



CABINET

Subject Heading:

Procurement of Highways and Street Lighting contracts

Cabinet Member:

Cllr Mugglestone, Cabinet Member for Environment

SLT Lead:

Andrew Blake-Herbert

Report Author and contact details:

Imran Kazalbash, 01708 433831
imran.kazalbash@havering.gov.uk

Policy context:

This report supports the Places objectives in the Corporate Plan, – A great place to live, work and enjoy

Financial summary:

The cost of the contract is anticipated to be £170m over 10 years and will be funded from both revenue and capital budgets

Is this a Key Decision?

Yes, (c) Significant effect on two or more Wards

When should this matter be reviewed?

N/A

Reviewing OSC:

Places Overview and Scrutiny Sub Committee

The subject matter of this report deals with the following Council Objectives

Place - A great place to live, work and enjoy

SUMMARY

This report sets out the Business Case and proposed procurement strategy for the Highways and Street Lighting contract outlining the rationale for the new delivery model. A number of options were considered which are set out in the Business case.

The procurement of these services contributes to achieving a number of the Councils objectives. This procurement is shaped by the vision “The Havering you want to be part of” and will deliver on the strategic objective, Place – a great place to live, work and enjoy. This approach will improve the way Havering looks and feels helping residents and visitors feel better about their surroundings.

The Public Contract Regulations 2015 places a positive emphasis of carrying out market engagement ahead of any procurement process. Effective market engagement informs the design of the procurement process. Market engagement was carried out and suppliers confirmed a strong interest in this opportunity based on the services in scope and the approach demonstrated by the council.

RECOMMENDATIONS

Cabinet is asked to:

1. Agree the procurement strategy and the commencement of the procurement procedure as set out in this report and Business Case
2. Agree the scope of services to be included in the procurement, as set out in the Business Case at Appendix 1.
3. Waive Contract Procedure Rule 18.4 and allow the tender to be evaluated against 60% price and 40% quality.
4. Approve funding for provision to be made, for up to £100k to fund external legal advisers for the procurement and contract completion.
5. To delegate authority to the Assistant Director of Public Realm to finalise and agree all associated arrangements, documents and contracts necessary to effect the procurement of these services.

REPORT DETAIL

Background

A number of legal statutes require the local authority to manage and facilitate the maintenance and improvement of the highway adopted by the Council. The Authority has a duty to maintain the highway in accordance with section 41 of the Highways Act 1980. The Authority must maintain repair and replace street lighting across the borough and has a duty to maintain all existing street lighting and illuminated equipment in accordance with the electrical Regulations BS 7671 (2018). The Flood and Water Management Act (2010) places a duty on the authority to maintain and co-ordinate flood risk on both the highway and watercourse network (but where the highway authority co-ordinates this). Section 184 of the Highways Act (1980) requires the local authority to manage and facilitate the introduction of dropped crossings on the highway network. The Road Traffic Regulation Act (1984) provides a duty on the local authority to ensure that traffic is lawfully managed and restricted, in both a safety and operational sense. Each of these acts requires the local authority to discharge duties on the highway. There is therefore a need to ensure that the Council meets these duties and the associated works on the highway.

Having currently fulfils the construction requirements through 2 contractors, Marlborough Highways (MH) and Volker Highways (VH) along with elements delivered by the in house, Direct Services Organisation (DSO). This ensures the highways network is maintained to a safe standard and is how improvements are facilitated.

The current contracts with MH and VH were entered into in 2017 for a period of 5 years, and then further extended in 2022 for a period of 2 years. There is no further opportunity to extend these contracts.

Service Delivery Options

As per the Business Case, several options were considered against financial, risk and cost factors. It has been identified that there are further opportunities to deliver greater value by increasing the scope of services to deliver through an outsourced model.

It is proposed to extend the scope of this contract to include the following services:

- Reactive highway maintenance*
- Gully cleansing and maintenance*
- Winter maintenance
- All signing and lining*
- All installation of equipment/infrastructure on the public highway and off street including the appointment of nominated subcontractors/suppliers*
- Structures and bridges maintenance and improvement schemes *

Cabinet, dd mmmm yyyy

- Flood management and drainage maintenance and improvement schemes*
- Emergency out of hours call outs
- Call off for professional services

*These services are delivered through a hybrid of the DSO and contractors. Over recent years contractors due to capacity issues in the DSO have delivered more of these services.

