

Report of: Executive Member for Environment & Transport

Meeting of:	Date	Ward(s)
Executive	8 December 2016	All

Non-exempt

SUBJECT: Procurement Strategy - Arboricultural Services**1. Synopsis**

- 1.1 This report seeks pre-tender approval for the procurement strategy in respect of Arboricultural Services in accordance with Rule 2.5 of the Council's Procurement Rules.
- 1.2 The contract is to procure all aspects of Arboricultural Services including the pruning, felling and planting of all council owned trees. This procurement will be a Single Supplier Framework Agreement utilising direct call-offs and will be subject to a joint procurement exercise with the City of London Corporation and Waltham Forest Council. Islington Council will be the Procurement Lead for this joint collaboration.

2. Recommendations

- 2.1 To approve the procurement strategy for Arboricultural Services as outlined in this report.
- 2.2 To delegate authority to award the contract to the Corporate Director of Environment and Regeneration in consultation with the Executive Member for Environment & Transport.

3. Background**3.1 Nature of the service**

We wish to procure an Arboricultural services framework agreement for all types of tree works, including pruning, felling and planting. This contract will apply to all trees on Council land (including highways, housing, parks and open spaces). It is necessary to procure a new contract for this work as the current contract comes to an end on the 31.6. 2017 and we need ensure continuation of service. We are in the process of developing the specification with the partner organisations and have been carrying out

market testing.

3.2 Estimated Value

The arrangement will be funded through current service level agreements with other directorates within the Council and other councils, plus additional income that the service generates. The estimated value of the procurement is £750k per annum for the Council, with an overall estimated annual spend of £1.6m per annum when incorporating Waltham Forest's and The City of London Corporation's spend (£750k and £80k respectively). To allow for fluctuations in funds and growth, the contract will have an annual value range of £1.2m to £2m). The contract will be a four year framework agreement which allows call-off contracts for up to a total length of seven years. The total contract value will therefore be between £8.4m and £14m.

Islington has spent a total of £1.5 million on this service over the last two years.

Any reduction in spend will result in a reduction in the amount of tree works undertaken through the contract. This would result in trees being pruned less frequently, likely resulting in an increase in complaints. It would also result in increased risk of claims being made against the Council for tree related subsidence. There would be a reduced ability to defend such claims as it would become more difficult to demonstrate that we had acted reasonably in relation to managing a known risk (that of trees causing damage to building on clay soil) resulting in a financial risk to the Council.

The existing contract was let three years ago, and market testing is now being carried out to review the schedule of rates. By undertaking a joint procurement, it is hoped that economies of scale may result in savings being realised, and efficiencies that can be delivered by the contractor will be considered as part of the quality methodology assessment.

3.3 Timetable

Contract award - May 2017
Contract mobilization period - June 2017
Contract Start - 1 July 2017

The current contract expires 31 June 2017.

As the value of this contract is over the EU threshold, the contract notice will be advertised in OJEU and the timescales as per the Public Contracts Regulations 2015.

We have consulted with both Procurement who are supporting us with the process, and Legal Services who have now drafted the framework agreement and call-off contract documents. As this is a collaborative procurement we have also consulted with our partners.

3.4 Options appraisal

We have considered the following procurement strategy options:

- single supplier award (not a framework)
- in-house provision
- single supplier framework agreement.
- use of existing framework

A single supplier award (not a framework) is not a viable option as we cannot define the total value of works to be placed under this contract. The option of bringing this service back in house would increase costs and we would lose the flexibility in resources that a large contractor is able to provide. We have also reviewed frameworks currently available, but none are sufficiently local as to be suitable to provide this service.

In-house provision is not considered a viable option due to the requirement for the service to provide a

wide range of tasks (felling, planting, pruning, stump grinding, specialist felling etc) which requires specialist equipment and trained operatives. These tasks fluctuate throughout the year resulting in the need for a highly flexible workforce. A large contractor can provide this flexibility whereas an in-house team would need significant investment to enable this wide range of tasks. A large contractor has greater capacity to deal with storms/ unforeseen surge in work.

