

Report of: Corporate Director of Environment

Date: 18th August 2022

Ward(s): All

SUBJECT: Procurement Strategy for Arboricultural Services

1. Synopsis

- 1.1 This report seeks pre-tender approval for the procurement strategy in respect of the supply of tree surgery in accordance with Rule 2.8 of the Council's Procurement Rules.
- 1.2 The contract is for the tender of the tree surgery via ESPO (Eastern Shires Purchasing Organisation) as an interim for 18 months to allow for the framework contract with in-house elements to be developed.

2. Recommendations

- 2.1 To approve the procurement strategy for Arboricultural Services via ESPO for up to 18 months as outlined in this report.

3. Date the decision is to be taken:

30th August 2022

4. Background

- 4.1 Nature of the service

The current tree surgery contract started in July 2017 and finished on 30th June 2022, it was a 5+2 contract, but we have not considered the extension of the contract due to performance issues with the current contractor.

We are seeking to procure an Arboricultural contractor from ESPO (Eastern Shires Purchasing Organisation - public sector owned professional buying organisation) for an 18-month period while a new bespoke framework contract is developed and the option for bringing work in-house is explored. The contract will cover maintenance of the Council's tree stock and tree planting programme.

The ESPO contract tender will take approximately 3-6 months to award and in the interim period while we are out of contract we are looking to utilise smaller tree surgery companies on the council's supplier lists to quote for small tender packages, and awarding works based upon expediency, value, quality, and experience.

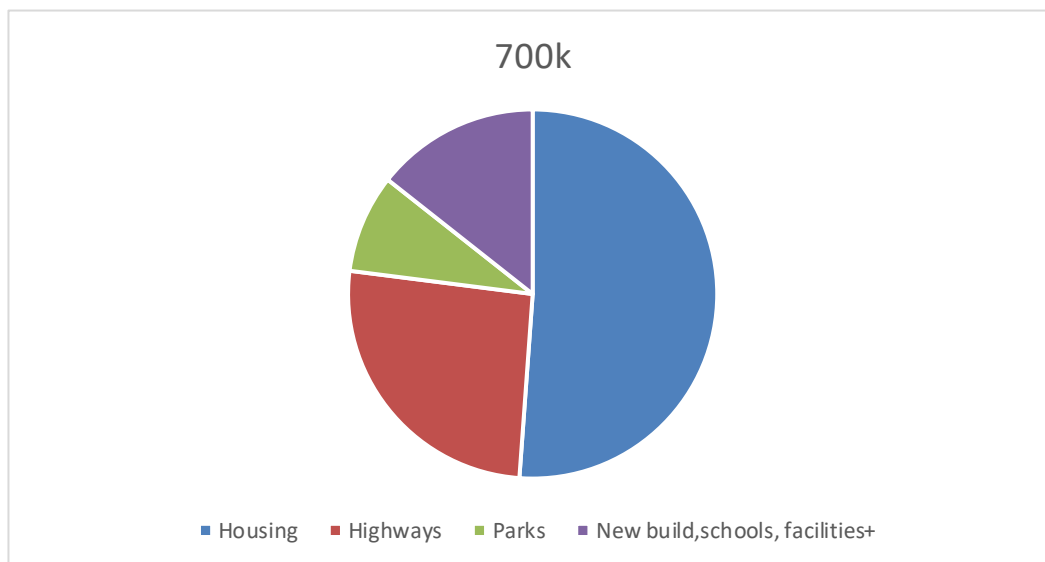
Ongoing advice has been provided by procurement; benchmarking has been done with the London Tree Officers Association.

4.2 Estimated Value

The current value of the contract is £700k/year and is funded by revenue budgets. In addition, £250k of capital is also used each year to fund the tree planting programme.

Work to trees on council managed land is funded by the following client departments (but not exclusively):

- Housing
- Highways
- Parks
- Facilities
- Schools
- New build projects



The costs of tree surgery have risen in the last 5 years. This increase, in conjunction with the low unit cost at tender in 2017 means we are expecting the future cost for tree surgery to rise from the current 700k to between 1m – 1.75m /year.

Contractual price index rises mean that the unit cost of tree works has risen since the contract started in 2017. Budgets provided by client departments have not risen to match, leading to a reduction in works completed over the life of the contract.

There is a shortage of qualified and experienced tree surgeons who are prepared to work in inner London, leading to wage rises, the costs of fuel, equipment etc. has also all risen significantly in the last five years.

Given the anticipated increased costs of tree surgery a percentage reduction in the budget would have a significant impact on the Council's ability to fulfil its duty of care to manage the risk from trees.

We have benchmarked with the London Tree Officers Association (LTOA) to give an indication of current unit rates of other contracts which bears this out.