Outstanding work and backlogs can pose both a reputational and financial risk to the Council, through more expensive interventions and increased insurance claims.

By outsourcing these services, the Council will seek to achieve:

- Financial advantages. Contractors have greater buying power in respect of equipment, fleet and materials and in providing a depot to deliver the services from.
- Improved service delivery. A more efficient co-ordinated approach. By working with contractors covering a wide range of services, there will be a uniform approach to service delivery, shared processes, procedures and contract monitoring systems. These efficiencies and improved working practices will in turn improve the customer satisfaction and experience.
- Reduction in Council overheads from outsourcing the DSO, such as fleet, Asset Management, Information Technology, Human Resources
- One brand. A unified approach to the delivery of the highways services that will enhance the local identity so that the services are all managed under one single brand delivering consistency.
- Expert acquisition. The new Contract has the potential to lead to the development and retention of a multi skilled workforce. This solution may present more opportunities for staff that wish to develop their professional career within this sector. The new Contract has the potential to result in significant cultural harmonisation benefitting both the Council and the contractor in areas such as knowledge pool, sharing of good practice, sharing of technology, and more innovative ways of working.
- Council Strategy. The new contract will contribute towards other Council strategies such as improved air quality, social value and community benefits.
- Transference of some operational and financial risk.

Officers have considered several options, which are clearly detailed in the Business Case outlining the advantages and disadvantages for each option. As a result of this it is proposed to include the following services in the procurement:

- Planned and reactive maintenance
- Street Lighting & associated Services
- Gully Cleansing & maintenance
- Winter Maintenance
- New schemes – minor and major
- Signing & Lining
- Installation of equipment/infrastructure on the public highway and off street including the appointment of nominated subcontractors/suppliers

Cabinet, dd mmmm yyyy

- Structures and Bridges maintenance and improvement works
- Flood management and drainage maintenance and improvement works
- Emergency – out of hours call outs
- Call off for Professional Services

Procurement Strategy

Having considered the current best practice and the procurement timeline it was concluded that the best outcome would be achieved by procuring these services using the Competitive Procedure with Negotiation under the Public Contracts Regulations 2015. This procedure allows the contracting authority flexibility around whether to negotiate - by reserving the right not to negotiate in the tender advertisement and to simply award the contract based on initial tenders submitted.

The advantage of this method is that the Council may enter into a negotiation if upon receipt of the submissions the council is of the view that the procurement could be enhanced. This method will provide a consistent transparent mechanism ensuring requirements are understood and bids can be refined during the process thus avoiding costly contract variations later in the contract.

Oversight and governance of this programme has followed Council policy. A project team reports into an Officer group consisting of subject matter specialists and stakeholders. The Council is securing external legal support to provide expert advice on New Engineering Contracts (NEC4) contracts.

To achieve best value, it is proposed to split the procurement into 2 separate lots:

1. Highways services
2. Street Lighting and associated services

The procurement will allow bidders to tender for either one or both lots. The Council will request a discount if the supplier wishes to tender for both lots, achieving economies of scale.

It is proposed that the length of the contract will be for an initial term of 6 years with an option to extend to a maximum of 10 years in periods of 1,2,3 or 4 years. This represents the optimum timescale for Contractors wishing to invest in the contract so that efficiencies and cost savings could be introduced with regards to long term costs (depot facilities, plant etc.) but one that would also allow for the Council to provide a review and break period.

The submissions will be evaluated against a price/quality split, with a split of 60/40 respectively. Price will be scored with the lowest price achieving the highest number of points, with the other bids receiving points measured against the lowest price. Quality will be scored in accordance with the Evaluation Framework based on the bidder's submissions.

A term contract will provide value to the Council by relying on a pricing schedule of rates which works are measured and valued against. The volume of work that this

contract represents cannot be defined in advance of procurement due to the uncertainty in works requirements and therefore a fixed price sum contract is not suitable.

Contract Management and Performance

The Highways team through a series of Operational, Contractual and Strategic meetings will manage the contract. The content and attendance of these meetings will be set out in the specification. A suite of reports addressing issues such as performance, trends, Health & Safety, Social and Environmental value, financial detail and innovation will support the meetings.

A detailed suite of Key performance Indicators (KPI's) covering all aspects of the service will be included in the specification, which will ensure the services are delivered to the highest standard. Bidders will be expected to evidence the use of effective technology to monitor and measure performance including KPI's.