The preferred procurement route is therefore a single supplier framework agreement with call-off contracts as it allows us not to commit to a total spend over the period of the contract and gives us the security of procuring a flexible resource that can meet the demands of the service.

This contract is being jointly procured with the City of London Corporation and Waltham Forest Council.

A framework agreement with call off periods of up to five years plus two years (seven in total), provides flexibility and allows spend to fluctuate whilst delivering a length of contract that allows contractors to invest in specialist plant and equipment.

3.5 Key Considerations

A requirement for apprenticeships will be written into the contract, as well as a requirement to engage in local employment and an expectation for the contractor to become involved in community events such as "Love Parks" and tree planting events.

A requirement for the payment of LLW will be included as a condition of this contract if there is no cross border interest in the contract following OJEU notice or if cross border bidders do not expect to use employees for this contract who are established in another EU member state.

At any time during the framework contract period, the Council can require the supplier to initiate a Best Value review at the supplier's expense in relation to the supplier's performance of its obligations under the Framework Agreement and call off contracts, including without limitation any subcontracted elements of the service provided to the Participating Authorities.

The contract will address environmental sustainability by insisting that the contractor operates an environmental management system, operates at all times within the Environment Protection Act 1990 and the Environment Act 1995. The contract will also detail protection of waterways, wildlife protection and specifically Bat regulations.

TUPE will apply to this procurement.

3.6 Evaluation

The tender will be conducted in one stage, known as the Open Procedure as the tender is 'open' to all organisations who express their interest in the tender. The Open Procedure includes minimum requirements which the organisation must achieve before the evaluation Award Criteria are considered.

The proposed evaluation award criteria is:

Cost – 60% Quality - 40%

Quality will be made up of:

- Efficiency/ Savings -10%
- Communications and Customer Care-12%
- Mobilisation / Implementation plan - 6%
- Health and Safety - 6%
- Social Benefit - 6%

3.7 Business Risks

The joint collaboration of this contract in itself presents some business risks. We have worked hard in

previous contracts in reducing risk to the contractor, by ensuring efficient business processes between us and the contractor and ensuring that there is an even flow of work issued to the contractor. Whilst Islington and Waltham Forest are looking at unifying the way we approach managing the contract as much as possible, the City of London Corporation may client the contract in a different way. One example is that whilst we will have a small number of officers who can raise work with the contractor, the City, due to the way it is structured, may have many and involving the use of a variety of systems. This is likely to result in additional costs to the contractor. To protect the Council from the risk of increased costs, an uplift on the City of London's work will be applied. There are also opportunities from collaborating more closely in the future and realising potential savings and efficiencies in the clienting side.

Health and Safety is an important consideration in this contract, and as such the bidding contractors Health and Safety policies will be assessed by Corporate Health and Safety.

3.8 The Employment Relations Act 1999 (Blacklist) Regulations 2010 explicitly prohibit the compilation, use, sale or supply of blacklists containing details of trade union members and their activities. Following a motion to full Council on 26 March 2013, all tenderers will be required to sign the Council's anti-blacklisting declaration. Where an organisation is unable to declare that they have never blacklisted, they will be required to evidence that they have 'self-cleansed'. The Council will not award a contract to organisations found guilty of blacklisting unless they have demonstrated 'self-cleansing' and taken adequate measures to remedy past actions and prevent re-occurrences.

3.9 The following relevant information is required to be specifically approved by the Executive in accordance with rule 2.6 of the Procurement Rules:

Relevant information	Information/section in report
1 Nature of the service	To manage and maintain tree stock. See paragraph 3.1
2 Estimated value	The framework agreement has an estimated annual value of between £700,000 and £1,000,000 of Council spend. The total estimated value of the framework agreement is between £1,200,000 and £2,000,000 per year, totalling between £8,400,000 and £14,000,000 over the life of the contract See paragraph 3.2
3 Timetable	Key dates within the procurement timetable have been provided within this report, with a contract start date of 1 July 2017. See paragraph 3.3
4 Options appraisal for tender procedure including consideration of collaboration opportunities	This contract will be jointly procured with Waltham Forest and The City of London. The procurement strategy options that have been considered are set out in this report. See paragraph 3.4
5 Consideration of: Social benefit clauses; London Living Wage; Best value; TUPE, pensions and other staffing implications	Social benefit clauses will be written into the contract. The London Living Wage and TUPE will apply to this contract as appropriate. See paragraph 3.5

