

**MEETING TITLE AND DATE:**

Cabinet  
24 August 2011

**REPORT OF:**

Director of Environment

**Agenda – Part: 1**

**Item: 6**

**Subject:** Highways and Engineering Works  
Contract 2011 – Approval of Tender

Key Decision: KD 3352

**Wards: All**

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**1. EXECUTIVE SUMMARY**

This report sets out the process undertaken for the procurement of a new Highways and Engineering Works Contract to commence on 6<sup>th</sup> November 2011 and seeks approval of the most economically advantageous tenderer.

**2. RECOMMENDATIONS**

To approve contractor A, on the basis that it has provided the most economically advantageous tender.

**3. BACKGROUND**

- 3.1 Enfield Council, in its role as a highway authority, has a statutory duty to maintain the public highway network and in particular, to ensure, so far as is reasonably practicable, the safe passage along a highway by its users. Enfield fulfils its maintenance responsibilities by commissioning maintenance works through a formal contract with a civil engineering contractor. Core maintenance activities, funded from revenue budgets, include reactive maintenance such as repairing carriageway and pavement defects, (potholes etc), cyclic maintenance such as cleaning road gullies, emergency responses, winter maintenance and miscellaneous works such as repairing pedestrian guardrailing or signs etc. Enfield's winter maintenance service is particularly highly regarded by residents and Members, especially in the light of the recent very severe winters.

- 3.2 Enfield also commissions 'planned works' through this contract such as large programmes of carriageway resurfacing and pavement reconstruction schemes, highway and streetscene improvement schemes, traffic management and improvement schemes, bridges and watercourse schemes and a variety of other civil engineering projects. These are mainly funded from either the Council's own Capital funding, TfL funding through the Council's Local Implementation Plan (LIP), or other external funding sources. The contract also provides a delivery mechanism for a range of other Council priority projects for other client departments across the Council.
- 3.3 The current Highway Works Contract expires on 5<sup>th</sup> November 2011, having been extended for 2 years on the original three-year contract period, as permitted by the original OJEU notice.
- 3.4 The new Highways and Engineering Works Contract was discussed at CMB in October 2010. CMB required further market testing to be undertaken before proceeding with the procurement of the new contract, which has been undertaken. A decision was made from the CMB report that the new contract should be for a period of 4 years.
- 3.5 The new contract has a 'break clause' mechanism that can be invoked after three years. This will allow Enfield to terminate the contract early, with no additional costs, should we choose to join the TfL pan-London contractor arrangements in 2014, having had the opportunity by that time to assess whether the pan-London arrangements will offer Enfield better value for money.
- 3.6 The form of contract will be the 'Institution of Civil Engineers Conditions of Contract Term Version 1<sup>st</sup> Edition'. This requires a Chartered Engineer to be 'The Engineer' under the Conditions of Contract, which will be the Head of Highway Services.
- 3.7 In accordance with the OJEU procurement process, the contract was advertised and expressions of interest were invited. Pre-qualification questionnaires (PPQs) were received from eleven contractors. Officers reviewed the submissions and a tender list was compiled of six civil engineering contractors, in accordance with the PQQ criteria.
- 3.8 At a meeting on the 10<sup>th</sup> May 2011, the Cabinet Member authorised the invitation to tender of the shortlisted six companies, the service levels to be included within the contract specification and the contract period of 4 years with an option to invoke a break clause after 3 years.
- 3.9 Prior to the release of the tender documentation one of the shortlisted companies withdrew from the process stating that due to the revised timing of the tender it would not enable them to dedicate sufficient focus to submit an offer to the standards they expect to provide to such an important client, leaving five companies to be invited to tender.
- 3.10 The Council's procurement, finance and legal departments have advised on, and been involved in, the process and contributed to the strategy and the evaluation of the tenders

3.11 In order to reflect variations in the contractor's costs for purchasing materials such as bitumen, aggregates, and fuels, the contract has included price adjustment clauses which will be applied every three months. A national working party including the Highways Term Maintenance Association (HTMA), TfL and highway authorities has recently recommended that different price adjustments should be applied to different work streams in order to more closely reflect varying costs for the different activities, which minimises the risk to both parties and allows keener pricing of the contract

This contract has therefore included separate price adjustment clauses for:

- Reactive and cyclic works
- Carriageway resurfacing works
- All other civil and highway works activities

3.12 Each price adjustment has a separate percentage build-up of base indices, e.g. labour, fuel, bituminous materials, etc. However, the labour index has been set to zero for each of the three adjustments, which means that the contractor will not receive any uplift over the duration of the contract as a result of any increase in his labour costs. 10% of each of the three adjustments have also been set to zero as part of efficiency savings. The overall adjustments can go up or down according to economic forces.

#### **4. TENDER PROCESS AND EVALUATION**

4.1 The contract was tendered in compliance with the Councils Constitution, in particular Contract Procedure Rules and in accordance with the Public Contract Regulations 2006 using the Restrictive Procedure.

4.2 Tender documentation was sent out at the end of May 2011 with a return date of 11<sup>th</sup> July 2011 to the five tendering companies.

4.3 During the tender process one company withdrew due to not being able to fully understand a number of liabilities, particularly in relation to TUPE transfer information, and therefore felt they would not be able to offer Enfield its' best value solution for this tender.

