

**BRISTOL CITY COUNCIL
CABINET
4 July 2016**

REPORT TITLE: Commence tender of new Highways Maintenance and Associated Works Framework and Statutory Emergency Response Contract.

Ward(s) affected by this report: Citywide.

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Purpose of the report:

To provide an update on the re-tendering process for the Council's existing Highway Maintenance Contracts and Frameworks and the Highways and Associated Works Framework (HAAWF), all to commence in April 2017. The decision to consolidate the existing Contracts and Frameworks into a single Highways Maintenance and Associated Works Framework and Statutory Emergency Response Contract has previously been made by Senior Leadership Team.

To seek Cabinet approval to re-tender the Highways Maintenance and Associated Works Framework and Statutory Emergency Response Contract. Approval for the award of the new contract models to be delegated to the Strategic Director for Place on completion of a successful procurement process.

RECOMMENDATION for the Mayor's approval:

1. Approve the commencement of the public retendering process for new Highways Maintenance and Associated Works Framework and Statutory Emergency Response Contract
2. Delegate approval for the award of this new Highways Maintenance and Associated Works Framework and Statutory Emergency Response Contract to the Strategic Director for Place on completion of the successful procurement process.

The proposal:

3. Transport Service currently has 32 contracts in place delivering Highways Maintenance and Associated Works functions. Current contracts need to be retendered from 1 April 2017 because most of the existing arrangements expire at the end of March 2017. Excluded from this proposal are Traffic Signals and Street Lighting maintenance functions as these contracts require specialist skills that differ from those provided by Highways contracts.
4. Two reviews of our existing Highways Maintenance and Associated Works functions have been carried out, one by Consultants in 2013, and the second by Department for Transport, Highways Maintenance Efficiency Programme (HMEP), in 2014. Both reviews recommended that we should consolidate our existing portfolio of contracts in order to achieve economies of scale and avoid duplication of functions e.g. monitoring, finance etc.
5. A market consultation supported the view that the current contracts portfolio, comprising both our Highway Maintenance and Associated Works, should be consolidated and there was market support for our proposal to consolidate these into two contracts and one Framework with 14 Lots covering specific functions. Subsequent to this consultation discussions with the Bristol Waste Company have been carried out regarding future operation and delivery of our Winter Maintenance Function in line with Highways Act 1984 section 41A. Bristol Waste Company currently deliver the Winter Maintenance Function and it has been agreed that they will continue with this function from April 2017 at least until the Winter of 17/18 with decisions for future service to be agreed following the outcome of reports on the future of Bristol Waste Recycling. A Service Level Agreement, with appropriate Key Performance Indicators, currently oversees the delivery of this service.
6. The format of the of the new Highways Maintenance portfolio is as follows:
 - a. One Term Contract covering our Statutory Duty with respect to emergency response. Highways Act 1984 section 41 refers to duty to maintain the highway network and Section 58 which requires that we have suitable policies and procedures in place to maintain the highway;
 - b. Single Framework with fourteen Lots covering the range of specialist maintenance works that we require ranging from surfacing through maintenance, cleansing and surveying of drainage systems and watercourses to repairs.Please refer to Appendix 1 for more detailed description of both the proposed Contract and Framework.
7. The new Framework and Contract will adopt the principles of the Council's Social Value policy, and through the procurement of these two projects, will promote the improvement to the economic, social and environmental well-being of Bristol. In order to achieve this aim each tender will include a 10% weighting to quality score for social value outcomes. Also, in accordance with the Council's aspirations and objectives, these projects will encourage the tenderers to adopt the Living Wage for all staff employed on these projects in-line current procurement practices.

Consultation and scrutiny input:

a. Internal consultation

A part of this project consultation has been carried out with the following internal stakeholders:

- Finance;
- Legal;
- Procurement;
- Diversity & Equality;
- Environment Team;
- Place Scrutiny Commission;
- Assistant Mayor for Transport.

b. External consultation (Market Engagement)

As part of this project the Project Board conducted the following external consultation:

- Soft market testing with other Core Cities;
- Market engagement;
- Consultation with other Local Authorities and organisations who are undertaking similar procurement exercises.

