

EXEMPT OR CONFIDENTIAL REPORT

The following paragraph of [Part 4b Section 10 of the constitution](#) applies in respect of information given in **Appendix 1, Appendix 2 and Appendix 4** of this report and it is therefore exempt from publication. Members and officers are advised not to disclose the contents of this report:

Information relating to the financial or business affairs of any particular person (including the Authority holding that information)

Committee: Cabinet

Date: 15th July 2019

Agenda Item:

Wards: ALL

Subject: Award of contract for the delivery of Highway Works and Services within Merton.

Lead officer: Chris Lee – Director of Environment and Regeneration

Lead member: Councillor Martin Whelton – Cabinet Member for Regeneration, Environment and Housing

Contact officer: Gary Marshall

Recommendations:

- A. That Cabinet approve the award of the new contract for delivery of Highway Works and Services within Merton to the contractor that submitted the highest quality tender, as outlined in the confidential Appendix 1. The initial period is for seven years starting subject to the extension of the existing contract, 1 March 2020 at the latest with an estimated value of £35m with the option to extend for an additional three years at a total estimated value of £50m for the life of the contract.
 - A. That delegated authority is granted to the Director of Environment and Regeneration, after consultation with the Cabinet Member for, Regeneration Housing and Transport, to approve any further matters relating to the contract award and the additional three years extension.
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Important notice: It should be noted that the names of any of the bidders, including the Preferred Bidder, are confidential at this point and should not be disclosed publicly even after Cabinet resolution on 15th July 2019 and any subsequent call-in period. In line with the Public Contract Regulations, all bidders need to be made aware of the intention award at exactly the same time (i.e. via a standstill letter via the E-Tendering portal). Disclosing the names of any of the bidders, including the Preferred Bidder, prior to the notification going out simultaneously via E-Tendering opens up the council to a potential legal challenge for failure to follow due process.

1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. This report is to inform members of the process carried out to re-procure Merton's Highways Works and Services Term Contract and the proposal submitted to the council, following a competitive procurement exercise, for the continuous delivery of planned and reactive highway works and services from 31st August 2019.
- 1.2. The recommendation is that Cabinet agrees the award of the contract for highway works and services to the bidder that submitted, the highest quality tender after undergoing a competitive procurement exercise and achieving the highest total score for both quality and price.
- 1.3. The recommendation is also to delegate authority to the Director of Environment and Regeneration in consultation with the Cabinet Member to approve any further matters relating to the contract award and the three year extension.

2 DETAILS

- 2.1. Following a previous competitive procurement exercise, the Council's current Highway Works and Services Term Contract was awarded to F M Conway Limited for a five-year term from 1 September 2012 to 31 August 2017, with the option to extend for a further 2 years until 31 August 2019.

The procurement process

- 2.2. In October/November 2017 a market survey was carried out to determine the best route forward for the council to procure a new contract at the expiration of the 2-year extension. FM Conway, JB Riney, Kenson Contractors, Volker Highways, Kier Highways, Croydon Council, TfL, Richmond/Wandsworth Councils and the London Borough of Waltham Forest participated in this exercise.
- 2.3. Based on the outcome of that market survey a strategy was recommended to, and approved by Procurement Board to undertake a fully compliant procurement process in line with the Public Contracts Regulations 2015 (PRC2015).
- 2.4. A report to Merton's Sustainable Communities Scrutiny Panel on 4th September 2018 set out the reasoning that going out to full procurement gives the council the opportunity to tailor the scope of works/specification to meet its current needs and requirements while ensuring savings can be realised where possible and identifying any social value benefits. In addition an update of this procurement process was presented to Sustainable Communities Scrutiny Panel on 26 Feb 2019.
- 2.5. As part of preparation for the procurement exercise, a market/contractor engagement day was carried out in August 2018, which recorded a turnout of 9 attendees listed below:
 - AGS One Group
 - FM Conway
 - JB Riney & Co Ltd
 - Natinwide Traffic Solutions
 - Cappagh Ltd

