

 <p><b>Brent</b></p>	<p><b>Cabinet</b> <b>24 April 2017</b></p> <p><b>Report from the Strategic Director, Regeneration and Environment</b></p>
<p>Wards Affected: All Wards</p>	
<p><b>Arboricultural Services Contract and Authority to Tender</b></p>	

## **1.0 Summary**

- 1.1 This report sets out the background and the options considered for the procurement of Arboricultural Services on the Council's highways, parks and Brent Housing Partnership managed estates.
- 1.2 This report also seeks approval to invite tenders for the Arboricultural Services contract, as required by Contract Standing Orders 88 and 89.

## **2.0 Recommendations**

### **That Cabinet:**

- 2.1 Approves the invitation of tenders for Arboriculture Services on the basis of the pre-tender considerations set out in paragraph 5.3 of this report; and
- 2.2 Gives approval for the evaluation of the tenders referred to in 2.1 above, on the basis of the criteria set out in paragraph 5.3 (iv) of the report; with a further report to Cabinet following the tender exercise which will make recommendations on the award of the Contract.

## **3.0 Current Contracts**

- 3.1 Trees in urban environments provide a range of environmental, health and community benefits. They:
  - absorb carbon dioxide, the main greenhouse gas
  - reduce pollution and improve air quality
  - moderate temperature extremes
  - reduce the risk of flash flooding

- provide shade from UV radiation to reduce skin cancer risks
- contribute to psychological wellbeing
- create character and a sense of place
- support biodiversity

The maintenance arrangements for Brent's trees are detailed below.

### Street Trees

- 3.2 The Council has approximately 22,000 street trees. The current maintenance contract with Gristwood & Toms was let in 2012 for a term of four years (to April 2016). It was extended for a further two years, and expires on 31<sup>st</sup> March 2018. As part of the agreed extension the Council negotiated a zero inflationary uplift on prices, a full survey of the Council's street trees stock, and the establishment of a comprehensive asset database. The contract is priced according to the estimated volume of work being delivered against the tendered schedule of rates, covering the full range of activities undertaken to maintain the street tree stock. The 2017/18 value of the contract will be £0.45m p.a., as it has been since 2015/16.
- 3.3 The Contract Specification breaks down specific work activities (e.g. pruning, pollarding, planting, etc.), and sets out the Council's expectations for the undertaking of technical maintenance works. This is aimed at ensuring that works are delivered to a standard which does not prejudice the health of the tree stock. The majority of these works are undertaken as part of an annual programme, but some works are undertaken on an ad hoc basis where there is a requirement for immediate action to eliminate potential risks.
- 3.4 There is also an element of fixed costs in the contract, associated with ground works. These works ensure that the Council meets its statutory requirements by keeping the highway clear. They include the removal of epicormic (basal) growth from the Council's lime trees, and the removal of low hanging branches which may impede the footway or carriageway.
- 3.5 There is provision within the contract for the Contractor to coordinate and undertake emergency works; the importance of this service was underlined in autumn 2013 when a series of storms felled a number of street trees.
- 3.6 Current budgets provide for maintenance of the existing tree stock, and for any trees provided as replacements through community funding, but not for new planting. However, should external funding become available, tree planting could also be carried out under the provisions of the contract. Potentially, external funding for tree planting may in future be secured from a variety of sources. For example, a recent bid from the Council for tree planting funding from the Mayor of London was successful. There is also an existing council scheme for community funding of new trees.

### Housing Estate Trees

- 3.7 Brent Housing Partnership (BHP) manages around 200 housing estates, which contain approximately 5,800 estate trees. There is also an ad hoc service for emergency works to trees in the gardens of tenanted properties. The current housing estate trees maintenance contract with Gristwood & Toms was let in September 2016 and expires on 31<sup>st</sup> March 2018. The contract was priced according to the estimated volume of work being delivered against the tendered schedule of rates, covering the planned programme for estate trees and a provision for the ad hoc works. BHP has confirmed that the 2017/18 value of the contract is £0.16m p.a.