A summary of the external consultation questionnaire and responses can be found at Appendix 2. The overview from market engagement was positive on the proposed approach. Comments were that other organisations were using similar models e.g. Highways England. Over 40 responses were received to the market engagement with over 70% positive to the approach and only 2 companies suggesting a fully integrated model with the remainder suggesting minor amalgamation of the lots. The response from both Assistant Mayor for Transport and Place Scrutiny Commission was that the design of the new Framework and Contract should be such as to offer the widest opportunities for engagement with SME providers. In addition both the Framework and Contract should provide for greatest Social Value benefits e.g. number of apprenticeships, payment of Living Wage etc.

Other options considered:

Three other options were considered:

- Maintain the current model - Although enter into new procurement process as existing Contracts and Framework expire at the end of March 2017. This option was discounted as no foreseeable benefits would be delivered by it. Indeed, all the current disadvantages (duplication, function overlap, administratively intense) would have been maintained with no likely cost-saving outcome.
- One single contract – Consolidation into a single contract was advised against by both the external reviews because our current position with respect to using Asset Management in determining work priorities would be potentially risky. We needed to formalise and embed in our IT systems our current Performance Monitoring system. The purchase of both CONFIRM (new Transport Asset Management system operational from April 2016) and Pro-Contract (new online Procurement system) will allow for this. It was also felt that tendering all works in one contract would discourage SME providers for bidding for work, many of whom currently provide existing works.

- Dynamic Purchasing System – Consideration has been given to the appropriateness of using a Dynamic Purchasing System (DPS) for the new Framework and Contract. Ernst and Young Consultants, appointed to advise the Council on appropriate procurement systems, advise that savings of between 4-10% could be achieved by use of DPS. The Project Board received a report from the Procurement Team which outlined their recommendations, please refer to Appendix 3. The view of the Project Board, after considering the recommendations of this report was to reject DPS as an appropriate form of contract for the following reasons:
 - Significant additional work would be required to run tender processes for each and every project offsetting any predicted savings;
 - Tender prices can be adjusted at anytime by providers. This means that the Council cannot effectively budget plan as costs can increase or decrease, but in a buoyant market, such as we are in now, it is likely to mean increasing costs;
 - A further impact of ability to adjust prices is that a greater number of different contractors may win works under a DPS arrangement. The result of this would be that it would be more difficult to build proactive working relationships with providers;
 - Block Contracts – This means that the Council guarantee to procure defined amounts of work under the contract. Officers believe that this is not an appropriate form of contract for the new Framework and Contract for the following reasons:
 - Officers have no idea what future bids or projects Government maybe bringing forward so could not commit funding;
 - In using Asset Management principles for our future maintenance programmes we may decide to change the emphasis of spend e.g. moving funding from roads to structures so not being able to fulfil contracted spend forecasts in any specific areas of work.

Risk Assessment:

7. Risk			
<i>What are the risks associated with this project?</i>			
<i>Risk</i>	<i>Impact / Probability (High; Medium; Low)</i>	<i>Mitigating action</i>	<i>Responsibility</i>
IF there is a delay with project programme e.g. Procurement resources, THEN delivery schedule is not met.	H/M	Set appropriate planning, forecasting and consultation processes; perform suitable controls and reviews, improve communication with all Project Board. SRO and Senior Suppliers to ensure appropriate resources in place or seek additional resources in such scenario.	Project Manager SRO and Senior Supplier
IF insufficient number of responses or no response from market, THEN may need to	H/L	Market engagement approach followed to date would suggest that this scenario is unlikely	SRO

undertake the process again, poor competition, no value for money.		based on number of responses to pre-tender engagement.	
IF there is challenge to tender process e.g. evaluation, assessment procedures, THEN delay to award of contract may occur resulting in no service being in place for April 2017	H/L	Ensure evaluation members have adequate tender assessment training and appropriate resources are put in place in good time. Ensure detailed records are maintained throughout tender process.	Project Manager and Senior suppliers, Procurement
Risk of overspend on either Framework or Contract	H/L	Approved budgets will be matched to works procured under either the Framework or Contract. There is also no guaranteed level of spend for providers under either the Framework or Contract.	Senior Users

Public sector equality duties:

Before making a decision, section 149 of the Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following “protected characteristics”: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:

i) eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.

ii) advance equality of opportunity between persons who share a relevant protected characteristic and those do not share it. This involves having due regard, in particular, to the need to:

- remove or minimise disadvantage suffered by persons who share a relevant protected characteristic.

