

CABINET

8 JUNE 2010

GATEWAY 1 OPTIONS APPRAISAL: TREE MAINTENANCE CONTRACT

Portfolio Holder: Councillor Howard Doe, Community Services

Report from: Robin Cooper, Director of Regeneration, Community and Culture

Author: Mike Sankus, Principal Tree Officer

Summary

This report seeks agreement to start the procurement of a new tree maintenance contract, to commence from July 2011 for a period of 5 years plus an extension, subject to performance and market suitability, for a period (or periods) of up to 2 years.

1. Budget and Policy Framework

- 1.1 The tree maintenance contract will enable the Council to meet its duty of care obligations in respect of tree management and will facilitate the completion of tree work to deal with legitimate customer requests for service and complaints.
- 1.2 To ensure business continuity from expiry of the existing contract (July 2011) authority is requested to commence the procurement of a new contract for a period of 5 years plus an extension, subject to performance and market suitability, for a period (or periods) of up to 2 years. The decision falls within the policy and budget framework. How the contract will address some of the council's strategic objectives is set out in section 4.2.

2. Related Decisions

- 2.1 Officer Scrutiny Panel approved an extension to the existing contract on 6 January 2010 to enable this contract to follow the same procurement timetable as the playground maintenance contract and to ensure alignment with the council's budget setting process.

3. Background

- 3.1 The current tree maintenance contract was awarded to Blenwood Limited in April 2006. The contract was let as a three-year contract from 1 July 2006 with an option to extend subject to satisfactory performance for a further 24 months to 1 July 2011.
- 3.2 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.
- 3.3 The existing contract is managed through a combination of ad-hoc performance checks, joint site visits and contract review meetings that are scheduled on a monthly cycle. There have been no significant cost or volume variances to the existing contract since it was tendered and the main benefits of the contract (to ensure Medway Council's trees are pruned to a high standard and in a cost effective way) have been achieved.
- 3.4 A host service arrangement has been investigated and discounted as there are no opportunities for a joint procurement exercise or shared tree maintenance service in Kent at this time. An in-house option has also been discounted on the basis of on costs around salaries and service continuity.
- 3.5 Following an options appraisal, this report highlights a preferred option of external contractor supply because there is an established, but small market of specialist suppliers.

4. Business Case

4.1 Business Case Summary

- 4.1.1 The tree maintenance contract enables the Council to fulfil its statutory duty of care obligations relating to tree management and facilitates the completion of tree work to deal with legitimate customer requests for service and complaints in line with the council's adopted tree policy.

4.2 Strategic Context

- 4.2.1 This contract will enable Medway Council to fulfil its responsibility to maintain its trees in a safe condition and facilitate the completion of tree work to deal with legitimate customer requests for service and complaints. In addition the contract will address some of the strategic objectives of the following initiatives, plans, strategies and policies:
- Tree Policy
 - Medway Council Transport Asset Maintenance Plan
 - Wildlife, Countryside & Open Spaces Strategy
 - Core Value – "Putting the Customer at the Heart of everything we do".

- Core Value – “Giving Value for Money”
- Strategic Priority - “A Clean and Green Environment”
- Strategic Priority – “People Travelling Easily and Safely in Medway”

4.3 Whole Life Costing/Budgets

4.3.1 The predicted costs which are subject to tender return, are set out in the exempt appendix. This is based upon the total contract value over 5 years together with the maximum contract extension period of 2 years.

4.3.2 The contract will fall into two main areas, planned work and emergency standby and unplanned maintenance and emergency works, details of which are set out in the exempt appendix.

4.4 Inflation provision

4.4.1 Tree maintenance works incur many expenses that will vary over time including labour, fuel, depot facilities, waste disposal requirements and more comprehensive health and safety requirements.

4.4.2 The current contract includes a clause covering inflation provision based on the all items retail price index (RPI), with an average annual increase under the existing contract of 3.04% per annum.

4.4.3 As part of the Gateway 1 process consideration has been given as to whether options to cover increases in basic costs such as inflation provision should be included in the contract.

