

Committee: Cabinet

Date: 22 September 2022

Wards: All

Subject: Award of Contract for Arboriculture Services

Lead officer: John Bosley, Assistant Director, Public Space

Lead member: Cllr Natasha Irons, Cabinet Member for Local Environment, Green Spaces and Climate Change

Contact officer: Claire Secord, Neighbourhood Client Officer

Exempt or confidential report

The following paragraph of Part 4b Section 10 of the constitution applies in respect of information within this appendix and it is therefore exempt from publication:

Information relating to the financial or business affairs of any particular person (including the Authority holding that information).

Members and officers are advised not to disclose the contents of the appendix.

Recommendations:

- A. To award a new contract for the provision of arboriculture services across the Council's administrative area to Barkland Tree Specialists for a period of three (3) years (from 01 November 2022) with potential extensions of up to 36 months (three years). The contract value is set out in Appendix A.
- B. To delegate the decision to award an extension of the awarded contract to the Director of Environment and Regeneration in consultation with the Cabinet Member, for any period up to 3 years in accordance with CSO 27.

1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

1.1. The purpose of this report is to explain the procurement process for a new contract for the provision of arboricultural services across the Council's administrative area and to recommend that Cabinet approves the award of the contracts to the successful bidder (Barkland Tree Specialists) contained within Appendix B.

1.2. The proposed award of contract will work towards meeting the Council's strategic service priorities for clean streets and environment. This will be achieved through close work with the Contractor to maintain and manage the Council's tree assets and continue to bolster new tree numbers and to deliver improved canopy cover across the borough which will be further underpinned by the developing tree strategy.

1.3. The tender process involved contractors bidding to provide the arboriculture services following a pre-qualification exercise, fully in line with CSOs and the Public Contract Regulations 2015.

1.4. One (1) service provider is recommended to be appointed. Due to the commercial sensitivity the details of assessment results have been circulated as a confidential appendix to this report.

1.5. The recommended service provider offered the best overall value for money in the procurement process.

2 DETAILS

2.1. This report outlines the key features and benefits of this recommendation and the impact that this will have on overall impacts on service quality, cost control and value for money.

2.2. The contract is for the provision of arboriculture services across the Council's administrative area (including highways, parks, schools, cemeteries and open spaces). Principally the front-line maintenance and field-based aspects of specialist tree work, covering the borough's highways, parks, open spaces, cemeteries and schools tree stock.

2.3. The contract includes for the programmed tree maintenance, ad hoc (variable/non-guaranteed volume) and emergency tree works of the Council's tree stock to ensure that the Council meets its statutory obligations, to ensure the health of tree stock for future generations and to support the conservation of wildlife, biodiversity and nature.

2.4. Works will be completed against an agreed priced activity list, with ad hoc and emergency works being invoiced as per an agreed schedule of rates.

2.5. The total annual value of the contract, and estimated total value over the full contract term can be found within Appendix A.

2.6. There is no guaranteed minimum level of spend or volume of work under the contract and the council has the ability to procure services outside of this contract should it wish to do so. The estimated total contract value of the services has been based on all activities occurring within the cyclical cycle of tree maintenance (e.g. coppicing & epicormic growth), target achieving street tree planting, and tree planting establishment through watering.

3 PROCUREMENT PROCESS

3.1. The procurement was undertaken via a two-stage restricted tender. The OJEU/Find a Tender (FTS) notice and Selection Questionnaire (SQ) was published on 10th September 2021.

3.2. The procurement process was managed via Merton Council's electronic tendering system 'The London Tenders Portal', in line with the Council's Contract Standing Orders (CSO's), and in collaboration with the Commercial Services team.

3.3. Five (5) bidders submitted a response during this stage, and all were successfully shortlisted and invited to tender as per stage 2 of the process.

3.4. Following the pre-qualification exercise, the Invitation to Tender (ITT) was published on 15th November 2021, with a submission deadline of 12 noon on 21st December 2021.

3.5. A total of three (3) submissions were received and the evaluation of the bids was carried out in line with the evaluation methodology set out in the ITT.

