

Wiltshire Council

**Environment Select Committee
12 January 2016**

**Cabinet
19 January 2016**

Subject: New Highways Contract Award

Cabinet Member: Councillor Philip Whitehead – Highways and Transport

Key Decision: Yes

Executive Summary

Following the decision by Cabinet in July 2015 on the early termination of the existing Highways and Streetscene contract with Balfour Beatty Living Places (BBLP), a procurement exercise has been undertaken for a new highways contract.

The new contract will include the provision of routine highways maintenance, Parish Stewards, pothole repairs, winter gritting and the implementation of safety and Community Area Transport Group (CATG) schemes. The new contract will start on 1 April 2016, and the opportunity has been taken to undertake a joint procurement with Swindon Borough Council. It is anticipated that annual expenditure through the contract is likely to be in the region of £15,000,000.

The Procurement of the new contract has followed a two stage process. Following the publishing of the Official Journal of the European Union (OJEU) notice, 54 firms (made up of both smaller and larger companies), expressed an interest via the supplying southwest portal, and subsequently seven firms submitted documents requesting to be on the tender list. One was eliminated due to non-compliance and the remaining six were evaluated. One submission was eliminated by the finance team because of turnover and financial considerations.

Based on the evaluations by a team comprising service managers and representatives of the finance team, with the Corporate Procurement team acting as moderators, a list of five potential tenderers was prepared. One of the companies subsequently advised that they would not be submitting a bid because of timescales and conflicting workloads.

Four of the contractors submitted tenders, which have been assessed in terms of cost and quality, using Price/Quality considerations of 60/40 described in the tender documentation.

The detailed scoring and financial information is contained in a confidential report to be considered in Part 2 of this meeting.

Proposal

The proposal is to be considered as a Part 2 Item at this meeting.

Reason for Proposal

- (i) There is a need for a specialist contractor to deliver the Council's highways and related services when the existing contract ends on 1 April 2016.
- (ii) Following a procurement exercise in accordance with the 'Restricted Procedure' tenders were submitted by four companies, which were assessed in terms of price and quality.
- (iii) The most advantageous tender for the Council, taking into account quality and price, should be accepted in accordance with the procurement procedures. The detailed scoring and financial information is contained in a confidential report to be considered in Part 2 of this meeting.

Dr Carlton Brand
Corporate Director

Wiltshire Council

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Key Decision: Yes

Purpose of Report

1. To consider the award of the Wiltshire and Swindon Borough Councils' Highways Contract.

Relevance to the Council's Business Plan

2. The Council's highways contract helps meet the priorities of the Council's Business Plan, including:
 - Outcome 2 – People in Wiltshire work together to solve problems locally and participate in decisions that affect them
 - Outcome 6 – People are as protected from harm as possible and feel safe

Background

3. The Council's highways service has been primarily delivered through the Highways and Streetscene Contract, which was awarded to Balfour Beatty Living Places (BBLP) on 18 December 2012. The contract started on 1 June 2013 and brought together the previous highways, street lighting and streetscene contracts and operations into one contract.
4. On 21 July 2015 Cabinet approved the early termination of the BBLP contract, the early transfer of some key BBLP sub-contracts, and the procurement of a replacement highways contract. An outline of the highways services to be provided under the new highways contract is included in **Appendix 1**.
5. The new contract will include the provision of routine highways maintenance, Parish Stewards, pothole repairs, winter gritting and the implementation of safety and Community Area Transport Group (CATG) schemes.
6. Lessons learnt from the existing contract with BBLP have been included in the new contract to reduce the risk of similar problems with the new contract. The removal of the streetscene functions from the contract will make it a more 'traditional' highways contract which suppliers should find easier to understand and deliver.

7. It is proposed that the new contract will come into operation on 1 April 2016 in order to achieve the programme agreed with regard to the termination of the BBLP contract. A summary of the main provisions of the new contract is included in **Appendix 2**.
8. The opportunity has been taken to include Swindon Borough Council in the procurement process so that it can obtain work through the contract. This has the benefit of increasing the scale of the contract, making it more attractive to bidders, and meets the Department for Transport requirements for collaborative working with other highway authorities. It is anticipated that annual expenditure through the new contract is likely to be in the region of £15,000,000.