- J McCann & Co Ltd
- Volker Highways Ltd
- Elm Surfacing Ltd
- Colas

- 2.6. Initially Competitive Dialogue was the preferred route to market. However following market engagement and consultation with the Council's Legal and Commercial Services teams, it was agreed that a competitive dialogue process would be too expensive for both the council and the potential bidders given the value of Merton's contract. As such it was deemed that the most suitable route to market was a restricted two-stage procurement process.
- 2.7. As part of the procurement process, a notice was placed in the Official Journal of the European Union (OJEU) on 1st February 2019. The Selection Questionnaire (SQ) was published on 6th February 2019 with a return deadline date of 15th March 2019. Five bidders responded to the SQ and four were selected to submit an Invitation to Tender (ITT). (For details of the evaluation methodology for both SQ and ITT, please see Appendix 3 procurement evaluation breakdown).
- 2.8. The contract is based on the Engineering Contract Term Services (NEC4) which is based on a partnering ethos. This type of contract was chosen because it encourages employers, designers and contractors to work collaboratively, its simplicity and clarity, which is designed to minimise the incidence of disputes.
- 2.9. When writing the scope for the new contract, the council sought to achieve efficiencies by having a broader range of works and services within the contract that we can call on if they are needed. This will enable the council to avoid unnecessary procurement costs and mobilise for works more swiftly. The scope of the new highways contract includes the following works that the council can commission when needed.
- Routine maintenance of carriageways, footways and parking locations. (*parking element is a new activity included in this contract*)
 - Routine maintenance of structures including retaining walls, culverts, bridges and underpasses (*more in depth activities included in this contract including concrete, brickwork and waterproofing*)
 - Emergency repairs of carriageways and footways.
 - In hours and out of hours emergency response to incidents on the highway network, and parking locations including weather emergencies.
 - Reactive cut back of vegetation (*new activity included in this contract*)
 - Provision, maintenance & removal of posts, bollards and other items of street furniture.
 - Drainage cleansing, including soakaways, culverts, gully emptying and jetting, and watercourse maintenance. (*Cleansing of high risk gullies is new activity included in this contract*)

- Drainage installation and remedial works.
 - Proprietary surfacing, asphaltic concrete and hot rolled asphalt surfacing of carriageways and other areas.
 - Anti-skid surfacing.
 - Kerbing.
 - Patching and repair of footways paved areas and Car Parks. *(parking element is a new activity included in this contract)*
 - Paving and surfacing of footways and paved areas.
 - Provision and maintenance of Traffic Management for third parties.
 - Provision, maintenance & removal of road markings, and Signs
 - Sign cleaning
 - Improvement Projects
 - Highways Structures Inspections *(new activity included in this contract)*
 - Contractor's Design *((more in depth activities included in this contract)*
 - Contractor Resources
 - Professional Services,
- 2.10. By including measures in the new contract that are useful to the council's Parking Services, it will create efficiencies in delivering Parking services without having to carry out additional procurement.
- 2.11. The new contract has capacity for the use of new materials incorporated into the bill. It also takes the circular economy approach,, for example the council can now require eligible materials to be recycled into other works instead of disposing of these materials.
- 2.12. The new contract has taken an innovative approach to the delivery of the works in line with changing technology. For example, there is now a requirement to provide real time update on-site, which will greatly improve the information available and the council's reputation in managing highway works.
- 2.13. The price schedule had extensive and additional element added to it from the current price list. The current contract's price list was more limited and led to a lot of variation within the current contract. Adding additional elements to the price list will potentially save the council carrying out numerous variations with subsequent cost implications.
- 2.14. The new Highways Contract allows the council to seek external quotes for any project with a value of £500,000 and over. This approach allows the council to compare different rates for projects over that value, which potentially provide savings for the council.
- 2.15. Ten Key Performance Indicators (KPI's) have been specifically developed to measure the performance of the contractor and ensure continuous improvement throughout the term of the contract.
- 2.16. Low service damages have been included within this contract showing parity with utility companies, therefore if the service does not meet the service level stated within the contract, low services damages can be applied to the contractor.