Default mechanisms will form part of the contract and will apply if a service failure occurs and/or has not been rectified within the appropriate timescales.

Consideration has been given to other service areas that may benefit from this procurement and subsequently the requirements of other teams that may use these services have been factored into this procurement. This will ensure:

- Consistency of workmanship, products and materials used on the highway
- Technical oversight of schemes
- Consideration of designs in terms of maintenance implications ensuring the design meets certain construction standards

The Business Case was considered and approved by Gateway Panel on 17 May 2023.

REASONS AND OPTIONS

Reasons for the decision:

Appendix 1 of the Business Case provides a detailed analysis and the rationale of all options considered. The table sets out the pros and cons for each option.

This option will maximise innovation to secure a contract that is fit for the future and transfer most of the financial and operational risk to the contractor.

The Council has a legal obligation to tender contracts of this value. It provides an opportunity to demonstrate that the Council is obtaining best value for money by carrying out an open and transparent process and engaging with the market. The

Cabinet, dd mmmm yyyy

competitive tension provided through a procurement process incentivises innovation and reduces costs.

Other options considered:

Do nothing

The Council has a duty to discharge these services and failure to make provision would result in the Council failing to deliver its statutory duty. This is not a viable option.

Extend current contract

The contracts in place have been extended to their full capacity. The Council must obtain advice in accordance with the limitations of the Public Contracts Regulations 2015 (PCR 2015) for any further extensions to be considered and must ensure that this constitutes best value to the Council.

Shared service delivery model

Following discussions with neighbouring authorities, 2 authorities have completed procurements in the last 18 months, and another has indicated their intention to extend with their incumbent provider.

Bringing services in house

This option was considered and disregarded given the operational challenges and financial costs associated with resourcing these services, procuring a fleet and providing a fully operational depot.

Setting up a Local Authority Company (LAC)

This option was considered and disregarded as the challenges and financial outlay would be similar to bringing the services in house with the Council retaining all the risk. The Council does not have the expertise to establish and operate a LAC.

Hybrid model - in house and part outsourced.

This option was considered and disregarded for similar reasons to an in-house service. There would be a requirement for substantial capital investment to provide a depot and fleet and ongoing revenue costs. The Council would essentially be proving the replica of the supplier's assets and resources.

IMPLICATIONS AND RISKS

Financial implications and risks:

It is estimated that the spend on this contract over the 10-year term will be £170m of which it is anticipated £12.5m will be capital and £4.5m will be revenue spend. However, these figures are indicative figures only as the nature of local government finances is such that spend cannot be guaranteed and investments will be considered each year as part of the MTFs process.

Cabinet, dd mmmm yyyy

The table below sets out the projected annual contract spend against service area, based on current provisions and estimates.

Capital Allocations per annum	Highways Improvement Programme (HIP) – Programme of street lighting, footway and carriageway renewals and reconstruction	£7.000m
	Funding contributions from developers and external agencies – S106, CIL & regeneration schemes funding contributions from the Environment Agency and similar bodies	£3.500m
	Funding contributions from TfL	£2.000m
Provisional annual capital spend		£12.500m
Revenue Allocations per annum	Maintenance of structures	£0.050m
	Maintenance of Rivers and Brookcourses	£0.080m
	Funding of minor traffic and parking improvements	£0.140m
	Reactive maintenance	£2.200m
	Cleansing of gully network	£0.350m
	Winter maintenance	£0.200m
	Implementation of dropped crossings	£0.600m
	Street lighting maintenance	£0.900m
Provisional annual revenue spend		£4.5m

Further financial information will become clearer as part of the next stage of the procurement process as will its impact on the Council's Medium Term Financial Plan and this will be reported as part of future Cabinet reports. The financial implications arising will be considered as part of the procurement and decision-making process.

Additional provision is required of up to £100k to fund external legal advisers for the procurement and contract completion.

Legal implications and risks:

Section 41 of the Highways Act 1980 places a duty on the highway authority to maintain the highway at public expense. Section 1(3) of the Highways Act states the council of a London borough...are the highway authority for all highways in the borough.

The value of the proposed procurement is well above the threshold for Works and Services contracts. Compliance with Part 2 of the Public Contracts Regulations 2015 is therefore required. A Contract Notice will need to be published on the UK e-notification service, 'Find a Tender' as well as on Contracts Finder.

The procurement process that officers intend to follow has already been set out in the body of this report and appears to be a fully compliant procedure.