4.4.4 If no provision is made to cover inflation the tendering contractors will need to balance the risk of submitting a competitive tender with the likelihood of having to stick with prices that may not meet their costs throughout the contract period. While there would be some benefit for the council in fixing the prices, the risk is that the successful contractor may not wish to extend after the initial 5-year contract period. There is also a possibility that the increased risk for contractors may discourage them from tendering, leaving insufficient interest in the contract. This risk for tree contracting as opposed to a service such as street lighting or highway maintenance is greater because of the small and specialised market.

Inflation Calculator	Contractor		Council	
1) None	High Risk	<p>The contractor will need to balance the risk of submitting a competitive tender with the likelihood of having to stick with prices that may not meet their costs throughout the contract period. If they choose not to inflate prices they may find it difficult to complete the contracted works through the life of the contract.</p>	High Risk	<p>Initial costs will be higher and although fixed, may not be fully covered by current budgets, resulting in a reduced service or budget pressures. The successful contractor may not wish to extend after the initial 5-year contract period. Tree surgery contracting is a small and specialised market and with the increased risk for contractors there is a real concern that there will be insufficient interest in tendering for the contract. There are likely to be increased difficulties in managing/monitoring the contract thereby increasing supervisory costs.</p>
2) Use RPI	Low Risk	<p>Contractor is protected against unknown price increases through inflation and will price accordingly.</p>	Medium Risk	<p>Budgets will need to reflect inflation level; alternatively there may be a reduced service or budget pressures to deal with the shortfall. The full cost of the contract is unknown although estimates suggest the average increase is likely to be 2.94% per annum for the next 5 years. The average annual increase has been 3.04% for the past 5 years.</p>

<p>3) Fixed at 3% per annum to reflect contract price increase over the last 5-year period.</p>	<p>Medium Risk</p>	<p>The risk is significantly less than the no annual increase option above, but the contractor will still need to balance the risk of submitting a competitive tender with the likelihood of having to stick with prices that may not meet their costs throughout the contract period. If they choose not to inflate their prices they may find it difficult to complete the contracted works through the life of the contract.</p>	<p>Low Risk</p>	<p>The council can predict increases in costs year on year and make informed, timely decisions regarding budget provision. The Contractor's rates may be higher to allow for unpredictable increases in costs.</p>
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- 4.4.5 Guidance from Finance and Corporate Services indicates that inflation is likely to continue its current long-term trend of circa 3% per annum. The current contract inflation figure is on average 3.04% per annum over the past 5 years.
- 4.4.6 At Procurement Board held on 12 May 2010 it was agreed that two options would be taken forward to deal with matters relating to inflation provision in the new tree maintenance contract. In essence tenderers will be asked to tender for two lots.
- 4.4.7 The first option will see tenderers submitting their rates on the understanding that there will be zero percent uplift over the entire contract term. The second option will see tenderers submitting their rates again, but for this set of rates they will also be asked for their inflation provision, expressed as a flat percentage to be added to the schedule of rates each year.
- 4.4.8 For each lot tenderers would have to provide a priced schedule of rates which the evaluation panel would convert into a basket of requirements based on historic spend to evaluate the price element of tenders. The client department would present the results at Gateway 3 for Procurement Board and Cabinet to make an informed decision.
- 4.4.9 The rationale behind this approach is that tenderers will be given the opportunity to submit their most competitive rates with and without inflation provision. The advantage to the council is that we will be able to predict increases in costs year on year and make informed, timely decisions regarding budget provision.

4.5 Risk Management

- 4.5.1 The Risk Analysis Tool (RAT) assesses the risk of this contract as 59 and High. The Risk Register is appended to this Gateway 1 Report (Appendix 1) and the RAT is available to Members upon request.

Risk	Probability (P) (score 1-4)	Impact (I) (score 1-4)	Overall Score P x I	Action to avoid or mitigate risk
Tender costs exceed budget provision	1	2	2	Procurement timetable aligned with Budget Build Framework.
Failure to monitor activities and benefits of the new service	1	2	2	Monitoring of service through reporting and management procedures

4.6 Market Testing (Lessons Learnt/Bench Marking)

- 4.6.1 There is a small, specialised market for tree maintenance services. This has been tested through the previous renewal of the tree maintenance contracts.
- 4.6.2 Informal benchmarking through the London Tree Officers Association shows that most authorities procure this work as a stand-alone contract due to the specialist nature of the works.
- 4.6.3 An in-house option has been discounted on the basis of set up costs, available depot facilities, on costs around salaries, the retention of suitably experienced staff and service continuity.
- 4.6.4 A consultation exercise undertaken by a neighbouring Kent authority in December 2009 has demonstrated that there are no opportunities for a joint procurement exercise or shared tree maintenance service with other authorities in Kent.
- 4.6.5 Officers have investigated the possibility of entering into a framework agreement for tree maintenance through OCG Buying Solutions or the Eastern Shires Purchasing Organisation. Both stated that they do not have any framework contracts for tree maintenance works.

