

# WIRRAL COUNCIL

## CABINET

7<sup>TH</sup> NOVEMBER 2013

<b>SUBJECT:</b>	<b>HIGHWAY SERVICES CONTRACT 2014 – 2018: AWARD OF CONTRACT</b>
<b>WARD/S AFFECTED:</b>	<b>ALL</b>
<b>REPORT OF:</b>	<b>MARK SMITH, HEAD OF ENVIRONMENT AND REGULATION</b>
<b>RESPONSIBLE PORTFOLIO HOLDER:</b>	<b>COUNCILLOR HARRY SMITH, HIGHWAYS AND TRANSPORTATION</b>
<b>KEY DECISION?</b>	<b>YES</b>

### 1.0 EXECUTIVE SUMMARY

- 1.1 This report is intended to inform Cabinet regarding the outcome of the procurement for a new term Highway Services Contract to replace the current contract which ends on 31<sup>st</sup> March 2014, and to recommend awarding the contract to the preferred bidder, based on their tender being the most economically advantageous to the Council.
- 1.2 Parts of the report relate to the commercial considerations of the tenders submitted and their evaluation, together with value for money assessments which utilise price information relating to the preferred bidder's tender and that of the current provider and which are exempt from public disclosure in accordance with paragraph 3 of Part 1 of schedule 12A of the Local Government Act 1972, and are presented in **Appendix 1**.
- 1.3 The maintenance of highways is a statutory duty imposed on the Council as Highway Authority. The maintenance of the highway infrastructure also underpins the regeneration of our communities and the creation of new jobs through providing good transport links.

### 2.0 BACKGROUND AND KEY ISSUES

#### Introduction

- 2.1 The current highways and engineering services contract ends on 31<sup>st</sup> March 2014, and at its meeting on 14 March 2013 [Minute 229 refers], Cabinet resolved that "...the *Strategic Director for Regeneration and Environment* be requested to proceed with the development and procurement of a single strategic contract for highway services to be effective from 1<sup>st</sup> April 2014; complying with procurement legislation."
- 2.2 That report also concluded that the scope of services should remain as for the existing contract and a contract duration of four years plus up to two years extension be adopted.

## Project governance

- 2.3 Project governance was established to ensure effective delivery of the new contract, with senior officer representation from Regeneration and Environment, Legal Services, HR, Communications, Corporate Procurement and Finance. Regular progress briefings have also been given to the Cabinet Member for Highways and Transportation. The monthly Project Board meetings have been supported by a project delivery group responsible for developing and managing appropriate project controls including programmes, risk registers, resource plans, communications plan, technical reports, specification documents, procurement documentation and tender management.

## Contract form

- 2.3 Officers have determined that the most appropriate form of contract to be used would be the current industry standard, the New Engineering Contract (NEC) Term Service Contract, rather than the NEC Engineering and Construction Contract employed on the current contract.
- 2.4 The timing of the decision to proceed with procurement of such a contract also coincided with the launch of new procurement and model contract documents as part of the government-sponsored Highways Maintenance Efficiency Programme (HMEP) based on the NEC Term Service Contract form. The HMEP suite of documents have been developed to enhance the existing standard documentation published by the Department for Transport which is considered as being geared towards the construction of new motorways and trunk roads, rather than the maintenance of local road networks.
- 2.5 The HMEP documents have been developed using the most recent procurement carried out in the highways sector in local government and provide procurement pre-qualification, form of contract, specification and method of measurement documents to form the basis of new local government highway contracts.
- 2.6 In consultation with both Legal and Corporate Procurement officers as to the management of key risks to the Council within contracts, it was decided to procure the new contract for Wirral using the new HMEP documents; putting Wirral at the forefront of best practice in highway maintenance procurement. In accordance with the Council's Contract Procedure Rules, a 70% price : 30% quality split has been adopted in the evaluation of tenders.
- 2.7 It has been estimated that the total value of the contract, over a full six year contract, would be in the range of £30 to 33 Million.
- 2.8 A press release combining both the decision to proceed with procurement and to use the new form of contract was issued to, and covered by, the technical press in May 2013.

## Procurement

- 2.9 The Head of Procurement published a contract notice in the OJEU on 24 May 2013, informing potential bidders that the procurement of the contract, as described above, was underway, using the Restricted Contract Procedure and inviting expressions of

interest, through completion of a comprehensive HMEP Pre-Qualification Questionnaire (PQQ).

2.10 On 1<sup>st</sup> July 2013, the closing date for expressions of interest had produced 8 completed PQQ, which were then evaluated by officers from Corporate Procurement, Finance and Highways Management. It was determined that three of the interested companies did not meet the financial criteria stipulated, and it was agreed that 5 contracting companies would be invited to tender, which was carried out on 28 August 2013:

- Amey
- BAM Nuttall
- Galliford Try
- LaFarge Tarmac
- North Midland Construction

2.11 Of the 5 companies, only 3 submitted completed tenders by the closing date of 14 October 2013:

- BAM Nuttall
- Galliford Try
- North Midland Construction

The Head of Procurement is to make contact with the 2 companies that declined to submit tenders despite expressing interest through submission of the PQQ, to determine the reasons for their decision.

