

	<p style="text-align: center;">Executive 16th April 2007</p> <p style="text-align: center;">Report from the Director of Finance and Corporate Resources</p>
<p>For Action Wards Affected: All</p>	
<p>Authority to award contract for cleaning of municipal buildings</p>	

Forward Plan Ref: F&CR-06/07-39

Appendix 3 to this report is Not for Publication

1.0 Summary

1.1 This report requests authority to award a contract as required by Contract Standing Order No 88. This report summarises the process undertaken in tendering this contract and, following the completion of the evaluation of the tenders, recommends to whom the contract should be awarded.

2.0 Recommendations

2.1 That Members award the contract for Cleaning of Municipal Buildings to Connaught Environmental Ltd to take effect from 4th June 2007 for a period of 3 years with an option for the Council to extend the term of the contract for up to a further 2 years.

3.0 Detail

3.1 This contract involves the cleaning of 16 of the Council's buildings. The cleaning of the sixteen municipal buildings is currently undertaken by eight different contractors under various contracts – cleaning services for nine of the sites are provided by one contractor under one

contract with the remaining seven sites being cleaned by a number of other contractors.

- 3.2 Since the Authority to Tender report to the Executive Committee in November 2006, Chesterfield House was added to the contract specification. The intention in the letting of this contract was to enable the incorporation of additional Municipal sites within the contract from time to time. As the cleaning contract for Chesterfield House was due to expire, it was agreed to include the site within this tender. The addition or deletion of sites was contained within the provisions of the Contract Specification.
- 3.3 The cleaning services entail the professional cleaning of municipal buildings from Monday to Friday (and on Saturday for two sites) and includes the provision of staff, site supervision, expertise, all relevant cleaning equipment and materials necessary, ad hoc emergency cleaning, and periodic cleans including window and carpet cleaning.
- 3.4 The existing contract for the cleaning of nine municipal sites noted in the table below was tendered in 2001 under EU Procurement Legislation.

Quality House	Brent Town Hall & Annexe	Brondesbury Road
Pyramid House	Elizabeth House	Hampton House
Brent House	Mahatma Gandhi House	London Road

This contract started on 2 July 2001 and taking into account agreed extensions now terminates on the 3rd of June 2007. Therefore the contract was due for re-tendering.

- 3.5 Since the cleaning contract for the nine sites noted above was last tendered in 2001, the Council has entered into contracts with various cleaning companies for a further seven municipal buildings – these cleaning sites are noted below and now form part of the cleaning services contract portfolio managed by the Property & Asset Management Unit. The additional sites are:

Brent House Annexe	Douglas Avenue	Cottrell House
Triangle House	Challenge House	Kingsbury One Stop Shop
Chesterfield House		

The contracts for these extra sites were each for a fixed 12-month period. No formal contracts were entered into but official orders were issued by the Council. These contracts were subsequently renewed on a year by year basis.

- 3.6 The new contract will amalgamate all of the cleaning services contracts managed by the Property and Asset Management Unit and thus provided an opportunity for the Council to consolidate the management of cleaning services for all sixteen municipal building sites. Tenders for part or parts of the service were not accepted.

3.7 The Specification for the new cleaning contract was extended beyond the existing specification:

- ◆ To address the need for the cleaning contractor to adhere to environmental considerations when providing the service, such considerations to include the Council's Corporate Environmental Policy, Going Green, Recycling and Fair Trade agenda; and
- ◆ To include stipulations for the provision of emergency cleaning call-outs in relation to the control of hazardous occurrences/biological agents, for inclusion within Property & Asset Management Unit's Business Continuity Plans for the named sites included in the contract.

Further, the Conditions of Contract provide a facility to broaden the cleaning services specification to include additional sites or to withdraw sites depending upon the Council's future accommodation strategy, service strategies (such as the One Stop Service impact on building ownership) and the outcome of the Council's Civic Centre proposals. This is in line with the Council's corporate approach to asset management and opportunities to include additional buildings will be actively pursued.

