

Cabinet Report

Date of Meeting: 12 June 2018

Report Title: Highway Services Contract Procurement – Award of Contract

Portfolio Holder: Cllr Don Stockton, Environment Portfolio Holder

Senior Officer: Frank Jordan, Executive Director of Place

1. Report Summary

- 1.1. The purpose of this report is to seek Cabinet approval to appoint a Preferred Bidder as the next Service Provider for the Council's Highway Services Contract.
- 1.2. The Project Team have concluded their negotiations, evaluation and moderation processes and this report proposes the Preferred Bidder to deliver the Council's Highway Services Contract. The process of determining the future delivery of highway services has followed the Council's contract procedure rules.

2. Recommendations

- 2.1. Cabinet is recommended to:
 - 2.1.1 Note the findings of the Highway Services Contract Procurement: Final Tender Evaluation Report set out in Appendix A. (Part 2 item)
 - 2.1.2 Approve the selection of Bidder X as the Preferred Bidder.
 - 2.1.3 Note the Preferred Bidder's proposed Premises Strategy as set out in Appendix B. (Part 2 item)
 - 2.1.4 Authorise the Executive Director of Place in consultation with the S151 Officer and the Director of Legal Services to enter into a legally binding Contract with the Preferred Bidder.

3. Reasons for Recommendations

- 3.1. In April 2017 Cabinet approved the procurement strategy for the Highways Service. The project team have since completed the procurement exercise following the Competitive Procedure with Negotiation procedure.
- 3.2. The bidders' submissions have been moderated and scored in accordance with the published award criteria. To determine the most economically advantageous tender the Quality / Price ratio for the evaluations was 70% / 30%.
- 3.3. On completion of the final tender moderation Bidder X received the highest combined Quality / Price score. As a result the Preferred Bidder has been identified as Bidder X.
- 3.4. Each bidder, as part of their submission, was requested to develop a Premises Strategy for the delivery of the Highway Services to meet the Contract requirements, which included Council owned premises. The Premises Strategy developed by the Preferred Bidder is detailed in Appendix B.

4. Other Options Considered

- 4.1. The entire range of highway delivery models open to the Council were assessed and evaluated through the Project Board and Member Panel prior to finalising the Procurement Strategy. The assessment followed the Highway Maintenance Efficiency Programme guidance (*HMEP is the Department for Transport's transformation programme*) and tested all the options against the Council's strategic aims and objectives for the Highway Service.
- 4.2. Following the assessment and evaluation, the chosen highway model approved by Cabinet in April 2017 was an Integrated Services model with a single provider.

5. Background

- 5.1. The current contract will end on 4th October 2018 having previously been granted the two year extension to utilise the maximum 7 year duration.
- 5.2. Following approval of the Procurement Strategy for the next Highway Services Contract, the Project Team in consultation with the Project Board have prepared, tendered and evaluated bids for the Contract. The activities have followed the Council's timeline including the following stages:

Event	Dates
Selection Questionnaire	
OJEU Contract Notice	16 August 2017
Issue Selection Questionnaire	21 August 2017
Return of Selection Questionnaires	20 September 2017
Deadline for Evaluation of SQ responses	4 October 2017
SQ feedback to applicants	9 October 2017
Initial Tender Stage	
Issue Invitation to Submit Initial Tender	13 October 2017
Tour of Employers Premises and ICT discussion	25 October 2017
Deadline for return of Initial Tenders	30 November 2017
Review, Evaluation and Moderation of ISIT	1 – 21 December 2017
Negotiation Stage	
Issue Instruction to Negotiate	3 January 2018
Negotiation Meetings	15/16/17 January 2018
Negotiation feedback and Quality Score issue	18 January 2018
Final Tender Stage	
Issue Invitation to Submit Final Tender	22 January 2018
Deadline for Return of Final Tender	8 February 2018
Review, Evaluation and Moderation of ISFT	9 Feb – 5 Mar 2018

5.3. Following the Award of Contract the Council will enter into the mobilisation phase with the Preferred Bidder. The mobilisation will commence on 4th July 2018 and run till 04th October 2018, a period of 3 months. During this phase regular updates and briefings will be arranged to update officers and members on changes to service.

6. Implications of the Recommendations

6.1. Legal Implications

6.1.1 The existing Highway Service Contract will expire on 4th October 2018 and a new contract is required.

6.1.2 The value of the Highway Services Contract will be above the applicable EU threshold and the award of the Contract is therefore subject to the Public Contracts Regulations 2015 (“PCRs”). The PCRs require the Council to treat all economic operators equally and without discrimination. In addition, the Council must act in a transparent and proportionate manner.

- 6.1.3 The Council has followed the Competitive Procedure with Negotiation, which is a compliant procedure under the PCRs. In addition, the Council has fully complied with its own Contract Procedure Rules during this project. The use of the Competitive Procedure with Negotiation has allowed the Council to negotiate with Bidders to improve their final tenders.
- 6.1.4 From the inception of this project, the Council has engaged external legal and highway procurement industry experts to act as specialist advisors. In particular, Bevan Brittan were appointed as the Council's legal advisors and have supported the Council in the choice of procurement route, the procurement documentation and the draft contractual documentation. The use of external experts and the Council's internal departments has ensured that a transparent, robust, fair, and compliant procurement process has been followed throughout.
- 6.1.5 The Contract is based on the Highway Maintenance Efficiency Programme (HMEP) NEC3 Term Service Contract, which has been tailored to meet the Council's needs.

