



Cabinet
23 May 2016

**Report of Strategic Director,
Regeneration & Environment**

For Action

Wards Affected:
ALL

**Authority to Award Contract for the Supply of Street Lighting LED
Lanterns**

1.0 Summary

- 1.1 This report explains a recent issue associated with the proposed award of the Lot 1 contract to Bouygues E&S Infrastructure UK Limited (Bouygues) for the supply of LED (Light Emitting Diode) street lighting luminaires, as recommended to Cabinet in January 2016.
- 1.2 This report proposes a method for effectively managing the issue and associated risks, whilst minimising the delay in realising carbon and energy savings.

2 Recommendations

That Cabinet:

- 2.1 Rescinds the decision made in the Cabinet meeting of the 20 January 2016 to award the contract for the supply of LED (Lot 1 Light Emitting Diode) street lighting luminaires to Bouygues E&S Infrastructure UK Limited, noting that all other recommendations made in that report remain unaffected;
- 2.2 Authorises officers to revert to the invitation to submit a Best and Final Offer (BAFO) stage in the Lot 1 tendering process for the supply of LED (Light Emitting Diode) street lighting luminaires using a revised specification, as detailed in paragraphs 3.12 to 3.22; and

- 2.3 Delegates authority to the Strategic Director (Regeneration & Environment), in consultation with the Chief Legal Officer, Chief Finance Officer and the Lead Member for Environment, to sanction the award of a contract to the Most Economically Advantageous Tender, based upon the criteria set out in paragraphs 3.22 to 3.25.

3 Background

- 3.1 At its meeting on 14th April 2015, Cabinet endorsed a business case which proposed investment in Light Emitting Diode (LED) lanterns and a Central Management System (CMS) for street lighting, and authorised officers to invite tenders for their supply.
- 3.2 Advertisements were placed in the Official Journal of the European Union (OJEU), the London Tenders Portal, on 31st July 2015 to seek initial expressions of interest. This elicited 58 initial enquires. Contractors were provided with an outline specification and details of the tender approach and were invited to complete shortlisting questionnaires using the Council's Electronic Tendering Facility. 21 contractors subsequently completed the questionnaire.
- 3.3 Shortlisting was carried out on the basis of the contractors' financial viability, technical ability, and relevant experience. Eight contractors were subsequently invited to tender. Tenderers were invited to bid against three lots:
- 1) For the supply of LED equipment;
 - 2) For the supply of CMS equipment and software; and
 - 3) A combined bid for both LED and CMS equipment.
- 3.4 The tender evaluation was carried out by officers supported by the Council's technical lighting consultant, Designs for Lighting (DfL). Following evaluation, the panel confirmed that all bidders had met the minimum threshold required by the council's specification. Some differences were noted in the quality of the luminaires and systems included in the tenderers' method statements. All eight tendering suppliers were advised that they would be going through to the next stage in the process; negotiation and submission of a Best and Final Offer (BAFO). The panel met with all tendering companies to improve the panel's understanding of the various method statements, and draw out any potential for amending the Specification advantageously ahead of seeking Best and Final Offers.
- 3.5 All eight companies were invited to submit a BAFO, revisiting their initial prices and answering further questions for the purpose of re-evaluating quality. At the BAFO stage, bids were weighted in favour of price over quality, in the ratio 55:45. In respect of the supply of LED luminaires, quality was assessed against:

