

## CABINET

20 September 2016

<b>Title:</b> Highways and Street Lighting Term Maintenance Contracts	
<b>Report of the Cabinet Member for Finance, Growth and Investment</b>	
<b>Open Report</b>	<b>For Decision</b>
<b>Wards Affected:</b> None	<b>Key Decision:</b> Yes
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<b>Accountable Director:</b> Jonathon Toy, Operational Director, Enforcement Services	
<b>Accountable Strategic Director:</b> Claire Symonds, Strategic Director Customer, Commercial and Service Delivery	
<b>Summary:</b> <p>The purpose of this report is to seek Cabinet approval for officers to continue to work with the London Borough of Havering (LBH) to prepare contracts to procure works for planned highways works and street lighting when the current contract arrangements end in October 2016.</p> <p>Highways are one of the larger spending areas of the London Boroughs and all boroughs have similar needs and requirements in this area. This report draws on the previous joint procurement undertaken with the London Borough of Havering which has demonstrated that efficiencies can be obtained through joint procurement, economies of scale and improvements in contract management.</p> <p>Objectives of jointly procuring highways and street lighting contracts are to:</p> <ul style="list-style-type: none"><li>• Maximise the use of shared knowledge, expertise and resources</li><li>• Standardisation of conditions of contract and specifications</li><li>• Prove savings through greater purchasing power (economies of scale)</li><li>• Improve management of contract and client activities</li></ul> <p>This has been demonstrated over the last five years through the partnership working with Havering which was agreed at Cabinet in November 2010.</p> <p>The collaborative contracts will seek to be sufficiently flexible so as to accommodate the various requirements of each individual borough. Therefore, although there will be one procurement process, the Council will have its own contracts to manage with the successful bidder(s).</p> <p>The current joint contract ends in October 2016 and this report proposes a five-month extension from 1 November 2016 until 31 March 2017 for the Highways and Street Lighting Term Contracts with the current providers. This will be a joint procurement exercise with LBH and in accordance with the Council's policies and procedures. LBH</p>	

have sought and received approval for both the waiver and the proposed procurement route. The collaborative contracts will seek to be sufficiently flexible so as to accommodate the various requirements of each individual borough.

The new contract is expected to commence on 1 April 2017 for a period of five years with an option to extend, subject to performance, for a further two years. The terms and conditions of the contract that will be used will be agreed between each party.

### **Recommendation(s)**

The Cabinet is recommended to:

- (i) Waive the requirements to advertise and tender in accordance with the Council's Contract Procurement Rules in order to extend the existing Highways and Street Lighting term Contracts with the current providers for five months from 1 November 2016 until 31 March 2017 in accordance with the strategy set out in the report;
- (ii) Agree that the Council proceeds, in collaboration with the London Borough of Havering, to invite tenders for highways maintenance (planned and reactive) and street lighting services; and
- (iii) Delegate authority to the Strategic Director for Customer, Commercial and Service Delivery, in consultation with the Cabinet Member for Enforcement and Community Safety, the Strategic Director of Finance and Investment and the Director of Law and Governance, to conduct the procurement and award and enter into the contracts and all other necessary or ancillary agreements with the successful bidder(s) in accordance with the strategy set out in the report.

### **Reason(s)**

The Council has an obligation, under the Highways Act 1980 to maintain the public highway, both in terms of safe for use and fit for purpose.

An extension is required on the current contract to ensure best value for money for future works as failure to extend the contracts would leave the Council vulnerable to the market to get these services delivered.

## **1. Introduction and Background**

- 1.1 In November 2010, in accordance with the Contract Rules, Cabinet gave officers approval to jointly procure planned and Highways and Street Lighting contracts via an OJEU process which took effect from 1st November 2011.
- 1.2 The procurement exercise was carried out in accordance with EU procurement Regulations and the respective Contract Rules. On 16th September 2011 the Corporate Director of Housing and Environment in consultation with the Chief Finance Officer approved the award of contract to Marlborough Surfacing Ltd for Highways and Volker Highways for Street Lighting. The contracts which were based on NEC3, the industry standard for engineering contracts, were awarded to begin

1st November 2011 for an initial 2½ years with the option to extend for up to a further 2½ years.

1.3 In April 2014 the Corporate Director of Housing and Environment, in conjunction with the Chief Finance Officer, under delegated authority approved that the Contracts were extended for a period of 2½ years from 1st May 2014 to 31st October 2016.

1.4 The highway works under the above contracts comprise of larger planned maintenance and improvements schemes and street lighting works, whilst reactive maintenance and smaller schemes remained with the Council's directly employed operations service (DSO).