### Parks Trees

- 3.8 The Parks Service maintains approximately 14,500 trees in Brent's parks and cemeteries. The service does not currently have a trees maintenance contract. Instead, maintenance works are carried out on an ad hoc basis, according to need. 2016/17 parks expenditure on reactive trees maintenance is anticipated to be around £0.04m p.a. which was placed almost exclusively with the council's main contractor, Gristwood and Toms. This expenditure was met from within the overall parks maintenance budget.

## **4.0 Background**

- 4.1 In April 2015, Cabinet agreed to a two year extension to the Arboricultural Services Contract for street trees, to expire in March 2018. Extending the contract for two years was intended to give the Council time to progress the following opportunities identified through earlier soft market testing and audit advice:
- Increase the contract size to generate economies of scale, in conjunction with Brent Housing Partnership and the Parks Service
  - Investigate possible opportunities for external partnering
  - Review and redraft the service specification
  - Identify a depot site to facilitate greater competition
  - Complete a full survey of the council's tree stock, to enable better programming of work and reduce the extent of ad hoc work required, which is more expensive and establish an asset database

### **Update**

- 4.2 A joint working group including Parking & Lighting, Brent Housing Partnership (BHP) and Parks has been established. All three services will be included within the new Arboricultural Services Contract, covering trees on the public highway, on housing estates and in parks. This will increase the value of the contract by £0.2m p.a., to approximately £0.65m p.a. based on existing budgets. Further efficiencies will be reviewed later this year, including shared client arrangements and revising the Trees Maintenance Policy.

- 4.3 Initial soundings indicated that two other boroughs might be interested in joint work with Brent: LB Ealing; and LB Harrow. LB Ealing were approached about the possibility of future partnership working; however their trees maintenance contract was re-let in April 2016, to 31<sup>st</sup> March 2019, with the option of up to two 3 year extensions, and they have subsequently confirmed they do not wish to partner LB Brent. LB Harrow has also been approached. Harrow had previously accessed the Council's current contract, which was let as a framework. However in 2014 they decided to not continue with this arrangement, as it was not tailored to their requirements, and they have not expressed an interest in partnering with Brent. The other West London Alliance boroughs were contacted to explore potential partnership arrangements, but no other authorities wishing to enter into a potential partnership arrangement have been identified.
- 4.4 A potential depot site in Roe Green Park has been identified. The site is currently managed by Veolia, and they have indicated a willingness to share the site with a Trees Maintenance contractor. The availability of a potential depot site within the borough may remove a potential barrier to competition, though bidders will have the option of using their own site if they choose. Further detail on accommodation implications is contained in Section 10. Should the winning bidder elect to use the Roe Green site, some capital works will be required to bring the site up to a suitable standard. This includes provision for the storage of equipment, and some staff facilities for contract operatives. Any works necessary to create a depot facility would be fully at the contractor's expense, with the expectation that this would be addressed within their tender documentation.
- 4.5 The Council's current contractor, Gristwood & Toms, is currently undertaking a full survey of the Council's street tree stock. This was a condition of extending the contract for two years. The survey is expected to be completed by April 2017. The Council will then have a detailed inventory to improve the quality of programmed maintenance work and reduce the extent of ad hoc work required, thereby potentially reducing the cost of operating the contract.
- 4.6 Closely linked to the survey is the creation of an asset database, specifically designed for managing tree stock. This was also a condition of extending the contract with Gristwood & Toms. The database is currently being populated with survey information. Gristwood & Toms are also recording details of all Housing Estate trees managed by BHP on the same database. The asset data will provide bidders with accurate information on our tree stock, which will allow them to more accurately price for programmed work. Previously, bidders have had to estimate the volume of programmed work required, and estimates tend to be priced more expensively to allow for a higher contingency budget.
- 4.7 The existing street trees contract specification is being reviewed, and updated to incorporate the requirements of all three services. A key issue is the pressing need to emphasise reducing the risk of insurance claims for damage to nearby property from street trees. The London Tree Officers Association (LTOA) *Risk Limitation Strategy for Tree Root Claims* recommends that local authorities implement a regime of planned cyclical pruning of council tree stock. The

Council has been following this regime over the course of the current contract, with trees identified for annual programmed maintenance identified based on a number of considerations, including proximity to buildings.