- Return on investment. Evidence that the offer represents the best return on investment for Brent Council based upon energy savings provided over a ten year period.
 - How the product will be optimised for individual roads, given the variety of road geometry and existing column spacing within Brent.
 - How the luminaires will be supplied on a call-off basis to optimise the lighting to the relevant BS5489-1 lighting class, whilst minimising energy consumption; and how the installer will identify the different luminaires required for streets with different photometric distributions.
 - Updated evidence of performance against the supplied geometries.
 - How social value could be enhanced.
- 3.6 The panel met on 8th December and each submission was marked by the whole panel against the award criteria. Bouygues E&S Infrastructure UK Limited had the highest scoring tenders for Lot 1; and DW Windsor Limited had the highest scoring tender for Lot 2. The combined bid (Lot 3), was assessed against the merits of combining Lot 1 and Lot 2 tenders.
- 3.7 Following a lengthy tender process, Cabinet agreed to recommendations made in a report of the 20 January 2016 to award a contract for the supply of LED luminaires to Bouygues E&S Infrastructure UK Limited.
- 3.8 The recommendation was made alongside the award of the contract for the Lot 2 supply of a lighting Central Management System to DW Windsor Limited.
- 3.9 Following the Cabinet decision, officers proceeded to formalise the award of contracts to Bouygues and DW Windsor Ltd. All tendering companies were notified of the council's intention to award contracts, and the mandatory standstill period commenced. The mandatory standstill, sometimes referred to as the 'Alcatel' period, is in place to allow bidders to informally challenge tender results or seek clarity in how decisions were reached.
- 3.10 During the standstill period officers received a formal request for clarification from an unsuccessful bidder. The main query concerned the calculations used by Bouygues to formulate their price. Subsequent technical analysis, and dialogue with Bouygues, revealed that arithmetical errors had indeed been made which prejudiced the savings proposals cited in their bid. The clarification also revealed some ambiguities in the council's specification which had been interpreted by bidders in different ways.

Options Considered

3.11 Officers have considered several options for how the council could now proceed. These options have been captured in the below table:

| Preferred Option | Reason |
|---|--|
| <i>Revert to an earlier stage in the tendering process, re-inviting Best and Final Offers.</i> | <p><i>Effectively manages the potential risk of a legal challenge – all bidders will be taken back to the BAFO stage where they will have an equal opportunity to win the contract through submission of the most competitive bid.</i></p> <p><i>Small delay in commencing the contract, but without impacting on the council's scheduled revenue savings programme.</i></p> <p><i>NB: Potential risk of increased capital cost.</i></p> |
| Rejected options | Reason |
| <i>Delay and Procure alongside the next street lighting contract (to commence in December 2018)</i> | <i>Two year delay and substantial savings foregone</i> |
| <i>Respond to points of formal clarifications raised then proceed to award as originally agreed</i> | <i>High risk: Potential for a legal challenge and an injunction sought which may present the council with a lengthy delay, as well as the potential for reputational and financial damages.</i> |
| <i>Restart Procurement</i> | <p><i>Approximate delay of up to a year, costs incurred, and loss of revenue savings.</i></p> <p><i>Restarting a fresh procurement would not negate the potential for a challenge to the process by any tenderer.</i></p> <p><i>In any case, the option recommended (subject to Cabinet approval) is to invite all eight (8) bidders, that were originally short listed and invited to submit responses to the initial Invitation to Tender, to now submit Best and Final Offers.</i></p> |

Preferred Option Approach

3.12 Officers recommend that Cabinet endorses the option to revert to an earlier stage in the tendering process, re-inviting 'Best and Final Offers' from tendering parties. Whilst not without risk, it is considered that this method carries the least amount of risk both financial and reputational.

3.13 If this recommendation is agreed, all eight bidders will be informed that the council intends to re-invite bids from them against a slightly amended specification. The specification will be revised to remove any

ambiguities in the council's requirements. Where the contract previously demanded '*equivalent*' or '*broadly comparable*' standards, the council will now be more prescriptive in order to remove any inconsistencies in bidders' interpretation of the standard. Whilst all eight bidders will be informed of the council's intention to re-invite bids, only six of the eight tenderers are expected to bid; two of the previous tenderers are CMS manufacturers, and are not now anticipated to bid for the supply of LED.