Main Considerations for the Council

9. The Procurement of the new contract has followed the 'Restricted Procedure' which is a two stage process. The first stage was for bidders to submit information to enable them to be considered for inclusion on a list to be invited to tender.
10. The second stage was for the short listed tenderers to be issued the Invitation to Tender (ITT) documents, which had to be completed and returned by the closing date of 18 December 2015. The tender documents included both price and quality elements which are taken into account in awarding the contract.
11. An open invitation was made to potential providers to attend an 'Industry Open Day'. This was held on the afternoon of Tuesday 6 October 2015 in the Council Chamber at County Hall and was well attended. A presentation was delivered to attendees to enable them to understand the scope of the contract and the timescale for procurement.
12. The programme for the procurement of the new contract is:

Event	Date
Publish OJEU PIN	3 September 2015
Publish PQQ	20 October 2015
Deadline for submission of PQQ clarification question	16 November 2015
PQQ submission deadline	19 November 2015
Evaluation of PQQ Submissions	19 November – 25 November 2015
Issue Invitations To Tender	30 November 2015
Tender Submission Deadline	18 December 2015
Contractor Interviews	22 – 23 December 2015
Award, Standstill Period start, Appointment	19 January 2016
Contract Commencement	1 April 2016

Pre Qualification Questionnaire

13. Following the issue of a Prior Information Notice (PIN), the Pre-Qualification Questionnaire (PQQ) was made available to potential bidders. The PQQ requested information about the bidder, including financial information, business and professional standing, health and safety, equal opportunities and diversity, environmental management, quality management and previous experience.
14. The returned PQQs were assessed in accordance with the process set out in the document, and were scored by a panel of Council officers to identify a list of organisations to be invited to tender.
15. Following the publishing of the Official Journal of the European Union (OJEU) notice, 54 firms (made up of both smaller and larger companies), expressed an interest via the supplying southwest portal. The PQQ document was issued to all of the firms which had expressed interest.
16. In compliance with the new Public Contract Regulation 2015, all the documents (the PQQ and the Draft Tender Documents) were made available on the same day. This was to allow all the potential bidders to view the documents, and the requirements of the Council, to allow an informed decision on whether to submit a completed PQQ.
17. By 19 November 2015, which was the deadline to receive completed PQQs, seven firms had submitted documents. One was eliminated due to non-compliance and the remaining six were evaluated. One submission was eliminated by the finance team because of turnover and financial considerations.
18. Based on the evaluations by a team comprising service managers and representatives of the finance team, with the Corporate Procurement team acting as moderators, a list of five potential tenderers was developed. One of the companies subsequently advised that it would not be submitting a bid because of timescales and conflicting workloads.
19. It is considered that the four companies invited to tender represented a good tender list of firms with the capacity and capability to deliver the contract. Although it did not form part of the considerations, three of the four companies have had successful contracts with Wiltshire previously. Swindon Borough Council has been involved in the procurement process and kept informed of progress.

Invitation to Tender

20. The updated tender documents were issued to the selected list of bidders on 30 November 2015 for return by 18 December 2015. The tender documents include a Price List and a Quality Questionnaire. The Quality Questionnaire has questions in connection with:
 - The Management Arrangements
 - Systems and Processes
 - Operations and Methods

- Customer Care
 - Performance, Innovation and Efficiency
21. The tenderers also had to complete the Price List of items which reflected the range of work to be procured through the contract.
 22. The tenders were returned by 18 December 2015. The tenderers were invited to attend individual interviews on 22 or 23 December 2015. This comprised a short presentation by the tenderer, and the opportunity to respond to a series of questions in connection with the contract. The presentation and responses to the questions contributed to the scoring of the quality assessment.