4.4 All four remaining contractors submitted tenders by the return date 11<sup>th</sup> July 2011.

4.5 The tenders have been assessed on the basis of the Most Economically Advantageous Tender, based on a 40:60 quality:price assessment. The current contract was evaluated 5 years ago on the basis of a 60:40 quality:price assessment model and the present model of 40:60 reflects an increased priority given to the requirement for competitive prices. The quality assessment was allocated 40% of the marks in order to ensure that the successful contractor's delivery arrangements meet Enfield's required levels of service which have previously been agreed with Members.

4.6 The price assessment was based on a matrix of typical 'planned projects' and 'core maintenance activities' undertaken in a 12 month period.

- 4.7 The submitted quality plans were evaluated against the following areas within the tenderer's Quality Plan: Service Provision and Workforce Matters, Materials and Workmanship, Delivery within Time Requirements of Contract, Health and Safety, Dealing with Those Affected by Contractor Activity, Quality Policy and Practices. The assessment of issues that are important to Enfield, such as sustainability, staff development and training, local employment, customer care etc, was included under these headings.
- 4.8 All contractors attended tender clarification interviews to discuss their submitted quality plans and prices.
- 4.9 Full Details of the evaluation of tenders are contained within the part 2 report on this agenda. Below is a table summary:

| Overall Evaluation of Tender Submission | Tendering Contractors |             |             |             |
|---|-----------------------|-------------|-------------|-------------|
|   | (A)                   | (B)         | (C)         | (D)         |
| Part 1 Report Reference                 | (A)                   | (B)         | (C)         | (D)         |
| Quality Plan Submission                 | 39                    | 35          | 40          | 40          |
| Financial Assessment                    | 60                    | 58.2        | 54.4        | 52.2        |
| <b>Total Score</b>                      | <b>99</b>             | <b>93.2</b> | <b>94.4</b> | <b>92.2</b> |

## 5. ALTERNATIVE OPTIONS CONSIDERED

- 5.1 Contract periods of 5 and 7 years, with potential extensions of 5 and 3 years respectively, were considered however these could have restricted Enfield's ability to join one of the pan-London contracts which are currently being developed and programmed to commence in 2013.
- 5.2 Another option considered was to extend the existing contract beyond its current period however this would be a breach of the Public Contracts Regulations 2006 ("PCR 2006") and would clearly leave the Council open to a challenge by aggrieved contractors.
- 5.3 Other options considered and investigated were the potential opportunities within the sub-region, regional and national areas, which found no immediate opportunity but did re-confirm the TfL pan-London arrangements.

## 6. REASONS FOR RECOMMENDATIONS

- 6.1 To ensure that the Council has the ability to fulfil its obligations under the Highways Act, in maintaining the borough's highway infrastructure by appointing a contractor from a tendering process, enabling continuity when the existing contract ends in November 2011. The contract also provides a delivery mechanism for a range of

other Council projects and programmes without the need for further procurement exercises.

- 6.2 The recommended contractor has been assessed to provide the most economically advantageous tender to deliver a range of highway maintenance and engineering projects.
- 6.3 The contract duration of 4 years, with a break clause after 3, provides the potential to join the pan-London arrangements, should they be assessed to provide greater value for money.

## **7. COMMENTS OF THE DIRECTOR OF RESOURCES AND OTHER SERVICE GROUPS**

### **7.1 Financial Implications**

Finance officers from the Finance, Resources and Customer Services Department have been consulted and engaged in the procurement process, and can confirm that the financial evaluation of the tender returns have been conducted in accordance with the specifications of the tender documents.

### **7.2 Legal Implications**

- 7.2.1 Part IV of the Highways Act 1980 places a statutory function on the Council to maintain highways at the public expense. Section 111 of the Local Government Act 1972 permits the Council to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of its functions. Therefore the appointment of this contractor is in accordance with the Council's powers.
- 7.2.2 The Council has procured the contract in full compliance with the Council's Constitution, in particular Contract Procedure Rules and the Public Contracts Regulations 2006.
- 7.2.3 The legal agreement will be in the form of Institution of Civil Engineers Conditions of Contract Term Version 1<sup>st</sup> Edition, which is a form approved by Legal Services.

## **8. Key Risks**

- 8.1 Delay in the decision processes reducing mobilisation period for the successful tenderer, which could potentially affect the delivery of the winter service, other statutory functions and the Council's priority projects at the start of the contract period.
- 8.2 A potential legal challenge to the procurement process delaying award until resolved.

## **9. IMPACT ON COUNCIL PRIORITIES**

### **9.1 Fairness for All**

The continued maintenance of the council's carriageways and footways, including minor highway improvements, provision of dropped kerbs and street scene

improvements, will improve the road and footway network for all, particularly those with mobility and those with sight difficulties.

## **9.2 Growth and Sustainability**

Continuous maintenance of the council's carriageways and footways is essential to support transport and mobility for the borough's growth and sustainability. Planned maintenance at appropriate intervention levels based on sound asset management practices is far more sustainable and cost effective in the long term.

## **9.3 Strong Communities**

The maintenance of the council's highway network, including minor highway improvements and scene improvements, will improve the quality of the streetscape and its contribution to the public realm, thus developing better places and a better environment for residents, businesses and local communities.

## **10. Performance Management Implications**

10.1 The Contractor's performance in delivering this contract will be measured against the Councils' Vision to make Enfield a better place to live and work, delivering fairness for all, growth and sustainability and strong communities. In order to meet the Council's objectives the Contractor's performance will be assessed from the following three sets of indicators:

- Contract management
- Customer Satisfaction
- Operational Performance

10.2 Performance monitoring will be a continuous process and key performance indicators will be reported at contractor performance meetings.

## **Background Papers**

None