

## MUNICIPAL YEAR 2018/2019 REPORT NO.

### ACTION TO BE TAKEN UNDER DELEGATED AUTHORITY

### OPERATIONAL DECISION OF:

Director of Environment  
and Operational Services

**Agenda – Part: 1**

**KD Num: 4897/U204**

**Subject: Appointment of replacement  
contractor to construct Edmonton  
Cemetery extension**

**Wards: Bush Hill Park**

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### 1. EXECUTIVE SUMMARY

- 1.1 In July 2018, the decision was taken to appoint Dawnus Construction Holdings Ltd. (Dawnus) to construct the Edmonton Cemetery extension. This was agreed through report PL 17.156 (Key Decision 4655).
- 1.2 Dawnus commenced the construction works in December 2018, but on the 14<sup>th</sup> March 2019, Enfield Council was informed that Dawnus had become insolvent and went into administration, causing all works to cease on site. The company's administration resulted in the termination of the contract between the London Borough of Enfield (the Council) and Dawnus.
- 1.3 An urgent resolution is required because Edmonton Cemetery has very limited burial space remaining within the existing cemetery and this poses a significant reputational risk to the Council that needs to be address urgently. A fast resolution is also required to protect the Council's return on investment.
- 1.4 This report seeks authority to appoint the second ranked contractor from the original procurement exercise to complete the outstanding programme of works.

### 2. RECOMMENDATIONS

That the Director of Environment and Operational Services

- 2.1 Agrees to award the contract to complete the construction of Edmonton Cemetery extension to bidder A.
- 2.2 See Part 2 report.

### **3. BACKGROUND**

- 3.1 On 13<sup>th</sup> September 2017 Cabinet gave approval for the extension of Edmonton Cemetery (the revised approach) as detailed within report number 54 (Key Decision 4558). Extension of the cemetery was required as it was beginning to reach full capacity. The decision gave authorisation for the extension of the existing cemetery east onto the land adjacent that was occupied by fourteen tennis courts next to the A10.
- 3.2 An invitation to tender for the construction of the Edmonton Cemetery extension was issued by STACE, the project's appointed quantity surveyor, with the tender running from 13<sup>th</sup> December 2017 until 2<sup>nd</sup> February 2018. The tender was conducted through a single stage process via the London Tenders Portal, for a JCT intermediate building contract with contractor's design, 2016 edition.
- 3.3 On the 3<sup>rd</sup> July 2018 the decision was made to appoint the successful bidder, Dawnus Construction Holdings Ltd., to construct the cemetery extension. Following the discharge of the relevant planning conditions, Dawnus commenced the construction works in December 2018. However, on 14<sup>th</sup> March 2019 the Council was informed that Dawnus had become insolvent and had gone into administration.
- 3.4 The company's administration resulted in the termination of the contract between the Council and Dawnus and all works on the cemetery extension ceased. Approximately 70-80% of the scheduled work remains outstanding, and consequently a new contractor is required to complete the cemetery extension.
- 3.5 It is important to appoint a replacement contractor quickly because there is very limited burial space remaining within the existing cemetery. Based on current demand we expect the existing cemetery to reach capacity (lawn graves and traditional) by late summer. Some demand can be accommodated via the cemetery's vaults and mausolea, but this is only a temporary mitigation.
- 3.6 Should the completion of the extension be delayed much beyond late summer then there is a significant risk that the cemetery will need to close for new burials. This will pose a reputational risk to the Council as we will be unable to meet demand from the local community, which is of particular concern for those who already have loved ones buried within Edmonton Cemetery.
- 3.7 Officers have reviewed the options for obtaining a replacement contractor and recommend the appointment of the second ranked bidder from the original procurement exercise. This recommendation has been made because the appointment of bidder A will be the fastest way of securing a contractor for the works, whilst ensuring that good value has been achieved.

#### **4. ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 Conduct a new tender exercise. This option has been considered and discounted because this would delay the delivery of the cemetery extension by at least 10 weeks and there are no guarantees that a new tender would result in a better price than what has been negotiated with bidder A.
- 4.2 Utilise the Highway Services landscape contract. This option has been considered and discounted because there is no cost certainty due to the contract being a re-measurement contract, which is where each element of the project is valued against a schedule of rates and no overall price is agreed. There is also no redress within the contract for delays that could occur. A further reason for discounting this option is that the value of works is likely to be close to the contract threshold and officers would need to ensure it does not exceed the limits set out in the OJEU notice.
- 4.3 Appoint a contractor from a construction framework. This option has been discounted as it is likely to be the costliest option due to the premiums added to framework contracts, plus the potential delay to procure a framework compliant call-off.