6 Evaluation criteria	<p>Cost – 60% Quality 40%</p> <p>Quality will be made up of:</p> <ul style="list-style-type: none"> • Efficiency/ Savings -10% • Communications and Customer Care-12% • Mobilisation / Implementation plan - 6% • Health and Safety - 6% • Social Benefit - 6% <p>See paragraph 3.6</p>
7 Any business risks associated with entering the contract	<p>The business risks have been identified and steps to mitigate these are being identified.</p> <p>See paragraph 3.7</p>
8 Any other relevant financial, legal or other considerations.	None

4. Implications

4.1 Financial implications:

The contract has an estimated annual value for the Council of up to £1million and is financed from budgets within the tree service and across the Council who commission the tree service work. The service also generates external income from services to third parties. The cost of the procurement will be met from budgets within the tree service.

4.2 Legal Implications:

The Council has powers to maintain open spaces and burial grounds under section 10 of the Open Spaces Act 1906 and a general power to improve highways under section 62 of the Highways Act 1980. Both these powers may involve the planting of trees. Maintenance of trees may be carried out under s111 of the Local Government Act 1972. The Council has power to enter into contracts with providers of arboricultural services under section 1 of the Local Government (Contracts) Act 1997.

The Executive may provide Corporate Directors with responsibility to award contracts with a value over £2 million using revenue money (council's Procurement Rule 16.2).

The proposed contract is a contract for services. The threshold for application of the Public Contracts Regulations 2015 (the Regulations) is currently £164,176.00 for service contracts. Contracts above this threshold must be procured with advertisement in the Official Journal of the European Union and with full compliance of the Regulations. The Council's Procurement Rules also require contracts over the value of £164,176.00 to be subject to competitive tender. The proposed procurement strategy, to advertise a call for competition and procure the service using a competitive tender process, is in compliance with the principles underpinning the Regulations and the council's Procurement Rules.

On completion of the procurement process the contract may be awarded to the highest scoring tenderer subject to the tender providing value for money for the Council.

4.3 Environmental Implications

Arboriculture services are high risk in terms of environmental implications due to the nature of the works, which may cause significant damage to the trees and protected species that live in them (e.g. bats or nesting birds) if carried out incorrectly. The contractor will be required to submit and adhere to

method statements detailing how they will carry out and manage any works, and ensure their staff are appropriately trained.

More minor aspects of the contract involve travel around the borough, which will be mitigated by the contractor scheduling works to minimise travel. Other aspects include those associated with the use of offices and tools by the contractor – e.g. energy and water use and waste generation. All bidders are expected to have an environmental management system in place to address these, and will also be legally required to comply with the waste hierarchy, prioritising recycling over landfill.

4.4 Resident Impact Assessment:

The Council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The Council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The Council must have due regard to the need to tackle prejudice and promote understanding.

A Resident Impact Assessment was completed on 31/10/16. Tenders will be required to address as part of the method statement on Social Benefit, how their site set-up and management in public places will reduce the impact of their works on people with visual impairments and other disabilities. The contractors also have to access gardens in the rear of tenanted properties and we will be looking for how they intend to protect children and vulnerable adults. Their method statements will form part of the contract specification.

We will work with the contractor to seek to ensure access to employment on the contract of local people and under represented groups wherever possible.

5. Reason for recommendations

- 5.1 The recommendations are to allow for the procurement strategy detailed in this report to be progressed securing a single supplier framework agreement as this provides the best contractual structure for this type of service for the Council and its' partners.

Appendices – none

Final report clearance:

Signed by:



29.11.16

Executive Member for Environment and Transport

Date

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