The Tender Process

3.8 The new contract will be let for a period of 3 years commencing on Monday 4th June 2007, with the option for the Council to extend the Contract for a further 2 years.

3.9 The process used by the Council for the procurement of this contract was the restricted tender process. This is a two stage tender process allowing the Council to eliminate unsuitable contractors at the pre-qualifying stage.

Stage One – Pre-Qualifying Stage

3.10 Advertisements were placed in the Official Journal of the European Union (OJEU) and in the local press on 16th November 2006 to invite initial expressions of interest, which elicited 48 initial enquires. Shortlisting pre-qualification questionnaires (PQQ) and information about the proposed contract were sent out. The PQQ documentation and related contract information was also posted on the Council's website.

3.11 Contractors responding to the advertisement were requested to complete and return the PQQ (both in hard copy and on CD Rom where possible) by 12 noon on 28 December 2006. A total of 14 PQQs were subsequently received from various organisations including the current contractor for the 9 municipal buildings.

3.12 Shortlisting was carried out on the basis of the contractors' financial viability, probity and technical ability which included a consideration of their ability provide services in the form required, their compliance with quality control and assurance (including Health & Safety and

Environmental) and their approach to service provision. On 16th January 2007 nine contractors were assessed as achieving relevant standards and were invited to tender.

Stage Two – Invitation to Tender

3.13 A tender pack was issued to the 9 contractors invited to tender. The tendering instructions stated that the contract would be awarded on the basis of the most economically advantageous offer to the Council and that in evaluating tenders, the Council would have regard to the following criteria with the following weightings:

- ◆ Quality control and assurance (weighting factor 4)
- ◆ Quality of staff management (weighting factor 4)
- ◆ Value for Money – Price (weighting factor 4)
- ◆ Affordability – against budget (weighting factor 5)
- ◆ Experience of and technical ability to supply these services in the form required (weighting factor 4)
- ◆ Environmental criteria in regards to contract operation and chemicals and equipment used (weighting factor 5)
- ◆ Flexibility in service provision (weighting factor 4)
- ◆ Compliance with appropriate legislation (weighting factor 5)
- ◆ References and Reference Sites (weighting factor 3)
- ◆ Approach to Service Provision (weighting factor 4).

3.14 Contractors were required to submit additional information providing details of their proposed arrangements for performing the services including (but not limited to) the following:

- ◆ A Pricing Schedule with an indicative breakdown of cost for each individual site per annum.
- ◆ Method Statements and Performance Measurement Systems
- ◆ Details of ability to achieve continuous improvement and any consequential qualitative improvements.
- ◆ Information showing an understanding of and commitment to the Council's service delivery objectives
- ◆ Full details of occupational pension scheme
- ◆ Evidence of comparability of pension provision
- ◆ Confirmation of preparedness to undertake the necessary consultation process under TUPE

- ◆ Details regarding intended staff resources including relevant qualifications / expertise to perform the Service without reliance on a TUPE transfer of current contractor's staff
 - ◆ Health & Safety Policies and criteria in regards to contract operation and chemicals and equipment used
- 3.15 All tenders had to be submitted no later than 12:00 noon on Monday 26th February 2007. Tenders were opened on Monday 26th February 2007 and four valid tenders were received.

Evaluation Process

- 3.16 The tender evaluation was carried out by a panel of officers from Property & Asset Management, Financial Management, Procurement, Environmental Service's Policy Performance & Information, and Health & Safety Units.
- 3.17 The panel evaluated each tender submission on Wednesday 28th February 2007 & Thursday 1st March 2007 against the evaluation criteria agreed by Executive in November 2006. As part of this evaluation process, site visits were undertaken and written references taken up for all contractors.