- 4.8 It is accepted that any further reduction in tree inspection and maintenance activity would increase the risk of successful insurance claims in the future. Costs are unavoidable where the council is liable for the damage, and the only approach that will reduce insurance costs is to reduce the number of cases that we are liable for. In order to reduce the likelihood of insurance claims where the council is liable for the damage, the specification will be updated to more clearly specify that the contractor must identify and prioritise for action the trees considered to be at high risk with regard to potential insurance claims. In addition, insurance claim location data will be incorporated into the planned maintenance schedule. All of this information will inform the annual programme of maintenance work. Inspection and record-keeping elements of the contract specification will continue to be robust. Furthermore, the Trees Maintenance policy will be revised in 2017/18. Subject to Cabinet approval, this will seek to take a more proactive approach to the removal and replacement of trees considered to be high risk with regard to potential insurance claims.
- 4.9 In addition, the specification will also need to explicitly encourage the contractor to improve quality and reduce costs on a permanent basis while taking account of safety issues. The specification will also have strengthened provisions for dealing with unsatisfactory performance.
- 4.10 It is proposed to offer a contract duration of five years, from 1<sup>st</sup> April 2018 to 31<sup>st</sup> March 2023, with an option to extend for up to 2 additional years. This will provide an opportunity for the contract to be aligned with the Public Realm and Parking Services contracts, and thereby facilitating an option of letting a single contract to cover a range of environmental services.
- 4.11 Given the involvement of BHP in the proposed procurement, Notice of Intention to retender the Arboricultural Services Contract will be served on BHP leaseholders, where required in May 2017 before the deadline for receipt of pre-qualification questionnaire and then Notice of proposal to award the contract in October 2017 when the contract decision has been made.

## 5.0 **Pre-Tender Considerations**

- 5.1 As per the Council's procurement requirements, a Gateway Zero analysis was conducted to assess the feasibility of delivering the trees maintenance contract in house via a Direct Labour Organisation (DLO). The analysis concluded that the contract should continue to be outsourced to specialist providers on the basis of high capital set up costs, a lack of in house expertise and the likelihood of higher in house running costs. This view was endorsed by the Commissioning and Procurement Board on 24<sup>th</sup> January 2017. Please see appendix A for estimated in house running costs and capital set up costs.

5.2 The following procurement options, outlined in the table below have been considered, with a brief summary of the benefits and risks associated with each option. The recommended approach is to procure as a single Authority.

Option	Comments	Appraisal
Procure as a single Authority including partners in Brent	<p><b>Benefits</b></p> <ul style="list-style-type: none"> <li>• Quickest and least expensive option</li> <li>• Only Brent's needs to be considered</li> <li>• A bespoke service can be procured</li> <li>• Single, locally-based contract management</li> <li>• May encourage local providers</li> <li>• With BHP and Parks, sufficiently large to provide economies of scale</li> </ul> <p><b>Risks</b></p> <ul style="list-style-type: none"> <li>• May reduce the scope for additional economies of scale</li> <li>• Less potential for efficiency savings</li> </ul>	Recommended
Collaborate with a neighbouring Authority	<p><b>Benefits</b></p> <ul style="list-style-type: none"> <li>• May increase cost savings due to increased buying power</li> <li>• Could share some maintenance costs</li> <li>• Could share some client staff costs</li> <li>• Could share best practice and provide opportunities for career progression</li> <li>• More resilient</li> </ul> <p><b>Risks</b></p> <ul style="list-style-type: none"> <li>• No nearby authorities have expressed an interest in partnering</li> <li>• Loss of sovereignty and expertise</li> <li>• A more complex process</li> <li>• Complex governance structure</li> <li>• May restrict tenders to large firms</li> <li>• Reduces the time to implement</li> <li>• Requires additional staff resources to manage the procurement</li> <li>• Complex, varied requirements and potential diseconomies of scale</li> <li>• Procurement timelines differ</li> </ul>	Not Recommended
In source	<p><b>Benefits</b></p> <ul style="list-style-type: none"> <li>• Brings expertise in house</li> <li>• Direct control of operations</li> <li>• Greater budget control</li> </ul> <p><b>Risks</b></p> <ul style="list-style-type: none"> <li>• Requires prohibitive start-up costs, particularly in vehicles and equipment</li> <li>• The Council does not possess the management expertise or experience</li> </ul>	Not Recommended

