


<p>Cabinet</p> <p>29 March 2023</p>	 <p>TOWER HAMLETS</p>
<p>Report of: Ann Sutcliffe – Corporate Director - Place</p>	<p>Classification: [Exempt]</p>
<p>Highways & Street Lighting Works Term Service (P5735) Contract Award</p>	

Lead Member	Councillor Kabir Hussain, Cabinet Member for Environment and the Climate Emergency
Originating Officer(s)	Dan Jones, Director, Public Realm Wajid Majid, Interim Head of Highways and Transport
Wards affected	All wards
Key Decision?	Yes
Reason for Key Decision	Financial threshold / Significant impact on wards
Forward Plan Notice Published	23/12/2022
Exempt information	<p>This report and/or its appendices include information that has been exempted from publication as the Monitoring Officer:</p> <ul style="list-style-type: none"> • has deemed that the information meets the definition of a category of exempt information as set out in the Council’s Access to Information Rules; and • has deemed that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. <p>The exempt information is contained in</p> <ul style="list-style-type: none"> • Appendix 1 <p>The exempt information falls into this category:</p> <p style="padding-left: 40px;">Information relating to the financial or business affairs of any particular person (including the authority handling the information)</p>
Strategic Plan Priority / Outcome	A borough that our residents are proud of and love to live in.

Executive Summary

This report seeks approval for the award of the Highways & Street Lighting Works Term Service (P5735) Contract. On 28th September 2022, approval was given to the re-procurement of the contract and agreed that the Mayor will award the Contract to the most economically advantageous tenderer following an appropriate procurement process.

This contract will replace the current highways and street lighting contract (CLC4371), which is due to expire on the 30th June 2023.

The contract will be used on a “call-off” basis, meaning that when the Council requires works and services of the nature covered by this contract it will place an order with the winning bidder which creates the obligations to perform the works and or services detailed in the order.

Recommendations:

The Mayor in Cabinet is recommended to:

To approve the contract award for the Highways and Street Lighting Term Service Contract, as outlined in this report, to the highest scoring contractor emboldened under the section “Final Score” detailed in Appendix 1 for an initial period of 60 months from 1.7.2023, with a right for the Council, in its absolute discretion, to extend the contract for a period of up to a further 24 months in accordance with the advertised opportunity.

Note that that any exercise of the contractual option to extend will only be undertaken by the relevant Chief Officer following consultation with the Mayor

1 REASONS FOR THE DECISIONS

- 1.1 At the Cabinet Meeting of 28 September 2022 the Mayor mandated that the final decision to award the contract should be restricted to the Mayor only in this case. The Council’s constitution requires decisions of the Mayor to be made in a particular formal setting hence the need for this report

2 ALTERNATIVE OPTIONS

- 2.1 Any award must be made in accordance with the tendered results. Therefore, there are only two options. The first is to follow the recommendation. The second is to not award a contract at all. However, in the event that the Mayor settled on this alternative option it is likely that the Council would be challenged on this decision especially if the Council subsequently opened a new competitive exercise for the same or similar works or services. A subsequent procurement would also severely restrict the Council’s ability to deliver road maintenance as a reprocurement time scale would likely be many months with no obvious short term or interim solutions