- 2.17. 9 contractors attended the market engagement event. 4 contractors chose to participate in the ongoing procurement process. A few of the reasons for the lower bid rate return include:
- 2.17.1 Merton is a relatively small borough and as such the total contract value was not as attractive as some of the other contracts currently on offer to the market, while the costs borne by the contractors for participating in the procurement process would have been similar. It should be noted that when the 2012 Highways contract was procured the council also received four bids.
- 2.17.2 As other boroughs had differing timescales for their Highways Contracts expiring, collaboration was not possible with neighbouring boroughs to improve economies of scale as others were already further along in the process. For information some of the current highway contracts in London and Surrey that were undertaking procurement at similar but different timescales:
- London Highway Alliance Contract 2 (LoHAC2) – Due to commence April 2021
 - Surrey County Council – Commencement April 2021
 - Richmond and Wandsworth – Commencement – either late 2019 or early 2020
 - Sutton and Kingston – Commencement – early 2020
- 2.18. The evaluation criteria for the ITT was set at 40% quality and 60% price. In addition, a minimum quality threshold was set at 25% or more out of a total of 40% available. Only bidders that achieved a total quality score of 25% or more would be in a position to be awarded the contract, irrespective of their price score. This was put in place to ensure that the contract would not be awarded to a bidder submitting a very low price bid with a poor quality submission.
- 2.19. A total of seven method statements, with varying quality score weightings, were set for bidder to submit against. There was also a comprehensive price list containing historic data for bidders to complete as part of the ITT stage. ITT documents was published on the 3rd April with response submission deadline of 24th May 2019. In between these dates extensions were given where required. (See details in Appendix 3 procurement evaluation breakdown)
- 2.20. Four service-specific evaluators evaluated all six quality question. Two officers from Commercial Services evaluated the one social value question. Seven questions were evaluated in total. The moderation team comprised of all evaluators as well as representatives from Commercial Services
- 2.21. A breakdown of each bidder's score is detailed in the confidential appendix 1.

3 ALTERNATIVE OPTIONS

- 3.1. One alternative would be not to award this contract and allow the current contract to end by the 30 August 2019, leaving the council with no contractor to carry on with the delivery of the highways works and services.
- 3.2. This is not considered a realistic alternative as it carries a huge risk to the council. In not awarding a contract, the council will fail to provide a statutory service to maintain the public highway and the public safety risks of the damage of not having a contract in place will be too significant a risk for the council to consider. There is no capacity in-house to carry out these works.
- 3.3. At their meeting in September 2018, Merton Council's sustainable communities' overview and scrutiny panel considered a report on the procurement of the highways services and works contract. At this meeting councillors considered another alternative option to procuring the contract which was to deliver the service by using the LoHAC Framework.
- 3.4. Councillors were informed that due to the difficulties experienced by other local authorities with regards to utilising the LoHAC framework agreement, the framework was currently not allowing new local authorities to call off it. As a result of this, the option of a call off is not considered a viable option. Although, LoHAC2 is currently in the process of being procured, local authorities are unaware of its context and how this will differ from the original LoHAC framework. The proposed go live date for LoHAC2 is April 2021 which does not align with Merton's contract end date.

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. As set out in the body of the report, soft market testing was undertaken in October/November 2017 with the following organisations participating: FM Conway, JB Riney Kenson Contractors, Volker Highways, Kier Highways, Croydon Council, Transport for London, Richmond/Wandsworth Councils and the London Borough of Waltham Forest.
- 4.2. A market engagement event was carried out on the 2nd August 2018 to determine the market interest and a PIN notice (notifying the public of the Council's intention to go out to procurement) was published on the 7th July 2018.
- 4.3. As part of the procurement process, an OJEU notice was published on 1st February 2019 with relevant Selection Questionnaire (SQ) published on 6th February 2019 with a return deadline date of 15th March 2019

5 TIMETABLE

- 5.1. Should councillors resolve the recommendation in this report, a contract mobilisation plan will be requested from the winning bidder soon after award notification and a project implementation plan will be requested from them immediately after award which will include details of how they intend to carry out LBM staff training in the new NEC4 contract as part of their commitment.

- 5.2. The initial Highways Works and Services contract as set out in this report will run for seven years from the agreed date of commencement of this contract. A further report to this meeting recommends extending the existing Highways Works and Services Contract for up to six months from 30th August 2019 until 28 February 2020 to allow for mobilisation between council and the new contractor. Should Cabinet agree the recommendations in this report, the latest date that the new contract could start is 28th February 2020. However it may be possible to achieve mobilisation at an earlier date within those six month by mutual agreement between the council and the new contractor. If this is achieved, Recommendation B of this report delegates any further matters relating to the contract award to the Director of Environment and Regeneration in consultation with the Cabinet Member.
- 5.3. After the contract has run for five years, the new 7-year contract allows the council to consider a further extension for an additional 3 years. This report recommends that this decision is delegated to the Director of Environment and Regeneration in consultation with the Cabinet Member.

