

CABINET

29 MARCH 2011

GATEWAY 3 PROCUREMENT TENDER PROCESS REVIEW AND CONTRACT AWARD: TREE MAINTENANCE CONTRACT

Portfolio Holder: Councillor Howard Doe, Housing and Community Services

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

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Summary

This report seeks permission from the Cabinet to award a contract to the supplier as highlighted within section 2.5.1 of the Exempt Appendix.

This is based upon the recently undertaken procurement process for a tree maintenance contract that 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.

This includes works such as the twice-yearly pruning of trees to remove low branches/suckers, the provision of an emergency response service for tree works and the completion of tree work to deal with legitimate customer requests for service and complaints identified during routine surveys.

This Procurement Gateway 3 Report has been approved for submission to the Cabinet after review and discussion by the Regeneration, Community and Culture Directorate Management Team and consideration by the Strategic Procurement Board on 9 March 2011.

The Regeneration, Community and Culture Directorate Management Team has recommended that this procurement project be approved as a Category B High Risk procurement project at Procurement Gateway 3 by the Cabinet. This is because the procurement team has identified this procurement project as a Services Category B High Risk procurement with a total contract value above £250,000.00 that does not have any political implications or service sensitivities that Cabinet should be aware of.

1. Budget and Policy Framework

1.1 Contract Award Decision

1.1.1 The decision to award a contract to the supplier as highlighted within section 2.5.1 of the Exempt Appendix for this procurement requirement 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 or Directorate service plans as highlighted within the Gateway 1 Report to Cabinet on 8 June 2010.

2. Background

2.1 Permission Required From the Cabinet.

2.1.1 This Procurement Gateway 3 Report seeks permission from the Cabinet to award a contract to the supplier as highlighted within section 2.5.1 of the Exempt Appendix.

2.1.2 This is based upon the recently undertaken EU compliant procurement process, which seeks to award a contract to undertake tree maintenance services with a single supplier that has suitable expertise and experience in supplying a specialised tree pruning and maintenance service.

2.2 Contract Details

2.2.1 Procurement type

The proposed award of the contract to the supplier as highlighted within section 2.5.1 of the Exempt Appendix relates to a Services procurement requirement.

2.2.2 Contract duration

The proposed contract duration for this procurement requirement is five years with provisions to extend the contract for a period of two years. The contract is proposed to commence on 1 July 2011 and conclude on 30 June 2016 (subject to extension).

2.2.3 Contract value

The total contract value associated with this contract is £2,248,064.00 (including total proposed extension provision).

2.3 Procurement Tendering Process

2.3.1 In line with Medway Council's Contract Procedure Rules this procurement requirement was subjected to a formal tender process in line with the EU Procurement Restricted process, whereby an OJEU notice was placed within the Official Journal of the European Union (OJEU) on 6 September 2010 and an advert was placed upon Medway Council's website in conjunction with the Strategic Procurement Team on 6 September 2010.

2.3.2 This was due to the associated total contract value of this contract being above the EU threshold of £156,442.00 for services and was approved by the Monitoring Officer in consultation with the Strategic Procurement Board at Gateway 1.

- 2.3.3 It was decided to follow a formal EU Restricted tender process as the marketplace is large and the potential interest to Medway Council's advertised requirements would be very large. Therefore, the procuring client department was confident and happy to invite applicants to Restricted tender and shortlist a select list of applicants from a larger Pre-Qualification applicant pool to invite to tender.
- 2.3.4 The deadline for expressions to request and submit a Pre-Qualification Questionnaire was 17:00 on 13 October 2010. Twenty-three Pre-Qualification Questionnaires were issued to all those applicants that had expressed an interest by the aforementioned deadline.
- 2.3.5 The Exempt Appendix highlights that thirteen Pre-Qualification Questionnaire expressions were received by the prescribed time and date within the OJEU notice and Medway Council's website.
- 2.3.6 Subsequently, post evaluation of Pre-Qualification Questionnaires, five applicants were short listed from the Pre-Qualification applicant pool and invited to tender in line with the defined evaluation approach as set out in the Council's Pre-Qualification Questionnaire.
- 2.3.7 Short listed applicants from the Pre-Qualification stage were issued with the Invitation To Tender Documents simultaneously on 17 December 2010 with instructions to return tenders by 12 noon on 31 January 2011.
- 2.3.8 Subsequently, four companies returned the Invitation To Tender documentation within the prescribed deadline for completed submissions of 12 noon on 31 January 2011 as defined within the Invitation To Tender document.
- 2.3.9 The evaluation criteria set within the Invitation To Tender document was Most Economically Advantageous Tender (MEAT) based upon a composite mixture of quality and price with 40% for quality and 60% for price equating to 100% in total.
- 2.3.10 After a compliance check against the instructions set out in the Invitation To Tender document, four compliant submissions were evaluated. The results of this evaluation process are set out in the Exempt Appendix.

