual improvement, to deliver the best outcomes for the community. The procurement of this contract aims to deliver this via the KPI performance targets.

5.2 Community benefits implications

The Council's Social Value Matrix will be used to secure economic and community benefits for local residents. 5% of the evaluation weighting will be used to assess this element of the Tender responses. KPI's will include local employment and local apprenticeship targets.

Environmental implications, climate change and carbon reduction

- 5.3 The KPI's embedded into the contract includes performance targets on recycling materials, waste reduction, site sustainability and carbon reduction). Successful contractors will need to show evidence of achieving the performance targets in this regard (i.e. reduction, re-use and recycling, minimising the impact of construction works, environmental management systems, plant and vehicle standards). The environmental management systems requirements will include reduction in carbon emissions, innovative sustainable design and construction solutions that lower whole life carbon and whole life cost.
- 5.4 Any vehicles utilised by the successful contractor/s will need to deliver a reduction in exhaust pollutants and carbon dioxide emissions by increasing usage of zero and ultra low emission vehicles in their fleet where feasible.

6 COMMENTS OF THE CHIEF FINANCE OFFICER

- 6.1 This report is seeking approval to re-procure the Council's Highways & Street Lighting Works Contracts. The current contract is due to expire on the 31st March 2022.
- 6.2 The contract consists of a mix of revenue and capital expenditure with an estimated value over 10 years of £158m, an average of £15.8m per annum. This represents a significant increase in contract value from the existing contract of £12.1m per annum.

- 6.3 This is a call-off contract, with a ceiling set at £158m over ten years. Therefore this represents the maximum spend and not the guaranteed spend.
- 6.4 There are revenue budgets to the value of £4.1m per annum spread across a number of cost centres within Public Realm. Revenue spend will need to be contained within these budget levels in order not to generate a cost pressure. Any revenue expenditure above this will need to be funded within the overall Place budget.
- 6.5 There is a total approved capital budget of £13.6m relating to street lighting. This consists of street lighting replacement (£11.6m), remote monitoring of Street lighting (£0.8m), both included within the invest to save programme, and £1.2m for street lighting maintenance within the rolling programme. The current profile of the total capital budget is £9.2m in 2021/22, £4.0m in 2022/23 and £0.4m in 2023/24. Capital expenditure will need to be contained within these existing approved budgets.

7 COMMENTS OF LEGALSERVICES

- 7.1 The structure of this contract is a framework contract for the purposes of European law. Under the law a framework cannot be longer than 4 years except in exceptional circumstances and those circumstances must relate to the subject matter of the tendered opportunity. In this case the winning bidder will be required to invest in a significant amount of upfront capital in terms of plant and machinery; expenditure which the Contractor would expect to recoup over the lifetime of the contract. Restricting the contract to the 4-year period would mean that the Contractor would seek to reclaim the expenditure over only 4 years which would leave the resultant contract as being uneconomic. A 7 year contract (to 10 with extensions) is a proportionate length of contract to be both economic and justifiable given the expected economic lifespan of typical plant and machinery that will be used on the contract.
- 7.2 The proposed route to tender is compliant with the current procurement law. The law in this area is being reviewed. However, as with previous changes in the law over the last 20 years it is expected that any changes to the law will only apply to tenders advertised after the change has come into place regardless of when the contract is due to be awarded.
- 7.3 The tenders will be evaluated and awarded to those bidders who represent Best Value. This will be shown by using predetermined and prepublished evaluation criteria with the award going to the contractors who show themselves to be the most economically advantageous bidders on the blend of quality and price shown in the criteria.
- 7.4 Reference is made in the report to subsequent awards of contracts being called off. This may be without further competition but only in the exceptional circumstances that the firm on the lot who is to be used is clearly identified as

being the Best Value contractor without a further competitive pricing exercise being necessary.

Linked Reports, Appendices and Background Documents

Linked Report

- None

Appendices

- None

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

- None

Officer contact details for documents:

N/A