3.6. Tenderers were required to answer a set of method statement questions to assess the quality of their bid, along with a completed price list.

3.7. The tender evaluation comprised of three stages: the first of which was a tender compliance check, on a pass/fail basis; the second was a quality and technical evaluation in line with the methodology prescribed in the tender and the third was the assessment of price in line with the methodology prescribed in the tender.

3.8. The quality and technical evaluation was carried out by a panel of officers from the Public Space Division. Each compliant tender was evaluated individually by members of the evaluation panel.

3.9. The bid prices received were not in keeping with the published contract notice or ITT and failed to offer value for money.

3.10. A second tender period was observed, with a revised pricing schedule, and published on the 4th April 2022, with a submission deadline of 3rd May 2022.

3.11. The panel, along with an officer from Commercial Services, met on 12th May 2022 to discuss individual scores and comments for each question in order to arrive at an agreed, moderated score.

3.12. The names of the bidders and their respective scores are included within Appendix B.

3.13. Due to the specialist nature of the services the basis of tender evaluations was based on a 50:50 ratio of quality/price. A quality threshold was contained within the evaluation methodology. Bidders who failed to meet this threshold would be disqualified from the process and would not progress to stage three – price assessment. All of the bidders met the quality threshold, and therefore progressed to the price evaluation.

3.14. The bids were evaluated against the following nine (9) method statement questions to assess the quality of each bidder:

No.	Method statement	Weighting
Q1	Tenderers are required to describe their approach and methodology of pre-commencement activities identifying how they comply with contract requirements and ensure they are ready to commence as of the contract start date, without compromising on quality of service.	5%
Q2	Tenderers are to provide a proposal of how they ensure that planning is applied where traffic (footfall and vehicle) management is required for the effective delivery of service.	5%

Q3	<p>Tenderers are required to detail the human resources dedicated to this contract which demonstrate ability to perform the requirements and maintain the contract standard. Including a summary of the numbers, qualifications, experience and training of the personnel which shall be made available to perform the requirements. Your response should include as a minimum:</p> <p style="text-align: center;">Staff structure and details of key persons dedicated to this Contract</p> <p style="text-align: center;">Number of staff within the designated team</p> <p style="text-align: center;">Experience of staff within dedicated team</p> <p style="text-align: center;">Approach to staff training and development.</p> <p>If you intend to sub-contract any area of the contract, please clearly outline what areas are to be sub-contracted.</p>	7%
Q4	<p>Tenderers are required to describe their approach for managing Health and Safety on site. Your response should include as a minimum:</p> <p style="text-align: center;">Health and safety planning</p> <p style="text-align: center;">Compliance with relevant statutory regulation.</p>	7%
Q5	<p>Tenderers are required to outline their approach to professional training in order to ensure that staff maintain their professional competence and to ensure they can work safely in this complex environment.</p>	6%
Q6	<p>Tenderers are required to submit their proposals of effective contract management. Your response should include:</p> <p>Approach to quality assurance and quality control for this contract</p> <p>Managing sub-contractors (where applicable), and how they are sourced</p> <p style="text-align: center;">Recording progress against KPI's</p> <p style="text-align: center;">Liaison with LBM Contract Manager</p> <p style="text-align: center;">Post Covid – 19 – Business continuity.</p>	7%
Q7	<p>Tenderers are required to describe their approach for ensuring effective communication throughout the life of the contract. Tenderers should:</p> <p style="text-align: center;">Identify specific stakeholders that they may need to communicate with</p> <p>Explain how they would communicate with stakeholders identified</p> <p style="text-align: center;">Explain how they would manage complaints.</p>	4%
Q8	<p>Tenderers are required to provide a breakdown of the machinery and equipment to be made directly available for the delivery of the contract, as per the specification and programme provided.</p>	4%

Q9	<p>Please refer to (and complete) the 'LBM Social Value Charter' doc (Appendix A).</p> <p>Please outline any social value contribution that you would propose as part of any resultant contract. Any contributions must clearly identify a proposed output/deliverable, and a number of instances/beneficiaries or a financial figure.</p>	5%
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3.15. The bidders provided a completed Price List as part of their tender returns. The Price List consisted of a series of rates against a comprehensive asset and works and indicative work volumes (list based on current assets, historical work volumes and target operating models).

