



Report for:
ACTION
Item Number:
19

Contains Confidential or Exempt Information	No
Title	Authorisation to invite tenders for term arboriculture contract
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Portfolio(s)	Councillor Bassam Mahfouz – Transport, Environment and Leisure
For Consideration By	Cabinet
Date to be Considered	15 September 2015
Implementation Date if Not Called In	28 September 2015
Affected Wards	All
Area Committees	All
Keywords/Index	Trees, Arboriculture, Contract, Invite, Tenders

Purpose of Report:

This report seeks approval of the Cabinet to invite and evaluate tenders for the term arboriculture contract, which is due to expire on 31 March 2016.

1. Recommendations:

- 1.1 It is recommended that Cabinet authorise the Director of Customer Services to invite and evaluate tenders to replace the existing borough wide term arboriculture contract for a period of 3 years, commencing on 1st April 2016, with the possibility of two three year extensions.
- 1.2. The Cabinet notes that following the evaluation of all tenders returned, a report will be submitted to Cabinet with a recommendation regarding the award of this contract.

2. Reason for Decision and Options Considered:

- 2.1. The current term arboriculture contract expires on 31 March 2016, which was awarded in the summer of 2008 and became effective on 1 April 2009. The existing arboriculture contract is split into three elements. One covers the entire tree pruning & felling works and also includes the emergency call out. The second is specifically for the basal growth removal works and the third is for tree planting and planting maintenance. By splitting the contract in this way it was intended to generate financial savings, deliver better quality services to our customers and communities.
- 2.2. The proposed new contract structure will divide the three existing elements into eleven smaller lots; arboricultural services five lots, basal growth three lots and planting three lots. The arboricultural lots one, two, three and four relate to Planned Programmed works for Highways, Housing and Parks. Lot five relates to Reactive Ad-hoc works. The respective three lots for Basal Growth and Tree Planting elements are divided into geographically areas; West, Central and East.
- 2.3. This structure has been developed in response to extensive soft market research which highlighted the competitive limitations of large contracts which were beyond the financial thresholds of many smaller arboricultural contractors. It is envisaged that these smaller lots will allow small and medium size contractors to compete, through an open tender process, whilst the invitation of multiple lot savings will allow competition from larger companies that can offer economies of scale. It is expected that this will increase competition and provide both financial savings and quality improvements to the service.
- 2.4. Given the importance on the quality of the services provided for Arboricultural Work and Tree Planting, these will be assessed on a 60% price and 40% quality ratio. As Basal Growth involves less risk and is less involved than the other elements, it will be assessed on a 80% price and 20% quality ratio.

3. Key Implications:

- 3.1. Failure to award this contract could potentially lead to trees throughout the borough not being maintained to a safe standard therefore increasing the tree related insurance claims against the council.

4. Financial:

- 4.1 The Council holds an annual budget of £0.88m for arboriculture services to be provided through this contract. This includes work undertaken on behalf of Housing, Schools and other Council departments. At present £0.725m per annum is spent on tree pruning,

felling works, and emergency call out, £0.090m on basal growth work; and £0.065m is allocated for tree planting.

4.2 Savings included in the Medium Term Financial Strategy:

- The revenue budget will be reduced to £0.750m in 2016/17 (down from £0.980m in 2014/15) as part of the Council's approved savings.
- Currently, it is anticipated that £0.645m will be spent on tree pruning, felling works, and emergency call out, £0.070m on basal growth work; and £0.035m for tree planting.
- The Service estimates additional funding of £0.040m from s106 contributions which will be used to ensure the replacement of trees and continue the vision and delivery of the Ealing Tree Strategy.

4.3 There is a risk that the total contract cost will increase, although the value and implication will not be known until the tenders are received. This can be managed moving forward by amending the bill of quantities for the various elements of the contract.

4.4 The estimated value of this contract is likely to be £6.750m over nine years.

5. Legal:

5.1. A competitive tendering procedure will be followed for the procurement of the term arboriculture contract, which will comply with the Council's Contract Procedure Rules and Public Contracts Regulations 2015, as the value of the contract will exceed the applicable threshold.

5.2. The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply as a business transfer should there be a change of provider for this service.

