

SUMMARY

This report describes the future options available to the Council for the procurement of a number of highway, street lighting and environmental related maintenance works.

The report also seeks approval to extend the existing highways & street lighting term maintenance contract for 2.5 years pending further service integration with the LoHAC framework.

RECOMMENDATIONS

That Cabinet:

1. Agrees to extensions to the Council's existing term maintenance contracts for Highways and Street Lighting maintenance for 2.5 years in accordance with the current contract conditions.
2. Agrees to enter the procurement framework contract and use the framework as and when required for highways maintenance, street lighting and environmental works through the London Highways Alliance Contract (LoHAC) established by Transport for London and approve the appointment of Ringway Jacob's as the North East London Area LoHAC partner.
3. Agrees to review the LoHAC framework rates after 1 year to determine if the rates are favourable and to explore the greater opportunities available prior to commencing any retender exercise for the existing highways and street lighting contracts.
4. Delegates authority to the lead Member for StreetCare to take advantage of the range of individual service contracts available within the LoHAC procurement framework as and when required.

REPORT DETAIL

Background

1. In November 2011, following a full EU tendering exercise the Council entered into 2.5 year contracts for highway and street lighting works with two suppliers, Marlborough Surfacing and Volker Highways in partnership with Barking and Dagenham, these contracts have the option to extend for up to a further 2.5 year's, it was officers intention to run these contracts until the formal TFL LoHAC framework contract was set up in full.
2. The highway works under the above contracts comprise the larger planned maintenance and improvements schemes and street lighting works, whilst reactive maintenance and smaller schemes remained within our own Direct Service Operation (DSO). This latter arrangement is set to continue.
3. The full year spends related to the Highway Planned Maintenance contract and the Street Lighting contract currently in force, are set out in Table 1 below.

TABLE 1						
Annual Spend	'000				Forecast	Totals
	2009/10	2010/11	2011/12	2012/13	2013/14	
Marlborough Surfacing	N/A	N/A	£611k	£4.4m	£5.7m	£10.7m
Volker Highways	N/A	N/A	£833k	£2.3m	£1.7m	£4.8m
Total Spend						

4. During the last 2 years both contractors in the planned highways maintenance and street lighting areas have continued to deliver a good standard of works, building upon existing relationships and linking IT systems to good effect, performance as been maintained at good levels throughout this period reducing the need to re tender these works and containing unnecessary cost in re tendering.
5. Following Negotiations with the current service providers officers have agreed zero percentage inflationary increases for the extension period of 2.5 years, this will ensure budget stability in an area of works that are constantly under severe pressure, officers are keen to ensure that the improvements made to our roads and footway network over recent years are maintained.

6. The TFL framework contract (once agreed to enter) allows Havering the opportunity to access a range of services at London wide rates which could be measured against our existing contracted rates allowing for a flexible but low risk approach to potential low cost services across a range of service areas without the impact of undertaking the full procurement process.

TFL LoHAC Contract Framework

7. In 2010 Transport for London (TfL) and the London Boroughs began the procurement process for pan London Highways contracts, known as LoHAC with the aims of reducing costs through the use of:
 - common specifications;
 - economies of scale across four contract areas in London;
 - contractual obligations for year on year savings;
 - London Living Wage agreements, and
 - Open book accounting by 2015.
8. The procurement process was managed by TfL with the close co-operation of the London Boroughs.
9. Havering is one of the clients for the North East Area and officers were directly involved in the production of the contract documents. The Council is represented on the Contract Development & Management Board and we have incurred no direct procurement costs.
10. TFL invited tenders for a range of works across London in early 2012 and jointly evaluated return of documents in August and September 2012. This framework contracts runs for a period of 8 years from April 2013 to March 2022, depending on the performance and quality of the contractor. The successful supplier for the North East area that includes the London Borough of Havering came from Ringway Jacob's.
11. Key features of the contract include:
 - recruiting apprentices (a minimum of 120 across London);
 - fitting vehicles with cyclist protection devices, and
 - all vehicles to meet the Euro 6 standards for low emissions
 - easy to access once signed up
 - No obligation to use the TFL Framework rates supplied
 - Continuous benchmarking of cost

Cabinet, 19 March 2014

12. The justification for the duration of the framework exceeding four years was set out in the OJEU (Official Journal of the European Union) notice as follows: “The intention of the framework agreements is to stimulate competition and provide an opportunity for economic operators to offer exceptional value for money and efficient delivery of the required works.
13. It is acknowledged that there are potentially significant start-up costs, investment in capital equipment, plant and systems. Having consulted with the trade association and a number of economic operators it was determined that the optimum period to achieve best value was to set up a framework for eight years.
14. The eight year duration will allow contracting authorities whose current contracts expire in the next few years to call-off from the frameworks (increasing the opportunity for economic operators), for expensive plant to be properly depreciated and for better value to be achieved when negotiating leases for required depots.”
15. The form of contract is the NEC3 (formerly New Engineering Contract) Term Service Contract. Havering is not obliged to order any works under this contract and may issue orders for highway works as it judges appropriate.
16. The range of services included within this framework cover the following service areas;
 - Safety Inspections
 - Service Inspections
 - Highway Structures
 - Design Services
 - Highway Maintenance
 - Traffic Signs
 - Road Markings
 - Street Lighting
 - Fencing
 - Drainage
 - Street Cleaning
 - Bridge & Other Structures
 - Tunnels
 - Street Furniture
 - Winter Maintenance
 - Civil Engineering Support Works
 - Weed Control Services
 - Grounds Maintenance
 - Arboriculture Services

