



**Haringey** Council

## APPENDIX A

### REPORT TEMPLATE

Agenda item:

**[No.]**

**Procurement Committee**

**On 27 November 2007**

Report Title: **Re-procurement of Highways and Street Lighting Contracts**

Forward Plan reference number (if applicable): **[add reference] TBC**

Report of **Director of Urban Environment**

Wards(s) affected: **ALL**

Report for: **Key Decision**

#### **1. Purpose**

1.1 To consider the procurement of new contracts for both Highways and Street Lighting works and the extension of the existing contracts to allow sufficient time for full procurement processes.

#### **2. Introduction by Cabinet Member (if necessary)**

2.1 This report shows the necessary process to re-procure the Highways and Street Lighting Contracts in line with the relevant legislation and in a way not to adversely affect the Council's Capital programme. In order to do this an extension of 12 months is necessary on the existing contracts, and these have been negotiated at no increase on current rates.

#### **3. Recommendations**

3.1 That the Highways planned and responsive work be packaged into a single lot and street lighting as a separate lot within one contract and put out to tender for a two year term starting 1 April 2009 with the option for up to 2 annual extensions.

3.2 That the existing contracts be extended for a further year from 1 April 2008 to 31 March 2009 to enable full European Tendering Procedures and timing of work to enable capital works to be completed.

Report Authorised by: **Niall Bolger, Director, Urban Environment**

Contact Officer: **Mike Tobin, Interim Head of Highways**

#### **4. Director of Finance Comments**

4.1 The cost of the re-procurement process, both the proposed new contract and the one year extension will need to be contained within the relevant Highways approved capital and revenue budgets for the timescales being proposed. The volume of works procured within a financial year, probably on a schedule of rates basis, must not exceed that years approved budgets.

#### **5. Head of Legal Services Comments**

- 5.1 This report is recommending the packaging of the current Highways Infrastructure contract, Highways Commissioning Contract, and Street Lighting contract as one single contract divided into two separate lots when the contract is re-tendered upon expiry of the current contracts in 2008.
- 5.2 Regulation 8(11) of the Public Contracts Regulations 2006 allow the division of contracts into lots.
- 5.3 Secondly, the report is recommending a further extension of the current contracts upon expiry of the current extension period in April 2008 for a further one year period.
- 5.4 The OGC Procurement guidance briefing, "Contract Re-competition", states at Paragraph 2.4 that extensions of contracts with a value above the EU threshold are only recommended when there was scope within the original advertisement in the Official Journal of the EU for a possible extension, and the contractor is performing well and is well-placed to deliver the authority's needs.
- 5.5 The EU advertisement in respect of the contracts referred to the possibility of an extension of the term of the contracts for a period of up to two years.
- 5.6 The contracts have already upon expiry of the original contract term in 2006, been extended for the 2-year period stated in the EU advertisement until April 2008.
- 5.7 The report states that external legal advisor Trowers & Hamblins have advised there is a risk of challenge in respect of the proposed further extension by other potential contractors on the basis that the proposed extended contract period represents an entirely new contract requiring a new procurement process.

- 5.8 The report however states that Trowers & Hamlins have cited a report recently released by the National Audit Office on the commercial realities of contract extensions, which notes that such extensions have happened and that the risk of challenge is low, depending on the length of any extension and that Trowers and Hamlins have confirmed the risk of challenge is particularly low where the contract will be re-procured after the extension (as in this case). Trowers and Hamlins have also stated that in their experience it is not unusual for local authorities to extend contracts for six months outside of the OJEU notice period.
- 5.9 The Head of Legal Services advises that in reaching a decision on whether or not to grant a further contract extension, Members will need to balance the risk of challenge highlighted by Trowers and Hamlins against the potential advantages of granting the extension which the report states to be as follows:
- 5.9.1 Financial and other deadlines make an April changeover more convenient.
  - 5.9.2 A new permit scheme will be introduced in spring 2008, so an extension would allow for this to be incorporated into the contract.
  - 5.9.3 A new Head of Service should be in place within the year and would therefore be able to input into the tender process.