## **2. Procurement Strategy**

2.1 The two contracts are estimated to be valued at approximately £9.4 million per annum (over 5 years) for the London Borough Barking and Dagenham. The estimated value of the Contracts will be in excess of the threshold for application of the Public Contracts Regulations 2015 (the Regulations) and therefore subject to the full application of the Regulations. It is confirmed that the relevant provisions of both Havering's and Barking & Dagenham's "Contracts Guidance Notes", "Contracts Rules", "Contracts Codes of Practice" and the "Financial Rules" of the Council's Constitution and the EU Procurement Regulations will be fully adhered to in the proposed Joint Procurement.

2.2 The contracts will be tendered by the London Borough of Havering in full compliance with the Public Contracts Regulations 2015 and in accordance with their own procurement rules. A Prior Information Notice (PIN) was issued on 21 January 2016. Adverts will be placed in the Official Journal of the European Union (OJEU) requesting expressions of interest from prospective contractors. It is expected that an OPEN procedure will be used.

2.3 It is anticipated that tenders will be evaluated on a 70/30 (price / quality) ratio. The conditions of contract to be entered into between the Council and the successful tenderer(s) are yet to be agreed and Legal Services shall advise on the implications thereof upon receipt of instructions.

### **2.4. Outline specification of the works, goods or services being procured. Description of nature and scope of works;**

- A range of highways and related services to be delivered to the London Borough of Barking and Dagenham comprising of but not limited to:
- The reactive and planned repair and maintenance of existing highways and other public areas;
- Resurfacing and construction of highways including laying of specialist surfaces;
- Maintenance, repair and replacement of street furniture including non-illuminated signs, railings, posts, etc.
- Laying of road markings;
- Highway drainage;
- Construction of improvement schemes including traffic management and road safety measures, parking controls and public realm improvements;

- Maintenance and repair of street lighting columns, lanterns and associated equipment, including illuminate road signs and bollards;
- Maintenance and repair of other electrical equipment such as barriers;
- Supply and installation of street lighting columns, lanterns, illuminated signs and associated equipment;
- Installation of festive lighting;
- Maintenance works on structures including but not confined to water-proofing; joint replacement; parapet repairs; concrete repairs.

### **Description of Reactive and Planned Highways Maintenance & Construction of Improvement Schemes**

Reactive and Planned highway maintenance including structures, signs and markings.

Re-surfacing and re-construction of highways including specialist surfaces; highway drainage; construction of improvement schemes including new layouts; traffic management, road safety measures, parking controls and public realm works.

To help inform best practice and the market place capabilities the London Borough of Havering are undertaking a soft market test exercise to gather information from potential suppliers.

Currently it is anticipated that this procurement will be undertaken using the Open procedure. The Council reserves the right to alter the lots, lot titles and maximum number of lots that can be applied for following the market test exercise.

Further detail relating to the specific breakdown of the lots and works will be set out clearly in the Contract Notice and Procurement Documentation.

### **Description of Maintenance, repair & replacement of streetlighting, other illuminated signs and associated electrical equipment:**

Supply, installation, maintenance and repair of street lighting columns, lanterns, control systems; other illuminated signs; and other associated electrical equipment.

To help inform best practice and the market place capabilities, the London Borough of Havering are undertaking a soft market test exercise to gather information from potential suppliers.

The feedback obtained will be used to help develop an appropriate procurement strategy specific to the contract(s) which will determine the nature and scope of the lots, and procurement procedure upon which the procurement will be based.

Currently it is anticipated that this procurement will be undertaken using the Open procedure.

The Council reserves the right to alter the lots, lot titles and maximum number of lots that can be applied for following the market test exercise.

Further detail relating to the specific breakdown of the lots and works will be set out clearly in the Contract Notice and Procurement Documentation.

## **2.5 Estimated Contract Value, including the value of any uplift or extension period**

Estimated LBBD value for extending the Highways term contract by 5 months until 31.03.2017 is £2m and for the Street Lighting contract is £300k.

Estimated LBBD contract value for the proposed new Highways Contract for the full contract period of 7 years is £40m and for the Street Lighting term Contracts is £7m.

## **2.6 Duration of the contract, including any options for extension**

Contracts will commence on 1 April 2017 for a period of 5 years with an option to extend subject to performance for a further 2 years. The terms and conditions of the contract that will be used will be agreed between each party.

The proposed joint Contracts exceed the EU threshold for works and services; therefore, there is a legal requirement to tender the contracts in the EU.

