

## CABINET

25 June 2013

<b>Title:</b> Procurement of Highways Maintenance Services via East London Solutions	
<b>Report of the Cabinet Member for the Environment</b>	
Open report, with an exempt appendix	<b>For Decision</b>
<b>Wards Affected:</b> All	<b>Key Decision:</b> Yes
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<b>Accountable Divisional Director:</b> Robin Payne, Divisional Director of Environment	
<b>Accountable Director:</b> Darren Henaghan, Corporate Director of Housing and Environment	
<b>Summary</b> <p>Highways maintenance is a business critical service for the Council, the quality of which has a direct influence on the lives of residents and all road users within the borough. The current term contract to deliver reactive highways services expired in May 2013. Although the Council has other options in place for the delivery of highways services, there is a need to have in place a replacement contract to cope with areas such as vehicle crossovers, refreshing lines and marking and larger scale repairs to the footways and carriageways.</p> <p>The London Highways Alliance Contract (LoHAC), is a collaborative highways maintenance and improvement schemes contract developed jointly by Boroughs and Transport for London (TfL) and includes a common specification. This is a first for highways maintenance in London. The contract term is eight years. There are four regions and these have been scoped to maintain manageable and sustainable contract size in the event that there is a high level of take-up by London Boroughs. LBBDD falls into the North East sector contract; the contractor is Ringway Jacobs.</p> <p>The LoHAC contractors have been chosen on the basis that (among other things) they will be of sufficient scale and sophistication to plan, manage and deliver services using a combination of internal resources and sub-contractors. The contractors' integrated relationship with clients will lead to efficient delivery and contract management, whilst allowing the Council to retain sole responsibility for asset management and project conception.</p> <p>In recommending this option, commercial analysis has been conducted and the proposed contract will provide value for money compared to the existing contract in terms of reactive highways. Additional benefits for the borough are that as this will be a call off contract, LBBDD will have the option of using any other services offered to support new or existing projects to deliver highway maintenance.</p>	

## **Recommendation(s)**

The Cabinet is recommended to:

- (i) Agree the procurement of a call-off contract under the London Highways Alliance Contract (LoHAC) framework as outlined in option 1 with total anticipated value of £218,000 per annum for a maximum period of eight years starting 1 July 2013;
- (iii) Indicate whether the Cabinet wishes to be further informed or consulted on the progress of the procurement and the award of the contract, or whether it is content to delegate to the commissioning Chief Officer, in consultation with the Corporate Director, the power to award the contract to Ringway Jacobs.

## **Reason(s)**

The procurement exercise to award a new Term Contract will provide the Council with a cost effective and high quality service for the provision of Highways Maintenance, through collaborative procurement with neighboring East London Solutions (ELS) members. The procurement will allow a contract to be entered into that is compliant with all relevant procurement regulations, offers value for money and will allow LBBD to provide highways maintenance to their constituents.

## **1. Introduction and Background**

- 1.1 On 1 June 2009 the Council entered into an agreement with Aggregate Industries UK Ltd trading as Bardon Contracting SE to deliver the Highway works and the Contract expires on 31 May 2013.
- 1.2 Highways maintenance is a business critical service for the Council, the quality of which has a direct influence on the quality of lives of residents and all road users within the borough. Since 1 June 2009 this service has been delivered through Bardon Contracting SE.
- 1.3 In December 2010 a report was submitted to London Transport and Environment Committee (London TEC) titled "Pan London Collaborative Highway Maintenance Contracts" which set out the potential benefits of adopting a common highway contracts across London under the Transform London's Highways Management (TLHM) banner.
- 1.4 London Boroughs, the City of London and TfL between them currently spend around £450m per annum on highways related activities, £360m procured through over 100 contracts based on geographic area, network type and activity. Five contractors hold 50 percent of these contracts which equates to 80 percent by value. Of these five contractors, two deliver more than half (by value) of the London Boroughs' work. One contractor has contracts with at least 13 Boroughs.
- 1.5 LoHAC is a key workstream of the wider programme TLHM. LoHAC is collaborative highways maintenance and improvement schemes contract developed jointly by Boroughs and TfL and includes a common specification – a first for highways maintenance in London. The four regions have been scoped to

maintain manageable and sustainable contract size in the event that there is a high level of take-up by London Boroughs. LBBD falls into the North East sector contract.

- 1.6 A collaborative approach whereby London Boroughs and TfL deliver highways maintenance through the same mechanism has been discussed many times before without coming to fruition. However, with economic conditions resulting in highways maintenance budgets across London reducing and a large number of contracts expiring in 2013, the TLHM Board agreed it was appropriate to run a collaborative procurement for highways maintenance contracts in London.
- 1.7 An objective of the TLHM programme is for LoHAC to provide all highway related services across London and it is anticipated this will be met as further Boroughs form call-off contracts when their existing arrangements expire. Another six Boroughs, whose existing arrangements expire in 2014, have expressed an interest in forming a call-off contract.
- 1.8 The LoHAC contractors have been chosen on the basis that (among other things) they will be of sufficient scale and sophistication to plan, manage and deliver services using a combination of internal resources and sub-contractors. The contractors' integrated relationship with clients will lead to efficient delivery and contract management, whilst allowing the LB of Barking & Dagenham to retain sole responsibility for asset management and project conception.
- 1.9 The conditions of contract are designed to ensure flexibility, meaning clients do not need to take the whole range of services. Services include emergency call-out, winter maintenance, lighting, safety and service inspections, and maintenance of tunnels and structures.
- 1.10 Commercial analysis has been conducted and the proposed contract will provide value for money compared to the existing contract.