## **6. Local Government (Access to Information) Act 1985**

6.1 [List background documents]

6.2 [Also list reasons for exemption or confidentiality (if applicable)]

## **7. Strategic Implications**

7.1 The Contracts are being procured in compliance with the EU procurement laws and at the best time to suit the needs of the Borough. However, the extensions are outside of the EU time limits and the reasons for this are discussed later in the report.

## **8. Financial Implications**

8.1 The extension of the existing contracts is *at no incremental increase on current rates* and this will lead to short term savings, which in turn will enable slightly more work to be carried out for the same budgets.

8.2 The new contracts will reflect the current market rates and may be higher or lower than the existing contracts. The implications cannot be assessed until the procurement process has been carried out due to current market uncertainties. The fact that both existing contractors have accepted an extension with no inflation on current rates hopefully implies that the market may not be significantly higher than the current contracts.

## **9. Legal Implications**

9.1 Trowers and Hamlins were approached for advice and they have said that the treatment of contract extensions in EU procurement law is not entirely clear and there has been little conclusive case law in this area. It has been their experience in advising

a number of local authority clients that it is not unusual for short term extensions of six months or less to be entered into outside of the OJEU notice period. This is particularly so when time periods for carrying out the procurement process cannot be met on practical grounds, or where an authority's corporate overview for the timing or scale of delivery dictates that such an extension will provide value to the authority, for example where it is in the process of procuring the contract again.

9.2 They have also advised that the level of risk will increase as the potential increases for the contractor's competitor to consider bringing a challenge. This potential will increase as the length of the extension grows, the value rises, and the profile of the extension is raised. On a practical level, it is generally conceded that risks, while still evident, will be of lower likelihood where the contract is in the process of being re-procured, for a term longer than the extension, for the reason that competitors are more likely to be engaged in bidding for the upcoming contract.

9.3 Therefore, while they do not recommend the use of extensions outside the OJEU notice, if the decision is taken by the Council to rely upon such an extension for a duration of 12 months, they suggest that the risk be carefully managed. It should only be considered where the Council has a clearly defined programme of re-procurement for the contract or its subject works or services. For the purposes of audit requirements the risk should be properly logged on the risk register relating to the given programme. The Council should ensure that all its internal requirements for letting contracts are adhered to, e.g. executive reports and approvals are properly submitted and obtained.

## **10. Equalities Implications**

10.1 The contract procurement will be carried out under the EU procurement rules and the Council's procurement procedures and will take equalities considerations fully into account at both the pre qualification and tender stages to ensure that recommended contractors are compliant in this regard.

10.2 The delivery of Highways and Street Lighting maintenance and improvement works will be of significant benefit to all residents.

## **11. Consultation**

11.1 The delivery of Highways and Street Lighting maintenance and improvement works will be of significant benefit to all residents. A consultation carried out in June 2007 with over 3500 responses showed several key issues that local residents prioritised. Overall the results showed that pothole repairs and pavement replacement are the main priorities for residents throughout the borough. Street Lighting was also high on their list of priorities. These contracts will enable the Council to carry out these works as well as all the others seen to be priorities as budgets become available.

## **12. Background**

12.1 These contracts were previously awarded as three separate contracts for a period of three years from 1<sup>st</sup> April 2003 with an option of extending the contract for a further two years. In the case of Street Lighting, this was conditional on the successful development of an output specification contract during the first two years.

12.2 The three contracts were:

- Highways Infrastructure contract awarded to John Crowley (Maidstone) Ltd,
- Highways Commissioning Contract awarded to Gabriel (Contractors) Ltd and
- Street Lighting awarded to EDF

All three Contractors performed well since the award of their contracts.

