



London Borough of Enfield

Report Title	Approval to directly award Enfield Council Hard and Soft Landscaping Contract . G MD 449
Report to	Perry Scott - Executive Director of Environment and Communities
Date of Meeting	
Executive Director / Director	Cheryl Headon - Director Parks, Leisure, and Culture (Interim)
Report Author	Andrew Dodkins, andrew.dodkins@enfield.gov.uk
Ward(s) affected	All
Key Decision Number	KD 5663
Classification	Part 1

Purpose of Report

1. Approval to directly award the Enfield Council Hard and Soft Landscaping Contract G MD 449.

Recommendations

<ol style="list-style-type: none">I. That the Director of Parks, Leisure and Culture approves the direct award of, and entering into, the Enfield Council Hard and Soft Landscaping Contract G MD 449, to AH Nicholls & Sons Limited for a period of 18 months, with the option to extend up to 6 months or part thereof.II. That the Director of Parks, Leisure and Culture approves the price fluctuation mechanism set out in this report to be incorporated into the contract.III. Delegate the approval to extend the contract at the end of the first 18 months to the Head of Service in consultation with the Director of Parks, Leisure and Culture.

Background and Options

2. The Enfield Council Grounds Maintenance contract was awarded on 1st April 2016 to Glendale Countryside Limited, with a contract term of 5 + 5 years and was procured compliantly in accordance with the Council's contract procedure rules and Public Contract Regulations 2015. The contract was extended in April 2021 and was due to expire in March 2026.
3. The Contract provided the provision for emergency and reactive playground maintenance, planned playground renewal, hard and soft landscaping, and civil engineering works.
4. In April 2023, the provider invoked the termination clause which ended the contract on 31st October 2023.
5. Negotiations were undertaken to novate the contract to their supply chain partner, however this was unable to be concluded by 31st October 2023, and requests to extend the contract until 31st December were not successful.
6. Discussions were held with Legal and Procurement services to review whether the supply chain partner could continue the service provision outside of novating the contract. It was confirmed that the supply chain partner could be assessed for a direct award recognising the importance of implementing a contract provision to ensure continuity of service.
7. The time required to undertake an above threshold tender is estimated to be between 12 and 18 months, and therefore it was agreed for an interim contract with the current supply chain partner for this time to allow a full review and full tender to be undertaken.
8. It was also recognised that the period between the end of the contract and the award of the new contract would affect service delivery and the delivery of capital projects, and it was important that the implementation of a new contract was expedited to minimise the impact.
9. The scope of the new contract includes playground reactive maintenance and emergency works, planned playground renewal, and hard and soft civil engineering works for programme projects.
10. A waiver was sought from the Executive Director of Resources to direct award this contract to AH Nicholls & Sons Limited.
11. Checks were undertaken to assess the financial standing of AH Nicholls & Sons Limited by Financial services, and further checks were undertaken by Procurement services relating to required insurance levels. AH Nicholls & Sons Limited also confirmed they held Gold membership of Constructionline.
12. The Schedule of Rates for this contract was based on the previously tendered Grounds Maintenance contract rates.
13. All rates are subject to the price fluctuation mechanism.

14. AH Nicholls & Sons Limited were also assessed against the following areas:-
 - Resources
 - Health and Safety
 - Waste Reduction and Sustainability
 - Staff Training and Development
15. In order to cater for price fluctuations affecting labour, plant, materials and market conditions the contract will be subject to a price fluctuation mechanism.
16. The Contract Price Fluctuation will be calculated using the indices and the information in Schedule 3 Clause 79 - Contract Price Fluctuations. The first review will be on 1st April 2024, and then every twelve months.

Risks that may arise if the proposed decision and related work is not taken

17. Should a decision not be taken, the council will not have a term maintenance contractor to undertake emergency or reactive playground repairs to its play areas.
18. This could result in a potential rise in insurance claims.
19. Playgrounds may have to be closed or individual contracts let to keep them open which would be both a costly and time-consuming process.
20. Projects may have to be tendered on an individual basis, adding time and potential costs to project work.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

21. The contractor awarded these works could go bankrupt or into insolvency. Financial checks were undertaken to the tenderers by Enfield's Finance Team to ensure their financial stability. In the unlikely event that an unforeseen issue should arise with the chosen provider the Council have other Term Contractors in place who could carry out works in the short term while another procurement process took place. Payments are always in arrears, therefore there is minimal financial risk.

Preferred Option and Reasons for Preferred Option

22. Other options considered include commissioning this work through existing term contracts, however, rates would need to be provided under variation orders outside of a competitive environment and would therefore be unlikely to provide such good value. There would also be delay in the delivery of emergency or routine playground maintenance operations. This approach would be more time consuming and less efficient than entering into an interim term contract.

