

CABINET

30 OCTOBER 2012

GATEWAY 4 CONTRACT MANAGEMENT REPORT: TREE MAINTENANCE CONTRACT

Portfolio Holder: Councillor Howard Doe, Housing and Community Services

Report from: Simon Swift, Head of Greenspace, Heritage & Library Services

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Summary

This report reviews the progress of the tree maintenance contract CPCU/01/10C currently awarded to the supplier as highlighted within 2.1.2 of this report.

The contract covers safety related work to deal with dead trees or branches, obstructions to roads, other tree hazards and an emergency response service. The contract also facilitates the completion of tree work to deal with legitimate customer requests for service and complaints. Some works such as the twice yearly pruning of trees to remove low branches and the provision of an emergency response service are undertaken on a planned basis and some following works orders placed by the Authorised Officer.

This is based upon the procurement process which was undertaken during 2010- 2011 and which led to an award of contract on 29 March 2011 with a commencement date on 1 July 2011.

This Procurement Gateway 4 report has been approved for submission to Cabinet after review and discussion at Regeneration, Community and Culture Directorate Management Team meeting on 30 July 2012 and Procurement Board on 5 September 2012.

1. Budget and Policy Framework

1.1 Post Project Appraisal / Contract Management

1.1.1 This procurement post project appraisal and its subsequent review is within the Council's policy and budget framework and ties in with all the identified Core Values, Strategic Priorities, Strategic Council obligations and Departmental/Directorate service plans as highlighted within the Procurement Gateway 1 Report.

1.2 **Statutory Requirements**

- 1.2.1 Statutory requirements for the procurement of the Tree Maintenance Contract are in relation to ensuring that the Council meets its Duty of Care Obligations, Health & Safety and requirements under the Highways Act.

1.3 **Funding/Engagement from External Sources**

- 1.3.1 This contract is directly funded through the Council's budget. Currently there is no external funding in relation to this contract but opportunities to secure (subject to external funding criteria) funding for new tree planting costs will be explored through the contract lifecycle.

2. **Background**

2.1 **Contract Details**

- 2.1.1 This contract is a Services Contract.
- 2.1.2 This Gateway 4 Report relates to the Tree Maintenance Contract CPCU/01/10C currently awarded to City Suburban Limited.
- 2.1.3 The Tree Maintenance Contract CPCU/01/10C is to enable the Council to meet its duty of care obligations in respect of public open spaces and highway assets. The contract also facilitates an ongoing annual tree replacement programme and enables the Council to effectively respond to customer requests for service and complaints.
- 2.1.4 The contract is for 5 years, commencing on 1 July 2011 and termination on 30 June 2016, with an option to extend for a further two years.

2.2 **Permissions Required**

- 2.2.1 This report seeks permission to provide the Cabinet with a post project appraisal and conclude this contract at the end of the contract duration of five years plus extension, subject to performance and market suitability for a period of two years without any further Gateway 4 or 5 reporting requirements. A Gateway 4 report will be reported in 2015 one-year prior to the two-year extension.
- 2.2.2 This request is on the basis that the contractor has fulfilled their requirements in accordance with the service specification and associated contract terms and conditions in the first year and because no major contractual issues have been identified which cause concern for further continued contract management reporting to the Procurement Board/Cabinet.
- 2.2.3 It is acknowledged that if this option is granted, in the event of any major issues arising for the remainder of the contract term, a Gateway 5 will be submitted with immediate effect for review by the Procurement Board/Cabinet or if so required and instructed for review

by the Procurement Board/Cabinet during the remainder of the contract term.

2.3 Other Information

- 2.3.1 As a result of changes to line management responsibilities following Release 1 of the Better for Less a review of Client Management arrangements were undertaken
- Weekly on site operational meetings are held and recorded which inform contract review meetings
 - Contract review meetings are held quarterly and are formally recorded. These meetings include Greenspace Services Operations Manager and the contractors Managing Director.
 - Weekly monitoring reports are generated and reviewed at on site operational meetings.
 - An agreed formal ordering system has been set up and used as a single point of reference to both parties.
 - An annual contract review is now in place, which supports the agreed service improvement plan.
 - Procedures have been agreed and adopted with other internal clients to handle call out/call off requirement, which are reviewed at regular meetings.
- 2.3.2 In parallel with this review an external Health & Safety Audit was undertaken on the new Tree Maintenance Contractor (City Surban). This review concluded that the contractor continued to work within the specification requirements and met all their contractual obligations.

