



Cabinet
12 March 2018

**Report from the Strategic Director
Regeneration and Environment**

Street Lighting Maintenance: Authority to Tender Contract

Wards Affected:	All
Key or Non-Key Decision:	Key
Open or Part/Fully Exempt:	Open
No. of Appendices:	None
Background Papers:	None
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1.0 Purpose of the Report

1.1 This report:

- i) Proposes to award an interim contract for the Street Lighting Maintenance service to Bouygues E&S Infrastructure UK Ltd from December 2018 to March 2019;
- ii) Sets out the options considered for the procurement of this service from April 2019; and also seeks approval to invite tenders for the Street Lighting Maintenance Services contract from 1st April 2019, as required by Contract Standing Orders 88 and 89; and
- iii) Seeks approval to assign responsibility for the 5 year post-PFI street lighting column warranty.

2.0 Recommendation

That Cabinet:

- 2.1 Approves an exemption pursuant to Contract Standing Order 84(a) of the requirement to seek quotes for a four month contract for Street Lighting Maintenance for sound operational and financial reasons as

detailed in Section 3, including ensuring the smooth completion of the LED installation programme;

- 2.2 Approves the award of a four month contract for Street Lighting Maintenance to Bouygues E&S Infrastructure UK Ltd from 1st December 2018 to 31st March 2019;
- 2.3 Approves the invitation of tenders for Street Lighting Maintenance Services from 1st April 2019 on the basis of the pre-tender considerations set out in paragraph 4.2 of this report;
- 2.4 Approves the evaluation of the tenders referred to in 2.4 above, on the basis of the criteria set out in paragraph 4.3 (iv) of the report;
- 2.5 Delegates authority to the Strategic Director of Regeneration and Environment in consultation with the Lead Member for Environment to award the contract for Street Lighting Maintenance Services from 1st April 2019 for a term of four years with an option to extend the term by up to a further two years; and
- 2.6 Delegates authority to the Strategic Director of Regeneration and Environment in consultation with the Lead Member for Environment and the Director of Legal and Human Resources, to approve the transfer of the five year residual life warranty on street lighting columns from PFI Lighting Ltd to Bouygues E&S Infrastructure UK Ltd.

3.0 Detail

Existing Contract

- 3.1 The purpose of street lighting is to improve road safety for motorists, cyclists and pedestrians. Street lighting can also play a role in the reduction of car crime, and fear of crime generally, in addition to encouraging economic and social activity during the hours of darkness.
- 3.2 The Council is responsible for maintaining almost 21,000 street lights and columns, and 5,600 other street lighting assets. These include illuminated signs, bollards and Belisha beacons. The Council is nearing the end of a 20 year PFI contract, with PFI Lighting Limited ("PFIL"), which is set to expire on 30th November 2018. Delivery of maintenance services is currently sub-contracted to Bouygues E&S Infrastructure UK Ltd ("Bouygues"). The service costs £3.3m per annum; and this cost is made up of two components:
 - capital repayment (for investment in column renewal which took place during the first 10 years of the contract); and
 - maintenance, providing a monthly unitary payment.

The unitary payment is offset by a PFI grant of £0.79m per annum, which will cease at the end of the current contract.

- 3.3 The maintenance activities within the contract ensure that street lighting assets remain in light and are maintained to maximise their life span. For street lighting, this includes:

Maintenance Activity	Frequency
Scouting to ensure that lighting levels are maintained	Fortnightly
Bulk changes of lamps when the lamp has exceeded its lifespan	Every 4 years
Luminaire cleaning	Every 4 years
Electrical testing	Every 6 years
Column painting	Every 6 years
Structural testing	Every 6 years

For other highway lighting assets, this includes:

Maintenance Activity	Frequency
Scouting to ensure that lighting levels are maintained	Fortnightly
Bulb change and clean	Annually
Electrical testing	Annually
High frequency bollard cleaning programme	Every two months on traffic routes

- 3.4 The service also includes provision to rectify faults within 48 hours; and a 2 hour emergency response service in the event of an asset becoming unsafe due to a road traffic accident or vandalism, for example.
- 3.5 At the end of the existing 20 year PFI contract, the Contractor (PFIL) is required to provide to the Council a warranty that all of the street lighting columns will have a residual life of not less than 5 years without requiring replacement or major structural repairs. The warranty excludes column replacements required following third party damage, theft or from a lack of routine maintenance. This warranty provides the opportunity for the Council to pause from investment in street lighting column replacement for five years, from December 2018 to November 2023. This would avoid costs estimated at £2m p.a. over the five years covered by the warranty. It is anticipated that lighting column replacement would need to re-commence by December 2023 at the latest.