The Council's Contract Procedure Rules require tenders to be evaluated against pre-determined best price-quality ratio of 70% cost and 30% quality weighting. This report proposes a departure from this ratio and for tenders to be evaluated against a 60% cost and 40% quality weighting.

The Public Contract Regulations confirm that contracting authorities have flexibility of choice in selecting their price/quality evaluation model. Authorities must base the award on the Most Economically Advantageous Tender.

Furthermore, Contract Procedure Rule 14.1 states that a waiver of the Rules is permissible if approved by an individual Cabinet member using an Executive Decision, with a report setting out the background, the rule to be waived, the reasons why the waiver is required, how value for money will be demonstrated, any legal or financial risks or implications and with the approval of the Director of Law and Governance and the Chief Executive.

Officers have satisfied themselves that the waiver requirements have been met in this instance and that this decision will result in the best value for the Council overall.

Human Resources implications and risks:

The DSO services (up to 8.5 full time equivalent staff) have been included in the proposed procurement process as part of the new contract. It is clear that TUPE (Transfer of Undertakings (Protection of Employment) Regulations 2006) will apply, and the employees would be required to transfer to the employment of a new service provider. Employees in scope of the TUPE transfer will be regularly updated throughout the procurement process and once the award is made to the successful bidder, the statutory TUPE Information and Consultation process will commence and be followed by a period of mobilisation for which a plan would be produced.

The following risks have been identified; however, these will be mitigated through a regular communication with all parties e.g., Trade Unions, staff.

- Sufficient planning required for any TUPE and staff questions to be resolved;
- Sufficient information for staff with regular communications.

The Council will work closely with all parties to mitigate any risks

Equalities implications and risks:

The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have due regard to:

- (i) The need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (ii) The need to advance equality of opportunity between persons who share protected characteristics and those who do not, and;
- (iii) Foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are age, sex, race, disability, sexual orientation, marriage and civil partnerships, religion or belief, pregnancy and maternity and gender reassignment.

"Due regard" is the regard that is appropriate in all the circumstances. The weight to be attached to each need is a matter for the Council. As long as the council is properly aware of the effects and has taken them into account, the duty is discharged

The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socioeconomics and health determinants.

The group of staff in scope is very small and therefore individuals may be identifiable. EQIA data is therefore not included in this report.

Health and Wellbeing implications and Risks

Havering Council is committed to improving the health and wellbeing of its residents. The contract is likely to have a positive impact on health and wellbeing through several positive benefits which include:

- The contract will specify a requirement to contribute to air quality with the possible introduction of electric vehicles and low emission vehicles. This will benefit the health and wellbeing of both residents and visitors to the borough;
- Maintaining and improving the borough's street lighting is directly linked to providing a safe borough and reducing the fear of crime.
- The contract will specify a commitment to environmental and social Value initiatives
- The contract will specify a committed to follow the requirements of the Good Work Standard which sets the benchmark for the highest employment standards;

There are no negative impacts attributable to this contract.

ENVIRONMENTAL AND CLIMATE CHANGE IMPLICATIONS AND RISKS

Having declared a climate emergency this procurement will support the council in achieving their commitment to become carbon neutral by 2040 or sooner. The climate changes now being experienced are accelerating the deterioration of our highway infrastructure, resulting in a greater need for a dependable, robust and innovative service, which can be achieved by outsourcing these services.

The specification will clearly set out expectations from bidders and will be evaluated in accordance with the Evaluation Framework. The following matters will be included (but is not exhaustive):

- The requirement to evidence how they will reduce greenhouse gas (GHG) e.g., CO₂, NO_x, PM_{2.5}, PM₁₀ emissions from the operations of the services to work towards the achievement of the Mayor's Emissions Performance Standard (EPS) and the Havering Climate Action Plan
- How they will influence staff, suppliers, customers and communities through the delivery of the contract to support environmental protection and improvement
- Set out how they will off-set the total carbon produced through the operations of the service provision via initiatives delivered in the Authority Area wherever possible
- Ensure that accredited quality and environmental management systems are in place throughout the Contract
- Evidence how sustainability programmes deliver year on year reductions e.g., reduce waste and increase re – use of materials
- Deliver a sustainable fleet and depot
- Evidence sustainable environmental policies and systems for the whole contract term
- Harness technological change throughout the contract ensuring opportunities for advancements are embraced

BACKGROUND PAPERS