23. AH Nicholls & Sons Limited is recommended for contract award following the assessment of the suitability of the contractor meeting our required standards and delivering value for money following a financial review of costs.

Relevance to Council Plans and Strategies

24. The Contract will span across multiple services, including Parks and Open Spaces, Highways and Journeys and Places. The Contract will support these services in delivering the Council's plan priorities.
25. Clean and green places
Enhance biodiversity and protect our parks, open spaces, woodlands, watercourses, wetlands, trees and shrubs. Keep our streets and public spaces clean and welcoming. Enable active and low carbon travel.
26. Strong, healthy and safe communities
Improve our leisure and sports opportunities to enable more active lifestyles. Nurture our arts, heritage and creative sectors to connect people through culture.
27. Thriving children and young people
Increase local education, play and leisure opportunities for children and young people with special educational needs and disabilities. Engage children and young people in positive activities.

Financial Implications

Summary

28. This report is recommending approval to award the Enfield Council Hard and Soft Landscaping Contract to A H Nicholls & Sons Limited. The contract is worth up to £3.75m over a period of 18 months with the option to extend for a period of 6 months subject to spend not exceeding threshold for works under the Public Contract Regulations 2015.
29. The approximate spend of £2.5m a year is split between capital and revenue funding through Parks and Open Spaces budgets, grant funding, and other service areas that commission works through the contract. Approximately £200k of spend will be charged to revenue per annum with the remaining £2.3m to be charged to capital, funded through grant, and borrowing.
30. The drawdown of works through the contract is based on a schedule of rates that have been evaluated through the procurement process to ensure the Council achieves value for money. There is no guaranteed expenditure on this contract.
- 33 Capital works will only be commissioned through the contract where there is a capital budget that has been approved. Capital budget for parks and playground for 2024/25 is yet to be approved. No orders will be placed unless capital budgets are available to fund spend.

31. A financial assessment was performed on AH Nicholls & Sons Limited. The purpose of the financial assessment is to assess the Contractors financial capacity to perform the contract. The financial assessment follows the guidance set out in the governments commercial function. The guidance note “Assessing and monitoring the economic and financial standing of bidders and suppliers” sets out a range of financial metrics and ratios to assess organisations.
- 34 The assessment is based on a standardised set of metrics and ratios, which were reviewed to ensure they were related and proportionate to the contract. The assessment was performed by qualified accountants within the Councils finance team.

Revenue Budget Impact

- 35 Any works commissioned through the contract that are deemed revenue will be charged to the revenue budget. There is currently a £200k revenue budget that costs will be charged against.

Capital Budget Impact

- 36 Capital works commissioned through the contract will be charged across several capital schemes. Current estimates are detailed below.

				<i>Funded by:</i>	
	2023/24	2024/25	Total	Grant	Borrowing
Parks and Playground	£0.38m	Tbc*	£0.38m		£0.38m
Journeys and Places	£0.00m	£1.50m	£1.50m	£1.50m	
Watercourses	£0.20m	£0.90m	£1.10m	£1.10m	
Housing	£0.02m	£0.03m	£0.05m		£0.05m
Education	£0.07m	Tbc*	£0.07m	£0.07m	
Total	£0.66m	£2.43m	£3.09m	£2.67m	£0.42m

*Any budget for the capital scheme in that year still requires approval before any costs can be charged against it.

- 37 Work can only be commissioned through the contract once a budget is in place.

Borrowing Impact

- 38 Its estimated £420k of the contract value is funded through borrowing this will result in an annual MRP charge of £16.8k, annual interest charge of £22.3k. Total financing costs of £39k a year over 25 years at an interest rate of 5.3%

Tax Implications

- 39 The Council will reclaim all VAT on expenditure though its regular submissions for input VAT. No other known tax implications.

Accounting Treatment

- 40 Costs will be accounted for in compliance with the Councils capitalisation policy. Any costs that cannot be capitalised will be charged to the revenue budget.
- 41 All costs commissioned through the contract that are identified as capital in nature will be charged to the capital programme budget. Works that enhance, extend the useful economic life, or create a new non-current asset, will be considered for capitalisation.