- take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);

- encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

iii) foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to tackle prejudice and promote understanding.

Please refer to Appendix 4 for Equality Impact Assessment Screening Form which has been completed. This currently does not identify any major issues or concerns. The design of any works, especially new ones as opposed to maintenance works, which would then be procured through this new Framework and Contract arrangement would be subject to a separate Equalities and Impact Assessment process.

Eco impact assessment

An Eco Impact Assessment has been carried out and can be found at Appendix 5. No significant impacts have been identified at this time.

Resource and legal implications:

Finance.

This exercise is aimed at consolidating the contracting arrangements for highways maintenance. There is no direct financial impact upon the council as the contracted suppliers will provide services to the council within the budget available.

Advice given by Mike Allen, Finance Business Partner

Date 16th May 2016

b. Financial (Capital) implications:

There are no capital implications from the proposed change in contracting for highways maintenance services.

Advice given by Mike Allen, Finance Business Partner

Date 16th May 2016

Comments from the Corporate Capital Programme Board:

Not applicable at this time

Advice given by Mike Allen, Finance Business Partner

Date 16th May 2016

c. Legal implications:

Procurement compliance

Full advice and support is being provided by Legal Services to enable this procurement process to be carried in full compliance with EU procurement regulations, the Public Contracts Regulations 2015 and the Council's own Procurement Regulations.

TUPE

Enquiries will need to be made of incumbent providers to identify when Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) might apply for the purpose of informing this current tender process and any subsequent mini-tender exercises under the framework. Contract documents will need to include terms to cater for the application of TUPE at the beginning and end of any contracts awarded under the new framework.

Social Value

The Public Services (Social Value) Act 2012 (Social Value Act) requires the council to consider at pre-procurement stage of any services contract:

- how the services to be procured may improve the economic, social and environmental wellbeing of its area; and
- how the council may conduct the procurement process with a view to securing that improvement.

Social Value Act compliance will be achieved with the decision to include a 10% weighting to quality score for social value outcomes in the contracts referred to in this Report provided that criteria are compliant with procurement legislation.

Contracting authorities must award all public contracts on basis of “the most economically advantageous tender”. For a compliant procurement, social value considerations used in assessing the most economically advantageous tender must:

- be relevant and linked to the subject matter of the contract; and
- be proportionate to the needs of the contracting authority and not discriminatory.

There is no lawful scope to specify the same social value criteria to all procurement exercises on a blanket basis; this includes for example, requiring the Living Wage for all staff engaged on a Council contact, or that employees of contractors reside local to Bristol. Social value issues can be considered on a case by case basis and applied where they are relevant and proportionate to the subject matter of an individual contract.

Legal Services will continue to support this project to apply the Council’s Social Value Policy in a compliant way for this framework and in its individual contracts.

Advice given by Michael Bonnick, Legal Officer & Jane Johnson, Team Leader
Date 17 June 2016

d. Land/Property implications:

There are no specific property implications from the proposed change in contracting for highways maintenance services.

Advice given by Steve Matthews, Asset Delivery Manager
Date 24 May 2016

e. Human resources implications:

There are a number workforce issues relating to the existing service providers and this is set out in Legal Services advice above. There are no HR implications in respect of the council’s workforce.

Advice given by Mark Williams, HR Business Partner
Date 16th May 2016

Appendices:

- Appendix 1 – Detail of proposed Contract and Framework;
- Appendix 2 – Summary of market engagement responses March 2016;
- Appendix 3 – Procurement Team summary of Dynamic Purchasing System and relevance to the new Highway Maintenance and Associated Works Contract and Framework;
- Appendix 4 – Equality Impact Assessment Screening Form;
- Appendix 5 – Eco Impact Assessment