## **2.7 Recommended procurement procedure and reasons for the recommendation**

The contracts will be tendered by the London Borough of Havering in full compliance with the Public Contracts Regulations 2015 and in accordance with their own procurement rules. Adverts will be placed in the Official Journal of the European Union (OJEU) inviting expressions of interest from prospective contractors to receive tender documents. An Open tender procedure will be used in order to reduce the tender period.

The purpose of this minor extension to the Highways and Street Lighting term Contracts is purely to provide sufficient time to correctly carry out the full tender process in accordance with the Council's policies and procedures. There is no intention to carry out any major works apart from essential maintenance both on the Highways side and for Street Lighting.

## **2.8 The contract delivery methodology and documentation to be adopted.**

Both Highways and Lighting contracts are based on the New Engineering Contract (NEC3) Conditions of Contract with a contract period of 5 years plus possible 2 years extension subject to performance.

The tender period is currently programmed between September and October 2016. The award of contracts is anticipated to be confirmed in December 2016 and the contracts are expected to start 1st April 2017.

Once the successful tenderer for each of the contracts is chosen a separate but identical contract will be awarded by each Council who will manage their contract independently. An award to one contractor for both the Highways and Lighting element is possible if they offer the best value for money in each instance.

Contracts will be based on the schedule of rates (SoR) format and required works will be subject to separate orders and invoices.

**2.9 Outcomes, savings and efficiencies expected as a consequence of awarding the proposed contract.**

Until the tendering process is complete the potential savings cannot be quantified, though, there are potential benefits in producing a larger contract and joint working with another borough, which will provide an opportunity to realise these savings in terms of economies of scale as well as sharing the administration / tendering costs.

Both London Borough of Havering and London Borough of Barking and Dagenham have considerable experience in procuring and running this type of work. LBBB worked collaboratively with LBH for the previous contracts for these works very successfully for the current contract period. Bidding costs for this type of work can be considerable and with our reduced staffing levels this process can be onerous and cause delays. Timelines are short, so with shared knowledge and experience we believe that the joint process is the preferred one.

From a contractor's perspective, the scale of the project is doubled if two neighbouring local authorities advertise this work at the same time. Therefore, reduced costs are realised for both operational depots and all other potential associated overheads. A joint service is also a consideration, whereby the winning bidder may be able to provide both Highways and Street Lighting services.

**2.10 Criteria against which the tenderers are to be selected and contract is to be awarded.**

The Contract will be awarded on the basis of the Most Economically Advantageous Tender (MEAT). Tender evaluation criteria will be based on 30% Quality, through an assessment of the Method Statements, and 70% Pricing Schedule Submissions.

It is proposed that the tenders be evaluated by both LBH and LBBB staff both for quality and price. The panel will include senior managers from LBBB and other senior staff from LBH. These senior management teams are in place to ensure that best value is achieved for both LBBB and LBH alike.

**2.11 How the procurement will address and implement the Council's Social Value policies.**

A well maintained Highways and Lighting stock will improve the Environment and benefit all users of public highway network. Tenders will be evaluated both on price and quality submissions ensuring it is in line with the Social Value Act 2012.

**3. Options Appraisal**

3.1 Option 1 – The Council solely procures its own contracts; this is currently not an option due to the size of the contract and the fact that current arrangement has already undergone a 2.5 year extension, meaning this 5 month extension will allow a sole procurement / tender process to be possible.

3.2 Option 2 – Do nothing. The Council is required to tender for contracts for planned highways works and street lighting works. The Council is not able to opt out of putting these contracts in place as there are no alternatives available through any Council framework. The Council could use the in house DSO team, though, it's

neither viable nor cost effective to deliver the full range of highways and lighting works. The in-house team does not have the expertise or experience to deliver these services, however it will continue to provide small scale reactive works.

- 3.3 Option 3 – The Council continues to work with the London Borough of Havering to prepare common specifications and contract documents to procure planned highways works and street lighting works contracts at the earliest opportunity. These contracts should operate until 2022; however the contract will have provision for early termination should it be deemed best value is not being provided.
- 3.4 Option 4 – To utilise the London Highways Alliance Contract (LoHAC) - Considered and rejected. This contract has not been used to date and it is therefore not tried and tested and there is no guarantee that the existing contractor could provide the level of service required. This may also lead to an increase in staffing levels and costs. Potentially this could be more expensive because of start-up costs and prove difficult to manage in the short term. This work can be carried out as part of the full tender process and evaluation to ensure best value is achieved for the Council.
- 3.5 It is recommended to opt for Option 3 as this enables the Council to work with another borough to assess the level of potential benefit in terms of economies of scale and joint administration without any significant risk to statutory undertakings.