3. Options

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.

3.1 Options Resultant From Procurement Tender Process

This procurement tendering process has resulted in the following procurement contract award options:

3.1.1 Do not award any contract and cancel procurement process.

The option of not awarding any contract and cancelling the procurement process has been considered, but this would prevent Medway Council from meeting its duty of care obligations in respect of tree management,

and there is no justification for not awarding this contract as it provides best value and has been delivered in accordance with the original advertisements and associated procurement documentation and therefore this option has been discounted

3.1.2 Award contract to the contractor as highlighted within the Exempt Appendix.

The option of awarding the contract to the contractor as highlighted within the Exempt Appendix has been considered and below are the advantages and disadvantages of this option.

Advantages:

- Most economically viable option that gives best value.
- A single supply contract with a specialist contractor that will avoid additional costs associated with the use of sub-contractors.

Disadvantages:

- None identified.

3.1.3 Other alternative options

All other options were ruled out at the Gateway 1.

4. Advice and analysis

4.1 Preferred option

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

Award contract to the contractor as highlighted within the Exempt Appendix and 3.1.2 above.

The recommended preferred option is the most viable option for contract award because the proposed contract award meets the requirements as set out in Section 5 'Business Case' within the Gateway 1 Report in the following ways:

- Enables the Council to fulfil its statutory duty of care obligations relating to tree management
- Facilitates the completion of tree work to deal with legitimate customer requests for service and complaints in line with the councils adopted tree policy.
- Will address a number of strategic objectives, initiatives, plans, strategies and policies as detailed in the gateway 1.
- Addresses concerns and provides certainty with regard to inflation provision.

- Demonstrates that the provision of tree maintenance has been market tested.
- Provides scope for all stakeholders to engage tree maintenance services through this contract at a competitive rate.

4.1.1 Procurement Project Outputs / Outcomes

The following procurement outcomes/outputs identified as important at Gateway 1 to the delivery of this procurement requirement have been appraised in the table below to demonstrate how the recommended procurement contract award will deliver 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 Services, tree officers, and if appropriate, the Strategic 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.

4.1.2 Procurement Project Management

This procurement project will be taken through the remainder of the Gateway Procurement Process through the utilisation of the following project resources and skills:

Subsequent Gateway reports will be submitted in line with the new Gateway Procurement Process by the Head of Greenspace & Heritage Services, utilising information provided by tree officers assigned to manage this tree maintenance contract.

4.1.3 Post Contract Award Contract Management

The contract management of this recommended procurement contract award will be resourced post award through the following contract management strategy:

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.

4.1.4 Other Issues

The following issues have been identified that could potentially impact the recommended procurement contract award and justification has been provided accordingly as to how such issues have or will be mitigated:

There are no other issues that could potentially impact the recommended procurement contract award.

4.1.5 TUPE Issues

Further to guidance from Legal Services, Human Resources and the Strategic Procurement Team, it was identified that as this is a Services related procurement contract award, TUPE does apply to this procurement process.

The recommended contract award will result in seven employees being affected by TUPE as a result of the incumbent provider not being successful as part of this procurement tender process.

5. Risk Management

5.1 Risk Categorisation

The following risk categories have been identified as having a linkage to this recommended procurement contract award:

Procurement process	X	Equalities	
Contractual delivery	X	Sustainability / Environmental	
Service delivery	X	Legal	
Reputation / political	X	Financial	X
Health & Safety	X	Other	

For each of the risks identified above, further information has been provided below.

Risk Categories	Outline Description	Risk Impact I=Catastrophic II=Critical III=Marginal IV=negligible Impact	Risk Likelihood A=Very High B=High C=Significant D=Low E=Very Low F=Almost Impossible	Plans To Mitigate Risk
a) Procurement process	Council decision making process affects timing of contract award which impacts on service provision	II	E	The project was planned with Procurement and Cabinet dates in mind to minimise delays
b) Contractual delivery	Failure of contractor to deliver contractual arrangements	II	E	Contract monitoring through competent arboriculturists ensure contract compliance. Default clauses are part of the contract documentation.
c) Service delivery	Failure of contractor to deliver contractual arrangements	II	E	Contract monitoring through competent arboriculturists ensure contract compliance. Default clauses are part of the contract documentation.
d) Reputation / political	Negative publicity as a result of poor practice, or failure to deal with legitimate customer requests for service	II	E	Contractors have quality assurance system, which will be monitored by competent staff, and there is adequate budget provision to complete tree work.

e) Health & Safety	Tree works will be undertaken in public spaces and the standard to which they are completed is key to ensuring safety.	I	E	Contractor has suitable procedures and a track record of competence, which will be monitored by competent arboriculturists to ensure contract compliance.
f) Financial	Reduced budget affecting service provision and contract viability.	II	E	Contract falls within existing budget provision.

