

	<b>Decision of Cabinet Member for Environment</b>
	<b>Report from the Strategic Director, Regeneration and Environment</b>
<b>Tender Procedure for the Street Lighting Maintenance Contract</b>	

<b>Wards Affected:</b>	All
<b>Key or Non-Key Decision:</b>	Non-key
<b>No. of Appendices:</b>	Open
<b>Background Papers:</b>	Cabinet Report Street Lighting Maintenance: Authority to Tender Contract; 12 March 2018
<b>Contact Officer(s):</b> (Name, Title, Contact Details)	Mark Fairchild Acting Senior Contracts Manager Mark.Fairchild@brent.gov.uk 020 8937 5300

## 1.0 Purpose of the Report

- 1.1 This report concerns the tender process for the street lighting maintenance contract, which is due to commence on 1 April 2019. This report requests individual Cabinet Member approval to amend the tender procedure from a Restricted (2 stage) process to an Open (1 stage) process in accordance with paragraph 13 of Part 3 of the Constitution.

## 2.0 Recommendation(s)

That the Cabinet Member for Environment, in consultation with the Leader:

- 2.1 Agrees to amend the tender procedure for the street lighting maintenance contract from Restricted to Open, in accordance with paragraph 13 of Part 3 of the Constitution.

## 3.0 Detail

- 3.1 The principal purpose of the street lighting maintenance contract is to ensure that lighting can reliably and consistently play its part in improving 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 maintains almost 21,000 street lights and columns, and 5,600 other street lighting assets. The Council is nearing the end of a 20 year PFI contract with PFI Lighting Limited (“PFIL”). This will expire on 30<sup>th</sup> November 2018. The Council is managing a controlled exit from the contract. The Council is also setting up a 4 month lighting maintenance contract, from 1<sup>st</sup> December 2018 to 31<sup>st</sup> March 2019, with the existing PFI sub- contractor, Bouygues E&S Infrastructure UK Ltd (“Bouygues”). This was approved by Cabinet on 12<sup>th</sup> March 2018. The short-term contract will enable the continuation of maintenance services, and facilitate completion of the project to install LED luminaires. This is forecast to complete by end March 2019.
- 3.3 On 12<sup>th</sup> March 2018, Cabinet also agreed to invite tenders for the Street Lighting Maintenance contract, commencing 1<sup>st</sup> April 2019, on the basis of a Restricted (2 stage) tender process. The 2 stage process involves:
- Stage 1: a shortlisting selection questionnaire, which identifies whether organisations meet the Council’s financial standing requirements, health, safety and environmental standards, and technical capacity and capability.
  - Stage 2: submission of tenders for evaluation.

A Restricted procedure is most appropriate when a large number of bidders are anticipated. The shortlisting selection questionnaire helps ensure that organisations which do not meet minimum qualifying criteria are not invited to submit full tenders. The Restricted procedure can, however, add several weeks to the procurement timetable, and is less appropriate if the supplier market is more limited.

## Procurement Update

- 3.4 The maintenance contract will be for an initial term of four years, with an option to extend by up to a further two years. The estimated value of such contract is above the EU procurement threshold for service contracts. The Council is thus required to comply with the requirements of the Public Contract Regulations (PCR) 2015. 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.

- 3.5 A prior information notice has already been issued in the Official Journal of European Union to notify suppliers of our intention to go to market. This did not specify whether a Restricted or Open procedure would be used so we retain flexibility.
- 3.6 Preparation of the tender documentation has been considerably more complicated and extensive than originally envisaged. The previous contract documentation from the PFI Contract is obsolete due to age, changes in technology and revised Industry Standards. Drafting the specification and other tender documentation has therefore taken longer to produce than originally forecast. This task is expected to be completed by mid-October.
- 3.7 Following advice from Procurement and the external consultant supporting the preparation of the tender documentation, it is now considered that there are only a limited number of suppliers in the market capable of bidding for a technical contract on this scale. It is now considered that a Restricted (2 stage) procedure offers no real advantage. Given the time which has been required to address the complexity of the tender documentation, the Restricted procedure would also result in a significantly curtailed mobilisation period for the contract which must commence on 1<sup>st</sup> April 2019.
- 3.8 The proposed change to using an Open Procedure is fully compliant with the PCR 2015. This one stage process requires all bidders to provide the relevant evidence to show that they can meet the requirements of the contract. The tendering process will be more rapid, reducing the timescales by several weeks. There should be no appreciable impact on competitiveness, due to the limited number of suppliers in the market.
- 3.9 This will also restore the contract mobilisation period to an acceptable duration. Moving to the Open Procedure will allow more time for mobilisation and transition from the short term lighting contract, which will end on 31<sup>st</sup> March 2019.
- 3.10 Using the Open procedure, all other pre-tender considerations will be consistent with the recommendations approved by Cabinet on 12<sup>th</sup> March 2018. The revised indicative procurement timetable would be:
- OJEU Prior Information Notice – September 2018.
  - OJEU Contract Notice and Issue Tenders – October 2018.
  - Deadline for tender submissions – end November 2018
  - Panel evaluation – End November/December 2018.
  - Contract decision –December 2018.
  - Authority to Award report approval - December 2018.
  - Contract mobilisation – Mid January 2019 to end March 2019
  - Contract start date - 1st April 2019.

#### **4.0 Financial Implications**

- 4.1 The Open procedure will require exactly the same financial assurances from bidders that would have been the case under a Restricted procedure. The winning contractor's financial stability and insurance arrangements, and other financial risks, will be fully taken into account as part of the bidder evaluation. A Parent Guarantee and Bond Undertaking will form part of the tender pack.
- 4.2 The financial implications of this contract remain unchanged from the 12<sup>th</sup> March 2018 Cabinet report, which forecast savings of £2m per annum for the duration of the column warranty period following completion of the PFI contract's programme of investment in street lighting columns.

## **5.0 Legal Implications**

- 5.1 The contract to be procured is subject to the PCR 2015. Both the Restricted and Open procedures are permitted procurement processes under the PCR 2015 and therefore there is no issue from an EU procurement perspective with changing procedures at this point, particularly as the Prior Information Notice issued by the Council was not specific as to which procurement process would be followed.
- 5.2 From 1 September 2018 changes to the Constitution were implemented to allow individual Cabinet members, in consultation with the Leader to make certain decisions within their portfolio area, one of which was to agree changes to the tender procedure as adopted by Cabinet. Cabinet on 12 March 2018 agreed the use of the Restricted process but for the reasons detailed in Section 3 of the report, it is now proposed to use the Open procedure. In view of the provisions set out in set out in paragraph 13 of Part 3 of the Constitution, the Lead Member has discretion to agree the change.

## **6.0 Equality Implications**

- 6.1 There are no equalities considerations deriving from the change in tender procedure. Equalities considerations remain as per the 12<sup>th</sup> March 2018 Cabinet report.

## **7.0 Consultation with Ward Members and Stakeholders**

- 7.1 The Lead Member has consulted with the Leader on the change in tender procedure.

## **8.0 Human Resources/Property Implications (if appropriate)**

- 8.1 There are no equalities considerations deriving from the change in tender procedure. Human resources and property implications remain as per the 12<sup>th</sup> March 2018 Cabinet report.

## 9.0 Public Services (Social Value) Act 2012

- 9.1 The evaluation criteria set out in the 12<sup>th</sup> March 2018 Cabinet Report set out the weighting given for Social Value and it is fully compliant with Brent's policies and procedures.

**Report sign off:**

**AMAR DAVE**

Strategic Director of Regeneration and  
Environment