

## **Committee: Cabinet**

**Date: 15 August 2016**

Wards: All

## **Subject: Updated version of the Appointment of a Contractor for the Street Lighting Maintenance and Improvement Term Contract – 1 October 2016 to 31 March 2024**

Lead Officer: Chris Lee – Director of Environment and Regeneration

Lead Member: Councillor Martin Whelton – Cabinet Member for Regeneration, Environment and Housing

Contact Officer: Steve Shew – Interim futureMerton Infrastructure Manager

### **Recommendations:**

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1. That Cabinet note the content of this report.
  2. That Cabinet agree to award the Street Lighting Maintenance and Improvement Term Contract from 1 October 2016 to 31 March 2024 to Provider A (see Appendix A) who submitted the most economically advantageous tender based on Price (60%) and Quality (40%).
  3. That Cabinet agree that in the unlikely event that Provider A fails to enter into a Contract with the Council then the Contract shall be offered to Provider B who came second following the evaluation process.
  4. That Cabinet note the option to include Parks, Sports Grounds and Council Depots in the contract but subject to an audit, condition survey of assets and the affordability of maintenance and improvement as required. Cabinet are requested to delegate any such decisions to the Director of Environment & Regeneration as appropriate.
  5. That Cabinet are requested to delegate to the Director of Environment & Regeneration any decisions to exercise the option to extend the new contract from 5.5 years, by two periods of one year each, subject to satisfactory performance of the appointed Contractor.
  6. That Cabinet consider other recommendations listed in this report at section 5 below.
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**Information referred to within this report as 'exempt' is exempt pursuant to paragraph 3, Schedule 12A Local Government Act 1972 in that the information relates to the financial or business affairs of the authority and/or the contractor and/or the tenderers.**

## **1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY**

- 1.1. To inform Members of the details, procurement process and evaluation of competitive tenders for the Street Lighting Maintenance and Improvement Term Contract.
- 1.2. The report recommends that Cabinet agree to award the new Term Contract to Provider A (Appendix A) for a period of 5.5 years from 1 October 2016 to 31 March 2022, with the option to extend the contract by two further one-year periods to a maximum expiry date of 31 March 2024.
- 1.3. The report also seeks delegated authority for the Director of Environment & Regeneration to exercise the options to extend, subject to satisfactory performance of the appointed contractor.

## **2 DETAILS**

- 2.1. The Mayor and Burgesses of the London Borough of Merton placed a contract notice on 23 November 2015 in the Official Journal of the European Union (OJEU) seeking expressions of interest from potential providers for the provision of Street Lighting Maintenance and Improvement works within the Borough.
- 2.2. The scope of this Term Contract includes planned, reactive and inspection of street lighting and illuminated street furniture (such as illuminated bollards, illuminated signs and zebra crossings) to meet the Council's statutory duty to maintain a safe and well-lit highway network.
- 2.3. The current contract expires on 30 September 2016 but this may need to be extended by up to two months to allow a sufficient mobilisation period for the incoming Contractor, depending on how much time they require. It is possible to extend the current Term Contract so long as the works are called off before the contract expires. We are therefore currently talking to the incumbent Term Contractor who is willing to continue delivering services for this period to allow for a suitable mobilisation period. This course of action is being taken because the winning bidder will only be announced after Cabinet have given approval to award the Contract and consequently the appointed Contractor will need to quickly marshal resources to commence service delivery.
- 2.4. The new contract will be for a period of 5.5 years (66 months) with options to extend, subject to satisfactory performance and continued need, for two periods, each of 12 months potentially taking the overall term to 90 months.
- 2.5. This timeline has been set to make the new contract co-terminus with many other boroughs whose contracts expire at the end of the financial year and will therefore provide a greater opportunity for collaborative procurement in future.

- 2.6. The services within the scope of this contract are currently provided by a third party provider and as such the Transfer of Undertaking (Protection of Employment) Regulations may apply to those staff currently delivering the services.
- 2.7. Provision was made within the OJEU notice and associated tender documents for the possibility of lighting columns in Parks, Sports Grounds and Council Depots to be included in this Term Contract. Bidders submitted Schedule of Rates that should cover most of the assets, but there was no requirement on bidders to submit tenders for these particular areas because of a need to undertake a detailed audit of the assets involved and to produce a condition survey report. Once this information is known, a cost profile will be sought from appointed Contractor but the Council retains the right to seek competitive bids for other suppliers as appropriate.

