

## CABINET

23 NOVEMBER 2010

### REPORT OF THE CABINET MEMBER FOR ENVIRONMENT

<b>Title:</b> Joint Procurement of Highways and Street Lighting Contracts with the London Borough of Havering	<b>For Decision</b>
<p><b>Summary:</b></p> <p>The purpose of this report is to seek Cabinet approval for officers to work with the London Borough of Havering to prepare contracts to procure works for planned highways works and street lighting when the current contract arrangements end.</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 research by Capital Ambition, London's Improvement and Efficiency Partnership, that demonstrated that efficiencies can be obtained through joint procurement, economies of scale and improvements in contract management. This proposed procurement is part funded by Capital Ambition.</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>The longer term aim is to enter a joint procurement arrangement with the six boroughs that make up the East London Delivery Arm of Capital Ambition (East London Solutions). This broader work will take place in 2014 once their respective contracts end. Leading up to 2014, the joint procurement contracts by the London Borough of Havering and London Borough of Barking and Dagenham will serve to act as a pathfinder for good practice.</p> <p>The joint procurement exercise will be led by the London Borough of Havering with the active support of the London Borough of Barking and Dagenham. Assistance will also be provided by the Capital Ambition and East London Solutions.</p> <p>The collaborative contracts will seek to be sufficiently flexible so as to accommodate the various requirements of each individual borough.</p> <p><b>Wards Affected:</b> ALL</p>	
<p><b>Recommendation(s)</b></p> <p>The Cabinet is recommended to agree:</p> <p>(i) To the request to seek tenders for a new contract for planned highways maintenance works and a second contract for street lighting, over an initial 2 ½ year term with the possibility of extending to a further 2 ½ years subject to satisfactory</p>	

- performance.
- (ii) That the procurement can be completed through a joint procurement exercise with the London Borough of Havering.
  - (iii) That the current contractual arrangements for planned highways maintenance and street lighting be extended to 31 October 2011 to coincide with the proposed procurement timetable
  - (iv) That the Corporate Director of Customer Services, in consultation with the Corporate Director of Finance and Resources, be given delegated authority to approve the use of the contracts following the agreed procurement process.

### **Reason(s)**

As part of the Capital Ambition, analysis has identified that the boroughs in East London all have different contract arrangements in place and that there is the scope for efficiencies and savings to be made by increasing the size of the contract value. The purpose of this report is to get agreement from the Council and a commitment for a joint procurement exercise with the London Borough of Havering for two individual contracts for Planned Highway Works and Street Lighting works starting 1 November 2011.

Agreement is also sought to put the necessary arrangements in place to extend the existing contract. The boroughs will also look at how they can work together in the management of the contract and client activities.

### **Comments of the Chief Financial Officer**

For this financial year the current street lighting contract of £1.9m is split between revenue (£900k) and capital £1m. An appropriate bid would need to be made for any future years' capital funding.

The £5m highways programme is for capital works only. As with the street lighting contract any funding for capital works will be in line with approved bids. However, it should be noted that approximately £1m of the funding is provided by TfL. The TfL grant claim is reviewed every 5 years and the next review date is due in August 2011. The value of future contracts is therefore yet to be determined so therefore it is not possible to give a firm indication of potential savings from re-negotiating the contract.

The joint procurement proposal is in line with modern procurement practise and increases the Council's buying power within the market. This, along with simplified monitoring arrangements, should achieve savings to the Council, but the extent of any savings cannot be quantified fully until later in the procurement process, but in any event it will be contained in existing budgets.

The contract for highways maintenance ends in August 2011. In order to align the contractual arrangements for the London Borough of Barking and Dagenham and the London Borough of Havering the contract start date for the joint arrangement will be 1<sup>st</sup> November 2011. By extending the existing contracts to this joint date, the Council is foregoing any potential savings although this cannot be quantified at this stage. To minimise this affect officers are currently in negotiation with the highways maintenance and street lighting suppliers to reduce contract costs.