	<ul style="list-style-type: none"> <li>• The Council does not possess the equipment and vehicles required</li> <li>• Highly localised service will find it difficult to recruit and retain staff</li> <li>• Complex Transfer of Undertaking</li> <li>• Higher staffing on-costs</li> <li>• The overall costs would be prohibitive</li> </ul>	
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5.3 In accordance with Contract Standing Orders 88 and 89, pre-tender considerations have been set out below for the approval of Cabinet.

Ref	Requirement	Response
i.	The nature of the service.	Arboricultural works
ii.	The estimated value	£0.65m per annum
iii.	The contract term	A contract of five year duration from 1st April 2018 to 31 <sup>st</sup> March 2023, with an option to extend the term of the contract for up to two years to 31 <sup>st</sup> March 2025.
iv.	The tender procedure to be adopted.	A two stage tender process in accordance with the Council's Standing Orders.
v.	The procurement timetable.	<p>Indicative times</p> <ul style="list-style-type: none"> <li>• OJEU Notice and Pre-selection questionnaire advertised - May 2017.</li> <li>• Deadline for selection questionnaire – June 2017.</li> <li>• Evaluation and shortlisting to 5 providers - July 2017.</li> <li>• Issue Invitation to tender – early August 2017.</li> <li>• Deadline for tender submissions –end August 2017</li> <li>• Panel evaluation – September 2017.</li> <li>• Contract decision –October 2017.</li> <li>• Authority to Award report approval - November 2017.</li> <li>• Contract mobilisation – December 2017 – March 2018</li> <li>• Contract start date - 1st April 2018.</li> </ul>
vi.	The evaluation criteria and process.	At selection stage shortlists will be drawn up in accordance with the Council's Contract Management and Procurement Guidelines through the use of a selection questionnaire to identify organisations that meet the Council's financial standing requirements, health, safety and environmental standards, technical capacity and technical expertise.

		<p>At the tender evaluation stage, the panel will evaluate tenders against the following criteria:</p> <p><b>Quality:</b> 50% delivery of service 10% Social Value</p> <p><b>Price:</b> 40%</p>
vii.	Any business risks associated with entering the contract.	<ul style="list-style-type: none"> <li>• The new schedule of rates may be more expensive than the existing schedule of rates as a result of contractors factoring in the effect of inflation since 2012, and the potential impact of the London Living wage</li> <li>• Should the contractor decide to use the offered depot site, that relevant permissions for the installation of storage or staff facilities may not be granted.</li> </ul>
viii.	The Council's Best Value duties.	The Council has a duty under Best Value to secure cost-effective and efficient services that meet the needs of the Borough's customers.
ix.	Consideration of Public Services (Social Value) Act 2012	In accordance with the Council's social value policy, 10% of the overall marks will be awarded for social value benefits.
x.	Any staffing implications, including TUPE and pensions.	Please see section 10.
xi.	The relevant financial, legal and other considerations.	Please see section 6 and 7.

## 6.0 Financial Implications

6.1 The estimated value of this contract is £0.65m per annum (5 year contract with the option to extend for two years). £0.16m of this expenditure relates to the Housing Revenue Account.

6.2 The 2016/17 budget is illustrated in the table on the following page.



<b>Works</b>	<b>2016/2017 (£000)</b>		
<b>Works</b>	<b>Street Trees</b>	<b>Estate Trees (HRA)</b>	<b>Parks</b>
Programmed maintenance	250	98	-
Ground Works	126	-	-
Programme Maintenance Survey	32	12	-
Ad-hoc and emergency	38	50	-
Planting	4	-	-
Reactive parks maintenance	-	-	40*
<b>Budget</b>	<b>450</b>	<b>160</b>	<b>40</b>

\*Park trees expenditure is drawn from the overall maintenance budget

6.3 The council incurs additional costs, associated particularly with street trees, on insurance claims e.g. for damage to nearby properties. Insurance payments vary significantly from year to year and are extremely difficult to predict in advance. They depend on the outcome of individual cases, some of which may relate to claims going back over the previous decade.