For direct comparison between current contract costs and the current market rate we asked three contractors to provide quotes for the Bunhill Ward parks tree surgery. This is a smaller scale but provides an indication of the rise. The market costs are between 2x and 5x higher than the current unit rates, but it is expected that the economy of scale should bring these costs lower. We have not included the specific unit rate costs as they are commercially sensitive.

An option would be to reduce the current cycle of inspection and works from 3 years to 4 or 5 years. This would result in increased risk of liability from claims and risk of property damage or personal injury if trees were to fail during that extended period. It would also lead to an increase in complaints and correspondence. Islington is a very dense urban borough and trees can come into conflict with properties and vehicles and impede street lighting and CCTV cameras if not inspected and pruned on a regular cycle. It also may lead to an increase in costs as the level of works required over a longer inspection cycle are greater.

Savings may result from bringing services in-house as part of the long-term procurement strategy to follow this interim arrangement, however, in the short term the costs of tree surgery provision is expected to rise.

The key cost drivers for the service are to try and ensure that the Councils trees and canopy cover are increased (in line with the councils Carbon Net Zero and vision 2030 targets) and that the trees are maintained in a safe state to fulfil the legal duty of care to residents.

During the interim period, while out of contract, we would initially try and keep costs below the threshold for application of the Public Contracts Regulations 2015 (£210k).

The award of the ESPO contract is already delayed and while works could be strictly prioritised and restricted to try and keep under this threshold, further delays will compound the current tree surgery back log and result in further increased complaints and enquirers to the Tree Service and prolong delays to works.

If further expenditure is required beyond the threshold, then a waiver will be required at Corporate Director level to access further funds in order to maintain tree surgery cover out of contract, potentially until December 2022. The estimated cost of the waiver will be based upon the rate of expenditure but is estimated at between £200-300k.

4.3 **Timetable**

Key dates:

- 6th April 2022 – Environment and Leadership Team Agree procurement strategy
- 28th April 2022 - Commissioning & Procurement Board
- 30th June – Fixed term contract end
- July 2022 – Sign off on procurement strategy
- August 2022 - Forward Plan
- August – November 2022 – Competition via ESPO
- December 2022 – Contract Implementation

The current tree surgery contract expired on the 30th of June 2022, the option to extend was not taken.

The ESPO contract tender will take approximately 3-6 months to award and in the interim period while we are out of contract we are looking to utilise smaller tree surgery companies on the council's supplier lists to quote for small tender packages, and awarding works based upon expediency, value, quality, and experience.

There are no statutory deadlines.

We have consulted with

- Procurement
- Legal
- LTOA contract working party

4.4 **Options appraisal**

Procurement routes considered:

- Extend the contract for up to 2 years
- Use smaller local companies to deliver the tree surgery in the short/ medium term until a new framework is established. Small works orders with at least three tree work contractors tendering.
- Use of other Local Authority Frameworks
- Bringing the service in house
- Use of ESPO to secure large contractor

The timescales that we have now limit the options that are open to us.

The option to extend the current contract for 2 years was not a recommended option.

We are currently using smaller contractors to clear backlogs and deal with urgent works, this has worked very well. The completion times and standard of has been good.

Bringing the service in-house completely would be incredibly challenging, due to the lack the space to carry out that kind of operation. However, with time to explore this option further there may be opportunities to bring some aspects in house. These options are considered in more detail below.

If the in-house options are viable, they will be initiated as soon as they can be organised. The tree pit creation, tree planting, tree watering and ground level pruning works will be looked at initially with the option of bringing in house tree surgery operatives in the new framework contract.

Our preferred procurement route is the use of the ESPO framework for up to 18 months while we work to write a new framework contract and explore the options of bringing elements of the service back in-house.

The previous contract was a tri-Borough Framework, a collaboration with the City of London and Waltham Forest. This was not successful as they were managed differently had different land use, resources, expectations, and costs. We are collaborating with other Boroughs to develop a framework, membership of the LTOA contracts working party and benchmarking with other London Councils but we are not considering a collaborative contract currently.

Camden may potentially work as a partner going forward as their current contract finishes in 2023. Meetings are proposed with Camden to discuss a longer-term joint procurement strategy.