## **2. Proposal and Issues**

- 2.1 It is proposed to initially utilise the LoHAC Framework agreement for Reactive Highways Maintenance services and some professional services. Whilst Ringway Jacobs will be the main provider of the service the Council will maintain the option to utilise its Reactive Highways DSO (Direct Services Organisation) and the planned highways maintenance contractor Marlborough Surfacing in order to provide choice, flexibility and reduce risk. The LOHAC framework will also be used where funding awarded through the Local Implementation Plan (LIP) stipulates use of alliance.
- 2.2 Savings have been achieved through a cost focused procurement process (30:70 Quality: Price ration). Inclusion of the open book pricing principles, target costing, annual efficiency challenges and volume discounts also provide opportunities for further savings in future years.
- 2.3 The commercial comparison exercise has shown overall there will be a net reduction in costs for the Council of approximately 21% based upon existing volumes of work and excluding vehicle crossovers which residents pay for directly

(gross figure including crossovers 28.4%) . This saving has been calculated based upon historic volumes from 2011/12.

- 2.4 Non-cashable savings will be achieved due to Highways maintenance being delivered using a common specification. This will increase contractor efficiency and simplify contract management and ongoing asset management. Closer working relationships between LB Barking & Dagenham and other ELS Boroughs will lead to highways maintenance being delivered in a consistent manner across East London. Other services available through the LoHAC framework such as Arboriculture services may be added at later stages which will result in further discounts and contract management efficiencies. Procurement process costs and time spent by officers is greatly reduced by utilising the Framework and the potential 8 year term of the contract will reduce future procurement costs further.

### **3. Options Appraisal**

#### **3.1 Option 1**

Sign up to the LoHAC framework with Ringway Jacobs to provide highways maintenance whilst maintaining the option to utilise our DSO and the planned highways maintenance contractor Marlborough Surfacing in order to provide choice, flexibility and reduce risk. This is the preferred option as outlined in the recommendations.

#### **3.2 Option 2**

Request an exemption from the Council's procurement rules and directly award a contract to Bardon Contracting SE for a period that will allow a full procurement process to take place. Taking account of the commercial comparison analysis of the LoHAC schedule of rates against the current schedule of rates for Bardon's, this option is not recommended as there will be no financial gains and limited flexibility to expand the services to improve highway maintenance.

#### **Option 3**

Do nothing. This is not a viable option as the Council has a duty to maintain the highway network. Although a term contract is in place for planned maintenance which can be utilised for supporting the reactive works this cannot be relied on for all reactive works. The same is true of the Reactive Highways team (DSO) who are not sufficiently resourced to carry out the works other than emergencies and planned work such as gully cleansing.

### **4. Consultation**

- 4.1 Consultation has taken place with the Cabinet Member for Environmental Services, Legal Services, Procurement and finance.

## 5. Financial Implications

Implications completed by: Jahangir Mannan, Group Accountant

- 5.1 The total expenditure on reactive highways maintenance has been in the region of £391,000 in the last financial year (2012/13), and is assumed to reflect the demand for an average year. Given that the amount is substantial and ongoing, it is in accordance with council procurement rules to enter into a new contract for this service as the current one is expiring.
- 5.2 The cost of the service procured through Ringway Jacobs is expected to realise a saving to the council. It is estimated that the annual saving will be in the region of £173,000, however this is indicative based upon 2012/13 volumes and the actual saving will be based upon actual volumes. The resulting saving, excluding spend of vehicle crossovers as this is paid directly by residents, will be subject to 'gainshare' under the contract arrangement with Elevate - based upon an 80:20 (Council:Elevate) ratio.
- 5.3 There are two possible discounts included within the contract:
- (1) The first is a volume related discount where LBBB will be entitled to a rebate of 0.13% if the collective order of the whole North East London Area exceeds £26m. This is payable back to the council at the end of the financial year.
  - (2) The second is a 'Task Order' discount where LBBB will be entitled to 1.5% on orders made over £500,000, as well as an additional discount of 0.5% if orders are made before 31 March for the following financial year. Therefore, taking the maximum possible entitlement to 2%. Discounts are applied to the invoice and therefore captured within service expenditure.

## 6. Legal Implications

- 6.1 The legal implications are set out in **Appendix 1** which is in the exempt section of the agenda as the information relates to the business affairs of a third party.