#### Outcome of the procurement process

2.12 The tender process required bidders to complete a comprehensive price list based on the standard method of measurement used in the HMEP documents, supplemented by items specifically required by Wirral in maintaining its Coastal and Highways infrastructure. This is for both the routine ordering of works, and for the target cost works which are larger and more complex nature, such as for bridges and traffic improvement schemes. Prices submitted were evaluated by using a set of quantities based upon a broad selection of the activity carried out under the current contract. The summary outcomes of that evaluation, which comprises 70% of the total marks potentially awarded to bidders, are shown in **Appendix 1** which is exempt from public disclosure in accordance with paragraph 3 of Part 1 of schedule 12A of the Local Government Act 1972, due to the commercial sensitivity of the information.

2.13 The tender process also required bidders to submit information and proposals determined by the HMEP documents, together comprising:

- A Methodology Statement regarding the bidder's proposed approach to carrying out the contract;
- Information regarding the Key People the company would use to manage the contract and the services provided; and
- The Quality Statement which brings together the bidders' response to a range of questions covering client satisfaction, quality ('right first time'), cost control, programme management and health and safety.

The responses are scored and weighted relative to importance, before collation into a single score out of a possible 30% of the total score potentially awarded to bidders. The summary outcomes of that evaluation are shown in **Appendix 1** which is exempt from public disclosure in accordance with paragraph 3 of Part 1 of schedule 12A of the Local Government Act 1972, due to the commercial sensitivity of the information.

- 2.14 The outcome of the evaluation has produced a ranking of the three tenders submitted, and consequently a preferred bidder.

#### Achieving the Council's Objectives including securing value for money

- 2.15 Cabinet will recall that a comprehensive value for money review of the existing contract was reported to them on 27 September 2012 [Minute 88 refers], and the price aspects of the preferred bidder's tender have been subjected to the same methodology, to enable a comparison with the earlier analyses, and in particular with the existing contract. That methodology was based on some of the key case studies provided within the then Audit Commission's 2011 report on local government highway maintenance entitled '*Going the distance*'; specifically (i) a number of key maintenance activities for which a range of rates were provided and (ii) utilising the 'basket of schemes' developed to enable benchmarking between authorities by the Midlands Service Improvement Group (MSIG) which now comprises 21 member authorities.
- 2.16 The results of these exercises, and the data provided by MSIG members, Merseyside and Core Cities authorities, are commercially sensitive, and the results are considered exempt from public disclosure in accordance with paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 and this information is separately contained within **Appendix 1**.
- 2.17 The Preferred Bidder's approach to managing the contract and delivering the services is provided in detail in their tender submission.
- 2.18 Performance management for the contract has already been fully developed; bringing together the governance and collaborative working arrangements in the HMEP documents with the baseline of the range of performance measures in place on the current contract. Targets for the first year are already determined, and improvement targets for future years will be developed in discussion with the preferred bidder. The Contractor is incentivised to meet performance targets through the HMEP approach of 'earning' contract extension periods up to a maximum of 2 years. Poor performance can result in extensions already earned being withdrawn.

#### Assurance processes

- 2.19 Assurance that the Council will meet its obligations and objectives, in deciding to proceed with the contract award have been tested through a review by the Head of Internal Audit, in September 2013, and Gateway 3 Review conducted independently by Local Partnerships between 29 and 31 October 2013.
- 2.20 The purpose of the reviews was primarily to validate the Council's approach to the procurement exercise including the evaluation of tenders, selection of preferred

provider and confirmation that the Council's needs will be met before the Investment Decision is made.

- 2.21 The reports from these two reviews are provided at **Appendix 2**, together with the Action Plan prepared in response to the recommendations made.

#### Standstill period

- 2.22 In accordance with the Public Contracts Regulations 2006, Cabinet should note that there is a statutory ten day "standstill period" to enable unsuccessful tenderers to obtain feedback on the Council's contract award decision and potentially lodge a legal challenge if unsatisfied with the legality of the decision. Only after this period can the contract be formally awarded.

### **3.0 RELEVANT RISKS**

- 3.1 Compliance with procurement legislation and the Council's own CPRs have been ensured through involvement of both Corporate Procurement and the Legal Services at all stages in the procurement process, including membership of the Project Board, and should minimise any risk of successful challenge to the procurement decision to award the contact as recommended in Section 12 below.
- 3.2 The possibility that a small number of tenders returned might lead to a lack of competition has been considered, and the quality and price bids have proved acceptable and the preferred bidder's tender provides value for money. The financial implications arising from the award of the contract are addressed in Section 7.0 below.
- 3.3 The need to secure a new highway maintenance service provider from 1<sup>st</sup> April 2014 will be achieved through appointment of the preferred bidder and then implementing a full mobilisation programme with the appointed contractor from December 2013. Planning and preparation for handover from the current provider, who is collaborating well, is already underway and risks and works programmes being regularly monitored. This will enable continuity in delivering highway maintenance as required by the duty imposed on the Council as Highway Authority.