TUPE applies to a "relevant transfer", which means either or both of the following:

- (i) A transfer of a business, undertaking or part of a business where there is a transfer of an economic entity that retains its identity (a business transfer) (regulation 3(1)(a) TUPE. This involves three elements:
 - An economic entity
 - a transfer of that economic entity; and
 - the economic entity retaining its identity following the transfer
- (ii) A client engaging a contractor to do work on its behalf, reassigning such a contract or bringing the work "in house" (a service provision change) (regulation 3(1)(b),

TUPE.) The activities carried on after a change in service provider must be “fundamentally or essentially the same” as those carried on before it.

Under Regulation 11 of the 2006 TUPE Regulations, the current provider would be required to provide employee information no less than 28 days before any transfer to any new provider.

- 5.2.1. Employees of the existing contractor may have the right to be transferred to the new contractor(s), on the same terms and conditions and with their employment law rights preserved. There are certain conditions to be fulfilled, and there are some exceptions.

6. Value For Money:

- 6.1. The tendering process will be carried out in a way that ensures the Council achieves value for money. By breaking the contract further from the three elements, as specified in item 2.2 we will increase market competition and generate financial savings. Multiple lot saving offers will also be included as part of the tender.
- 6.2. A performance management system will be used to monitor the performance of this contract following re-tendering.

7. Sustainability Impact Appraisal

- 7.1 Environmental and sustainability were given due consideration during the tender process. Currently the wood generated from the arboricultural works is utilised by the current contractor for the commercial production of heat and power generation. Chippings are also used on bedding within the Borough.

8. Risk Management:

- 8.1. All arboriculture operations undertaken must be done in a way that complies with health and safety legislation and be risk assessed. The Contract for Arboricultural Services include works related to insurance mitigation, health and safety pruning and emergency call-out operations.

9. Community Safety:

- 9.1. Ealing Tree Service ensures that the Council meets its legal duty of care in respect to trees and public safety.
- 9.2. As part of the Contract for Arboricultural Services works are routinely undertaken to improve sight lines for safety and CCTV cameras, and to improve street lighting and reduce the incidents of antisocial behaviour.

10. Links to the 6 Priorities for the Borough

10.1 The following are applicable to this report:

- Safer
- Healthier
- Cleaner

11. Equalities, Human Rights and Community Cohesion

11.1 An Equalities Impact Assessment was carried out as part of the original procurement exercise and is still relevant to this Contract.

12. Staffing/Workforce and Accommodation implications:

12.1. There are no workforce or accommodation implications. TUPE in respect of the current contractor staff may apply, dependent upon the results of the tender and how the multiple lots are awarded.

13. Property and Assets:

13.1. There are no implications for property and assets.

14. Any other implications:

14.1. There are no other implications.

15. Consultation:

15.1. Consultation will take place internally with other users (schools, Highways, Corporate Health & Safety and Housing) of the term arboriculture contract as part of the re-tendering process.

16. Timetable for Implementation:

16.1. The ITT will be issued once Cabinet authority is obtained. Closing date for the return of the ITT will be approximately mid October 2015. Tender evaluation will begin in November 2015 and a report will be submitted to Cabinet with a recommendation regarding the award of this contract in December/January 2015/2016.

15.2. The new contract must be awarded in January 2016 to allow for the transfer of staff by virtue of TUPE, should it apply, ready for the new contractor to commence works on April 2016.

16. Appendices:

16.1. None.

17. Background Information:

17.1. None

Consultation

Name of consultee	Post held	Date sent to consultee	Date response received	Comments appear in paragraph:
Internal				
Keith Townsend	Executive Director of Environment, Leisure and Customer Services	04 /08/15	26/08/2015	1.1, 2,2.2, 2.3 & 2.4
Alison Reynolds	Director of Environment, Leisure and Customer Services	04/08/15	None	
Chris Bunting	Assistant Director of Leisure	04/08/15	07/08/2015, 27/08/2015 & 02/09/2015	1.1, 2.1, 4.2, 5.1, 6.1, 10, 13.1 & 17
Donna Creffield	Contracts Lawyer	12/08/15	13/08/2015	1.1, 1.2, 2.2, 7.1, 11.1, 16.1 & 16.2
Jonathan Scholtz	Senior Management Accountant	12/08/15	19/08/2015	6.1, 6.2, 6.3 & 6.4
Raj Sandhu	Lawyer	14/08/2015	20/08/2015	5.2 & 5.2.1
External				

Report History

Decision type:	Urgency item?
Key decision	Yes
Report no.:	Report author and contact for queries:
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