Legal Implications

- 42 The Council has a duty under both the common law and legislation including the Occupiers Liability Acts 1957 and 1984, Health and Safety at Work etc Act 1974 and the Management of Health and Safety at Work Regulations 1999 to take such care as is reasonable in all the circumstances to ensure that individuals do not suffer injury on its premises and that it does all that is reasonably practicable to ensure that people are not exposed to risk to their health and safety. Under the Public Health Act 1875 and Open Spaces Act 1906 the Council has the power to provide open spaces and to manage and control them, and by virtue of s.111 of the Local Government Act 1972, the Council has the power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of this function. Section 1 of the Localism Act 2011 further empowers the Council to do anything that individuals generally may do provided it is not prohibited by legislation and subject to Public Law principles. The recommendations in this report are in accordance with these powers.
- 43 The value of the proposed interim award is below the relevant EU procurement threshold for works, and so the Public Contracts Regulations 2015 do not apply.
- 44 This report constitutes a Key Decision under the Council's Constitution and, as such, must comply with the Key Decisions process.
- 45 The agreement must be in a form approved by the Director of Law and Governance and contracts with a value above the Key Decision threshold of £500,000 must be executed under seal.
- 46 For contracts of £1,000,000 or above in value, the Council's Contract Procedure Rules ('CPR') provide that contractors must be required to provide sufficient security in one of the forms outlined in CPR 7.3. If the contractor cannot provide such security, the Executive Director of Resources must approve such a decision, with reasons and risk mitigation measures set out in the relevant authority report, prior to the award of the contract.

Equalities Implications

- 47 An Equality Impact Assessment has been carried out. The mitigation actions of the EqIA are listed below.

Protected characteristic	Impact	Mitigation
Age	None	N/A
Disability	Access and orientation during any works commissioned through this contract maybe more difficult for disabled people.	Works carried out will have temporary measures that meet accessibility guidance, adapted to the specific location as required.
Gender reassignment	None	N/A
Marriage and Civil Partnership	None	N/A
Pregnancy and Maternity	Pregnant people and those in the early months after birth, who may also have other young children, as well as a new-born baby, to look after, as a family group may need to take extra care, both when walking on the footway and crossing a road. Access and orientation during any works commissioned through this contract can be more difficult for new parents with prams.	Works carried out will have temporary measures that meet accessibility guidance, adapted to the specific location as required.
Race	None	N/A
Religion and belief	None	N/A
Sex	None	N/A
Sexual Orientation	None	N/A
Socio-economic deprivation	None	N/A

- 48 It should be noted that projects or work stream deriving from this may be subject to a separate Equalities Impact Assessment. Therefore, any projects or work stream will be assessed independently on its need to undertake an EQIA to ensure that the Council meets the Public Sector Duty of the Equality Act 2010.
- 49 The contractor has signed up to the Equality Act 2010, Human Rights Act 1999 and the Employers Equal Opportunities policy all detailed in Schedule 3 Terms and conditions (Para 72.4.1) of the Contract.

HR and Workforce Implications

50 There are no direct implications for Enfield Council, however, TUPE may apply.

Environmental and Climate Change Implications

51 The Contractor has agreed to meet the minimum requirements for the council's Sustainable and Ethical Procurement policy including :-
Reduce waste, Reuse, and Recycling;
Minimising the use of water;
Prioritising sustainable and locally sourced materials that is expected contribute to the reduction of embodied carbon and emissions from transportation.

Public Health Implications

52 There is increasing evidence that the public realm has a profound effect on behaviour and lifestyle influencing how people travel, how much time they wish to spend in the public realm and how they feel about where they live. How these budgets are spent will therefore have a significant effect on the health of the borough.

Property Implications

53 With regard to Corporate Property assets, there are no property implications that arise from the implementation of the contract.

Safeguarding Implications

54 The proposals within this report are for the maintenance and improvement of the Public Realm, Parks, and Highway areas and it is not considered that there are any specific safeguarding implications.

55 Crime and Disorder Implications

56 The proposals within this report are for the maintenance and improvement of the Public Realm, Parks and Highway areas. Crime and safety will be considered at the design and implementation stage of undertaking works, although there are not any specific Crime and Disorder implications.

Procurement Implications

57 The contract award to AH Nicholls & Sons was concluded via E-Tendering Portal (ref DN695721) in accordance with the Councils Contract Procedure Rules (CPR's).

58 A waiver to contract procedure rules to directly award the contract to AH Nicholls & Sons Limited and to waive the request for the form of Financial Security was presented and discussed at the Procurement Assurance Group on the 04/10/2023. On the 06/11/2023 a waiver to contract procedure rules

was approved by the Executive Director of Resources. Please see attached to this report.

- 59 The award of the contract, including evidence of authority to award, promoting to the Councils Contract Register, and the uploading of executed contracts must be undertaken on the London Tenders Portal including arrangements for the future management of the contract. The award of contract must be published on Contracts Finder to comply with the Government's transparency requirements.
- 60 As the estimated contract value is in excess of £100,000 Contract Procedure Rules state that the contract must have a nominated contract manager in the Council's e-Tendering portal and that the contract management monitoring requirements are adhered to.
- 61 As the contract estimated turnover is over £1,000,000, the service must ensure that sufficient security has been considered to manage risk. Evidence of the form of security required, or why no security was required, must be stored and retained on the E-Tendering Portal for audit purposes.

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Appendices

Waiver from Exec Director of Finance for Direct Award.

Departmental reference number, if relevant: ECPLC2324_007