3.16. Following the process, one provider was successful for recommendation for contract award (as shown in Appendix B).

3.17. Contract management is a critical requisite to ensure the success of a contract of this size and importance. A Partnering Governance Schedule has been developed outlining the strategic and operational governance arrangements and structures that will be in place to ensure rigorous contract management and standards of the service. This includes the regularity and expected content of contractual meetings and reports to a suite of KPIs to monitor performance that will be reported on monthly.

3.18. Structure of contract management: The Service Provider will attend regular meetings and provide regular reports, the structure, frequency and expected content of which are outlines in the Partnering Governance Schedule. The Schedule also outlines the performance management framework that will be adopted to ensure that standards are maintained over the life of the contract and that robust structures are in place to address any areas of concern.

3.19. The Performance management framework, as outlined in the Partnering Governance Schedule includes a suite of eight KPIs that cover a range of objectives including timescales for the delivery of works, timely reporting, responses to complaints and/or FOIs to emergency works and invoicing.

3.20. The KPIs are reported over a rolling 3-month period, ensuring that the two previous month's performance is taken into account. Each KPI is measures in two ways, a simple pass or fail for that month with a performance adjusted value applied if an omission or failure is not rectified within a specified rectification period and also the direction of travel from the previous two months. This allows the contractor to take account of improved or declining performance.

3.21. The framework also allows for trigger levels for the Authority to implement a corrective action plan if standards are not improved within the agreed timescales. This places the financial onus on the contractor to invest and make necessary provisions to address poor performance.

3.22. A worked example of the KPIs and how they will be reported is shown in Appendix D.

4 ALTERNATIVE OPTIONS

4.1. An alternative option is to do nothing, do not enter into a contract and withdraw the Service.

4.2. The disadvantages to this would be significant. Safety duty of care implications, adverse effects upon the landscape quality and environment. Liability risk would be increased. There would also be significant reputational impacts for the Local Authority. The Local Authority would be unable to deliver its duty of care.

4.3. A further alternative option is to undertake another tender period. This exercise has highlighted a limited market capable of meeting the capacity requirements for this contract size, and so a further tender period is unlikely to warrant any further benefit.

5 CONSULTATION UNDERTAKEN OR PROPOSED

5.1. The approach followed for this procurement was initially conveyed at the Operational Procurement Group (OPG) on 4th February 2020.

5.2. The Procurement Board which is representative of the council departments considered the options presented in a business case report to them in February 2020.

5.3. Due to Covid-19, this procurement was put on hold and an interim contract was awarded using regulation 32(2)(c) of the Public Contracts Regulations 2015.

5.4. With the interim award coming to an end, the process of tendering for the full contract was resumed.

5.5. A full Gateway 2 report was presented at OPG on 2nd August 2022. Two small amendments for the report were suggested and the report was updated for Procurement Board.

5.6. The Gateway 2 report, taking into account recommendations from OPG was presented to and approved by Procurement Board on 16th August 2022.

6 TIMETABLE

Event	Date
Evaluation of tenders	03 May 22 – 13 May 22
Operational Procurement Group	02 August 22
Procurement Board	16 August 22
Leaders Strategy Group	6 September 22
Cabinet	22 September 22
Call-in period	26 September to 29 September 22
Notification of contract award decision	29 September 22
"Standstill" period	29 September to 10 October 22

Confirm award of contract	10 October 22
Contract commencement date	01 November 22

6.1. Bidders provided a mobilisation plan at tender stage, and this will be finalised and implemented during the mobilisation period, immediately after the contract is awarded so that systems and procedures are in place for 01 November 22.

6.2. It is anticipated that a rapid mobilisation of the contract can be implemented as there are no TUPE requirements and/or requirements to procure significant fleet or organise depot requirements. All bidders have submitted a mobilisation plan, there are no IT integration or connectivity issues. The Service Provider will be supplying their own plant and machinery and there are no depot requirements.