4.7 Stakeholders Consultation

- 4.7.1 The key internal stakeholders are Greenspace Services and Highways Services with a small proportion of work being undertaken for Housing Services and occasional ad-hoc works for some schools, Parking Services and Bereavement Services.

- 4.7.2 The potential for including coppicing works, currently undertaken on behalf of Greenspace Services by other contractors, in the new tree maintenance contract will be fully considered at Gateway 2. It is anticipated that this work would be added as a schedule of rates item for coppicing woodland units of 100m², with an indication of the total volume to be cut per annum. It is anticipated that the tendered rates would be considered each year as an option to be compared against current market rates.
- 4.7.3 There is potential for tree work in schools to be included in the tree maintenance contract. Due to the independence of schools in contract arrangements separate agreements would have to be made with individual schools that chose to join the contract. Officers will write to all schools and Children Services explaining the benefits of taking advantage of this shared service and report back at Gateway 2.
- 4.7.4 Community Services (housing estate management) currently take advantage of some contracted tree maintenance services through the existing contract. This includes some planned works (see 4.3 above) in housing forecourts and some unplanned works on an ad-hoc basis in residential gardens. Consultation will be undertaken to see if Community Services wish to alter the scope of this service.
- 4.7.5 Consultation will also be undertaken with Bereavement Services and other potential internal stakeholders who do not currently take advantage of the service.
- 4.7.6 It should be noted that the proposed contract arrangement would provide scope to vary the stakeholders included in the contract throughout the contract period.

4.8 Other Issues

- 4.8.1 No issues around IT and construction have been identified.

5. Procurement Impact Assessment (PRIMAS)

- 5.1 The proposed procurement is not considered to have any negative impact in relation to equalities (i.e. age, disability, ethnicity, sexual orientation, gender and religion/ belief) or local community.
- 5.2 There are no issues identified in relation to environmental or health & safety since these issues will be addressed in relation to existing legislative requirements as part of the ITT. The contract will include pricing options for contractors to use low emission vehicles that have less of an impact on the environment.
- 5.3 Opportunities to tender for the works will be promoted in accordance with the adopted procurement policy of the Council.

6. Permissions/Consents

- 6.1 No permissions or consents have been identified at this stage of the procurement process although any hosting or shared service opportunities identified would need to be subject to a lock out agreement that, dependant on the nature of the agreement, may require the approval of Cabinet.

7. Options Appraisal

7.1 Success Criteria/Key Drivers/Indicators

- 7.1.1 A key indicator of success would be to 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.

7.2 Options

- 7.2.1 Three main options have been considered for renewing this contract. These include renewing as a stand-alone contract, renewing as an integrated contract and proceeding with an in-house service model.

7.2.2 Option 1 - Renew as stand alone contract:

A contract with a single supplier that has suitable expertise and experience in supplying a specialised tree pruning and maintenance service. A stand-alone contract that is not linked to any service other than tree pruning and maintenance.

Advantages - There is an established, but small specialist market. Contract value and work volume should encourage market interest and competitive bids. The Council has established monitoring systems for contract performance. Single supply contracts can avoid additional costs associated with the use of sub-contractors and tend to encourage the specialist suppliers we are seeking.

Disadvantages – The main disadvantage is the lack of a local depot provision, but experience suggests that contractors will be able to source suitable local facilities.

7.2.3 Option 2 - Integrated Contract:

A contract with a single supplier that has broader, more general expertise and experience. An integrated contract for more than one service, for example a combined tree pruning and maintenance service and general grounds maintenance service.

Advantages – potential economies of scale.