3 DETAILS OF THE REPORT

- 3.1 On 28th September 2022, the cabinet had approved a strategy for the re-procurement of the Highways & Street Lighting Works Term Service (P5735) Contract. This was focused on awarding the term service contract to an external contractor following a competitive single-stage tender process.
- 3.2. The Highways & Street Lighting Works Term Service (P5735) Contract will be awarded to one contractor for a period of 60 months, with an optional extension period of 24 months. Such extension to be exercised only following consultation with the Mayor. The total estimated value of the contract is £110.6m (84 months), approximately £15.8m per annum.
- 3.3. The Councils current Highways and Street Lighting (CLC 4371) Contract will expire on the 30th June 2023. The Council must have a new contract in place, prior to expiry of CLC 4371 contract. A new contract will provide a continuity to deliver the statutory requirements noted below, and a wide range of projects and works that have a high level of public interest and priority.
- 3.4. As the Highway Authority, the 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. These duties shall be discharged via P5735 contract that includes maintenance and improvement of highways assets.
- 3.5. The contract had included a provision of professional services via hourly rate prices submitted for a variety of graded professionals.
- 3.6. Experience recognised that having a term service contract in place had delivered several benefits. These include economies of scale, high quality work, early contractor involvement, quicker scheme delivery, lower staff costs, greater cost certainty, partnership working and more appropriate risk management.
- 3.7. The Council priorities have been included in a new contract and will ensure that these priorities are embedded in the appointed contractor's performance by means of Key Performance Indicators (KPIs). KPIs shall be defined within the contract and monitored throughout its duration.
- 3.8. A partnering contract should not just rely on penalising for poor performance and so the KPIs performance will be linked to the approval of the extension period for the contract. KPI details shall be agreed with the successful contractor and those will be in the following areas:
 - Performance Management.
 - Health and safety record.
 - Sustainability and carbon reduction.

- Environmental performance (including recycling materials and waste reduction)
 - Social Value (including local employment, local apprenticeships, education, skills, professional support and training).
- 3.9. 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, and there will be quarterly reviews culminating in annual reviews.

TENDERS SUMMARY

- 3.10. This procurement exercise has been conducted in line with the Council's procurement rules and the Public Contracts Regulations 2015 (PCR 2015). The tender for this service was conducted in single stage (the open procedure). The tender period started on 11th October 2022 and ended 13th January 2023.
- 3.11. Total thirty-five (35) suppliers viewed the opportunity via the Council's electronic tendering portal; out of which, 16 suppliers opted out mainly due to the requirement not being in their line of business and three tenders were received.
- 3.12. The tender evaluation was based on the Most Economically Advantageous Tender (MEAT), based on 40% cost and 60% quality. The following tables provide a breakdown of the criteria and corresponding weightings that were used for evaluation during this stage.

Table 1: Award criteria

Award criteria	Weightings
Quality – method statement questions	60%
Contract implementation and mobilization	5%
Health and Safety	9%
Management and organizational structure	5%
Information and communication technology	6%
Innovation & Business Improvement	8%
CMS Deployment	7%
Helping to meet the carbon reduction, environment and climate targets	10%
Social value framework	10%
Cost	40%
Total	100%

- 3.13. The tender evaluation panel consisted of four evaluators: Interim Head of Highways and Transportation, Group Manager Highways, Principal Engineer Street Lighting and Project Manager. By providing a panel of four evaluators, it has provided a fair and equal opportunity to bidders, adding value and

balance to the overall evaluation. The evaluation panel members signed the conflict of interest form prior to undertaking the evaluation.

- 3.14. The social value elements and price have been evaluated separately by the officers from the Norman Rourke Pryme (NRP) consultants, their specialist area.
- 3.15. The evaluation panel reviewed the tender pack and scored individually between 18th January and 3rd February 2023. Upon completion of the individual evaluations, on 9th February 2023 a meeting was arranged and chaired by the procurement project officer, where the panel met to moderate the scores. During this meeting, individual evaluators' scoring was discussed, with views and opinions shared for each answer. A final score has been agreed for each element of the quality criteria by the evaluation panel, factoring in feedback from the individual evaluations.
- 3.16. Restricted Appendix 1 details the final moderated scores across the bidders. Following the completion of the evaluation exercise the contractor emboldened under the section "Final Score" detailed in Appendix 1 was the overall highest scoring bidder. The officers are confident that this contractor will deliver the contract to a high standard, so it is recommended that the new contract be awarded to this organisation.