#### **4. Waiver**

- 4.1 A waiver of the Council's Contract Rules is required under Rule 57.1 (d) to extend the contracts by 5 months as the contracts were already extended for a period of 2½ years from 1 May 2014 to 31 October 2016 and no specific provision for further extension exists in the contract. A waiver is granted in accordance with Rule 6.6 (a) of the contract rules "that an emergency situation exists" so as to allow sufficient time for officers to procure these contracts and facilitate continuation of the works. As the value of the waiver is £500,000 or more contract rule 6.3 requires that approval must be submitted to Cabinet.
- 4.2 London Borough of Havering are the lead on the procurement process; however due to unforeseen circumstances as outlined in their extension report (at <http://democracy.havering.gov.uk/ieDecisionDetails.aspx?id=2129&LLL=0>), the process has been delayed resulting in the need to extend the current contracts to enable the authority to continue to maintain the highway which is a statutory duty under the Highways Act 1080.
- 4.3 Due to the nature of the highways industry and the costs involved with plant / machinery etc. the quicker we can let the contractors know that we will be extending the contracts to 31 March 2017; the more chance there is that they will be available to do so as there maybe remobilisation costs incurred if they start to demobilise their operations.
- 4.4 Not having a contractor available is not an option as this would have a negative impact on the highways infrastructure.
- 4.5 The best value solution to the Council is to extend the contracts for a further five months as soon as practicable as this will ensure that the current contract rates can be honoured and no remobilisation costs are incurred.

## 5. Other Considerations and Implications

- 5.1 **Risk and Risk Management** - If the contracts are not extended and successfully tendered there are no other mechanisms in place to maintain highways. This will lead to complaints, a possible increase in fear of crime and a risk to the safety of the highways network.

One of the risks is for the incumbent contractors not to agree to extend the contract, although this was mitigated by keeping a dialog with the two contractors who have agreed to extend in principle.

- 5.2. **Health Issues** -.The contracts will assist in ensuring that the Council maintains both highways and street lighting to a sufficient level as to prevent accidents or crime. It would also assist the Council in meeting its objectives in maintaining their assets.
- 5.3. **Crime and Disorder Issues** - Should the lighting fail and areas of darkness are created, then the risk and the fear of crime are likely to increase for residents and stakeholders of the borough.
- 5.4 **Property / Asset Issues** - The Council has a statutory obligation to maintain highways and street lighting in accordance with the Highways Acts 1980 and the code of practice for Well Maintained Highways (July 2005) and Well Lit Highways (November 2004). The work to carry out the maintenance is contracted out and programme managed in accordance with the Council's Network Management Plan.
- 5.5. **Equalities and other Customer Impact** - There are not specific implications but the maintenance and improvement of the borough's highways and lighting stock will benefit all users of public highway network.

## 6. Consultation

- 6.1 Consultation for this tender exercise has taken place through circulation of this report to relevant Members and officers. The report and full business case was also considered and endorsed by the Corporate Procurement Board on 15 August 2016.

## 7. Corporate Procurement

Implications completed by: Kevin Lynch, Procurement Category Manager

- 7.1 The current term contracts expire on 31 October 2016. There was provision for an extension and this was taken up. There is no further provision within the current contracts to extend.

The report seeks the approval of two strategies

- A five month waiver until such time as a full procurement process is conducted.
- Approval to collaboratively tender in conjunction with London Borough of Havering for the provision of; Highways planned and reactive maintenance & street lighting. The term will be for five years initially with the potential to extend by a period of 2 additional years.



- 7.2 A waiver is sought for an interim period of five months to allow sufficient time for a compliant tender process to be completed. The anticipated value of the waiver is £2m. This value is below the OJEU threshold for works of £4,104,394 and therefore is not subject to European legislation. The waiver will seek to directly award the work to the current suppliers.
- 7.3 LBBB should ensure moving forward that sufficient time is allowed to reprocure the service before contracts expire. More forward planning will allow LBBB to plan future needs and to warm and position the market. In this instance, directly awarding the work for a five month period cannot be demonstrated to deliver value for money as LBBB is in a position that is dependent on the current suppliers costing.
- 7.4 The report also seeks approval to enter into a collaborative procurement exercise with London Borough of Havering for the provision of highways planned and reactive and street lighting on a five year contract with a potential two year extension. The anticipated value of this tender exercise is £47m over a potential seven year contract term. This is subject to European legislation as it is over the current threshold for works of £4,104,394. The opportunity will be required to be advertised on the OJEU Journal, Contracts Finder, and LBBB website. LBH will be the lead authority on this procurement exercise with input from LBBB as necessary.
- 7.5 This procurement exercise will be carried out using the open procedure. A PIN was issued on the 21<sup>st</sup> January 2016. This will allow for a reduction in timescales.
- 7.6 A collaborative procurement exercise should achieve economies of scale and allow the participating authorities to take a larger project to the market thus gaining more market leverage that maybe would not be delivered if each authority ran separate procurement exercises.