Disadvantages – The works are specialist in nature and most integrated contracts tendered are grounds maintenance/cleansing so there is no

guarantee of market interest or value for money being achieved. Further disadvantages are the requirements for potential complex client administration frameworks. There is a lack of a local depot provision and for an integrated contract a larger depot would be required. Integrated contracts can result in additional costs associated with the use of specialist sub-contractors.

7.2.4 Option 3 - In-House Model:

Advantages – None identified

Disadvantages - Direct (In-House) provision has been discounted on the basis of set up costs, available depot facilities, on costs around salaries, the retention of suitably experienced staff, service continuity and that there is an established market of external providers.

7.3 Preferred Option

7.3.1 Option 1 (Renew as stand alone contract) has been identified as the preferred option on the basis that there is an external market of specialist providers.

7.3.2 Past experience suggests the preferred option will give value for money, but this will be demonstrated through the evaluation criteria for contract award. Value for money could also be achieved through offering the service to other departments on a full-cost recovery basis plus management fee.

7.3.3 The existing ITT and client administration have delivered a responsive, effective service to carry out tree works, which Greenspace Services are responsible for. Re-tendering the contract for which there is an established market will ensure value for money and service continuity.

7.3.4 Measurable benefits will be qualified in the ITT at Gateway Stage 2, but examples include:

- The high quality of works completed.
- Response times in dealing with problems on sites.
- Value for money from a specialist contractor with experience of running tree maintenance contracts.

8. PREPARATION OF THE NEXT STAGE OF PROCUREMENT

8.1 EU Implications

8.1.1 Due to forecast tender value this contract will need to comply OJEU procumbent regulations as the value is above the current EU procurement threshold for services of £156,442. An indicative timetable is attached at appendix 2 which will be finalised as part of the Gateway 2 QA by Strategic Procurement.

8.2 Resources and Project Management

8.2.1 A project-working group led by the Head of Greenspaces will be established to manage delivery of the new tree maintenance contract in line with the

procurement stages. Performance management will be undertaken through covalent as part of the Greenspaces Service Plan.

8.3 Contract Documents

- 8.3.1 The form of contract will be based on the existing contract updated to reflect any legislative changes and prevailing best practice for tree works contracts. The existing contract went through an extensive benchmarking exercise via the London Tree Officers Association prior to letting and is recognised as reflecting best practice for tree maintenance contracts.
- 8.3.2 In relation to deliverables and impacts these will be addressed through existing monitoring procedures and in accordance with the Councils adopted tree management policy.
- 8.3.3 The main risk identified at Gateway 1 stage is in relation to tender value exceeding budget allocation. This will be mitigated through aligning the procurement process with the Council's budget setting process and ensuring that the bill of quantities enables pricing options to ensure value for money.

8.4 Contract Management

- 8.4.1 The contract will be managed through a combination of ad-hoc performance checks, joint site visits and formal contract review meetings that are scheduled on a monthly cycle.

9. Comments of the Portfolio Holder for Community Services

- 9.1 To ensure business continuity and alignment with the budget setting process I am happy for the Head of Greenspace to commence procurement for a new tree maintenance contract to start from July 2011.

10. Procurement Board

- 10.1 The Procurement Board considered this report on 12 May 2010. In addition to the comments set out at section 4.4, the Procurement Board supported the recommendations, as set out in section 12.

11. Financial, Procurement and Legal Comments

- 11.1 Comments from Chief Finance Officer - the risk that the tender costs will exceed budget provision have been given a low probability rating. There is claimed to be an established, but small market of specialist suppliers that should ensure competition. Section 4.5 outlines the risks associated with a formalised method, or not, for the contract price uplift mechanism and this will be an issue in procurement generally. Given an active marketplace there is an argument in favour of leaving the risk with tenderers, but bearing in mind that this is a small and specialised market this does expose the Council to the possibility of having only a restricted number of tenders or inflated prices. The adoption of a fixed annual increment, as recommended, does mean that these

risks are significantly reduced. The financial implications of the tenders will be available for consideration in the budget setting process for 2011/2012.