3. Options

- 3.1 In arriving at the preferred option as identified within Section 4.1 'Preferred Option', the following options have been considered with their respective advantages and disadvantages

Conclude Current Contract And Provide Action Plan

- 3.1.1 The option of concluding the contract with immediate effect on the basis that the contract is a termed contract with provisions within the terms and conditions to cancel contractual arrangements for supplier non-performance and providing an action plan for future projects;

Advantages:

- No advantages identified.

Disadvantages:

- Council assets would no longer be maintained in a safe working condition.
- Not a viable option because the contractor is performing within the requirements of the contract.

Continue with Current Contract and Negate Any Further Gateway 4 or Gateway 5 Reporting Requirements

- 3.1.2 The option of continuing with the current contract for the remainder of the contract term and negating any further Gateway 4 or Gateway 5 requirements has been considered and below are the advantages and disadvantages of this option;

Advantages

- The contract is working without any operational or performance issues.
- Performance monitoring will continue to be undertaken but without the formal reporting to Procurement Board.
- Additional Gateway 4 or 5 reports would not need to be considered by Procurement Board.
- Removes need to produce repetitive information to Procurement Board.

Disadvantages

- A Gateway 5 report will need to be brought to the Procurement Board in 2015.
- Increased risk of underperformance of the contract due to removal of the need for formal Gateway reporting.
- There is still a significant period of the contract remaining, and so it would be helpful for the progress of the contract to be subjected to further reporting.

Continue with Current Contract and Subject Contract to Further Gateway 4 and/or Gateway 5 Reporting Requirements

- 3.1.3 The option of continuing with the current contract for the remainder of the contract term and subjecting the contract to further Gateway 4 and/or Gateway 5 requirements has been considered and below are the advantages and disadvantages of this option:

Advantages

- Complies with procurement rules relating to the extension/non extension of the contract in 2015
- Closer scrutiny of current service provider
- The contract is working without any operational or performance issues.
- Contract extension request will trigger a Gateway 5 report in 2015

Disadvantages

- Repetitive information presented to Procurement Board.
- Contract extension request will trigger a Gateway 5 report in 2015
- Removes need to produce repetitive information to Procurement Board.

Continue with Current Contract and Negate Further Annual Gateway 4 Or Gateway 5 Reporting. Report Gateway 4 in 2015 for Contract Extension or where Significant Problems Occur

- 3.1.4 The option of continuing with the current contract and negating further annual Gateway 4 or Gateway 5 reporting. However to report Gateway 5 in 2015 for the contract extension or where significant problems occur has been considered and below are the advantages and disadvantages of this option;

Advantages

- Complies with procurement rules relating to the extension /non-extension of the contract.
- The contract is working without any operational or performance issues.
- Performance monitoring will continue to be undertaken but without the formal reporting to Procurement Board.
- Removes the need for repetitive information to Procurement Board.
- Contract extension request will trigger a Gateway 5 report in 2015.

Disadvantages

- Information would not be presented to Procurement Board on an annual basis.

Other Information

- 3.1.5 No other alternative options have been identified

4. Advise and Analysis

4.1 Preferred Option

- 4.1.1 Further to an extensive review of procurement options as highlighted within Section 3 'Options' above, the following preferred option is recommended to the Cabinet including justification for this recommendation.

To continue with the current contract and negate further annual Gateway 4 or Gateway 5 reporting until contract extension Gateway 5 report in 2015 or where significant problems occur as outlined in 3.1.2.

The contractor has performed exceptionally well over the last year with no major performance issues. Any reduction in performance can be quickly identified using the processes outlined in 2.3.1. A prolonged reduction in performance would trigger a Gateway 4 or Gateway 5 report.

To retain the services of City Suburban Limited for the remainder of the initial five-year term, which expires in July 2016, a Gateway 4 report would be submitted in 2015 with the option to take up the contractual extension.

The recommended preferred option will ensure continuity of tree maintenance within Medway.