### **3 PROCUREMENT PROCESS**

- 3.1. The contract was advertised under the Restricted OJEU procedure and published on 23 November 2015 and managed through the London Tenders Portal in accordance with the Public Contracts Regulations 2015.
- 3.2. There were twenty five expressions of interest from interested contractors at the PQQ (Pre-Qualification Questionnaire) stage but only five submitted a PQQ. The five contractors were Bouygues Energies & Services Infrastructure, Cable Test Ltd, FM Conway Limited, Skanska and Volker Highways Ltd. All five contractors were taken through to the ITT (Invitation to Tender) stage.
- 3.3. The Council required bidders to provide a Form of Tender price for a range of reactive works that included Night Scouting (lighting inspections to identify columns that are not working as planned), Routine Maintenance, Cleaning, Electrical & Structural Inspections and Condition reports, Lamps (cost to purchase for bulk changing and fault replacements), Materials, Painting, Electrical Remedial works and Festive Lighting over the potential 7.5 year Term Contract. Bidders were also requested to price the current indicative 4 year capital relighting programme; extrapolated (pro-rata) for a 7.5 year term.
- 3.4. The deadline for receipt of tenders was 1pm on 11 July 2016 and five compliant bids were received on time.
- 3.5. Quality (40%) & Price (60%) were scored by a team of 4 Council officers from futureMerton and Procurement, in line with the published criteria and a preferred bidder identified.

### **4 CONTRACT AWARD**

- 4.1. The bidder that scored the highest points overall was Provider A (see Appendix A).

- 4.2. A Price/Quality table of results is attached at Appendix A (Exempt information due to this being commercially sensitive).

It should be noted that the projected costs do not include the cost of any associated UKPN (Electricity Board) or ICP (Independent Connection Provider) costs.

- 4.3. Levels of Service:

- An option was included in the specification to extend the bulk lamp change frequency for SON-T and SOX lamps in accordance with the manufacturer's lamp life curves, from 12,000 hours to 20,000 (SON-T) and 16,000 (SOX); however, the contract has been priced AS-IS (12,000 hours).

If the bulk lamp change frequency was extended to 20,000 hours for SON-T and to 16,000 hours for SOX lamps, the additional potential saving to the Council would be £7,963 per annum, with a negligible effect on light output.

- The contract has been priced for the Periodic Inspection & Test (PIT) regime to be extended from 6 years to 8 years for existing assets and to 12 years for new assets (to align with BSI standards).

In extending the PIT regime to align with the latest BSI standards, the Council will save an anticipated £4,800 per annum.

- 4.4. The contract provides for index-linked inflation adjustments from 2018 onwards. This arrangement provides a simple, relevant and transparent method for calculating and reimbursing any fluctuations in underlying costs over the life of the contract. As a result, bidders excluded any inflation risk premiums from their tenders and submitted optimum prices. However, the index used is normally above either CPI or RPI and the allowance for inflation in the MTFs, so any additional cost would need to be managed through the contract and schedule of works.

- 4.5. Subject to Cabinet approval on 15 August 2016, and assuming no legal challenges during the mandatory "stand-still" period, the Council aims to conclude the award of contract after 2 September 2016 with a Service Commencement date of 1 October 2016 (subject to how quickly the appointed Contractor can mobilise resources).

## **5 RECOMMENDATIONS**

- 5.1. It is recommended that Provider A (identified in Appendix A) is awarded the contract based on their schedule of rates for capital and revenue works (7.5 years Revenue and Capital costs) on the basis that they have submitted the most economically advantageous tender.
- 5.2. It is also recommended that in the unlikely event that Provider A fails to enter into a Contract with the Council then the Contract shall be offered to Provider B who came second following the evaluation process.

- 5.3. To note the reductions in specification and savings outlined in 4.3 above and that officers will be seriously considering the introduction of the extended bulk lamp change frequency.
- 5.4. To note the option to include Parks, Sports Grounds and Council Depots in the contract but subject to an audit, condition survey of assets and the affordability of maintenance and improvement as required. Cabinet are requested to delegate any such decisions to the Director of Environment & Regeneration as appropriate.
- 5.5. Cabinet are also requested to delegate to the Director of Environment & Regeneration any decisions to exercise the option to extend the new contract from 5.5 years, by two periods of one year each, subject to satisfactory performance of the appointed Contractor.

## **6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS**

### Revenue

- 6.1. The Customer & Performance Officer in the future Merton Infrastructure team has analysed the approved bidder's tender and compared this against the costs incurred over the previous 3.5 years, together with a projection of likely service requirements for 2016/17 and 2017/18, and estimated that the new contract would result in an average cost reduction of c16%, or £40k p.a. across the authority, with some sections that make use of the contract seeing cost reductions whilst others will experience increased costs.
- 6.2. It should also be noted that the contract requirements are not consistent and can vary considerably from one year to the next, so a definitive annual cost reduction is not guaranteed. For example, routine maintenance is, on average, c32% cheaper but it is cyclical. With respect to bulk lamp changes, the average SON lamp is 21% less expensive under the new contract but the average SOX lamp is 68% more expensive and these can occur in alternate years.
- 6.3. In addition, lamp replacements and night scouting are c15% and c29% respectively more expensive (based on the analysis explained in 6.1), but the maintenance of the Christmas lights is expected to achieve a 72% cost reduction per annum (or c£18k).
- 6.4. Another advantage to the new contract is that the Schedule of Rates have been structured so as to remove the fixed monthly Routine Maintenance payments that were a feature of the previous contract, meaning that the new contract is far more flexible for the authority. As a result, the authority will have more control over how its financial resources are allocated each year and, therefore, can more easily control spending within budget, but would need to ensure there are appropriate contract monitoring mechanisms in place to manage this.