#### **5. REASONS FOR RECOMMENDATIONS**

- 5.1 The quick appointment of an alternative contractor is necessary to complete the works already started on the extension. This is because of the following reasons:
  - 5.1.1 A key driver for the extension project was the provision of new burial space that will meet demand for the next 25 years. Existing burial space within the cemetery is nearing capacity and there is a very real reputational risk of the service having to close the cemetery until the works are complete. The fast appointment of a replacement contractor will reduce the risk of needing to close and protect the Council's return on investment in the site.
  - 5.1.2 When Dawnus Construction Holdings Ltd. went into administration the contract was cancelled and responsibility for the site reverted to the Council. The site has been secured and made safe, but delays in appointing a new contractor increase the risk of health & safety incidents and general site security.
  - 5.1.3 Delays to getting a replacement contractor on site increases the risk of occupation by the travellers or other third parties.

- 5.1.4 There will be a loss of budgeted income caused by the delay to project completion. The appointment of bidder A will be the fastest method of getting the works completed and reducing the impact on the service budget.

## **6. COMMENTS FROM OTHER DEPARTMENTS**

### **6.1 Financial Implications**

- 6.1.1 Please refer to Part 2 report.

### **6.2 Legal Implications**

- 6.2.1 In accordance with Section 111 of the Local Government Act 1972, the Council may do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions. The appointment of Bidder A, as recommended in this Report, will be incidental to this power. The Council also has a general power of competence under Section 1(1) of the Localism Act 2011 to do anything that individuals generally may do, provided it is not prohibited by legislation and subject to Public Law principles.

6.2.2 Additionally, the Council is empowered, under s.1 of the Local Government (Contracts) Act 1997 to enter into contracts in order to discharge its legal powers.

- 6.2.3 This reprocurement is exempt as it falls within CPR 1.5.6 in that it arises due to a genuine emergency beyond the control of the Council.
- 6.2.4 Ordinarily this would be a Key Decision given that it involves expenditure over £250,000. Part 4.6 Access to Information Procedure Rules of the Constitution, Rule 16 Special Urgency provisions provide (a) if by virtue of the date by which a decision must be taken Rule 15 (General Exception to the Key Decision process) cannot be followed then the decision can only be taken if the decision taker -----(i) obtains the agreement of the Chair of the Overview and Scrutiny Committee that the taking of the decision cannot be reasonably deferred. If there is no Chair-----or the Chair is unable to act then agreement of the Mayor or-----will suffice and (ii) provides notice at Civic Centre ---and on the Council's website, as soon as reasonably practicable, after agreement has been obtained under (i) above of the reasons why the decision is urgent and cannot reasonably be deferred. (b) All Service Groups are required to process requests for exceptions through the Governance Team.
- 6.2.5 The Council must comply with all requirements of its Constitution and CPRs. Throughout the engagement of Bidder A the Council must comply with its obligations of obtaining best value, under the Local Government (Best Value Principles) Act 1999. The Council must keep a clear audit trail of its decision to award these services to Bidder A in

order to demonstrate that best value has been and will continue to be obtained for the Council.

- 6.2.6 The contract price falls below the threshold for Public Works Contracts under the Public Contracts Regulations 2015 and therefore the full EU procurement procedures do not apply. However, the Council must ensure that it complies with the EU general principles of equality, transparency, proportionality, non-discrimination and mutual recognition when awarding the contract.
- 6.2.7 Any resultant contracts (and where relevant, ancillary contractual documentation) required in association with this matter must be in a form approved by the Director of Law and Governance and Legal Services ahead of contract commencement date. The works contract terms are in the form of the JCT Intermediate Building Contract with Contractor's Design (2016 Edition). As the contract value exceeds £1 million it will require sealing on behalf of the Council.
- 6.2.8 As the contract value for the works exceeds £1 million the contractor must be required to provide sufficient security, for example in the form of a performance bond, 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 (CPR 1.18).

### **6.3 Property Implications**

- 6.3.1 It is not believed that there are property implications from the recommendation to appoint bidder A.