Replacement LED luminaires and CMS project

- 3.6 In April 2015, Cabinet endorsed the business case which proposed investment in LED luminaires and a Central Management System (CMS) for the borough's street lighting. The CMS contract was

awarded in February 2016 to DW Windsor. Following a delay in procurement, the LED supply contract was awarded to the winning bidder, also DW Windsor, in May 2017. Legal agreement was subsequently reached with PFIL to install the LED luminaires and CMS under their contract, via their subcontractor Bouygues, and installation works commenced in November 2017. This was just 12 months before the end of the current street lighting contract in November 2018.

3.7 The project will see the existing SON-T street lighting luminaires replaced with an LED luminaire and a CMS node. As part of installation, each street lighting luminaire is electrically tested. The project will have the following impact on street lighting maintenance activities:

- A significantly reduced requirement for scouting, to monitor whether street lights are 'in light'. The CMS node installed with each luminaire remotely monitors whether the luminaire is working, so faults can be identified through CMS system reporting. However, the CMS cannot monitor column faults such as damage to columns or faulty electrical access door, so a limited requirement for street lighting scouting will remain.
- The new LED luminaires have a warranty of 10 years. Therefore the frequency of bulk changes to street lights, which currently takes place every three to four years, can be extended.
- Electrical testing on street lights will not be required for up to six years, following installation of the new LED luminaires.
- As all the luminaires will be new, cleaning will not be required for at least three years.
- The volume of street lighting faults should reduce significantly, as all the luminaires will be new.

3.8 By the end December 2017, just over 2,500 SON-T lanterns had been replaced with LED luminaires. Steps have been taken to accelerate the supply of lanterns in order to complete installation before 30th November 2018. However there remains a substantive risk that the project will not be completed by this time, should project issues be experienced with either supply or installation. If there are delays, and a new maintenance contract commences on 1st December 2018 with a new provider, completion of the installation phase would raise complex delivery issues. There would then be a high risk of delay, additional costs and reduced energy savings. This risk can be minimised by ensuring that the contractor that is delivering maintenance and installation for PFIL is contracted to ensure the work is completed before a new maintenance contract commences.

Short term maintenance contract

3.9 To manage any potential snagging issues with installed LED luminaires; to manage any risk that installation will not be completed by 30th November 2018; and to ensure a smooth transition to a long term

replacement contractor it is proposed that a four month short term contract be procured which will be below the EU threshold for Services contracts. This would cover the period from 1st December 2018 to 31st March 2019, and be directly awarded to the existing sub-contractor Bouygues, which is currently managing the LED luminaire installation. In the event that LED luminaire installation is not complete by the expected end of November 2018, this short term contract would ensure continuity of project delivery, and avoid the delays and costs which would otherwise be experienced through the mobilisation of a different contractor. The short term contract would also ensure that the future maintenance contract is aligned with the financial year. It is considered that a four month short term contract would be sufficient to ensure that the LED luminaire installation programme is completed smoothly.

Future Maintenance contract

- 3.10 As set out above, it is proposed that the next street lighting maintenance contract would commence on 1st April 2019. This will ensure that appropriate maintenance arrangements are in place for lighting columns and other lighting assets i.e. signs, bollards and Belisha beacons. However, there would be a reduction in the maintenance activities associated with the LED luminaires, as stated in paragraph 3.2. The initial period of the contract would be for four years to the end of March 2023, aligning the end date with that of the Public Realm, Parking and Trees Maintenance contracts. It is recommended that an option for an extension period of up to two years should also be available for the Council to exercise, if desired, to provide additional flexibility and manage risk (see paragraph 3.15 below).
- 3.11 The existing maintenance specification is twenty years old, and is considered obsolete. Work is underway with a lighting consultant to renew the technical specification to take into account up to date statutory or legislative requirements, manufacturer recommendations and industry trends.

