



Cabinet

11 JANUARY 2010

**DEPUTY LEADER
(+ENVIRONMENT)**
*Councillor Nicholas
Botterill*

**APPROVAL TO AWARD THE TERM
CONTRACT FOR RESURFACING AND ROAD
MARKING 2010 TO 2015**

**Wards
All**

Following a competitive tendering process, officers are seeking approval to award the above contract to the contractor (tenderer) assessed to have submitted the most economically advantageous tender to the Council to deliver the works.

A separate report on the exempt part of the agenda provides exempt information in relation to the results of the tender assessment process.

CONTRIBUTORS
DENV
ADLDS
DFCS
HR

Recommendations:

- 1. To award the five year Term Contract for Resurfacing and Road Marking 2010 to 2015, commencing 1 April 2010 , on the basis of the most economically advantageous tender received, as detailed in the report on the exempt part of the Cabinet agenda.**
- 2. To note that the contract has a clause that will allow three further one year extensions, but this is dependent upon the contractor's performance, and to agree that any decision needed to extend the contract in line with this provision may be delegated to the appropriate Cabinet Member at the proper time.**

HAS A PEIA BEEN COMPLETED? YES

1. PURPOSE

- 1.1 Following a competitive tendering process, which was undertaken in accordance with the Council's Contract Standing Orders and the Public Contract Regulations 2006, officers are seeking approval to award the Term Contract for Resurfacing and Road Marking 1 April 2010 to 31 March 2015. The Contractor recommended to be awarded the contract is the tenderer judged to have submitted the most economically advantageous tender to the Council.

2. BACKGROUND

- 2.1 Provision of the service is currently delivered by Colas Ltd through a term contract; Term Contract for Major and Minor Highway Surfacing Works 2004 to 2007. This contract has been extended and expires on 31 March 2010. From 2007, the scope of this contract has included the provision of a road marking services.
- 2.2 In anticipation of the procurement exercise, and at various stages throughout the process, officers have reported to the Cabinet Member to approve the procurement strategy and tender specifications.
- 2.3 The Tender Appraisal Panel (TAP) has determined that the Transfer of Undertakings (Protection of Employees) Regulations 2006 (TUPE) may apply to this contract.
- 2.4 The Tender Appraisal Panel (TAP) and Cabinet Members agreed that tenders should be assessed on a 70:30 price / quality split respectively.
- 2.5 The contract will be awarded for five years, with the option of three additional 12 month extensions, subject to Council approval and above satisfactory performance of the contractor.

3. TENDER PROCESS

- 3.1 The procurement process has been overseen by a Tender Appraisal Panel (TAP), which was established in accordance with the Council's Contract Standing Orders 2007.
- 3.2 The following is a summary of the stages in the procurement of the contracts:

Date	Action	Description
February - April 2009	Development of Procurement strategy	-
1 May 2009	Expressions of interest sought. Contracts advertised on Council web	Following Expression of Interest from Contractors Pre-Qualification Questionnaires (PQQ's) were issued

	site, trade journal and OJEU ¹	
1 June 2009	Deadline for return of PQQ's	16 completed PPQ's were received
2 July 2009	Short list of six tenderers for each contract agreed	Short list agreed by Cabinet Member following officer assessment and recommendation
14 August 2009	Tender documents issued	-
23 September 2009	Tender period closed	-
23 September 2009	Tenders Opened	-
28 September 2009	Tender opening meeting reconvened	-

4. TENDER OPENING

4.1 Tenders were opened by the Mayor, Councillor Alex Karmel, on 23 September 2009.

4.2 Five tenders for the Term Contract for Resurfacing & Road Marking 2010 to 2015 were received on time through the London Tenders Portal website.

4.2.1 Two tenders were received in accordance with the Instructions and were therefore accepted (with minor omissions listed in 4.4 below)

4.2.2 One tender failed to date the Form of Tender but was provisionally accepted by the Mayor, subject to the tenderer providing a signed and dated Form of Tender within 3 working days of the opening date.

4.2.3 Two tenderers failed to sign and date the Form of Tender.

4.3 The advice from Legal Services was that the Form of Tender represents an offer from a tenderer to the Council which is capable of acceptance by the Council. The requirements to sign and date the Form of Tender is a Council formality and is evidential proof that an offer has been made by a named person on a particular date. Notwithstanding, in contract law the failure to sign and date an offer is not crucial and the parties may still enter into a contract providing that all other legal and contractual formalities are satisfied.