- 6.5. The new contract also includes a penalty schedule for non-achievement of Key Performance Indicators (KPIs), such as timely completion and percentage of columns in lighting. These will be monitored and reported at the monthly contract meetings, together with invoiced work to ensure accurate payment to the contractor.
- 6.6. The Street Lighting budget has agreed revenue savings of £25k (E&R35) in both 2016/17 and 2017/18 that is expected to be achieved due to the advantages of the new contract stated in 6.4 above.
- 6.7. There is also an agreed saving of £148k (ENV15) in 2017/18 relating to reduced street lighting and maintenance costs following further capital investment in LED lights, which will also need to be monitored and managed by the section to ensure it is achieved.

#### Capital

- 6.8. Street lighting has a block allocation within the Capital Programme each financial year. The estimated approved and indicative Capital Programme for the 7.5 year period of the contract totals:

#### **Street Lighting - Budget in the Capital Programme**

	<b>General £</b>
2016/17 from 30/9/16 *	231,000
2017/18	290,000
2018/19	509,000
2019/20	290,000
2020/21 **	290,000
2021/22 **	290,000
2022/23 **	290,000
2023/24 **	290,000
<b>Available for Contract Sum</b>	<b>2,480,000</b>

\* Assumes 50% of the Block Allocation

\*\* Indicative budgets included in the  
Capital Strategy 2016-20

- 6.9. The activity undertaken by this contract will account for just over half of this budget. Other scheduled work, including the associated UKPN (electricity connections, disconnections and transfer) works, will be undertaken up to the value of the budget available.

## **7 LEGAL AND STATUTORY IMPLICATIONS**

- 7.1. The procurement process was conducted pursuant to the Public Contracts Regulations 2015 and included provision for the Council to include Parks, Open Spaces and Depots within the borough. During the procurement process and as a result of a Gateway review, the procurement process was halted, allowing clarification of the Council's requirements, and recommenced. It is considered that any risk of challenge in relation to this is low.
- 7.2. Subject to approval to award being granted, the contract between the Council and the successful contractor will be the NEC3 Term Service Contract, Option A: Priced contract with price list, with amendments.
- 7.3. In the event that the Transfer of Undertakings (Protection of Employment) Regulations ("TUPE") apply – referred to in paragraph 2.6 of the report – sufficient time will need to be allowed, before the contract commences, for the third party provider (as the 'Transferor') and the incoming Contractor (as the 'Transferee') to comply with the requirements of TUPE.
- 7.4. The Crime and Disorder Act 1998 imposes a duty on the council to exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.
- 7.5. The council, as a highway authority, has a statutory responsibility to maintain lighting where it has been provided to provide a safe and efficient highway network for the benefit and safety of all road users.

## **8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS**

- 8.1. The effective maintenance and improvement of street lighting in the borough plays an essential role in providing a safe night-time environment for residents, businesses and visitors to the borough, particularly for disadvantaged groups such as those with mobility difficulties and the elderly.

## **9 CRIME AND DISORDER IMPLICATIONS**

- 9.1. Section 17 of the Crime and Disorder Act 1998 requires all Local Authorities to consider crime and disorder while exercising their duties. The provision and maintenance of lighting will reduce crime and the fear of crime, thereby assisting the council in discharging this duty.
- 9.2. Street Lighting maintenance and improvement assists with delivering the Council's ambitions of "A Safe and Secure place to Live" and contributes to the objectives of the Thematic Partnerships contained in the Community Plan 2009-19 namely the Sustainable Communities and the Stronger Communities strategic themes.

**10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS**

10.1. Effective maintenance and improvement of street lighting assets will minimise insurance or injury risks to the Council by ensuring that the public highway is safe and serviceable, particularly during the hours of darkness.

10.2. The potential to include lighting in Parks, Sports Grounds and Council Depots into the Street Lighting contract would introduce improved asset management and inspection regime; but any decisions are subject to further assessment and affordability.

**11 APPENDICES – THE FOLLOWING ‘EXEMPT’ DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT**

11.1. Appendix A – Price/Quality tenders from Bidders.

**12 BACKGROUND PAPERS**

12.1. None.