Warranty

- 3.12 The responsibility to provide a five year residual life warranty on each of the Council's street lighting columns is held by the current contractor, PFIL. PFIL was established prior to the start of the contract as a Special Purpose Vehicle (SPV) to enable Brent to enter into a PFI scheme to replace the majority of Brent's street lighting columns. PFIL was set up specifically for the Brent contract and its intention would be to close down following the end of the current maintenance contract. As a consequence, PFIL wish to transfer the five year residual life warranty on the Council's street lighting columns to Bouygues.
- 3.13 Officers consider that there is merit in agreeing to the transfer of warranties from PFIL to Bouygues. Bouygues is part of a large company group with hands on experience of maintaining the lamp

columns. A warranty from Bouygues arguably gives the council greater security in relation to warranty commitments compared with an SPV.

- 3.14 It is understood that discussions are still under way between PFIL and Bouygues on this issue. It is therefore proposed that authority to approve the transfer of warranty be delegated to the Strategic Director Regeneration and Environment in consultation with the Director of Legal and Human Resources, in anticipation that the two companies will reach an agreement on this matter.
- 3.15 As set out in paragraph 3.10 above, there will exist the option to extend the four year contract term by up to a further two years. This would allow the contract to be extended beyond the end of the five year warranty period, should this be considered desirable to manage the risk of further complexity being introduced.

4.0 Pre-Tender Considerations

- 4.1 As per the Council's procurement requirements, a Gateway Zero analysis was conducted to assess the feasibility of delivering the street lighting maintenance contract in house via a new Direct Service Organisation (DSO). 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 high probability of higher in house running costs. This view was endorsed by the Commissioning and Procurement Board on 6th February 2018.
- 4.2 The following procurement options, outlined in the table below have been considered. The table sets out 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	<p>Benefits</p> <ul style="list-style-type: none"> • Quickest and least expensive option • Only Brent's needs to be considered • A bespoke service can be procured • Single, locally-based contract management <p>Risks</p> <ul style="list-style-type: none"> • May reduce the scope for any additional economies of scale • May have less potential for efficiency savings 	Recommended
Collaborate with a neighbouring Authority	<p>Benefits</p> <ul style="list-style-type: none"> • May increase savings due to increased buying power • Could share some contract costs • Could share some client staff costs 	Not

	<ul style="list-style-type: none"> • Could share best practice and provide opportunities for career progression • More resilient <p>Risks</p> <ul style="list-style-type: none"> • No nearby authorities have expressed an interest in partnering • Loss of sovereignty and expertise • A more complex process • Complex governance structure • May restrict tenders to large firms • Reduces the time to implement • Requires additional staff resources to manage the procurement • Complex, varied requirements and potential diseconomies of scale • Procurement timelines differ 	Recommended
In source	<p>Benefits</p> <ul style="list-style-type: none"> • Establishes expertise in house • Direct control of operations • Greater budget control <p>Risks</p> <ul style="list-style-type: none"> • Requires prohibitive start-up costs, particularly in vehicles and equipment • The Council does not possess the management expertise or experience • The Council does not possess the equipment and vehicles required • Highly localised service will find it difficult to recruit and retain staff • Complex Transfer of Undertaking • Higher staffing on-costs • The overall costs would be prohibitive 	Not Recommended

- 4.3 As the recommended approach is to procure as a single authority, 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.	Street lighting works
ii.	The estimated value	£1.0m to £1.4m per annum
iii.	The contract term	A contract of four year duration from 1st April 2019 to 31 st March 2023, with an option to extend the term of the contract for up to two years to 31 st March 2025.
iv.	The tender	A two stage tender process in accordance

	procedure to be adopted.	with the Council's Standing Orders.
v.	The procurement timetable.	<p>Indicative times</p> <ul style="list-style-type: none"> • OJEU Notice and Pre-selection questionnaire advertised - May 2018. • Deadline for selection questionnaire – June 2018. • Evaluation and shortlisting to 5 providers - July 2018. • Issue Invitation to tender – early August 2018. • Deadline for tender submissions –end August 2018 • Panel evaluation – September 2018. • Contract decision –October 2018. • Authority to Award report approval - November 2018. • Contract mobilisation – December 2018 – March 2019 • Contract start date - 1st April 2019.
vi.	The evaluation criteria and process.	<p>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> <p>At the tender evaluation stage, the panel will evaluate tenders against the following criteria:</p> <p>Quality:</p> <ul style="list-style-type: none"> • 50% delivery of service • 10% Social Value <p>Price: 40%</p>
vii.	Any business risks associated with entering the contract.	That the reduction in maintenance activities makes the contract less attractive to bidders, leading to fewer bids and a reduction in the competitiveness of the price
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	In accordance with the Council's social

	Public Services (Social Value) Act 2012	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 9.
xi.	The relevant financial, legal and other considerations.	Please see sections 5, 6, 7 and 8.