Procurement Project Outputs / Outcomes

4.1.2 The following procurement outcomes/outputs identified as important at Gateway 1 to the delivery of this procurement requirement and identified as justification for awarding the contract at Gateway 3, have been appraised in the table below to demonstrate how the procurement contract and corresponding supplier has delivered said outcomes/outputs.

Outputs / Outcomes	How will success be measured?	Who will measure success of outputs/ outcomes	When will success be measured?	How will recommended procurement contract award option deliver outputs/outcomes
Procure a new contract that enables continuation of the council's ability to fulfil its duty of care obligations and facilitates the completion of tree work to deal with legitimate customer requests for service and complaints while giving value for money.	Successful procurement of the contractor within the specifications contained within the tender process. Completion of tree works meeting all requirements	The Head of Greenspace, Heritage & Library Services, tree officers, and if appropriate, the Procurement Board and Cabinet via the Gateway process.	Regular monitoring throughout the contract period by tree officers attending site and contract review meetings.	The preferred contractor has experience of delivering tree maintenance services for local authorities. The specification included in the tender includes the key objectives outlined for delivery to be undertaken by the contractor.

Procurement Project Management

4.1.3 No further procurement management resources or skills are required to be deployed on this contract as it is a one-off contract with no additional termed requirements and will therefore no longer be required.

Post Contract Award Contract Management

4.1.4 The contract management of this procurement contract will continue to be resourced for the remainder of the contract through the following contract management strategy.

- Monitoring is to be regularly carried out by qualified tree officers.
- Weekly on site operational meetings to continue to standardise against contract requirement.
- Daily contact with contract manager
- Formally recorded quarterly review meetings to continue with the Greenspace Services Operations Manager and City Suburban Ltd Managing Director in attendance.
- Annual review and update of service improvement plan which will be reported to the Head of Service.
- Annual review of customer satisfaction.

Other Issues

4.1.5 The following issues have been identified that could potentially impact the remainder of this contract term and justification has been provided accordingly as to how such issues have or will be mitigated

The contractor may review the extension of contract after the initial five years and may decline the two year extension should the agreed annual uplift not meet current inflationary costs. There is currently no evidence that the contractor is considering rejecting the two-year extension and through close communication between the Greenspace Services Operations Manager and City Suburban Limited Managing Director any warning of such action will be included in a Gateway 4 report in 2015.

TUPE Issues

4.1.6 Further to guidance from Legal Services, Human Resources and the Procurement Team, it was identified at Gateway 1 that as this is a Services related procurement contract, TUPE did apply

The recommended contract award at Gateway 3 resulted in contract staff from Blenwood (Previous Contractor) seven staff being affected by TUPE and transferring as a result of the incumbent provider from the old contract not being successful as part of the previous procurement tender process.

Further to this, there are no further TUPE issues to consider at this stage.

Other Information

4.1.7 No other additional information has been identified.

5. Risk Management

Risk Categorisation

5.1 The following risk categories have been identified as having a linkage to this procurement contract at this Gateway 4 Stage

Procurement process	<input type="checkbox"/>	Equalities	<input type="checkbox"/>
Contractual delivery	<input checked="" type="checkbox"/>	Sustainability / Environmental	<input checked="" type="checkbox"/>
Service delivery	<input checked="" type="checkbox"/>	Legal	<input checked="" type="checkbox"/>
Reputation / political	<input type="checkbox"/>	Financial	<input checked="" type="checkbox"/>
Health & Safety	<input checked="" type="checkbox"/>	Other/ICT*	<input checked="" type="checkbox"/>

Risk Categories	Outline Description	Risk Likelihood A=Very High B=High C=Significant D=Low E=Very Low F=Almost Impossible	Risk Impact I=Catastrophic II=Critical III=Marginal IV=negligible Impact	Plans To Mitigate Risk
a) Procurement process	No risk identified			
b) Contractual delivery	The supplier may not meet terms of contract	E	III	Continue to manage and work closely with contractor to meet contractual needs
c) Service delivery	Service may not be delivered to specification	D	III	Continue to monitor contract works and standardise through operational meetings
d) Reputation / political	No risks identified			
e) Health & Safety	Council currently do have suitable tree inspection programme to assist with	B	II	Following external audit Council reviewing policies and procedures to