12.3 In January 2005 John Crowley (Maidstone) Ltd acquired Gabriel (Contractors) Ltd into their Group of companies and consequently requested Haringey Council for the Highways Commissioning Contract to be novated to John Crowley (Maidstone) Ltd. John Crowley (Maidstone) Ltd also confirmed that Gabriel (Contractors) Ltd is a 100% subsidiary of John Crowley (Maidstone) Ltd and the contract includes all previous terms and conditions including the pricing rates.

12.4 At that time John Crowley (Maidstone) Ltd confirmed their agreement to accept the normal two-year extension, should this be offered by the Council. Furthermore, John Crowley (Maidstone) Ltd also offered a further one-year extension in order to waive the BAXTER increase for 2005/06 for the Highways Infrastructure Contract, this potentially equated to a saving of approximately £700k. However, the Procurement and Legal section advised that this was not possible for a Director to extend for a further period than the two years. During negotiations John Crowley (Maidstone) Ltd did agree to waive the BAXTER rate increase for 2005/06 for the Highways Infrastructure Contract.

12.5 During January 2006 the Council extended all three contracts. These contracts are due to expire 31st March 2008.

## **13. Re-procurement Approach**

13.1 There are significant changes happening in the Highways area at present. As well as the recent loss of the Head of Highways there has been a need to review all these contracts in the light of the Traffic Management Act 2004 which from April 2008 will require the equal treatment of the Council's own works in the same system as currently employed by the Council in relation to the Utility companies. In particular if the Council were to introduce a permit scheme for the Utility companies the same would apply to all Council works. This scheme is still not finalised and it is therefore difficult to ensure that the Contract would reflect the necessary information yet. Therefore the procurement has been delayed and it is now suggested that a further one year extension be offered to both Contractor's subject to reasonable rates.

13.2 There are some risks according to the legal advice the Council has obtained (see Legal Implications). However the reasons why a year rather than a six month delay is recommended are:

- April is a good time for Contract change as so much Capital work is required to be completed by the end of March and a change in October might jeopardise these. In particular the Street Lighting programme would probably not be able to be fulfilled if an October change were made due to lead times for materials.
- The new permit scheme details will not be known till probably April or May 2008 and so the tender documents would be able to take that into account if a year's extension is given.
- The new Head of service will probably be in post prior to the tenders going out if a year extension is given which will enable his/her input into the documentation.

13.3 The existing Contractors have offered an extension at no increase. Therefore, although technically not allowed under the EU regulations still would look to comply with Best value as it will give automatic savings in relation to the normal inflationary pressures. The extension period would still have all the present terms and conditions but some performance issues that are not properly covered under the current contracts will be trialled in order to assess their suitability for the new contracts as well as introducing the permit scheme when the Borough introduced it next year.

13.4 The current single highways Contractor has worked well since the combining of the two companies. It is therefore considered sensible to replicate the current position with a single contract in the new arrangement. This in turn would be a step forward in the review of commissioning of "Public Realm" services. For this reason it is considered prudent to only award this contract on a two year basis with an opportunity for up to two annual extensions.

13.5 Under EU procurement it is possible to tender two contracts separately or to break a single contract into two lots. Either way it is considered possible to offer discounts if both are awarded to a single supplier, however it seems simpler to use the option of lots as this only requires a single advert.

13.6 The current Contracts were advertised as three lots as follows:

Lot 1: highways services infrastructure and road safety.

Lot 2: highways works commissioning.

Lot 3: street lighting.

The details of these are given in Appendix A. It is now considered sensible to simply have two lots, Highways and Street Lighting. The suggested details of the two lots are given in Appendix B.

## **14. Conclusion**

14.1 For several reasons the procurement process has not been started in sufficient time to enable a new contract to be in place in time for the finish of the existing extended contracts. Therefore the choice of extension is between a 6 month or a 12 month extension. For the reasons stated above a 12 month extension gives better

management of the capital works and has other advantages. Therefore it is recommended that the existing contracts be extended for a further year from 1 April 2008 to 31 March 2009.