### **Comments of the Legal Partner**

1. This report is seeking Cabinet's approval of a proposal for the Council to enter into an arrangement with the London Borough of Havering for the joint procurement of two contracts – (1) a contract for planned highway works, and (2) a contract for street lighting works.
2. A larger-scale joint arrangement between the six East London boroughs for the procurement of these contracts had originally been contemplated, but upon further investigation it was discovered that due to existing contractual commitments by four of the boroughs, such an arrangement would not be possible until 2014 at the earliest, hence the proposal to enter into a joint arrangement with London Borough of Havering, as the only neighbouring borough that would be in a position to undertake a joint procurement with LBBB for now.
3. The report states that the proposed joint procurement exercise with the London Borough of Havering will reduce procurement costs, achieve economies of scale and efficiencies in contract management for both boroughs, and maximise the use of shared knowledge, expertise and resources.
4. The Government has for some time now been actively encouraging collaborative working between local authorities, and as far back as 2006, the Local Government White Paper – “Strong and Prosperous Communities” – encouraged joint commissioning of services by local authorities and highlighted its potential benefits, including achieving economies of scale.
5. It is anticipated that the proposed joint procurement exercise will be led by the London Borough of Havering with support from the London Borough of Barking and Dagenham in terms of preparation of common specifications and contract documents.
6. The respective value of the proposed joint contracts exceeds the EU threshold for works (currently £3.9m), therefore there is a legal requirement to tender the contracts in the EU.
7. In compliance with Contract Rule 3.6 which requires the proposed strategy for contracts above £400k to be presented to Cabinet for approval, the Cabinet Member for Environment has set out the proposed strategy for the joint procurement of the contracts in Section 5 of this report, for approval by Cabinet.
8. In deciding whether or not to approve the proposed joint procurement with the London Borough of Havering, Cabinet, having regard to the Council's fiduciary duty and its duty to deliver Best Value, must satisfy itself that the joint procurement will represent value for money for the Council.
9. Further to the request for approval of the proposed joint procurement with the London Borough of Havering, this report is requesting that Cabinet delegates its authority to approve the use of the awarded contracts to the Corporate Director of Customer Services, acting in consultation with the Corporate Director of Finance and Resources.
10. Cabinet has the power under Section 15 (6) of the Local Government Act 2000 and under Part C of the Council's Constitution to delegate its powers to officers.

11. The report is furthermore seeking Cabinet's approval of an extension of the Council's existing contractual arrangements for the provision of Planned Highways Maintenance works and Street Lighting until 31st October 2011, to facilitate continuation of the works pending the anticipated completion date of the proposed joint procurement of replacement contracts, which is 1st November 2011.
12. Contract Rule 4.3 empowers the Executive to approve contract extensions where such extensions have been provided for as an option within the terms of the original tendered contract.
13. The terms of the existing Street Lighting contract allows the contract to be extended up to 3 (three) separate times by the Council for a period of up to one year each time. The option to extend has been exercised once, upon expiry of the original term of the contract, thereby extending the contract until September 2010. The Council therefore has two further opportunities to extend the contract by a period of up to one year each time, subject to the agreement of the Contractor.
14. The report states that the Council's current Highways Maintenance contract will expire in July 2011 i.e. three months prior to the anticipated completion date of the proposed joint procurement of replacement contracts. The Highways Department have however confirmed that the current contractor is agreeable to a short-term extension of the contract pending completion date of the procurement of a replacement contract.
15. Although there is some scope for an argument that such an extension would amount to a separate contract which should itself be procured, the commercial reality is that a short-term extension pending completion of the contract re-procurement is the most efficient way of ensuring continuity of a service that the Council has a statutory obligation to provide, pending completion of the proposed procurement.
16. All reasonable endeavours should however be undertaken to adhere to the proposed joint procurement timescales, to ensure that the procurement is completed by the anticipated date of 1<sup>st</sup> November 2011, in order to obviate the need of a further extension of the current Highways Maintenance contract.
17. The Legal Partner (Property, Procurement and Planning) confirms that provided Cabinet is satisfied that the proposed joint procurement with the London Borough of Havering will represent value for money for the Council, there is no legal reason preventing Cabinet from approving the recommendations of this report. The Legal Partner should be consulted in relation to the contractual aspects of the procurement.

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## **1. Background**

- 1.1 Planned highways works and street lighting are currently delivered through two individual contracts whose annual value are approximately £1.9m per annum for street lighting and £5m per annum for planned highways works. The Council has a statutory obligation to maintain highways and street lighting in accordance with The Highways Act 1980 and the code of practices for Well Maintained Highways (July 2005) and Well Lit Highways (November 2004)
- 1.2 The Contract for planned highways works is currently with Bardon Contracting and is valued at approximately £25m. It is due to expire in July 2011. The contract for Street Lighting is with May Gurney and expired in September 2010. It is valued at approximately £1.9m per annum and the contractual arrangement is currently being maintained.
- 1.3 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 research by Capital Ambition, London's Improvement and Efficiency Partnership, that demonstrated that efficiencies can be obtained through joint procurement, economies of scale and improvements in contract management. This proposed procurement is part funded by Capital Ambition.
- 1.4 East London Solutions analysis has identified that boroughs in East London all have different contract arrangements in place, that prices differ across the boroughs and that there is scope for efficiencies and savings by economies of scale. East London Solutions, was created by a number of London Boroughs, East London Solutions is about shared solutions which create a range of opportunities for East London authorities to work together to achieve demonstrable improvement and efficiencies in service design, management and delivery and/or procurement and market management. The boroughs that form part of East London Solutions are the London Borough of Barking and Dagenham, London Borough of Newham, London Borough of Havering, London Borough of Redbridge, London Borough of Tower Hamlets and London Borough of Waltham Forest.