5.0 Financial Implications

- 5.1 The current street lighting contract costs annually £3.3m, which covers both the cost of replacing lighting columns and the cost of all maintenance activities. Following completion of the LED installation programme, the maintenance-only contract as recommended in paragraph 2.3 is forecast to cost around £1m per annum, thereby achieving £2m contract savings.
- 5.2 The 2018/19 street lighting budget therefore anticipates contract cost savings to be achieved. The estimated cost of the proposed four month contract with Bouygues would be below the EU threshold for Services contracts.
- 5.3 Transfer of the 5 year (1st December 2018 to 30 November 2023) warranty from PFI Lighting Ltd to Bouygues should not impact on the Council's budgets. Under the current contract, PFI Lighting Ltd is contractually obligated to leave 5 years residual life on the asset (all Brent's street lighting columns and associated infrastructure) from the contract end date. Therefore PFI Lighting Ltd should be wholly responsible for any costs incurred in transfer of the warranty obligations to a third party.
- 5.4 A due diligence check has been carried out on Bouygues E&S Infrastructure UK Ltd, based on a potential contract value of up to £500k (the actual value is expected to be less than £181k). A review undertaken by Finance and Procurement officers has confirmed that the company has passed this financial viability test.

6.0 Legal Implications

- 6.1 The Highways Act 1980 empowers the Council as Highway Authority to provide street lighting. The Council has a duty of care to the highway users and must ensure it can demonstrate it has systems and programmes in place to ensure the safety of all highway lighting equipment.

- 6.2 Cabinet is recommended to approve the award of a four month contract to Bouygues. This contract is a service contract as defined under the Public Contracts Regulations 2015 ("PCR 2015"). The estimated value of this four month contract will be below the threshold for full application of the PCR 2015.
- 6.3 The proposed four month contract is classed as a Low Value Contract under the Council's Contract Standing Orders ("CSOs") and Financial Regulations and should thus be procured by seeking quotes. As detailed in Section 3, Officers consider that there are good operational and financial reasons not to seek quotes but instead award to Bouygues. In the circumstances, an exemption from the requirement to seek quotes is sought. Cabinet is permitted to grant such exemption pursuant to CSO 84(a) if it considers that there are good operational and / or financial reasons.
- 6.4 In addition to the award of a four month contract, Officers also recommend the procurement of a contract with a term of four years with an option to extend the term by up to a further two years. The estimated value of such contract is above the EU procurement threshold for service contracts, and the council is thus required to comply with the requirements of the PCR 2015, in that the contract must be advertised in the Official Journal of the European Journal (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. Paragraph 4.3 (iv) of the report sets out the procurement process that will be undertaken, namely a two stage Restricted procurement procedure under the PCR 2015.
- 6.5 The value of the contract as set out in paragraph 5.1 of this report is in excess of £2,000,000. The contract is therefore deemed a High Value contract under the Council's CSOs. CSOs 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 4.3 of this report) should be obtained for High Value contracts.
- 6.6 Officers seek approval to the transfer of the five year residual life warranty on street lighting columns from PFIL to Bouygues for the reasons detailed in paragraphs 3.12 to 3.15, subject to PFIL and Bouygues agreeing to transfer the warranty between them, and subject to delegated authority approval by the Strategic Director Regeneration and Environment in consultation with the Director of Legal and Human Resources. Any agreed transfer should be on no less favourable terms to the Council than the existing warranties, and subject to appropriate due diligence in respect of Bouygues (see paragraph 5.4 above).

7.0 Equality Implications

- 7.1 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.

8.0 Consultation with Ward Members and Stakeholders

- 8.1 The Lead Member was consulted when seeking authority to tender the contract. The contract is borough-wide and therefore consultation in respect of specific wards was not considered appropriate.

9.0 Human Resources/Property Implications (if appropriate)

- 9.1 This service is currently provided by an external contractor and there are no implications for Council staff or accommodation arising from retendering the contract.

10.0 Public Services (Social Value) Act 2012

- 10.1 In 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.

Report sign off:

AMAR DAVE

Strategic Director of Regeneration and Environment