- 3.14 The council's agreed revenue budget anticipates £750k of savings p.a. from the Street Lighting LED project, commencing in the 2017/2018 fiscal year. By reverting to the BAFO stage these projected savings will still be achieved. The Cabinet report of the 20th January 2016 concluded that energy savings of at least 70% would be achieved against the 'do nothing' baseline option. For the purpose of tender evaluation, the council has assumed that the budgeted expenditure on street lighting energy (£1.385m p.a.) will rise annually by 2.5% for the next ten years.
- 3.15 Officers will seek to secure the savings cited by tenderers, and will make it explicitly clear to bidders that the ten year warranties required must now guarantee achievement of the energy performance cited in the tender; i.e. should energy performance dip during this period, the council will expect the supplier to either replace the defective luminaire or accept the application of liquidated damages equivalent to the council's loss.
- 3.16 **Price Evaluation:** Officers anticipate that the expected 70% saving will still be achieved and this should remain the minimum level of energy savings which can be guaranteed. The method for evaluating the tenderer's price will continue to be a combination of capital outlay and ten years of projected energy savings. The revenue saving generated by LED luminaires over ten years significantly exceeds estimated capital outlay on supply, underlining the rationale for including energy performance in the price evaluation. In the April 2015 Authority to Tender Cabinet Report, it was agreed that the tenderer's price should form 55% of their score, with qualitative criteria forming the remainder of the evaluation (see 3.17, below). For absolute transparency, it is proposed that the bidder with the lowest price (capital cost + ten year energy cost) should be awarded the maximum price score (i.e. the whole 55%). For other bidders, the lowest price will be divided by each bidder's price and multiplied by 55% to generate their score.
- 3.17 **Qualitative Evaluation:** Officers propose that the following themes are used as a basis for evaluation, as they were at the original BAFO stage:
- Detailed evidence demonstrating how the energy performance cited in the price will be achieved.

- Details as to how the product will be optimised for individual roads, given the variety of road geometry and column spacings within Brent.
- Detailed evidence of how luminaires will be supplied on a call-off basis optimised for the lighting to the relevant BS5489-1 lighting class whilst minimising the energy consumption, and how the installer will identify the different luminaires required for different streets (i.e. having different photometric distributions)..
- Evidence of performance for the geometries given in Appendix 1 (Road geometry calculations).
- Evidence of adding Social Value to the submission.

In the case of all these sub-criteria, the weightings used would need to be identical to those used in the original procurement exercise. This would forestall any concern that weightings might have been adjusted in the light of the original tenders – which could have been interpreted as being to the advantage/disadvantage of any of the original tenderers.

- 3.18 In order to provide reassurance on the issue of impartiality, it is proposed that the Procurement Service identify a suitably qualified lighting consultant to undertake a thorough analysis of the technical merits of each bid. The consultant will be required, using industry software to replicate the energy savings which form part of each bidders' price, using the road geometries supplied by the council and the luminaire performance submitted in the tender.
- 3.19 The method for evaluating qualitative criteria must be transparent and objective. Each qualitative question will be evaluated in accordance with the evaluation methodology to be included within the Invitation to Submit Best and Final Offers pack. Clarity on the how the scoring levels would be marked will be provided to bidders.
- 3.20 In respect of the *Social Value* question, assessing actual value requires extensive experience in a procurement field. It is therefore proposed that the Social Value criteria be evaluated by the Head of Procurement and the Head of Employment and Skills.
- 3.21 Marks awarded will be converted into a per cent figure for the purpose of evaluation, rounded to the nearest whole number.
- 3.22 Summary of Evaluation Criteria:

| Evaluation Criteria | Weighting |
|---------------------|-----------|
| Price | 55% |
| Quality | 45% |

| | |
|--------------|-------------|
| Total | 100% |
|--------------|-------------|

Delegated Authority

- 3.23 For High Value contracts, the council's standard practice is for officers to seek the sanction of Cabinet for authority to tender, as well as authority to award contracts. This practice has been followed for the LED and CMS supply contracts. Reports were submitted to Cabinet in April 2015 and January 2016.
- 3.24 Reverting to the invitation to submit Best and Final Offers stage is not the standard approach to tendering, but is considered the approach carrying least risk in awarding the contract for the supply of LED.
- 3.25 Delegated authority is sought from Cabinet to permit the Strategic Director for Environment and Regeneration, in liaison with the Chief Legal Officer, Chief Finance Officer and the Lead Member for Environment, to award the contract for the supply of LED luminaires. This is to ensure the project commences expeditiously to deliver the previously agreed energy savings as quickly as possible. Aside from the decision on which company to award the Lot 1 contract, all the other recommendations agreed in the January Cabinet report still stand.