### **4.0 OTHER OPTIONS CONSIDERED**

- 4.1 The full Options Appraisal report, assessing a range of different options available to the Council was reported to Cabinet at the meeting on 14 March 2013.

### **5.0 CONSULTATION**

- 5.1 No formal consultation has been carried out during the procurement process. As reported at paragraph 2.8 above, a press release was issued to the construction and highways technical press.

- 5.2 Both the current provider and Trade Union representing the employees of the current provider affected by the procurement have been given regular updates on progress in the procurement process.

### **6.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS**

- 6.1 There are none arising specifically from this report.

## **7.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS**

- 7.1 The financial implications arising from the new contract are set out in **Appendix 1**. The services delivered through the proposed contract will be met from approved revenue and capital budgets which total approximately £8.03M in 2013/14.
- 7.2 The preferred bidder will need to work or interface with the Council's existing IT systems for managing infrastructure assets, customer enquiries and works ordering. The mobilisation planning to be commenced in December 2013 will include the Council's IT team to ensure that integration and access to systems, training, and handover of licences from the current provider can take place to ensure that full service is available from 1<sup>st</sup> April 2014.
- 7.3 The Council and the preferred bidder are to form a relationship using a new contract form and common understanding of the requirements of the contract is crucial to its success. The governance arrangements set out in the tender documents, including the mobilisation plan and risk registers, will need to be implemented as early as possible in December 2013. A programme of activity, including training, contract procedures, handover arrangements, communications, establishment of depot, and the like will require the Council's existing general and contract management resources to be carefully utilised to ensure both successful mobilisation to the new service contract as well as robust closing down of the current contract.
- 7.4 Cabinet is reminded that the salt barn depot, gritter fleet and salt are provided to the current contractor by the Council, and this arrangement is to continue under the new contract.

## **8.0 LEGAL IMPLICATIONS**

- 8.1 The maintenance of public highways is a statutory duty imposed on the Council as Highway Authority, under the Highways Act 1980.
- 8.2 The procurement process is governed by the Public Contracts Regulations 2006.
- 8.3 The transfer of former Council employees between the current provider and the incoming provider is governed by the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE).

## **9.0 EQUALITIES IMPLICATIONS**

- 9.1 Has the potential impact of your proposal(s) been reviewed with regard to equality?
- (b) No because there is no relevance to equality.

Whilst there is no direct impact on the Council's services, it is important that the Council's contractor meets the requirements of equality legislation, and supports the Council's obligations in carrying out works and services on its behalf, including through sub-contractors. All of the companies invited to tender had been satisfactorily assessed in this regard through the PQQ evaluation process described in 2.8 and 2.9 above.

## **10.0 CARBON REDUCTION IMPLICATIONS**

10.1 There are no specific implications arising from this report. All of the companies invited to tender had been satisfactorily assessed regarding the policies, management systems and procedures in place for environmental protection and waste management; including for sub-contractor arrangements; through the PQQ evaluation process described in 2.8 and 2.9 above.

## **11.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS**

11.1 There are no specific planning implications arising from this report. The Contractor appointed will be expected to address any planning obligations in respect of depot arrangements as part of the mobilisation for readiness for delivering the services.

## **12.0 RECOMMENDATION/S**

12.1 Cabinet is requested to:

- (i) Note the outcome of the procurement exercise described in the report.
- (ii) Note the outcome of the value for money and external assurance reviews, and endorse the proposed approach to resolving outstanding matters set out in the action plan prepared in response to the external review recommendations.
- (iii) Approve the award of the Highway Services Contract 2014 – 2018 to the preferred bidder, subject to statutory standstill procedures.

## **13.0 REASON/S FOR RECOMMENDATION/S**

13.1 The appointment of a contractor from 1<sup>st</sup> April 2014 is essential to deliver the maintenance of highways and coastal infrastructure.

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## **APPENDICES**

**Appendix 1 (EXEMPT)** – financial and value for money analyses

**Appendix 2** – Local Partnerships' *Gateway 3 Review* report and Internal Audit report.

## REFERENCE MATERIAL

The NEC family of contracts:

<http://www.neccontract.com/about/index.asp>

The HMEP standard form of contract and procurement documents:

<http://www.dft.gov.uk/hmep/efficiency/standard-form-of-contract.php>

Audit Commission report 'Going the distance' May 2011

<http://archive.audit-commission.gov.uk/auditcommission/sitecollectiondocuments/Downloads/20110526goingthedistancePRESS.pdf>

## SUBJECT HISTORY (last 3 years)

<b>Council Meeting</b>	<b>Date</b>
<b>Cabinet <i>Highway Services Beyond 2014 – Options Appraisal</i></b>	<b>14<sup>th</sup> March 2013</b>