Table 1. The benefits/ drawbacks of the options presented

OPTIONS	SPECIFIC PROPOSAL	BENEFITS	CHALLENGES / DEPENDENCIES
Extend the existing contract	Extend the existing contract for up to 2 years in 3-month increments	No requirement to alter the process or procurement	Delivery and resource challenges would continue.
Use small local contractors	Use several small contractors to tender and deliver tree works	<p>Already have companies' set up as suppliers and used successfully to reduce Housing works backlog.</p> <p>in use as interim cover between contract end and ESPO award.</p> <p>Works completed within timeframes</p> <p>Support for local businesses and local job opportunities.</p>	<p>Largest cost increase of the options.</p> <p>Increased management for multiple suppliers.</p>
Framework contract with in-house option	Develop a framework contract to use local companies to tender for smaller packages of work. Award on best value	<p>Already have companies' set up as suppliers who could use framework</p> <p>Works completed within timeframes</p> <p>Can develop the in-house options over time</p>	<p>The framework is not written and will take time to develop. We do not have time to prepare a framework before June 2022.</p> <p>There will be a similar resource pressure as managing the existing contractor, lots of small contracts.</p>

		<p>Support for local businesses and local job opportunities.</p> <p>Potential savings from in house options.</p>	<p>Will have a unit cost increase and increased internal cost to client departments</p>
Use other local Authority Frameworks	<p>Use an existing framework from a neighbouring Borough</p>	<p>Economy of scale may result in cost avoidance</p>	<p>Neighbouring boroughs frameworks do not allow for shared use. Hackneys' new framework option being explored.</p> <p>LAs are guarding the resources they have as there is a shortage of good contractors and tree surgeons.</p> <p>Some neighbouring Boroughs have similar performance issues with their contractors.</p>
Bring services in-house	<p>To bring the tree surgery and tree planting in house</p>	<p>Potential cost savings to the Council</p> <p>Reduced environmental impact</p>	<p>We are not prepared and would be unable to bring services in house at short notice.</p> <p>The end of the contract is cliff edge and we do not have time to develop.</p> <p>Lack of space within the council for vehicles, storage etc.</p> <p>Large/ unknown financial investment required.</p> <p>A shortage of tree surgeons means in house tree surgery has failed in other local authorities.</p>
Use of ESPO to secure large contractor		<p>Will resource tree surgery while we develop options.</p> <p>Large companies on ESPO will be able to resource and service the contract</p> <p>More closely align with the timeframes we have to secure a contractor.</p>	<p>Risk that they will have the same issues with delivery and resources as the incumbent contractor.</p>

		Economy of scale should reduce the cost increase in comparison to the other options.	
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4.5 Key Considerations – References to social value and impact on staff

There will be potential opportunities to look at apprenticeship and training opportunities as part of the contract. We will also look at how they can support the Council’s Net Zero Carbon ambitions using electric fleet and machinery where possible. We will build this into the tender evaluation criteria.

There are long term benefits from a framework contract that utilises local tree surgery companies and provides apprentices to Islington residents. The medium-term ambition to bring crews in house will provide savings to the council and support local employment.

Any ESPO contract would have to include the London Living Wage.

A review of the unit rates for works has been undertaken to ensure there is greater clarity over works ordered to ensure greater transparency for contractor and client over the cost of works and ensuring value for money regarding the works that are ordered. This will help to avoid additional uplifts and additions being applied.

We have considered economic, social, and environmental sustainability and there will be opportunities to consider apprenticeships and training. There is a strong focus on green jobs and the arboricultural industry is struggling to recruit and retain tree surgeons, particularly in the context of London. There is a clear opportunity to enable more young people to select a career in this area, one that they may not have any idea of as an option.

We also want the new contractor to support the Council’s goals to be net zero carbon by 2030 and to look to address the environmental sustainability of its operations by how it seeks to limit vehicle movements, shift towards electric fleet and electric plant where practical.

TUPE, Pensions and Staffing Implications may apply.

4.6 Evaluation

A mini tender exercise is proposed using the contractors on the ESPO Framework for Arboricultural services. Our proposed evaluation award criteria are:

- 40% Quality
- 20% Social value
- 40% Cost

The evaluation award differs from the last, it increases emphasis on quality and social value. This is to ensure the council attains a better service at a more realistic cost, increasing the likelihood of a successful contract.

Breakdown of the award criteria:

Quality – 40%

- **Service Delivery – 15%**
 - Works completion rates within scheduled timeframes
 - Alignment with CNZ
- **Customer Care/Communications – 5%**
 - Data security
 - Communications and response
- **Efficiencies/savings – 5%**
 - Continuous improvement and efficiency plan
- **Mobilisation/Implementation – 10%**
 - Resource plan
 - Depot and facility provision
- **Policy & Procedures-5%**
 - Service performance
 - Health and Safety policy
 - Commitment to Public Sector Equality Duty, as outlined in section 149 of the Equality Act 2010
 - Environmental management system

Social Value -20%

- **Jobs: Promoting Skills and Employment. 5%**
To promote growth and development opportunities for all within a community and ensure that they have access to opportunities to develop new skills and gain meaningful employment.
- **Growth: Supporting Growth of Responsible Local Businesses. 5%**
To provide local businesses with the skills to compete and the opportunity to work as part of public sector and the supply chains of larger organisations
- **Social: Creating Healthier, Safer and More Resilient Communities. 5%**
To build stronger and deeper relationships with the voluntary and social enterprise sectors whilst continuing to engage and empower citizens.
- **Environment: Decarbonising and Safeguarding our World. 5%**
To ensure the places where people live and work are cleaner and greener, to promote sustainable procurement and secure the long-term future of our planet. Innovation: Promoting Social Innovation. To promote new ideas and find innovative solutions to old

Cost -40%

Cost will be assessed against the tender's submitted prices for the different works specifications provided on a bill of quantities.