## **2. Proposal**

- 2.1 In order to consider how savings can be realised an opportunity has arisen whereby the Council and the London Borough of Havering undertake a pathfinder project for Capital Ambition which is looking to take forward a regional approach to procurement of planned highways works and street lighting works. This involves joint procurement using common specifications and contracts which will in effect pilot contracts which will be used on a larger sub regional basis from 2014.
- 2.2 The joint contract arrangements with the London Borough of Havering will operate from 2011 until 2014 when six East London Boroughs will seek to operate single contracts for planned highways works and street lighting works using common specifications and contract arrangements.
- 2.3 Initially procurement will be led by the London Borough of Havering with support from the London Borough of Barking and Dagenham, the Capital Ambition and East London Solutions.

### **3. Financial Issues**

- 3.1 There are potential savings to be made by jointly procuring services with the London Borough of Havering and subsequently with other Boroughs. Although the Council will need to provide resources in the preparation of common specifications and contract documents, the London Borough of Havering and East London Solutions will undertake the procurement exercise.
- 3.2 This exercise should mean a reduction in the cost of procurement, economies of scale and efficiencies in contract management. From 2014 further benefits should accrue when additional boroughs are able to enter into the procurement exercise.
- 3.3 By extending existing contract arrangements, the Council may initially be losing out on possible savings that more immediate long term contracts could generate.
- 3.4 For the purpose of preparing future contracts, the street lighting contract will have a valuation of up to £1.9m per annum and the planned highways works will be up to a value of £5m per annum.

### **4. Legal Issues**

- 4.1 The Council is required to tender for both planned highways works and street lighting works. These contracts will need to be in place from 2011.
- 4.2 Liability for TUPE will rest with the incumbent and any future contractors.

### **5. Procurement Strategy**

- 5.1 The two contracts are estimated to be valued at approximately £6.9 million per annum for the London Borough Barking and Dagenham and that the estimated value of the Contracts will be in excess of the threshold for application of the Public Contracts Regulations 2006 (the Regulations) and therefore subject to the full application of the Regulations. It is confirmed that the relevant provisions of the "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.
- 5.2. The contracts will be tendered by the London Borough of Havering in full with European procurement rules Directive 2004/18/EEC and in accordance with their own procurement rules. Adverts will be placed in the Official Journal of the European Union (OJEU) requesting expressions of interest from prospective contractors. It is expected that the two stage Restricted procedure will be used.
- 5.3. It is anticipated that tenders will be evaluated on a 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

### **6. Other Implications**

6.1 **Risk Management** – There is a risk that when tenders are returned they do not provide financial savings. The outcome of the tendering exercises will be reported to Cabinet, with comments on financial outcome, for delegated approval.

6.2 **Contractual Issues** – There is a need to extend current contractual arrangements in order to let the two joint contracts with the London Borough of Havering.

The new jointly procured contracts will be operational until 2014 when it is intended that five East London Boroughs will enter, with the London Borough of Barking and Dagenham, into joint contracts for planned highways works and street lighting works.

All six boroughs should be in position to enter into a joint contract in 2014, however to protect the contractual interests of the London Borough of Havering and London Borough of Barking and Dagenham, the contracts let in 2011 will be operational until 2014 but with the ability to extend for a further two and a half years.

6.3 **Staffing Issues** – No significant staffing issues at this time

6.4 **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.

## 7. Options appraisal

7.1 Option 1 – The Council solely procures its contracts until 2014 and then considers the option of jointly procuring with the other five East London Boroughs. There are potential benefits of procuring larger contracts and a joint approach with the London Borough of Havering will provide an opportunity to realise these savings from 2011 and also to assess the benefits/difficulties of operating with other boroughs.

7.2 Option 2 – Do nothing. The Council is required to tender for contracts for planned highways works and street lighting works in 2011. The Council is not able to opt out of putting these contracts in place.

7.3 Option 3 – The Council works 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 2014; at that time four other East London Boroughs will be able to participate in joint, six borough, contracts for these works thereby appreciating benefits in terms of economies of scale and contract administration.

7.4 It is suggested 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 before entering into the larger contract arrangement in 2014 without significant or long term risk.

## 8. Background Papers Used in the Preparation of the Report:

None

**9. List of appendices:**

None