6.3. The methodology set out in the Partnering Governance Schedule along with a set of pre-determined KPIs will be used to monitor the performance of the contractor during the contract period.

7 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

7.1. Credit checks were carried out for the recommended supplier and relevant financial advice provided. Full details provided in Appendix C.

7.2. The current budget for Arboriculture is as follows:

Street Trees Budget (22-23): £168,920.00

Parks Trees Budget (22-23): £381,880.00

Total Budget (22-23): £550,800.00

7.3. The Tendered Sum from the successful bidder for the Value of the Contract (over six years) is: **£2,982,878.48.**

7.4. This makes the average annual contract value of the new services to be estimated at: £497,146.41.

7.5. It should be noted that while this is slightly under the current budget held for arboriculture work the average contract value as noted in 7.4 does not take into account emergency and ad hoc works.

7.6. Annual contract expenditure, while controlled through programmed works, does vary depending on seasonal variants, e.g. impacts of severe storms and/or unseasonably dry periods.

8 LEGAL AND STATUTORY IMPLICATIONS

8.1. The Council as an occupier of premises under the Occupiers Liability Act 1957 and 1984 respectively, has a duty to take reasonable care to ensure that visitors on premises owned by it or over which it exercises control are reasonably safe and in relation to persons others than visitors, a duty in respect of any risk of their suffering injury on the premises by reason of any danger due to the state of the premises or to things done or omitted to be done on them. The regular inspection and maintenance of trees on public land are key to the discharge of this duty.

8.2. Officers are recommending the award of a contract to the preferred bidder following the completion of a Restricted Procedure tender exercise and approval to delegate to the Director of Environment and Regeneration in consultation with the Cabinet Member the authority to award an extension of the awarded contract up to 36 months beyond its initial expiry.

8.3. The details of the conduct of the procurement exercise set out in the body of this report evidence full compliance with the requirements of the Public Contracts Regulations 2015, particularly Regulation 28 and the Council's CSOs (Contract Standing Orders) 19 and 20. Accordingly, it would be lawful to approve the recommended contract award.

8.4. Part 1 Section 9EA of the Local Government Act 2000 permits the delegation requested. Accordingly, it would be lawful to approve the recommended delegation.

8.5. In accordance with CSOs 20.1.1 and 20.1.2, a Contract Award Notice is required to be published, and information about the award of the Contract must also be published on Contracts Finder. There is also a requirement for the Council to prepare and retain a written report (a "Regulation 84 Report") covering specified information about the procurement process.

8.6. The details of the completed contract, and any extensions taken must be recorded on the Council's Corporate Contracts Register.

9 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

9.1. Within the tender, bidders were required to propose social value offers via the Councils Social Value charter, under 4 specific theme areas: Economy; Social; Environmental, and Innovation. The social value offers submitted via the successful bidder will potentially generate social value to the London Borough of Merton. The value of which can be found within Appendix C, along with the social criteria breakdown.

9.2. The social value offers committed within the successful bid include: provision of work placements and apprenticeships, recruitment programme for people who are not in education, employment or training (NEETs), volunteering time to support local voluntary and community groups for outdoor based projects; volunteering opportunities; supporting environmental programmes with local groups and/or schools, and measures to reduce carbon emissions.

9.3. These items will form part of the contract.

10 CRIME AND DISORDER IMPLICATIONS

10.1. N/A

11 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

11.1. Tree owners have a common law duty to "take reasonable care to avoid acts or omissions which they could reasonably foresee would be likely to injure" a person.

11.2. The Local Authority therefore has a responsibility to regularly inspect and maintain its trees.

11.3. From a risk perspective, the chances of making a claim, would depend on whether the owner had been negligent; for example, if the tree was obviously unsafe through damage or disease, and they failed to act to prevent the incident occurring. Therefore, a comprehensive Arboriculture Service is a critical service, not only to prevent damage, but also to prevent liability claims.

12 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- Appendix A: Contractors Pricing Submissions
- Appendix B: Results of Tender
- Appendix C: Finance Check and Advice
- Appendix D: Social Value
- Appendix E: KPI Performance Monitoring Framework

13 BACKGROUND PAPERS

13.1. N/A

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