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. In order to provide an indicative revenue cost comparison between the current and preferred supplier's schedule of rates, a sample of three typical months of activity from the previous financial year was analysed. This showed a c20% increase in costs.,
- 6.2. However, some of the larger percentage increases relate to relatively low monetary values, so carrying out the same analysis for the top five areas of spend, for example highways reactive maintenance, results in a c11% increase in costs.
- 6.3. In addition, as set out in Section 2 of this report, particularly paragraphs 2.9 onwards, the proposed new contract differs in certain/many aspects from the current contract, and additional items have been included that should help reduce certain costs.
- 6.4. It is also important to note that as the contract costs are based on a schedule of rates, precise costs cannot be determined at this stage, and will fluctuate depending on the types and levels of work carried out.
- 6.5. In addition, there is no base or minimum payment required as part of this contract – if Merton Council did not require any highways works or services then no funds would be spent with the preferred supplier. The contractor is paid according to the works and services commissioned by the council and the schedule of rates that apply to these particular works.
- 6.6. Therefore, it is expected that the new contract will be delivered within existing revenue resources, and associated costs will continue to be monitored, and reported upon on a monthly basis in the usual way.
- 6.7. The council will also operate within the new requirements set out in the Well Managed Code of Practice (October 2018) which is a risk based approach. This new approach requires all highways authorities, including Merton Council, to base highways interventions/inspections on this risk-based

approach. This in turn has led us to change our processes and programmes to comply with the new requirement set out in the new code of practice. This will now change the way response times are dealt with and processes we use to commission works/services via our new highways contractor and will have positive and negative impacts on costs depending on the works being commissioned.

6.8. The cost of procuring the highways contract is c£155,000, made up of specialist procurement expertise (£102,152), staff time (£53,000) and legal fees of £18,556 (as at May 2019)

6.9. The budget implications are contained within the confidential appendices

7 LEGAL AND STATUTORY IMPLICATIONS

7.1. Public contracts must be advertised in the Official Journal of the European Union where the price is above the relevant threshold. The conduct of the bid process must also be undertaken in accordance with the Public Contracts Regulations 2015 (PCR).

7.2. This report describes a procurement process undertaken in accordance with the above requirements. As such upon notification of award of contract the Council is required to observe the mandatory ten day standstill period as required by the PCR prior to entering into the contract.

7.3. The Council is also required to draw up a report under regulation 84 of the PCR and make notification of contract award under regulation 50.

7.4. Merton has a duty to maintain highways maintainable at the public expense under Section 41 of the Highways Act 1980.

7.5. Officers and Members should note that the names of any of the bidders, including the Preferred Bidder, should not be disclosed publicly even after Cabinet resolution on 15th July 2019 and any subsequent call-in period. In line with the Public Contract Regulations, all bidders need to be made aware of the intention award at exactly the same time (i.e. via a standstill letter via the E-Tendering portal).

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

8.1. The effective maintenance and improvement of the adopted highway network in the borough is essential to meet our statutory duty to maintain a safe environment for residents, businesses and users of the network. This is especially important for disadvantaged groups such as those with mobility difficulties and the elderly.

8.2. There are no human rights, equalities and community cohesion impacts connected with the decision to award the contract to the Preferred Bidder.

9 CRIME AND DISORDER IMPLICATIONS

9.1. Section 17 of the Crime and Disorder Act 1998 requires all Local Authorities to consider crime and disorder while exercising their duties. The design of highway improvements and maintenance on existing roads complies with

nationally agreed Codes of Practice and Design Guides and assists with delivering the Council's ambitions of "A Safe and Secure place to Live" and contributes to the objectives of the Thematic Partnerships contained in the Community Plan 2009-19 namely the Sustainable Communities and the Stronger Communities strategic themes.

- 9.2. There are no crime and disorder impacts connected with the decision to award the contract to the Preferred Bidder.

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 10.1. Effective maintenance and improvement of the Highway Network will minimise insurance or injury risks to the Council by ensuring that the public highway is safe and serviceable.
- 10.2. Insurance levels set out in the contract requirements have been assessed by the Council's Risk and Insurance team and have been deemed to be of an acceptable level.

11 APPENDICES

- 11.1. Appendix 1 (Exempt): quality and price breakdown
- 11.2. Appendix 2 (Exempt) spend on highways maintenance contract
- 11.3. Appendix 3 (Non Exempt) Procurement evaluation breakdown
- 11.4. Appendix 4 (Exempt) Tenderers pricing schedule breakdown

12 BACKGROUND PAPERS

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