6.4 Over the five calendar year period 2012-2016, £2.037m of insurance claim payments were made by the council, of which 87% related to structural damage to buildings. In three of these five years, insurance payments exceeded the entire current tree maintenance budget (£450k p.a.). A typical single tree-related insurance claim can cost more than the annual maintenance budget for over one thousand street trees.

	2012 (claims from 2004- 2012)	2013 (claims from 2004- 2013)	2014 (claims from 2006 and 2009- 2014)	2015 (claims from 2006 and 2009- 2014)	2016 (claims from 2011- 2016)	Grand Total 2012-2016
Total tree related insurance costs	£0.557m	£0.516m	£0.157m	£0.606m	£0.201m	£2.037m
Of which: Building structure claims	£0.545m	£0.401m	£0.108m	£0.546m	£0.172m	£1.772m
Of which: Other claims	£0.120m	£0.115m	£0.049m	£0.060m	£0.029m	£0.265m

6.5 Changes within the specification of the contract to adjust the approach to service provision will seek to reduce the level of insurance claim risk in the future whilst maintaining the contract expenditure at the estimated value. Due to the speed at which insurance claims in this area progress it is unlikely that the success of these changes will be ascertained until the end of the proposed initial contract term.

- 6.6 It is not anticipated that any revisions to the specification will have any adverse financial impact on budgets.
- 6.7 The Council will procure the contract in its sole name, with Brent Housing Partnership able to access services under it. Brent Housing Partnership expenditure on arboriculture services secured through the contract would continue to be separately accounted for, whether or not BHP remain as an arms-length service provider.

## **7.0 Legal Implications**

- 7.1 Local authorities are required under the Highways Act 1980, the Local Government (Miscellaneous Provisions) Act 1976 and other statutory provisions, to provide and maintain trees in their borough for the benefit of the local people and the environment.
- 7.2 The contract is a service contract as defined under the Public Contracts Regulations 2015 ("PCR"). Where the value of the service to be procured under such a contract is above the EU procurement threshold for service contracts, contracting authorities are required to comply with the requirements of the PCR, in that the contract must be advertised in the Official Journal of the European Union (OJEU) and a competitive procurement process undertaken in accordance with the Treaty principles of equal treatment, proportionality and transparency for the contract to be awarded. Based on the value of the contract over lifetime, as set out in paragraph 5.3 (ii) the procurement is subject to the requirements of the PCR and EU procurement rules. The report sets out the procurement process that will be undertaken (paragraph 5.3), namely a two stage Restricted procurement procedure under the PCR.
- 7.3 The value of the contract as set out in paragraph 6.1 of this report is in excess of £500,000. The contract is therefore deemed a High Value contract under the Council's Contract Standing Orders ("CSO"). CSO provides that Cabinet approval should be obtained to invite expressions of interest, agree shortlists and invite tenders for High Value contracts, and CSO 89 also provides that Cabinet approval of pre-tender considerations (which are set out in paragraph 5.3 of this report) should be obtained for High Value contracts.
- 7.4 The report mentions in paragraph 10 below that officers are considering the commercial advantage in offering a depot site to prospective contractors to use in connection with the contract. Should this option be taken up, the Council will need to grant a lease to the contractor to use the Council's depot site, on the terms to be agreed by the parties. Under S123 of the Local Government Act 1972 the Council may dispose of their land in any manner they wish so long as they obtain the best consideration reasonably obtainable for the land, except if the disposal is by way of a short tenancy (a term of 7 years) or the Secretary of State's consent is obtained. If the lease is to be co-terminus with the contract, the contract is for 5 years +2 (i.e. 7 years in total), which meets the definition of a short tenancy.

## **8.0 Equalities Implications**

- 8.1 An Equalities Analysis screening exercise has been undertaken. No significant diversity implications for any protected groups have been identified arising from the decisions recommended in this report.
- 8.2 One of the purposes of programmed ground works maintenance is to ensure that the Council can meet its statutory requirement to keep footways clear for all users.