6.2. Finance Implications

- 6.2.1. The Estimated Contract Value for the full 15 year duration is £525-£600m. This is based on an estimated annual spend of between £35m and £40m (split across Revenue and Capital budgets) which is representative of current annual spending levels. This is in line with the Council highway budgets agreed in the Medium Term Financial Strategy (see MTFs – pg. 203 for Revenue and pgs. 170-174 for Capital).
- 6.2.2. The levels of highway budget set in future Medium Term Financial Strategies will determine the annual budget and levels of service to be provided. The new Contract will ensure the successful bidder delivers Value for Money irrespective of the level of highway budget. It should be noted that the bid submission is not a reflection of the 18/19 annual programme.
- 6.2.3. The Council is using the Department for Transport Highway Maintenance Efficiency Programme adaptation of the NEC3 Term Service Contract which allows differing payment options to be selected for each service component. This permits multiple options to be used in combination to best align with the various risk profiles presented by the various service components.

6.2.4. The Options selected are:

- Option: C Target Contract with Price List. This is a cost plus Contract subject to a pain/gain share mechanism by reference to an agreed target cost
- Option: E Cost reimbursable Contract. This is a cost plus Contract

6.2.5. The choice of the appropriate main option depends upon the risks specific to each service component or Task. The pricing of ad-hoc works such as emergency response attendance at road traffic accidents would not be appropriate under Option C as it would be difficult for any Bidder to price the risk without adding a significant premium to the price. This type of service component is best administered under Option E cost reimbursement. However, the use of pain/gain mechanisms in relation to target costs should provide the Council with some degree of cost certainty over the life of the contract.

6.2.6. Each Bidder's tender has been calculated based on the forecast of Defined Cost plus Fee, with supporting calculations to show how the Prices have been derived.

6.2.7. The Bidders were required to submit a total of the prices for a variety of services and schemes that were divided across a wide range of different highway activities. These services and schemes are representative of the type of services and schemes that the Bidder is likely to deliver under the Contract. Bidders are required to ensure their submitted prices are financially robust and resilient and calculated on the basis of forecast of Defined Cost plus Fee using appropriate resources and realistic and sustainable outputs and productivity rates.

6.2.8. The completed pricing information submitted by the Preferred Bidder will be used to set robust and resilient prices on commencement of the Contract. These will then be subject to pain/gain mechanisms.

6.2.9. Some elements of the proposed solution are currently within the Addendum section of the Capital budget. The addendum includes projects that have been added to the programme owing to their strategic importance to the Council. However detailed business cases are not yet in place as the precise details are not yet known given the differing strategies between the bidders. However they will only be commenced once a detailed business case has been completed and approved. At the stage where the business cases are sufficiently developed and they are deemed to be affordable the Portfolio Holder for Finance &

Communications and the Interim Executive Director of Corporate Services will provide the additional approval for these schemes to proceed in line with their delegated powers. Updates on these schemes will be provided to Cabinet through the quarterly reporting process.

- 6.2.10. The investment required for the Preferred Bidders Strategy is wholly deliverable within the allocations detailed in the Medium Term Financial Strategy but will require ongoing monitoring and management to ensure best value for the Council. All bidders submitted differing investment profiles depending on their Premises Strategy.

6.3. Equality Implications

- 6.3.1. An Equality Impact Assessment has been undertaken and continually reviewed by the Project Board on a quarterly basis as the project has progressed. It is available as a background document for review if required.

6.4. Human Resources Implications

- 6.4.1 The TUPE regulations apply to this procurement process. An initial anonymised TUPE staff list has been shared with the Bidders at the tender stage. Any TUPE staff transfer list required will not be finalised until the end of August 2018.
- 6.4.2 The Council's Trade Unions have been briefed and the current provider has commenced consultation with their staff and trade unions. Further briefings and consultation will continue up until contract commencement.

6.5. Risk Management Implications

- 6.5.1. A risk register has been developed for this procurement and is regularly reviewed by the Project Team and Board. All risks have assigned owners who are responsible for mitigating and managing the risks.

6.6. Rural Communities Implications

- 6.6.1. 57% of the Cheshire East highway network is classed as rural serving over half of our population. The quality and availability of the rural network is vital to the local economy and impacts on the Borough's 'quality of place'.

6.7. Implications for Children & Young People

- 6.7.1. The highway service delivers, and assists other Council departments to deliver, improvements and road safety training specifically targeted at our children and young people.

6.8. Public Health Implications

- 6.8.1. The highway service plays an important role regarding public health through promotion of walking and cycling, and the delivery of infrastructure to promote more sustainable travel patterns.

7. Ward Members Affected

- 7.1. All Wards and Ward members are affected as the implications are borough wide.

8. Consultation & Engagement

- 8.1. A Prior Information Notice was issued via the OJEU in February 2017 seeking market feedback on aspects of the new Highway Services Contract.
- 8.2. A pre-procurement advisory cross-party Member Panel was established in February 2017 to assist in the development of the Strategic Aims and Objectives and review each element of the Procurement Strategy.
- 8.3. The market questionnaire results and Member Panel outcomes informed the development of the Procurement Strategy to ensure the Council secured suitable market engagement.
- 8.4. The Procurement Strategy was considered by Corporate Overview and Scrutiny Committee in March 2017 and April 2017 prior to approval by Cabinet in April 2017.

9. Access to Information

- 9.1 The tender information is commercially sensitive.
- 9.2 Appendices A and B to this report contain exempt information as defined in Paragraph 3 of Part 1 of Schedule 12A to the Local Government Act 1972 (Information relating to the financial or business affairs of any particular person (including the authority holding that information)) and are therefore not for publication.

10. Contact Information

- 10.1. Any questions relating to this report should be directed to the following officer:

Name: Paul Traynor

Job Title: Head of Highways & Parking

Email: paul.traynor@cheshireeast.gov.uk