

Report for: Cabinet Meeting – 10th September 2019

Title: Interim Award of Highways Term Maintenance Contract

Report authorised by: Stephen McDonnell – Director of Environment & Neighbourhoods

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Ward(s) affected: All

Report for Key/

Non-Key Decision: Key Decision

1. Describe the issue under consideration

- 1.1. On 31st August 2018, in accordance with the Public Contract Regulations 2015, and in accordance with Contract Procedure Rule (CSO) 9.01.1 (Contracts to be let following an appropriate advertisement), an OJEU notice was published for competitive tender (using Open Procedure) to identify suitable economic operator(s) for the delivery of the Council's Highway and Street Lighting Term Maintenance Contracts.
- 1.2. On 9th July 2019, Cabinet made the decision not to award Lot 1 (Highway Term Maintenance Contract) for the reason set out in the exempt section (Part B) of that Cabinet report.
- 1.3. The Council needs to put in place an interim contractual arrangement, to ensure it complies with the statutory requirements under the Highways Act 1980 and Traffic Management Act 2004 and maintains the programme of works as stated in the Sustainable Transport Works Plan approved by Cabinet in June 2019.
- 1.4. This report seeks the approval to award an interim highways contract, covering both planned and reactive highways works, to Marlborough Highways Limited

for a period of up to 9 months and a maximum value of £4m (four million pounds) under the London Construction Programme (LCP) framework; in accordance with CSO 7.01 (b) (by selecting one or more contractors from a Framework) and CSO 9.07.01(d) (All contracts valued at £500,000 (five hundred thousand pounds) or more, may only be awarded by Cabinet).

- 1.5. In awarding an interim contract, the Council will have time to undertake a review of the highways services and consider the future delivery options (i.e. in-house, via a partnership with another Borough, 3rd party contractor, hybrid etc.) for these services. This will inform the scope (if any) of re-procuring a future term highways contract.

2. Cabinet Member Introduction

- 2.1. Transport plays a pivotal role in our daily lives and Haringey is one of London's best-connected boroughs and the transport network is used by our residents, businesses and by people from across the City and beyond; either passing through or interchanging at a station or bus stop.
- 2.2. The Council has a statutory obligation to maintain our roads and ensure the safety of our residents whilst using our roads. Maintaining and improving our road network plays a key role in enabling the achievement of our wider economic aspirations for the borough.
- 2.3. This interim arrangement provides an opportunity for the Council to bring forward a review of highways services, that looks at whether it is feasible to consider if an alternate affordable delivery option can be achieved through delivering these services in-house, or via a form of partnership with another Borough. Once this review has been undertaken, we can consider which (if any services), should be re-procured via a longer-term contract.
- 2.4. I therefore, fully support the recommendations of this report.

3. Recommendation

That Cabinet agrees:

- 3.1. Pursuant to CSO 7.01 (b) (by selecting one or more contractors from a Framework) and CSO 9.07.01(d) (All contracts valued at £500,000 (five hundred thousand pounds) or more may only be awarded by Cabinet), award an interim highways contract, covering both planned and reactive highways works, to Marlborough Highways Limited for a period of up to 9 months and a maximum value of £4m (four million pounds) under the London Construction Programme (LCP) framework.

4. Reason for decision

- 4.1. The delivery of the Highways requirement, both planned and reactive, contribute to the delivery of a number of Council priorities, as well as supporting the Council in complying with its statutory duties arising out of the Highways Act 1980 and Traffic Management Act 2004.
- 4.2. The current provider (Ringway Jacobs) has commenced demobilisation activity, having assumed a new provider would be place by the end of September 2019. There have been continued challenges with the current provider in delivery of the works and performance levels.
- 4.3. The Council needs to undertake a review of the highways service delivery options.
- 4.4. The Council would need to re-procure a highways term contract; however, the time taken to undertake this activity would go beyond the current arrangements with Ringway Jacobs and leave the Council exposed in relation to not being able to undertake its statutory duties or planned maintenance in accordance with the current programme of works. The LCP Framework was established in June 2019 and has a Highways Lot (5). The framework has provision for a direct award; directly awarding to Marlborough Highways offers the most expedient and practical solution ensuring the Council has no break in service provision for reactive and planned highways works. The primary reasons for selecting Marlborough Highways Limited instead of one of the other four providers are:

- 4.4.1. Marlborough were successful in securing the street lighting term contract and therefore will be mobilising their operation at the same time;
- 4.4.2. Any TUPE of staff will be simplified and contained within a single provider (i.e. staff will TUPE from Ringway Jacobs for street lighting and highways services).
- 4.4.3. Both street lighting and highways will operate out of a single site within the Borough. An alternate framework provider would either need to establish a site within the Borough or within a distance that would enable them to service the contract within contractual timescales.
- 4.4.4. It is extremely unlikely an alternate provider on the LCP framework would be willing to establish a site within, or nearby, the Borough for a contract with a maximum duration of 9 months.
- 4.4.5. Marlborough are already delivering a number of highways works within the Borough as part of previously tendered works packages.
- 4.4.6. The rates under LCP framework are more favourable than those under the current LoHAC contract.

5. Alternative option considered

- 5.1. Continue with current provider under the LoHAC framework – our experience of using Ringway Jacobs (RJ) over the past years has demonstrated that the provider is not delivering the level of performance required or the savings initially anticipated. Whilst continuation with RJ would appear to offer the Council a seamless way forward, there are a number of historic commercial issues yet to be resolved. Therefore, it would be prudent for the Council to carefully consider the risk, financial or otherwise, associated with an arrangement beyond the end of September.
- 5.2. The rates under the LCP framework are more favourable than those under the LoHAC framework and therefore presents better value to the LoHAC framework.
- 5.3. Conducting another full OJEU procurement or Mini Competition under an existing framework for a longer-term contract. These options could not be

considered due to the time constraints and the fact that it would not be possible to establish a contract by 30th September 2019.