Tender Assessment

23. As well as submitting prices the tenderers were required to answer specific questions regarding how they would deliver the required services. The Quality Questionnaire covered five main aspects:
 - Management Arrangements
 - Systems and Processes
 - Operations and Methods
 - Customer Care
 - Performance, Innovation and Efficiency
24. The Quality Questionnaires were assessed and scored by a panel comprising Heads of Service and other staff who have extensive experience of the type of work being undertaken through the contract. The weightings given to each aspect of the Quality Questionnaire are described in **Appendix 3**.
25. The Quality Scores were calculated for each tenderer by dividing their initial quality scores awarded by the panel by the highest initial quality score. Thus the tenderer with the highest initial quality score from the Quality evaluation was awarded a score of 100.00% and all the others are awarded Quality Scores pro rata to their *initial quality scores* (rounded to two decimal places).
26. The outcome of the tender quality assessment is reported in the Part 2 item to be considered at this meeting.

Tenderer Interviews

27. As part of the tender assessment process the tenderers were required to attend an interview at County Hall on 22 and 23 December 2015. They were required to make a short presentation to introduce their teams and their approach to the contract.
28. The panel consisted of the Associate Director for Highways and Transport, Parvis Khansari, relevant Heads of service, the Cabinet Member for Highways and Transport, Cllr Philip Whitehead, the Chair of the Audit Committee, Cllr Tony Deane, and the Chair of the Contracts Task Group established by the Environment Select Committee, Cllr Jeff Osborn. The interviews were monitored by a member of the Procurement Team.

29. The tenderers were each asked 10 set questions. They had been given an indication of the subject areas relating to the contract, but did not have advance warning of the specific questions. The scores awarded in connection with the presentation and the responses to the questions were included in the quality assessment.
30. Information on the scores awarded for the Tenderer Interviews is included in the Part 2 report.

Price Assessments

31. Tenderers completed and submitted a Price List which contained a schedule of rates and items for the work most likely to be required under the contract. This included a mixture of rates for different types of measured work, fixed sums for particular identified elements of work, and on-costs and multipliers to be applied in certain circumstances. These rates were used to price a basket of items which represented the typical annual expenditure anticipated through the contract.
32. The lowest annual value calculated from the price assessment was awarded 100%. The cost scores for all the other tenderers were calculated by dividing the lowest annual value by each tenderer's annual value in turn.
33. The outcome of the price assessment is reported in the Part 2 item to be considered at this meeting.

Comparison of bids

34. The tender assessment process has recognised the vital importance of obtaining cost-effective services, but has also recognised the importance of the quality of the services provided by the contractor. Consequently, bids have been evaluated on a 60/40 Price/Quality basis in order to reflect the relative importance of these two aspects.
35. The quality and price scores of the tenderers were combined to determine the preferred bidder. The full details of the assessment are described in the Part 2 item to be considered at this meeting.

Benefits of the New Contract

36. The new contract offers the opportunity to establish a new long term relationship with a contractor to work in partnership with the Council to deliver the highway service.
37. The contract would be for five years, with extensions up to two years subject to performance, which would be monitored continuously and assessed annually. This will act as an incentive for consistent good performance.
38. The new highways contractor would be an established company with a proven track record in highways maintenance, and the capacity and capability to deliver the service.
39. The new contract includes the reintroduction of the Parish Steward scheme, which will be welcomed by local communities.

40. The contract will be for highways operations, and will not include the streetscene and grass cutting elements which caused issues with the previous contract.
41. The new contractor will make full use of the My Wiltshire app in identifying and monitoring work, which would be developed to provide improved responses to reports.
42. The joint working with Swindon Borough Council will allow for better co-ordination of works and resources. It will provide a better workload for the contractor, with potentially greater flexibility and reduced costs. It also meets the Department for Transport aspiration for collaborative working between highway authorities.