4 Financial Implications

- 4.1 Due to the delay in commencing this project, it is unlikely to achieve additional savings in 2016/17. However, if the proposal in this report is agreed, the anticipated savings of £0.75m per annum will still be achieved from 2017/2018 year onwards.
- 4.2 Depending on the outcome of the proposed tendering process, the capital requirement for supply and installation could vary from the initial assumptions. This would have a corresponding impact on the cost of capital.

5 Legal Implications

- 5.1 Following the commencement of the standstill period issued subsequent to the Cabinet decision in January 2016, officers received a formal request for clarification from an unsuccessful bidder. The majority of the assertions made by the unsuccessful bidder did not raise substantive concerns. However (as described within the body of this report), during the standstill period it became apparent that the winning bid recommended for award contained fundamental arithmetical errors to the service provision. In addition the service specification was also found to lack sufficient clarity, in some areas, to enable bids to be submitted and evaluated on a like-for-like basis.

- 5.2 Officers are recommending that Cabinet sets aside its decision to award the Lot 1 supply of LED street lighting luminaires to Bouygues E&S Infrastructure UK Limited, so as to enable officers to restart and re-issue an invitation to submit a Best and Final Offer based on the criteria stated in paragraph 3 above. It is felt that offering bidders the opportunity to re-submit their Best and Final Offers (based on a revised specification which sets out the council's clear and unambiguous requirements) is the fairest process to ensure transparency, proportionality, non-discrimination and fairness to interested bidders without compromising the council's aims to deliver savings from this service.
- 5.3 The reported cases of *Federal Security Services Ltd –v- The Northern Ireland Court Service*[2009]; *APCOA Parking (UK) Ltd –v- City of Westminster* [2010] and *Direct Way Worldwide –v- European Parliament* [2015] all provide the council with legal authority to abandon or abort its tender process and set aside its original award decision.
- 5.4 For the reasons stated within this report, officers are seeking Cabinet approval to delegate the decision on award to the Strategic Director of Regeneration & Environment. Should Cabinet be minded to approve this recommendation, the Chief Legal Officer and Chief Finance Officer will be consulted prior to any decision to award. Thereafter, the council must observe a 10 day Standstill period prior to the commencement of the proposed Contract.

6 Diversity Implications

- 6.1 There are no diversity implications arising from this report. Diversity implications associated with the implementation of LED and CMS were considered by Cabinet at the meeting in January 2016 and remain unaffected.

7 Staffing Implications

- 7.1 No staffing implications arise as a result of this report.

8 Public Services (Social Value) Act 2012

- 8.1 This is considered in paragraphs 3.17 and 3.20 above. The council will demand relevant social value from the award of this contract, with the Head of Procurement assessing the merits of the bids.

Background Papers

Cabinet, 14 April 2015: *Street Lighting Energy and Carbon Saving Proposals, and Authority to Tender.*

Cabinet, 20 January 2016: *Authority to award contracts for the supply of Street Lighting LED lanterns and Central Management System.*

Contact Officers

Andrew Clarke,
Senior Contracts Manager,
Tel: 020 8937 5092
Email: andrew.clarke@brent.gov.uk

Gavin F Moore,
Head of Parking and Lighting,
Tel: 020 8937 2979
Email: gavin.f.moore@brent.gov.uk

Chris Whyte
Operational Director, Environmental and Employment Services:
Tel: 020 8937 5342
Email: chris.whyte@brent.gov.uk

Lorraine Langham
Strategic Director, Regeneration and Environment
Tel: 020 8937 1516
Email: lorraine.langham@brent.gov.uk