### **6.4 Procurement Implications**

- 6.4.1 The Procurement was undertaken in accordance with the Councils Contract Procedure Rules.
- 6.4.2 To minimise delays and the need to appoint a replacement contractor to avoid a potential closure of the cemetery and reputational risk the decision was made to revisit the bids received from the previous tender process.
- 6.4.3 The bids were reviewed and the appropriate BCIS inflationary increases to the original submissions were applied.
- 6.4.5 The updated tender prices were reviewed and the independently appointed quantity surveyor has established that contractor A's bid is an economically advantageous bid within pre tender estimates.
- 6.4.4 The CPR's require works contracts above £500,000 that a minimum of 5 bids (quotations) are received. If less than 5 quotes are received then the Procurement & Commissioning (P&C) Hub must approve the award.

- 6.4.6 As only 3 bids were reviewed the P&C Hub having reviewed this report and having considered the independent quality surveyors tender review agrees with the recommendation to award the contract to Bidder A.
- 6.4.7 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 future management of the contract.
- 6.4.8 All awarded projects must be promoted to Contracts Finder to comply with the Government's transparency requirements.

## **7. KEY RISKS**

- 7.1 There is a risk of a budget overspend on the project, which has been increased by appointing a replacement contractor. However, this has been mitigated via:
  - 7.1.1 Independent quantity surveyors have supplied cost estimates for the project, with contractor A submitting an economically more advantageous bid than the pre-tender estimates.
  - 7.1.2 There is a contingency sum built into the project budget that is available should the cost of delivering the cemetery extension exceed the bid supplied by bidder A.
  - 7.1.3 Any use of the £50,000 provisional sum (outlined in section 3.9 above) will be agreed with the project team before it is sanctioned.
  - 7.1.4 Project spend will be monitored by the project team throughout the duration of the construction and any variations from the figures supplied at the tender will be flagged to the project group and reported via the capital monitoring programme.
  - 7.1.5 The Corporate Construction & Maintenance Team will appoint a clerk of works to ensure that the works are delivered to agreed specification.

## **8. INTERNAL DEPARTMENT IMPLICATIONS/CONSULTATION**

Not applicable.

## **9. IMPACT ON COUNCIL PRIORITIES – CREATING A LIFETIME OF OPPORTUNITIES IN ENFIELD**

### **9.1 Good homes in well-connected neighbourhoods**

- 9.1.1 The provision of burial provision is essential for well-connected neighbourhoods. The contract award to bidder A will facilitate the completion of the Edmonton Cemetery extension project.

## **9.2 Sustain strong and healthy communities**

- 9.2.1 The proposed cemetery extension is focused on the future demands of residents within the Borough and allows for provision for non-residents with links to Enfield. The extension project will allow the service to adapt to future priorities of the borough and its community's needs.

## **9.3 Build our local economy to create a thriving place**

- 9.3.1 The proposals outlined within this report will provide additional burial space that will meet the growing demand within the community. The proposals will also ensure that the Cemetery Service can continue to operate with financial sustainability.

## **10. EQUALITIES IMPACT IMPLICATIONS**

Corporate advice has been sought, and it has been agreed that there are no equalities impacts from the recommendation to appoint the contractor to complete the cemetery works. However, it should be noted that the any contracts awarded should include a duty on the successful applicant to assist us with meeting our obligations under the Equalities Act 2010.

## **11. PERFORMANCE AND DATA IMPLICATIONS**

It is not believed that there are any performance and data management implications from the recommendations outlined within this report.

## **12. HEALTH AND SAFETY IMPLICATIONS**

The work carried out at the site should be carried out in such a way that the requirements of the Health and Safety at Work etc Act 1974 are complied with. In particular full attention should be given to ensuring compliance with the Construction (Design and Management) Regulations 2015 and the Control of Asbestos Regulations 2012.

The Council will follow its relevant health and safety policies and procedures and guidance in particular 'The Construction (Design & Management) Regulations 2015 (CDM 2015) Health and Safety Arrangements' and 'Asbestos (Corporate) Policy'. These actions will include ensuring that:

- All CDM duty holders have been appointed and are aware of their duties under the Regs.
- Pre Construction Information is available (including asbestos records) for the design stage.
- That consideration is given at the design stage to those that may be affected by the work in the vicinity of the project, such as members

of the public passing by, with regard to access, egress, pedestrian or vehicular movement, dust or other hazard caused by the work.

- That suitably qualified and experienced person (SQEPs) will arrange and monitoring the work at corporate level and team level.

These actions will in turn mitigate risks and ensure the sites are suitable for the end uses, including providing a satisfactory level of amenity, safety and security.

#### **14. PUBLIC HEALTH IMPLICATIONS**

It is not believed that there are any public health implications from the appointment of bidder A for the delivery of the Edmonton Cemetery project.

#### **Background Papers**

None