4 EQUALITIES IMPLICATIONS

- 4.1 Whilst the Council recognises that highways works are likely to create disruption, works carried out on the public highway usually happen to either address existing issues e.g., trip hazards or uneven footways and carriageways, or to deliver civil engineering improvements. To summarise, the highway works that are being carried out are there to create a better environment, which will provide a better quality of life for groups with protected characteristics.
- 4.2 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.

Community benefits implications

- 5.2 The Council's Social Value Matrix has been used to secure economic and community benefits for local residents. 10% of the evaluation weighting was used to assess this element of the Tender responses. KPI's have included local employment, training 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 have provided 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 were included 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.

S17 Crime and Disorder Act 1988 consideration

- 5.5 This proposal will ensure functioning street lighting on the highway in the borough and maintaining the highway in a safe condition. A College of Policing briefing shows that improved street lighting had a positive effect in reducing crime such as burglary and theft. It was estimated that improved street lighting was associated with a relative reduction in crime of 21% in areas it was introduced, compared to similar areas where there were no such improvements. This proposal is likely to help keep the streets in the borough safe.
- 5.6 The briefing also notes that improved street lighting brings about reductions in crime during daylight hours as well. The mid pandemic residents' survey 2021 results indicate that 89% of the respondents feel safe during the day and 60% after dark. They proposal may also help people in the borough feel safe both during the day and after dark.

6 COMMENTS OF THE CHIEF FINANCE OFFICER

- 6.1 This report is seeking approval for the award of the Highways & Street Lighting Works Term Service contract. This contract will replace the current highways and street lighting contract, which is due to expire on the 30th June 2023.
- 6.2 The total contract value is £110.6m over 60 months, with an option to extend to 84 months, an average annual cost of £15.8m per annum over the full

contract length. The contract will be used on a “call-off” basis meaning that the contractor will be requested to complete works as required with no obligation for a minimum level of spend each year.

- 6.3 The contract is a mix of capital revenue works. There are capital budgets within the three-year capital programme totalling £17.157m and further revenue budgets of £3.088m per annum. Although the budgets are insufficient to meet the full cost of the contract outlined in para. 6.2, the nature of the contract being on a “call-off” basis means that works in a given year will only be commissioned up to the approved budgeted level.
- 6.4 The letting of this contract is approved from a finance perspective.

7 COMMENTS OF LEGAL SERVICES

- 7.1 The Council has the legal power to take the recommended decision
- 7.2 The Council has followed a legally compliant tender process. As part of this process the Council advertised the criteria against which bids would be measured and has applied these criteria in a legally compliant way. The Council may only award a contract to the bidder who scored the most points as determined by the criteria. An award to the highest scoring bidder not only satisfies the procurement law but also constitutes an award to the bid that represents statutory Best Value.
- 7.3 It is noted in the alternative options that a decision could be taken not to award a contract at all. The Council is generally free not to award any particular contract. However, it may only abandon a procurement where it has good grounds for so doing. Whilst there is no definition of what constitutes good grounds under the legislation, the Council should not do so anticompetitively, arbitrarily or unreasonably. It therefore follows that good grounds tend to relate to a change in the Council’s requirements after the opportunity has been advertised. Any retender should have requirements manifestly different from the previous tender as this would demonstrate reasonable grounds for any such previous decision.
- 7.4 Appendix 1 includes commercial details contained in the winning bidder’s submission. The information is also exempt information as defined under the law as it relates to the business dealings of the bidder. It would be in the public interest to know this information but this is outweighed by the fact that release of this information into the public domain before the official award stage could prejudice the Council’s business interests or those of the tenderer. Therefore, the exemption should be maintained and the public excluded from this information.
- 7.5 Notwithstanding the legal position on release noted at paragraph 7.4 the Council will release certain aspects of the winning bid following award in accordance with the Public Contracts Regulations 2015
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Linked Reports, Appendices and Background Documents

Linked Report

- None.

Appendices

- Appendix 1: Restricted part of the report
- Appendix 2: Equalities Impact Assessment

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

- None.

Officer contact details for documents:

- N/A