14.1.1 The new contracts could be let on a long term basis, however due to a wider review of commissioning of “Public Realm” services it is considered prudent to offer a two year contract with up to two annual extensions.

14.1.2 The combining of the highways works into a single package due to one Contractor taking over the other has shown how it can work as a single contract. It is therefore considered sensible to have a single contract divided into just two lots.

14.2 Therefore it is recommended that the Highways planned and responsive work be packaged into a single contract with street lighting as two separate lots and put out to tender for a two year term starting 1 April 2009 with the option for up to two annual extensions.

## **15. Use of Appendices / Tables / Photographs**

15.1 Appendix A - Previous Contract Packaging

15.2 Appendix B - Suggested Contract Packaging

## APPENDIX A – PREVIOUS CONTRACT PACKAGING

### **Lot 1: provision of traffic engineering/management and civil engineering works services including:**

- a. planned, maintenance principal and non-principal;
- b. relaying, providing and laying granite and precast concrete kerbs;
- c. channels, edging, etc.;
- d. construction of domestic and industrial vehicular crossings;
- e. drainage and service ducts;
- f. provision of central islands refuges and erections of guardrailing;
- g. construction of road humps, speed cushions, speed tables, entry treatment, etc.;
- h. implementation, of controlled parking zones;
- i. new lighting scheme works;
- j. signing and lining;
- k. access bay markings;
- l. disabled bay signing and road markings;
- m. doctors bay signing and road markings.

### **Lot 2: provision of works services for reactive planning and maintenance for highways including:**

- a. reconstruction of footway and carriageway;
- b. planned maintenance principal and non-principal, resurfacing and improvements;
- c. reactive maintenance - footways and carriageways;
- d. gully construction and cleansing;
- e. performance standards;
- f. emergency works - call out/standby;
- g. construction of domestic and industrial vehicular crossings;
- h. road markings and maintenance.

### **Lot 3: provision of works services for the reactive maintenance and installation of new street lighting including:**

- a. lighting maintenance;
- b. bulk cleaning and replacement of lamps;
- c. service inspections of lighting units;
- d. cleaning method and materials;
- e. cleaning sign faces, illuminated bollards, marker posts, lamp columns, etc.;
- f. general maintenance;
- g. emergency work;
- h. lamp recycling;
- i. festive lighting;
- j. performance standards.



## APPENDIX B – SUGGESTED CONTRACT PACKAGING

### **Lot 1: Highways including:**

- a. planned, maintenance principal and non-principal including reconstruction of footway and carriageway; resurfacing and improvements, relaying, providing and laying granite and precast concrete kerbs; channels, edging, etc.;
- b. construction of domestic and industrial vehicular crossings;
- c. gully construction and cleansing; drainage and service ducts; cctv surveys
- d. reactive maintenance - footways and carriageways;
- e. provision of central islands refuges and erections of guardrailing;
- f. construction of road humps, speed cushions, speed tables, entry treatment, etc.;
- g. implementation, of controlled parking zones;
- h. new lighting scheme works (non electrical);
- i. signing and lining including road markings and maintenance; access bay markings; disabled bay signing and road markings; doctors bay signing and road markings.
- j. emergency works - call out/standby;
- k. performance standards;

### **Lot 2: provision of works services for the reactive maintenance and installation of new street lighting including:**

- a. lighting maintenance;
- b. column installation small and large schemes
- c. provision of lanterns, lamps, control gear, photocells etc.
- d. excavation and laying private cables
- e. provision of new illuminated signs and bollards
- f. bulk cleaning and replacement of lamps;
- g. service inspections of lighting units and electrical testing
- h. painting of lighting columns
- i. cleaning method and materials;
- j. cleaning sign faces, illuminated bollards, marker posts, lamp columns, etc.;
- k. general maintenance;
- l. emergency work;
- m. lamp recycling;
- n. festive lighting;
- o. performance standards.