	duty of care			address duty of care issues
f) Equalities	No risks identified			
g) Sustainability / Environmental	Unavoidable changes to environmental conditions e.g. drought, changeable weather patterns etc may increase pressures on service delivery	C	III	Continue to work closely with contract to ensure works orders meet any changes as and when applicable
h) Legal	Risk of additional insurance claims through operational negligence	D	III	Continue to monitor working practises and standardise if not meeting contract specification.
i) Financial	Risk of inflationary costs not being met by agreed uplift	D	III	Need to prioritise core work streams and review as part of quarterly board meetings
j) Other/ICT*	No risks identified			

Other Information

5.1.2 No other additional information has been identified.

6 Consultation

Internal (Medway) Stakeholder Consultation

6.1 The contractor carries out contractual obligations for Highways and Car Parks and also undertakes responsive works for Cemeteries, Leisure, Housing, Schools and other Social Services Sites. Stakeholder consultations is covered within regular liaison meetings and input into annual appraisal

External Stakeholder Consultation

- 6.2 No external stakeholder consultation is required.

Other Information

- 6.3 No other additional information has been identified.

7. Procurement Board – 5 September 2012

- 7.1 The Procurement Board considered this report on 5 September 2012 and recommended approval to Cabinet asking that this contract be reviewed on an annual basis.

8. Financial, Legal, Procurement and ICT Implications

Financial Implications

- 8.1 This procurement contract and its associated delivery as per the preferred option highlighted at Section 4.1 'Preferred Option' and the recommendations at Section 9, has the following financial implications which the Cabinet must consider –
Contract costs are within the budget allocation for Tree Maintenance.
- 8.2 Detailed finance and whole-life costing information is contained within Section 2.1 Finance and Whole-Life Costing of the Exempt Appendix.

Legal Implications

- 8.3 This procurement contract and its associated delivery as per the preferred option highlighted at Section 4.1 'Preferred Option' and the recommendations at Section 9, has the following legal implications which the Cabinet must consider –
There are currently no legal implications. Subject to continued satisfactory performance of this contract, a Gateway 5 report relating to the exercise of the option to extend should be made in good time, in order to avoid the Council's general duty of care being compromised in the event that the contractor declines any offer to extend.

Procurement Implications

- 8.4 This procurement contract and its associated delivery as per the preferred option highlighted at Section 4.1 'Preferred Option' and the recommendations at Section 9, has the following procurement implications which the Cabinet must consider –

The client department reportedly is satisfied that the contract has delivered against the objectives set out as part of the original tender specification and as part of the Gateway 3 contract award process. Through a robust internal contract management process, the supplier provides the service in line with the contract terms and conditions. In line with Contract Procedure Rules, Procurement Board/Cabinet must decide whether to require any further Gateway 5 reports for this contract during the remainder of the contract term. Any future contract

variations shall automatically require a Gateway 5 report to be presented to the Procurement Board for a decision to be made.

Strategic Procurement supports the recommendation at 4.1 to continue with the current contract, negating the need for further Gateway 5 reporting requirements, unless a change in contract term is required. The Procurement Board/Cabinet nonetheless needs to appraise whether this contract is considered of strategic importance to the Council and should be subjected to a minimum of one Gateway 5 per annum to ensure that the contract continues to deliver effectively throughout the contract term.

ICT Implications

8.5 This procurement requirement does not have any ICT implications

9. Recommendations

9.1 The Procurement Board recommends that Cabinet approve the continuation of the current contract with the continuation of annual Gateway 5 reporting for the remainder of the contract term.

10. Suggested reasons for decision(s)

10.1 The recommendation contained within Section 9 'Recommendations' above is provided on the basis of there being no adverse observations regarding this contract and the contractor is performing to a standard equal or better than set out in the contract specification.

Lead officer contact

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Background papers

The following documents have been relied upon in the preparation of this report:

Description of document	Location	Date
Gateway 1 Report	http://democracy.medway.gov.uk/mglIssueHistoryHome.aspx?lId=3652	8 June 2010
Gateway 3 Report	http://democracy.medway.gov.uk/mglsueHistoryHome.aspx?lId=6044	29 March 2011