- 11.2 Comments from Head of Procurement - Strategic Procurement will provide Quality Assurance as part of the procurement process including a comprehensive review of procurement documentation at Gateway 2. The client department must liaise with Strategic Procurement to publish the OJEU notice, as this is the role of Strategic Procurement. The client department has been advised to research any potential frameworks that are EU compliant and, in the event none are identified, a full EU procurement process will need to be undertaken.
- 11.3 Comments from Deputy Monitoring Officer - These are Part A services for the purposes of the Public Contracts Regulations 2006 (as amended) and the estimated value of the contract is well in excess of the relevant threshold. This procurement will be subject to the new rules implemented by virtue of the Remedies Directive. Both legal services and strategic procurement will therefore need to be closely involved in this procurement to facilitate and review its implementation.

12. Recommendations

- 12.1 Cabinet is recommended to agree to the preferred option (1), open market procurement for the tree maintenance contract from 1 July 2011.

13. Suggested Reasons for Decision

- 12.1 By commencing procurement of the tree maintenance contract now, service continuity can be adequately planned and financial award decisions made through the 2011 budget setting process.

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Monitoring Officer or deputy	Julien Browne	☎ 01634 332154
Head of Procurement or deputy	Gurpreet Anand	☎ 01634 332450

Background papers

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

Description of document	Location	Date
Directorate Management Team Contract Procurement Approval Report	Gun Wharf	3/12/2009

RISK REGISTER FOR Tree Maintenance Contract

1. Project identification

Project Manager	Mike Sankus – Principal Tree Officer	Project sponsor	Simon Swift – Head of Greenspace
Project Start	1 st July 2011		

RISK REGISTER

Ref	Risk description	Owner	Date Opened	Date Closed	Potential consequences	Counter actions to reduce risks	P 1-4	I 1 - 4	W P x I	Status	Notes
<i>P = Probability I = Impact W = Weight</i> <i>PROBABILITY – 1 Unlikely 2 Possible 3 Probable 4 Likely</i> <i>IMPACT - 1Minor 2 Significant 3 Major 4 Catastrophic</i>											
1	Tender costs exceed budget provision	Medway Council	Nov 09		Non award of contract resulting in service continuity failure	Procurement timetable aligned with Budget Build Framework.	1	2	2	Amber	

Ref	Risk description	Owner	Date Opened	Date Closed	Potential consequences	Counter actions to reduce risks	P 1-4	I 1 - 4	W P x I	Status	Notes
2	Failure to monitor activities and benefits of the new service	Medway Council	Nov 09		Reduction in service efficiency. Failure to rectify problems within reasonable time frames.	Monitoring of service through reporting and management procedures.	1	2	2	Amber	

Procurement Timetable

Project:	Tree Maintenance - High Risk
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Stage	Step	Task	Days	End Date
Gateway 0	1	Prepare Risk Analysis Tool	0	18/05/10
	2	Approval from Procurement	0	18/05/10
	3	DMT approval	0	18/05/10
	4	Add to Directorate Forward Procurement Plan	0	12/05/10
Gateway 1	5	Undertake research/consultation	0	12/05/10
	6	Prepare Reports	0	12/05/10
	7	Approval to proceed form Procurement Board/OSP/DMT	0	12/05/10
	8	Approval to proceed from Cabinet (If applicable)	27	08/06/10
Gateway 2	9	Prepare contract documents	30	08/07/10
	10	Approval from Procurement	5	13/07/10
Pre-Qualification	11	Advert Placed	2	15/07/10
	12	PQQ Request Date	37	23/08/10
	13	PQQ Return Date	0	23/08/10
	14	Docs Checked	5	30/08/10
	15	References Obtained	7	06/09/10
	16	Short List	10	16/09/10
	17	D&B Checked	2	20/09/10
	18	Team Decisions	3	23/09/10
Tender	19	ITT Sent	3	27/09/10
	20	ITT Return Date	40	08/11/10
	21	Written Evaluation	4	12/11/10
	22	Interview/Site Visit (If applicable)	1	15/11/10
	23	Team Decisions	1	16/11/10
Gateway 3	24	Prepare Reports	3	19/11/10
	25	Approval to proceed form Procurement Board/OSP/DMT	12	01/12/10
	26	Approval to proceed	20	21/12/10
Award	27	Award/Reject	10	31/12/10
	28	Commencement	10	10/01/11
	29	Award Notice	48	17/02/11