REASONS AND OPTIONS

Reasons for the decision:

17. The London Highways Alliance Contract (LoHAC) will offer savings on some areas of work (up to 5%, although this will be benchmarked against our current term contract rates) and further year-on-year savings. The procurement costs of going through the traditional tendering exercise will also be saved. By negotiating extensions to our existing contracts staff will be able to choose the most economically advantageous option on a scheme by scheme basis. In addition this approach will assist in business continuity planning.

Other options considered:

18. To procure these services in the traditional method either solely or seek other partnership opportunities.

IMPLICATIONS AND RISKS

The council has a statutory duty to maintain the public highway in a condition fit for use. Failure to carry out this duty will result in third party claims for negligence and adversely affect the public perception of the council.

Financial implications and risks:

This report concerns the procurement of highways, street lighting and environmental maintenance works. These are services and works that will impact on the StreetCare revenue and capital budgets. It recommends:-

- Extending the existing term contracts for Highways and Street-lighting maintenance for 2.5 years. No indexing will be payable. It is felt that in the context of the current market, this is a good deal. Currently RPI is running at over 2%.
- To enter the LoHAC framework contract. To evaluate the potential impact of the contract on the Council, typical schemes were selected and a cost comparison was carried out based upon current rates. These are set out in Appendix 1; this shows an 11% saving, though the precise saving will depend on the basket of works ordered in future.

As reported in para 17, both the above procurement routes can be used, to promote value for money; additionally there is the option to tender specific works of a value

Cabinet, 19 March 2014

over £250k. The contracts do not commit any specific level of Council resources, with the level of spend determined by the capital and revenue budgets available.

An indicative estimate of the annual value of services/works affected is as follows:-

- £1m TfL capital
- £1.5m LBH capital
- £500k street-lighting revenue
- Some proportion on the £1.6m highways revenue budget.

Legal implications and risks:

The Council has the power to carry out highways maintenance works under the Highways Act 1980, section 36 and may enter into contract for this purpose under section 1 of the Local Government (Contracts) Act 1997.

The use of the London Highways Alliance Contract (LoHAC) established by Transport for London as a framework contract following advertisement in the Official Journal of the European Union which provides for use of the framework by London Councils enables the Council to procure work to the value of which potentially could exceed the EU threshold without a further full Eu compliant procurement.

A framework contract established under the Regulations should not exceed 4 years “except in exceptional circumstances, in particular, circumstances relating to the subject of the framework agreement” (Regulation 19.10). LoHAC is a framework for a period of 8 years. The exceptional circumstances have been set out in the OJEU notice and detailed in the report above. While there is no case law or guidance on what is likely to constitute exceptional circumstances. TFL has explained its justification and it has not been challenged.

Most of the spend for highways maintenance works is capital spend that is part of the capital programme. Therefore, should members approve the use of LoHAC as proposed the Head of Streetcare has authority under the council’s Procurement Framework to authorise individual schemes under this framework.

Human Resources implications and risks:

Whilst there are no HR implications or risks for Council employees, TUPE implications will apply for employees of the existing suppliers if the current term maintenance contracts are not extended or if a significant amount of work load is transferred to Ringway Jacob’s under the LoHAC contract.

Officers are hoping to minimise this by engaging small scale service contracts to start, whilst testing the service level outputs, whilst extending the current LBH term contracts for the duration of the full extension period of 2.5 years.

Equalities implications and risks:

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 full EIA is not considered necessary in relation to this report as there are no putative adverse impacts. The likely recruitment of local apprentices will support the Council's objective of supporting people into employment.

BACKGROUND PAPERS

No Specific background papers were used related to this report

Following a sample testing of Havering works compared to use of the LoHAC term contract rates, varying degrees of variance were identified resulting in a potential for up to 10% savings in some areas of works type depending upon the volume and value of works.

Havering Scheme Summary			
	Havering	LoHAC	% Difference
<u>Carriageways</u>			
Rosewood Avenue	£57,648.20	£43,850.95	-23.9%
New Road	£53,915.06	£53,912.96	0.0%
South Street	£30,659.69	£29,902.13	-2.5%
Dagnam Park Drive	£62,274.62	£63,931.71	2.7%
Microasphalt Programme	£19,772.66	£14,042.66	-29.0%
<u>Footways</u>			
The Meads	£30,766.60	£27,515.34	-10.6%
LOWSHOE LANE	£44,612.44	£42,392.38	-5.0%
RANDALL DRIVE	£28,347.47	£25,587.21	-9.7%
Elm Park Estate	£33,093.76	£29,878.73	-9.7%
Hylands	£62,298.82	£45,390.17	-27.1%
TOTAL	£423,389.31	£376,404.26	-11.10%