## **8. Financial Implications**

Implications completed by: Katherine Heffernan, Group Manager –Services Finance

- 8.1 The report seeks waiver under the council's contract rules to extend the contract for the current provider of highways and street lighting maintenance for a period of 5 months to the end of March 2017 to allow for a procurement exercise to be undertaken. The current contract ends in October 2016. The estimated value for extending both contracts for a further 5 months is £2.3m and will be met from existing 2016 /17 budgets.
- 8.2 The report also seeks approval for proceed with the procurement exercise for Highways and Street lighting in collaboration with the London Borough of Havering. The contract will be for a 5 year term from April 2017 with the potential to extend for a further 2 years.
- 8.3 The contracts will be on a Schedule of Rates with works being subject to separate order.
- 8.4 Costs will be managed within approved revenue and capital budgets.

## 9. Legal Implications

Implications completed by: Kayleigh Eaton, Contracts and Procurement Solicitor, Law and Governance

- 9.1 This report is seeking Cabinet's approval to firstly, waive the requirement to tender and extend the existing contracts for highways and lighting maintenance for a period of 5 months from 1 November 2016 until 31 March 2017 and secondly, to proceed with the procurement of highways maintenance and lighting contracts for planned and reactive works in collaboration with the London Borough of Havering.
- 9.2 It is noted that the request for the extensions is sought to allow sufficient time for officers to procure these contracts and facilitate continuation of the works. The report author has advised that the extensions of the highways and lighting contracts will cost in the region of £2million and £300,000 respectively. In accordance with Contract Rule 57.1 (d) the responsible directorate is seeking a waiver of the requirement to conduct a competitive tender exercise as required by Rule 28.5 as no specific provision for extension exists in the contract, due to all extension options already being used. As the value of the waiver for the highways contract is above £500,000 contract rule 6.3 requires that approval must be granted by Cabinet.
- 9.3 The Law allows contracts to be extended beyond their initial term subject to certain conditions being satisfied. Providing that the extension is not substantial and falls within certain thresholds the extension will be permitted. Calculations provided by officers show that the extension values would fall within these permitted thresholds.
- 9.4 The proposed new procurements being considered are estimated to cost the Council approximately £40 million for highways maintenance and £7m for lighting maintenance over the lifetime of each contract and therefore are above the EU thresholds for service and works contracts (currently set at approximately £164,176 for services and £4,104,394 for works). This means that there is a legal requirement to competitively tender the contracts via the Official Journal of the European Union (OJEU).
- 9.5 This report advises that the London Borough of Havering will be leading on this procurement and the intention is to tender this contract in accordance with the Public Contracts Regulations 2015 (the 'Regulations') using the Open procedure. The requirements for competitive tendering, as contained in the Regulations and rule 28.5 of the Council's Contract Rules, should therefore be met, provided that the procedure is conducted in accordance with the Regulations.
- 9.6 Contract Rule 28.8 of the Council's Contract Rules requires that all procurements of contracts above £500,000 in value must be submitted to Cabinet for approval. In line with Contract Rule 50.15, Cabinet can indicate whether it is content for the Chief Officer to award the contracts following the procurement process with the approval of Corporate Finance.
- 9.7 The Responsible Directorate and report author are requested to keep the Law and Governance Team fully advised on the progress of this procurement who will be available to assist and advise throughout the process.

## **Public Background Papers Used in the Preparation of the Report:**

- A) London Borough of Havering Report - Notice of KEY Executive Decision  
Highways and Street Lighting term maintenance contracts (agreement to start the tendering process) - 21st January 2016  
<http://democracy.havering.gov.uk/ieDecisionDetails.aspx?ID=2126>
  
- B) London Borough of Havering Report - Notice of KEY Executive Decision  
Extension to highways and street lighting term maintenance contracts - 09.08.16  
<http://democracy.havering.gov.uk/ieDecisionDetails.aspx?id=2129&LLL=0>

**List of appendices:** None