Next Stages

43. Following a decision to award the contract there will be a ten day standstill period during which other tenderers may make a legal challenge to the award of the contract.
44. Subject to the outcome of the decision by Cabinet, and assuming no legal challenge is received, the intention is to enter into the contract as soon as possible in order to provide the maximum lead in time before the contract starts on 1 April 2016.
45. There will be a significant amount of preparatory work for the successful bidder in arranging the necessary plant and equipment, communications systems and infrastructure. There are also likely to be significant numbers of employees transferring from existing service suppliers to the new contractor. It will be important to establish a consistent culture and processes for meeting the employment obligations, especially in connection with the TUPE regulations.
46. The new contract will make a number of changes to the way services are delivered, including the reintroduction of the Parish Steward scheme, and these arrangements will have to be developed by the new supplier and agreed with the Council officers.

Overview and Scrutiny Engagement

47. The Environment Select Committee has been actively involved in the termination of the existing contract and the procurement of its replacement. A Contract Task Group was established for the previous contract, which has also monitored the procurement of the new contract. At its meeting on 15 December 2015 the Contract Task Group received a report on the procurement processes being followed.
48. The Chairs of the Contract Task Group established by the Environment Select Committee - Cllr Jeff Osborn, Audit Committee, and the Chair of the Audit Committee - Cllr Tony Deane, were at the Tenderer Interviews in December and have been involved in the process.

Safeguarding Implications

49. None.

Public Health Implications

50. The condition of roads and related infrastructure can have serious safety implications, especially with regard to skid resistance and condition of highways and the contribution they can make to reducing accidents and public safety. The arrangements for the new contract should ensure continuing delivery of services in these key areas, and help to improve road safety.

Procurement Implications

51. The new contract will deliver routine maintenance operations, pothole repairs and winter maintenance. The procurement has followed the Restricted Procedure, which is a two stage process, with the relevant OJEU notices and procedures.
52. The scope and details of the new contract take into account a number of factors, including revenue funding pressures, public expectations, winter maintenance requirements and legal obligations to maintain the highways network. The development of the package of works for tender has been undertaken in parallel with the transfer of other parts of the service by agreement.
53. The Council's Procurement Team has been actively involved in the process and has monitored the procurement and tender assessment processes to ensure they are carried out properly and to reduce the risk of a legal challenge. The detailed scoring and financial information on the tender assessment is contained in a confidential report to be considered in Part 2 of this meeting.

Equalities Impact of the Proposal

54. The new highways contract will result in existing employees of current contractors and sub-contractors having rights under TUPE legislation. The Council will work with the contractors and sub-contractors to determine whether TUPE is applicable and to make the appropriate arrangement to meet any legal obligations.
55. The successful tenderer has been required to demonstrate good practice in terms of employment policies and practices, and conform to the Council's standards and behaviours framework. The tenderers' employment policies have been taken into account in assessing the tenders.

Environmental and Climate Change Considerations

56. The effects of climate change are likely to have significant effects on the highways network as was seen in the flooding of 2014, and the consequent damage to the roads, footways and drainage systems. Having a suitable highways contractor in place will enable robust responses to be made to immediate problems, and will assist in delivering strategies and investment to improve the condition of the network to help build resilience into the infrastructure.
57. Some winters in recent years have been particularly severe, and have emphasised the importance of the precautionary salting and snow clearing which would be carried out by the new highways contractor.

58. The maintenance of highways, verges, landscaped areas and watercourses carried out by the highways service can have an important influence on the local ecology and environment in Wiltshire, and this has been taken into account in assessing the quality questionnaires.
59. The new contract includes the maintenance of the Council's street lighting. In recent years this has proved to be an area where significant cost savings have been made through invest to save initiatives, and where positive steps have been taken to reduce the Council's carbon footprint. The new contract has provided the opportunity to obtain prices for energy efficient equipment for potential installation to replace aging and inefficient infrastructure as funding permits.
60. The duties of the Council, as Lead Local Flood Authority, have increased the importance of responding to flooding. The new contract will provide for an immediate response to flooding and other incidents in the county, with resources being increased in response to events. It is likely that flood alleviation and community protection works will increase in importance during the life of the new contract.
61. The tender assessment process for the new highways contract has taken into account the environmental policies of the tenderers in the quality assessments.

Risk Assessment

62. There are significant risks associated with the Council's highways operations, especially in terms of health and safety, and in financial and reputational risks to the Council. The appointment of a suitable contractor for the highways service is important in reducing and managing these risks.