4.4 Other omissions from the tender submissions were;

- (i) 3 tenderers failed to sign and date the Collusive Tendering Certificate
- (ii) 2 tenderers failed to complete, sign and date the Form of Insurances

¹ A Contract Notice was sent for publication in the *Supplement to the Official Journal of the European Union* (OJEU) on 1 May 2009, which was published on 5 May 2009 (under reference – 2009/S85-122264 (1.5.2009)). A Contract Notice also appeared on the Council's website on 5 May 2009.

- (iii) 3 tenderers failed to supply a complete, signed and dated Deed of Undertaking (to release the TUPE information from the incumbent contractors).

- 4.5 In relation to point (iii) above, the submission of a completed Deed of Undertaking was not essential for the analysis of the tenders; however the tenderers were informed that TUPE information would not be released unless this was completed. These tender submissions have therefore not taken account of the possible TUPE implications and could put them at risk should they be awarded the contract.
- 4.6 The Invitation to Tender allowed the Council to exercise its discretion in relation to the acceptance of tenders containing minor omissions where such minor omissions could be rectified in accordance with any reasonable request by the Council. On the basis of advice from Legal Services and the Council's Highways Department, the TAP decided that the omissions listed above were minor, and subject to the relevant tenderers rectifying the omissions within a timescale of 3 working days, the Council should exercise its discretion to accept the tenders.
- 4.7 The list of contractors who submitted tenders is detailed in Appendix 1a of the separate report in the exempt part of the Cabinet agenda.

5. TENDER ASSESSMENT

- 5.1 Tender evaluation has been undertaken by highway officers and overseen by the TAP. Evaluation is based on a 70:30 price/quality ratio respectively.

5.2 Price Component

- 5.2.1 This is a Schedule of Rates Contract so tenderers do not submit a total or single price for the works. Each item of work that is likely to be instructed through the contract has been scheduled and the tenderers insert prices into banded quantities for those items.
- 5.2.2 Officers have developed an evaluation model which analyses the full range of the Schedule of Rates over the different bandings, with different weightings for each section of the Schedule of Rates as set out in Appendix 1 attached. These weightings have been set to determine which tenderer will provide the most economically advantageous for the key elements of works to be ordered through this contract.
- 5.2.3 Highest marks are awarded to the tenderer which has the lowest weighted price for each section in the Schedule of Rates. The remaining tenderers are awarded points based on their price in relation to the lowest tenderer.
- 5.2.4 A summary of the results of the overall financial analysis is detailed in Appendix 1b of the separate report in the exempt part of the Cabinet agenda.

5.3 Quality Component

- 5.3.1 A Quality Submission template document was provided as part of the tender documents which identified the key criteria the Council wished to assess each tenderer against. In addition to providing a method of assessing each tenderer, the information in the Quality Submission document will form part of the contractual requirements upon contract award.
- 5.3.2 Officers assessed tenderers' responses to each subsection under the criteria listed above, which were given scores out of 10. This then contributed to the overall Quality Submission assessment in accordance with the tables shown in Appendix 2 attached
- 5.3.3 The minimum acceptable quality standard was set at an overall weighted score of 20 points with no single criteria awarded a score lower than 'adequate'.
- 5.3.4 The final Quality Submission scores are detailed in Appendix 1c of the separate report in the exempt part of the Cabinet agenda.

5.4 Combined Price / Quality – Overall Score

- 5.4.1 The price and quality scores have been combined to give the overall scores as detailed in Appendix 1d of the separate report in the exempt part of the Cabinet agenda.
- 5.4.2 The Contractor highlighted in Appendix 1d of the separate report has the highest combined score and therefore is deemed to have submitted the most economically advantageous tender.
- 5.4.3 Officers therefore recommend that the Term Contract for Resurfacing and Road Marking be awarded to the Contractor highlighted in Appendix 1d of the separate report.

5.5 Contract Budget Implications

- 5.5.1 Due to the revised Schedule of Rates and structure of the pricing elements of the contract (compared to the current contract) it is difficult to make a direct comparison of new rates to the existing rates. However, following further evaluation, officers consider the new Schedule of Rates to offer a saving of around 10 – 15% on current prices. This is seen as a major positive outcome of the tendering process and procurement strategy.

6. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006 (TUPE)

- 6.1 The Council has provided information about the employees of the workforce of the incumbent contractors currently employed under this contract to tenderers

to enable them to take account of the potential TUPE liabilities when providing prices for this contract.

- 6.2 Tenderers were advised to seek independent professional advice regarding TUPE and its application to this contract and the implications for its organisation should it be successful in tendering for the contract. It has been made clear to all contractors that it is their responsibility to ensure that their contract submission takes account of any potential liabilities relating to the transfer of the staff of the current contractor.