6. Consultation

6.1 Internal (Medway) Stakeholder Consultation

6.1.1 Before commencement of the procurement process in order to direct the specification.

As part of this procurement project no internal stakeholder consultation was required nor undertaken before the commencement of the procurement project in order to direct the specification.

6.1.2 During the procurement process in order to aid the evaluation Process.

As part of this procurement project no internal stakeholder consultation was required nor undertaken during the procurement process in order to aid the evaluation process.

6.1.3 Post procurement/tender award in order to aid the contract management process.

As part of this procurement project, the following internal stakeholder consultation will be undertaken post procurement/tender award in order to allow other parts of Medway Council to benefit from shared services, which have been competitively tendered.

- Greenspace Services, for coppicing work.
- Bereavement Services, for tree work in cemeteries and crematoria.
- Schools and Children Services, for tree work in schools
- Highways, Parking Services, for tree work in car parks.
- Community Services, Housing Estate Management, for any alteration in the scope of tree work services currently provided.

6.2 External Stakeholder Consultation

6.2.1 Before commencement of the procurement process in

order to direct the specification.

As part of this procurement project no external stakeholder consultation was required nor undertaken before the commencement of the procurement project in order to direct the specification.

6.2.2 During the procurement process in order to aid the evaluation Process.

As part of this procurement project no external stakeholder consultation was required nor undertaken during the procurement process in order to aid the evaluation process.

6.2.3 Post procurement/tender award in order to aid the contract management process.

As part of this procurement project no external stakeholder consultation will be required or undertaken post procurement/tender award in order to aid the contract management process.

7. Strategic Procurement Board – 9 March 2011

7.1 The Strategic Procurement Board considered this report on 9 March 2011 and recommended approval to Cabinet.

8. Financial, legal and Procurement implications

8.1 Financial Implications

8.1.1 This recommended procurement contract award as per the preferred option highlighted at Section 4.1 'Preferred Option' and the recommendations at Section 9, will be funded from current revenue budgets managed by the tree team.

8.1.2 Detailed finance and whole-life costing information is contained within section 2.1 Finance and Whole-Life Costing of the Exempt Appendix.

8.2 Legal Implications

8.2.1 This recommended procurement contract award 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.

8.2.2 The procurement processes had been subject to the appropriate safeguards to ensure that they were open, fair and transparent and the invitation to tender stated that the contract awards would be on the basis of the most economically advantageous tenders. This will not only have resulted in a competitive process but also the award of contracts that will deliver value for money. It should be noted that to ensure that the contractor complies with all the terms and conditions of the contract a robust contract management process needs to be implemented.

8.3 Procurement Implications

8.3.1 This recommended procurement contract award 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.

- 8.3.2 Strategic Procurement has provided quality assurance throughout the process including a comprehensive review of procurement documentation at Gateway 2 to ensure compliance with regard to the evaluation criteria weightings, EU procurement threshold and timescales. In accordance with the EU procurement regulations, this contract was tendered on the basis of Most Economically Advantageous Tender (MEAT) and as such the proposed contract award within this report is reflective of this. Strategic Procurement is satisfied that a robust and compliant procurement process has been conducted which should deliver best value. The client department is advised that the EU procurement regulations require a 10-day mandatory standstill period to be observed which will take effect post completion of internal processes (5 day call in period by Cabinet) after which successful and unsuccessful letters will be issued. The client department must liaise with Legal Services for further guidance with regard to the issue of successful/unsuccessful letters and the 10 day mandatory standstill period to ensure that effective debriefing requirements are adhered to in line with the Remedies Directive. Once the 10 day mandatory standstill period has been observed successfully, the client department will need to formally award the contract by liaising with Legal Services to resolve issues of bonds/parent company guarantees and contract sealing. The client department should also commence the mobilisation strategy post contract award to ensure a seamless transition from the incumbent contractor to the new contractor.

9. Recommendation

- 9.1 Cabinet is requested to approve the procurement contract award to the contractor as outlined within Section 2.5 'Procurement Contract Award Recommendation' of the Exempt Appendix.

10. Suggested reasons for decision(s)

- 10.1 The recommendations contained above are provided on the basis that the procurement will deliver the objectives outlined in the business case.
- 10.2 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 councils adopted tree policy.

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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 to Procurement Board and Cabinet	http://democracy.medway.gov.uk/mqConvert2PDF.aspx?ID=4886	12 May 2010/8 June 2010