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

63. It is important that a suitable contractor is appointed to enable the contract to start on 1 April 2016 when the existing contract ends. In the event of the contract not being awarded it should be possible to make temporary arrangements with existing suppliers, and this possibility has been discussed with them. However, there would be risks associated with this as resource levels would be likely to be reduced, which could result in delays in dealing with potholes and other issues on the highway.
64. There could be a risk of increased accidents, claims and public dissatisfaction if highway maintenance is not delivered effectively, or is delayed as a result of procurement issues. These may arise if suppliers are unwilling to continue to provide the services to the level required by the Council. At present, with the current progress on procurement, this seems unlikely, but the situation will continue to be monitored.

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

65. There is a risk that despite the stringent procurement procedure and assessment processes that the selected contractor does not meet expectations and performance is not as good as anticipated. The problems with urban grass

cutting with the BBLP contract were widely reported. These problems have been resolved with the current service supplier, and do not form part of the new highway contract, but they do illustrate the issues that can arise.

66. Careful consideration was given to the scope of the new contract when the decision was taken to terminate the current contract. The new contract will be managed through established and clearly defined processes, with reports on performance being made on a regular basis to the Environment Select Committee, or as required.
67. There is a risk that there could be a legal challenge to the contract award. There is a ten day standstill period following award during which this could happen. The processes followed in procuring the contract have followed the required procedure in order to reduce this risk.

Financial Implications

68. Highways budgets nationally have been under severe pressure for many years. This has been especially the case recently for revenue funding which funds routine maintenance, including grass cutting, gully emptying, litter collection and day-to-day operations on the network. It is especially important that value for money is obtained for these items through the current procurement process.
69. There has been significant capital funding for highways maintenance and improvements in Wiltshire in recent years, despite the difficult financial situation. However, the increasing workloads in the public and private sectors are causing concerns about future cost pressures across the industry.
70. The assessment of the tenders for the new contract has included consideration of the financial aspects. A weighting of 60% has been given to the cost elements, compared to 40% for quality, which reflects the importance of achieving value for money through the contract. A representative basket of goods of anticipated work expected to be ordered through the contract has been used in order to carry out an assessment of the financial implications of the tenders.
71. The financial implications of the award of the new contract are discussed in the Part 2 report which will be considered at this meeting.

Legal Implications

72. The Council has a duty to maintain the highways network and related infrastructure. The new highways contract will deliver important aspects of the highways service, and help ensure that the Council meets its obligations under the Highways Act and other legislation. The new contract, and the appointment of a suitable supplier, will help ensure that the services are provided to the standard necessary for the Council to fulfil its statutory duties.
73. The transfer of staff under TUPE from the existing service suppliers to the new supplier will be managed, with appropriate legal advice, as part of the contract transition process. This will include the protection of pension rights of transferring staff through either access to the Local Government Pension Scheme or other appropriate scheme, details of which will be negotiated with the new supplier.

74. It is important that the procurement process and contract award follow the correct processes in order to avoid legal challenges during the process which could delay or prevent the start of any new arrangements.

Options Considered

75. It is necessary for the Council to award a new contract because of the importance of the highway service to the Council and the communities in Wiltshire. There are safety, legal, reputational and financial risks associated with not having a suitable contractor for the highways service.
76. The tenders submitted for the new contract have been assessed in terms of price and quality in accordance with the agreed procedure, and the most suitable tenderer has been identified.

Conclusions

77. The result of the assessment to identify the preferred bidder is described in the Part 2 item to be considered at this meeting. The most advantageous tender for the Council, taking into account quality and price, has been identified in accordance with the procurement procedures.

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The following unpublished documents have been relied on in the preparation of this Report:

None

Appendices:

- Appendix 1 - Scope of new contract
- Appendix 2 - Summary of main features of contract
- Appendix 3 - Quality Questionnaire Scoring Weightings
- Appendix 4 - Draft Notes of Highways and Streetscene Task Group, 15 December 2015