6. Background information

- 6.1. The Council currently delivers its highways works through the London Highways Alliance Contract (LoHAC) framework that was established in 2013. Ringway Jacobs is the sole provider for the North East region of the framework. The Council can commission services Highways and Street Lighting works from the framework to support planned and reactive works.
- 6.2. Approval was sought at various stages since 2013 to extend the use of the framework, allowing for call-offs to be made for planned works until March 2022, during which the LoHAC contract remains in place. The Council only granted approval to use the framework for certain reactive works until September 2019.
- 6.3. On 31st August 2018, the Council issued a Tender for the provision of a term maintenance contract for highways and street lighting services.
- 6.4. On 9th July 2019, Cabinet took the decision not to award Lot 1 (highway term maintenance contract) for the reasons set out in the exempt section (Part B) of that Cabinet report. At the same meeting, Cabinet approved the award of the street lighting term maintenance contract (Lot 2) to Marlborough Highways Limited.
- 6.5. The street lighting term contract commences 1st October 2019.

Proposed Procurement Route

- 6.6. Direct call off under Lot 5 (Highways and Public Realm) of the London Construction Programme (LCP) Framework.

7. Contribution to strategic outcomes

7.1. The Environment and Neighbourhoods Operations Services will be commissioning services during the contract period, as determined annually through the Local Implementation Plan (LiP) submission plan and Sustainable Transport Works Plan to support the delivery of Borough Plan objectives as well as transport and air quality strategy plans.

8. Statutory Officers comments (Chief Finance Officer (including procurement), Assistant Director of Corporate Governance, Equalities)

Finance

8.1 This report seeks approval to award an interim highways contract covering all highway works to Marlborough Highways limited for a maximum 9-month period and up to £4m.

8.2 The funding for this project will be a mixture of Council Capital and TfL for which a planned schedule of works has been created which will ensure this remains within existing budgetary constraints.

8.3 This will enable the sufficient time required for a new tender exercise to be completed which is expected to go live in April 2019.

8.4 The nature of contracts is such that they establish an expectation that they will be the principal vehicle by which the Council commissions maintenance and enhancements scheme (values not exceeding £500,000) of its highways which is statutory duty of the Council.

8.5 The tender process followed ensures that value for money will be achieved through commissioning future highway works through these contracts and as such is expected to realise a reduction in costs compared with the existing contract as a revised schedule of rates has been agreed.

This is expected to mitigate against existing cost pressures within the service if the contract is managed effectively.

8.6 Contract delivery costs and monitoring procedures are currently being reviewed with a view to the delivery of savings as part of the Medium-Term Financial Strategy.

Strategic Procurement

- 8.7 Strategic Procurement has consulted with the Highways Service in respect of the procurement options available to ensure continuity of highways services. Strategic Procurement advised the most expedient route to establishing an alternate highways contract is via Lot 5 (Highways and Public Realm) of the LCP Major Works Framework established in June 2019.
- 8.8 Strategic Procurement confirms the LCP Major Works Framework has provision to directly award under the framework and the services being commissioned are those that fall under Lot 5 of the framework.
- 8.9 Strategic Procurement has managed the procurement process in accordance with CSO 7.01 (b) (by selecting one or more contractors from a Framework) and the direct award procedure under the LCP framework.
- 8.10 Strategic Procurement confirms the rates submitted through the LCP framework are lower than those of the LoHAC framework.
- 8.11 Strategic Procurement confirms a period of 9 months will be sufficient to establish a longer-term highways contract.
- 8.12 Strategic Procurements fully supports the recommendation of this report.
- 8.13 Please refer to the Exempt Part B of this report for additional comments from Strategic Procurement.

Legal comments

- 8.14 The Assistant Director of Corporate Governance has been consulted in the preparation of this report.
- 8.15 Pursuant to Contract Standing Order 7.01(b) the Council can procure works, goods and/or services by selecting a contractor from a framework that has been established in accordance with applicable legislation and the Council's contract standing orders. The LCP Framework has been procured in accordance with applicable legislation and the Council's contract standing orders.

- 8.16 Pursuant to Contract Standing Order 9.07.1. (d) Cabinet has authority to approve contracts of the value set out in the recommendation in the report.
- 8.17 The Assistant Director of Corporate Governance sees no legal reasons preventing Cabinet from approving the recommendation in the report.
- 8.18 Please refer to the Exempt Part B of this report for additional legal comments.

Equality

- 8.19 The Council has a Public Sector Equality Duty under the Equality Act 2010 to have due regard to the need to:
- Eliminate discrimination, harassment and victimisation and any other conduct prohibited by the Act
 - Advance equality of opportunity between people who share those protected characteristics and people who do not
 - Foster good relationships between people who share those protected characteristics and people who do not
- 8.20 The three parts of the duty applies to the following characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex and sexual orientation. Marriage and civil partnership status apply to the first part of the duty.
- 8.21 The decision is to award contracts for term services in relation to highways works. The terms and conditions will require suppliers to comply with Council duties in any works they undertake under the contracts. Equalities formed a key element of the quality assessment process of the tender award to make sure that the successful tenderers will meet the requirements of the council.
- 8.22 Additionally, equality will be a key issue considered in undertaking the design of future schemes / works to be implemented under the contract.

9. Use of Appendices

None

10. Local Government (Access to Information) Act 1985

No supporting documents required.