## **9.0 Public Services (Social Value) Act 2012**

- 9.1 Since 31st January 2013, the Council, in common with all public authorities subject to the EU Regulations, has been under duty pursuant to the Public Services (Social Value) Act 2012 to consider how the services being procured might improve the economic, social and environmental well-being of its area; how, in conducting the procurement process, the council might act with a view to securing that improvement and whether the council should undertake consultation. This duty applies to the procurement of the proposed contract as Services over the threshold for application of the EU Regulations are subject to the requirements of the Public Services (Social Value) Act 2012. In accordance with the council's Social Value Policy, 10% of the award criteria will be reserved for social value considerations to be contained in the tender documentation.

## **10.0 Staffing and Accommodation Implications**

- 10.1 The report identifies a commercial advantage to the council in offering a potential depot site to prospective contractors seeking to tender. This may stimulate increased competition when tendering. The depot site would enable the local storage of equipment and vehicles. The site would not be used for the recycling of tree waste.
- 10.2 Officers have evaluated a number of depot site options and identified one potentially suitable option. This is an area of unused space at Roe Green Park depot. Part of this site is occupied by Veolia under the Public Realm contract, and part by T&A builders. The area under consideration within this depot is about 1000 sq. m. The space would be made available for a peppercorn rent. However, the successful contractor would be required to secure relevant permissions for the installation of any storage or staff facilities that they require, and any expenditure on creating a depot facility would be the contractor's liability.
- 10.3 It should be noted that Roe Green Park currently experiences some traffic management and parking issues, which stem from users of the other buildings in the park and surrounding area. Car and other vehicle usage have increased and the existing roadway into the park is relatively narrow and mixes pedestrian and vehicle movements. Any health and safety and planning issues would need

to be overcome in allowing any additional intensification of use which would likely as a minimum require the installation of a pedestrian footpath of about 180 metres. Any proposed lease would require the placement of a Sn. 123 notice under the Local Government Act 1972.

- 10.4 Other Parks depot sites used by Veolia have been rejected because there is no surplus capacity on these sites to facilitate sharing with another contractor.
- 10.5 The arboriculture services are currently provided by external service provider, Gristwood & Toms, and there are no implications for Council staff arising from the new tender process. Should another provider be awarded the contract, then staff currently employed by the incumbent contractor may be eligible to transfer to the new service provider pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006.

### **Background paper:**

Report to Cabinet, 14 April 2015, *Arboricultural Services Contract*, Item 13:  
<http://democracy.brent.gov.uk/ieListDocuments.aspx?CId=455&MId=2567&Ver=4>

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## Appendix A: Estimated in house costs from Gateway Zero evaluation

Running Costs				Capital Costs			
Description	How many	Unit cost	Total Cost	Item	How many	Unit cost	Total Cost
<b>Staff</b>							
Operatives	9	£ 39,628	£ 356,652	7.5t transit vans	7	45000	£ 315,000
Contracts Manager/Supervisor	2	£ 58,464	£ 116,928	Hiab	1	65000	£ 65,000
Emergency cost			£ 15,000	Estimate for :			
<b>Vehicles &amp; Plant</b>				- cherry picker			
Vehicle insurance			£ 12,800	- chipping machine			
Vehicle servicing			£ 8,000	- shredding machine			
Vehicle road tax	7	£ 165	£ 1,155	- stump grinder			
Fuel	7	£ 670	£ 4,688	- hand tools, PPE, saws, ladders etc			£ 520,000
<b>Depot running costs</b>				<b>Total</b>			<b>£ 900,000</b>
Electricity			£ 2,000				
Waste disposal			£ 5,000				
Premises insurance			£ 1,000				
Business rates			£ 5,000				
<b>Administration/Software Costs</b>							
Hand held computers	3		£ 3,000				
Software licences			£ 5,000				
Industry accreditations			£ 5,000				
Insurance			£ 30,000				
<b>Total</b>			<b>£ 571,223</b>				

Note: estimate costs refer to the street trees operation only.