## 7. Other Implications

- 7.1 **Risk Management** - The main risk is that no formal contract will exist for reactive highways maintenance after 1st June 2013. This makes it hard to guarantee quality of work, ensure the highway network is maintained in accordance with the Department of Transport Code of Practice 'Well Maintained Highways', control insurance risks, reduces the ability to manage the supplier and makes it hard to control costs. The contingency arrangements for June 2013 are that the Council is able to use the term contractor for planned maintenance Marlborough Surfacing. They also have the use of the reactive highways team (DSO) for all emergency works. Forward planning has meant that in preparation for the contract with Bardons coming to an end, work that was outstanding and that could be issued for reactive highways was issued prior to the contract ending.

## 7.2 Contractual Issues

- I. The framework agreements contain the mechanism for call-off contracts to be formed. Each client will form their own call-off contract with the contractor. Neither other Boroughs or TfL will be party to LB of Barking & Dagenham call-off or will have any liabilities associated with each other call-offs.
- II. The LB of Barking & Dagenham will be able to set its own priorities and will have direct ownership of its own contract whilst benefiting from working in a collaborative environment with other boroughs, within our area and having access to any innovation developed in other areas via a series of Area Management Boards upon which the LB of Barking & Dagenham will sit
- III. The term of the framework agreements will be eight years to assure best value for money and efficient delivery of the works. There are barriers to entry due to potentially significant start up costs, investment in capital equipment, plant and systems. Through consultation with the market, it has been identified that framework duration of longer than the normal four years is required to stimulate and enable effective competition and best value through optimum write off of investments. Additionally, it is the intention that boroughs will place call-offs for work as their existing contracts expire and opportunities arise in future years and a longer duration will facilitate this and enable best value through providing economically attractive call-offs for boroughs and the contractors
- IV. The conditions of the call-off contract are based on the NEC3 Term Services Contract, which has been amended to enable authorities to tailor the service provided by a supplier to their individual requirement and to incorporate lessons which have been learnt during the term of the existing contracts.
- V. The facility to move the delivery of core services from a series individual works orders to a lump sum or from a lump sums to a single target cost has been built into the conditions of contract and a map for this transition included. One benefit of target costing is that both parties benefit through a share mechanism if actual costs come in lower than the pre-agreed target. Therefore there is clear incentive for the parties to work collaboratively to decrease costs. The terms of the contract allow migration from lump sum to target cost from April 2015 onwards.
- VI. A contract reduction mechanism has been developed to incentivise the contractors to achieve five key performance indicators. Review of performance against these indicators will take place annually and failure to achieve the indicator targets will result in the duration of the framework agreement and all associated call-off contracts being reduced by six months. Performance on all clients' call-off contracts will be considered. The contractor will have the opportunity to win back these six months by improving their performance against the failing indicator(s) in the following year. Reduction of duration in two consecutive years gives the LB of Barking & Dagenham the right to terminate.
- VII. A volume rebate clause has been included in the contract to incentivise more Boroughs to join as the rebate increases in line with the volume of work procured through the framework. All clients, including the LB of Barking & Dagenham, will benefit financially as more Boroughs join
- VIII. The contract complies with the LB of Barking & Dagenham Responsible Procurement policy and in particular includes:

- (a) a requirement to acknowledge that the LB of Barking & Dagenham has a policy to promote and develop the local economy. This is achieved in part through the promotion and use, where possible, of:
  - Small and Medium Enterprises;
  - Black, Asian and Minority Ethnic businesses;
  - Suppliers from other under-represented or protected groups;
  - Suppliers demonstrating a diverse workforce composition; the Contractor is encouraged to use local suppliers and subcontractors so far as is reasonably practicable and appropriate
- (b) a requirement for contractors to appoint one local apprentice, or equivalent, per £3m spent through the framework;
- (c) the contractor must establish a complaints procedure relating to the LB of Barking & Dagenham Call-Off Contract and provide the LB of Barking & Dagenham with copies of the Contractor's records relating to complaints and the Contractor's responses;
- (d) a requirement to register the LB of Barking & Dagenham Contract under the Considerate Constructor's Scheme and to comply with the Considerate Constructor's Scheme Code of Considerate Practice;
- (e) a requirement for contractors to join the Freight Operator Recognition Scheme and to fit blind-spot warning devices to heavy goods vehicles;
- (f) a requirement for contractors to identify possible sources of pollution and provide detail on how they will prevent and/or reduce them; and
- (g) a requirement to ensure that none of its employees and that none of the employees of its Subcontractors and Indirect Subcontractors are paid an hourly wage (or equivalent hourly wage) less than the London Living Wage

7.3 **Customer Impact** - If the highways network is not maintained residents are directly affected by the condition and therefore safety of the boroughs roads deteriorating. There is a risk of damage caused by carriageway and footway defects to persons and to vehicles. This may lead to successful claims for compensation against the council increasing. Not only will this affect the premium but also the reputation of the Council.

7.4 **Property / Asset Issues** - If this service is not put in place then the condition of the boroughs roads is likely to deteriorate. The borough's Highway assets i.e. Carriageways, footways, street furniture, street lights etc, are held on a database. Any work carried out either planned or reactive is updated in the database so that condition can be assessed and investment required.

**Background Papers Used in the Preparation of the Report:** None.

**List of appendices:**

- **Appendix 1** - Legal Implications (exempt information)