7. RECOMMENDATIONS

- 7.1 Officers recommend that the Term Contract for Resurfacing & Road Marking 2010 to 2015 be awarded to the contractor identified in Appendix 1d of the separate report in the exempt part of the Cabinet agenda for a period of five years (with up to a further three 12 month extensions that may be awarded at the Council's discretion), with a commencement date of 1 April 2010.
- 7.2 To note that the value of the contract may go up or down depending on the work ordered through the contract and provided the works are ordered from an approved budget to agree to waive the requirement to seek a Key Decision to spend above the approved contract value.

8. COMMENTS OF THE DIRECTOR OF FINANCE AND CORPORATE SERVICES

- 8.1 Expenditure under the proposed contract will cover resurfacing and road marking and will be funded from a number of revenue and capital budgets within the responsibility of the Highways and Engineering division. Whilst it is not possible to pre-determine the value of the contract as this will depend upon the level of Council and external funding available, the notional contract values is set at £3.125m a year. This is equivalent to £15.625m over 5 years and £25m over the potential life of the contract (excluding inflation)
- 8.2 Initial analysis suggests that contract rates are lower than current rates, this will be explored to determine the potential for MTFS or Capital programme savings.

9. COMMENTS OF THE ASSISTANT DIRECTOR (LEGAL AND DEMOCRATIC SERVICES)

- 9.1 Legal Services has advised the client department during the procurement process and the Assistant Director (Legal and Democratic Service) is satisfied with the recommendations of the report.

**10. COMMENTS OF THE ASSISTANT DIRECTOR STRATEGY,
PERFORMANCE AND PROCUREMENT**

- 10.1. Officers from the Division have been involved in the retendering of this contact and the AD agrees with the recommendations contained in this report.

LOCAL GOVERNMENT ACT 2000
LIST OF BACKGROUND PAPERS

No.	Description of Background Papers	Name/Ext. of Holder of File/Copy	Department/ Location
1.	Contract documentation and tender submissions. Tender Evaluation Sheets	Chris Jerram	H&E, 4 th Floor, THX

Appendix 1 – Price Evaluation Criteria

Price Evaluation Criteria:

SoR item Series	Sub-series points	Maximum Series points
100 – Preliminaries	-	1
400 – Safety/Ped. Guard Railing	-	1
500 – Drainage & Service Ducts	-	4
600 – Earthworks	-	7
Excavation	2	-
Sub-grade/Topsoil, Trial Pit excavation	1	-
Cold Planing	4	-
1100 – Kerbs, Footway & Paving	-	2
1200/1300 – Line Markings	-	6
Line Markings / Removals	3	-
CPZ remarking	3	-
1700 – Structural Concrete	-	4
2400 – Brick, Block& Stone Work	-	1
2600 – Street Furniture	-	1
9000 – Pavements	-	33
Surface Course	11	-
Binder Course	6	-
Base Material	2	-
Antiskid	6	-
Concrete / Aggregate	4	-
Hammersmith Bridge	2	-
All other items	2	-
Table A – scoring shown in Appendix 3	-	10
	Grand Total	70

Appendix 2 – Quality Evaluation Criteria

Quality Submission Evaluation Criteria

Criteria	Maximum assessed score	Weighting (%)	Weighted Score
Council Objectives:	20	10	3
– Demonstration of understanding of the Council's objectives, needs and priorities.	10		
– Provide details of how the Tenderer means to deliver the service to meet the Council's Objectives	10		
Best Value:	60	25	7.5
– Management Training & supervision	10		
– Continuous improvement and Flexibility	10		
– Technical Innovation	10		
– IT and communication systems	10		
– Vision Statements	10		
– Added value from previous relevant experience	10		
Putting Residents First:	40	15	4.5
– Contractor presentation, identification, image and branding	10		
– Customer Care / Satisfaction	10		
– Working with the community	10		
– Responding to local circumstances and complaints	10		
Method and Resource Statement:	94	50	15
– Duly completed Method and Resource Statement document (Marking criteria provided in Instructions to Tenderers)	Provided in ITT		
Total			30

Quality Submission Scoring System

Score	Description	Mark range
Excellent	Meets all criteria in a very full and comprehensive manner and exceeds some requirements	9 - 10
Good	Generally satisfactory and meets the requirements of the criteria to the satisfaction of the TAP	7 - 8
Adequate	Satisfactory but with aspects which cause the TAP concern because either the response is incomplete, or differs from the professional / technical judgement of the TAP on the requirements necessary to meet the criteria	4 - 6
Inadequate	Indications that the response meets some of the requirements but either the TAP has serious doubts about aspects of the response, or inadequate information has been provided	1 - 3
Unacceptable	Little or none of the response is satisfactory, or little or no information has been provided	0