- **Service specification unit cost 10%**
- **Overall cost -30%**

The cost is judged on the unit and overall cost to ensure correct weighting of costs to prevalence of works.

4.7 Business Risks

The business risks are:

- Increased future costs for tree surgery

- Failure to secure a contractor would leave the council unable to fulfil our duty of care and open to liability from tree risks such as subsidence damage to property and tree failure damaging property and injuring residents.
- Time available to complete tender award process before the current contract ends.

The opportunity here is to provide time and space to accurately assess the best delivery model for the provision of Arboricultural services in the longer term. It will allow the proper assessment of in-house options and the potential to collaborate with other boroughs to achieve better value for money and greater social value.

The contract includes the provision of a 24hr call out for tree emergencies. Separate contact has been made to three contractors who would be able to fulfil this function if required.

The client departments have been forewarned of the likelihood and amounts of increased budget required to maintain their trees in the future.

4.8 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 complete an 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.

4.9 The following relevant information is required to be specifically approved in accordance with rule 2.8 of the Procurement Rules:

Relevant information	Information/section in report
1 Nature of the service	The provision of tree surgery to Islington council for the maintenance and safety of the councils' trees See paragraph 4.1
2 Estimated values	The estimated value per year is £1m – £1.75m. The agreement is proposed to run for a period of 1 Year with an optional extension of 6 months. See paragraph 4.2
3 Timetable	<ul style="list-style-type: none"> • 6th April 2022 – Environment and Leadership Team Agree procurement strategy • 28th April 2022 - Commissioning & Procurement Board • 30th June – Fixed term contract end • July 2022 – Sign off on procurement strategy • August 2022 - Forward Plan • August – November 2022 – Competition via ESPO • December 2022 – Contract Implementation

	See paragraph 4.3
4 Options appraisal for tender procedure including consideration of collaboration opportunities	See paragraph 4.4
5 Consideration of: Social benefit clauses. London Living Wage. Best value. TUPE, pensions, and other staffing implications	See paragraph 4.5
6 Award criteria	Overall award criteria 40/20/40 Quality/ Social Value/ Cost split. The award criteria breakdown is outlined within the report. See paragraph 4.6
7 Any business risks associated with entering the contract	The business risks are: <ul style="list-style-type: none"> • Increased costs for tree surgery • Failure to secure a contractor would leave the council unable to fulfil our duty of care and open to liability from tree risks such as subsidence damage to property and tree failure damaging property and injuring residents. • Time available to complete tender award process before the current contract ends. See paragraph 4.7
8 Any other relevant financial, legal, or other considerations.	See paragraph 4.8

5. Implications

5.1 Financial implications:

The contract has an estimated annual value for the Council of up to £1.75 million 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.

If the current budgets are not sufficient to cover the cost of the new contract a growth bid may need to be considered as part of the budget setting process along with a bid against the corporate contract inflation budget

The cost of the procurement will be met from budgets within the tree service.

5.2 **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 18.1.2).

The proposed contract is a contract for services. The threshold for application of the Public Contracts Regulations 2015 (the Regulations) is currently £213,477 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 £213,477 to be subject to competitive tender.

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.

5.3 **Environmental Implications and contribution to achieving a net zero carbon Islington by 2030:**

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.

The nature of the works means that there may be minor local disruption (e.g., noise pollution, traffic diversion, footpath closure) during planting and tree surgery operations, these will be minimised by adherence to best practice guidance and health and safety legislation, method statements, risk assessments and contract specification.

5.4 **Equalities Impact Assessment:**

Please retain this standard paragraph and add relevant text about specific impacts and mitigation below:

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.

EqIA screening indicated that a full EqIA was not required.

6. Reasons for the decision: (summary)

6.1 It is recommended that we proceed with the option to carry out a mini competition on the ESPO framework to provide a contract for up to 18 months. This is the best option for the time scale that we have to provide a short term, interim solution that allows greater time to put in place an effective framework, in-house or hybrid model for delivery of the Council's Arboricultural services.

7. Record of the decision:

7.1 I have today decided to take the decision set out in section 2 of this report for the reasons set out above.

Signed by:



Corporate Director of Environment

Date: 30.8.22

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