Evaluation Conclusion

- 3.18 A copy of the Tender Evaluation Grid is in Appendix 1 showing the final scores awarded by the panel for each contractor against each of the evaluation criteria approved by the Executive. The Pricing Schedule detailing the sums tendered by the relevant contractors is attached as Appendix 2. The names of the contractors tendering for the service are at Appendix 3. Numbers attributed to contractors are not indicative of their ranking in the tender process.
- 3.19 Contractor No. 2 was the highest scoring contractor, as detailed in the Tender Evaluation Grid in Appendix 1 and its tender was evaluated as the most economically advantageous to the Council. It is therefore recommended that members award the contract to Contractor No 2, namely Connaught Environmental Ltd.

Connaught Environmental Ltd's approach to service provision offers greater value for money by the provision of enhanced contract management processes through access to an on-line communication and reporting system. It met high standards, received good references (both written and on site), had potential to redeploy staff and invested highly in staff training.

Whilst Contractor No 3 tendered the lowest price, it scored lower on all other criteria to Connaught Environmental Ltd. Officers considered its TUPE pension provisions to be inadequate, and its general approach to the service provision, although adequate, did not meet the high standards and benefits offered by Connaught Environmental Ltd. It was felt that Contractor No 3's proposed systems would not produce the same opportunities for enhanced contract monitoring and

management

4.0 Financial Implications

- 4.1 The Council's Contract Standing Orders state that contracts for supplies and services exceeding £500k or works contracts exceeding £1million shall be referred to the Executive for approval of the award of the contract. The estimated value of this contract is over this threshold.
- 4.2 The cost of this contract forms part of the Service Charges levied to building tenants occupying the sixteen municipal buildings to which this applies. The contract has greater emphasis on service delivery and quality following the aggregation of the sixteen buildings into one combined contract and increased requirements under Environmental and Health & Safety Legislation. A further requirement was also placed on contractors to ensure staff previously employed by the Authority, if they so required, are able to access a comparable pension scheme.
- 4.3 Over the period of the contract the value exceeds the previous budget estimates, the additional amount will in Year 1 be contained within the overall Facilities Management contingency budget and service charges levied with Year 2 being funded by a small increase in those services charges, resulting in the base budget rising for Year 3.

	Year 1	Year 2	Year 3
Budget Service Charges * ①	£403,333	£413,416	£453,100 ②
Contract Costs * ①	£431,267	£442,049	£453,100
Additional Services Charges	£27,934	£28,633	0
Percentage Increase in Service Charges to Users	0	0.97%	0
Funded by contingency	£27,934		

①*Budget & Contract assumes 2.5% inflation

②*Year 3 budget assumes 2.5% inflation plus additional 0.97% from Year 2 into base budget.

- 4.4 With regard to pensions, the General Purposes Committee decided on 27th April 2004 that Council staff transferring to a private or voluntary sector employer as a result of an outsourcing (and on subsequent re-tendering of an outsourced contract) must continue to have access to the LGPS or be offered an alternative good quality occupational pension scheme. Such an alternative scheme must, save where the Director of Finance and Corporate Resources is satisfied there are exceptional circumstances, be actuarially certified as broadly comparable to the LGPS.

4.5 Furthermore the Council must have due regard to, but may if it has proper and rational grounds for so doing depart from, the Code of Practice on Workforce Matters in Local Authority Service Contracts. This is part of Best Value guidance issued by the Government under the Local Government Act 1999. The Code requires the following for all outsourced contracts advertised on or after 13th March 2003 (whether on original transfer or subsequent re-tender of the contract):

- Local government staff transferred to the new contractor must continue to have access to the LGPS or be offered an alternative good quality pension scheme which, save in exceptional circumstances, must be broadly comparable to the LGPS
- Where an alternative pension scheme is offered the Council must, save in exceptional circumstances, make it a condition of the contract with the contractor that there will be a bulk transfer agreement under which the new contractor's pension scheme will provide day for day past service credits (or an equivalent recommended by the Government Actuary's Department as a suitable reflection of differences in benefit structures between the schemes) to former Council staff who wish to transfer their accrued credits from the LGPS to the new contractor's pension scheme.
- Where staff join the contract subsequent to the transfer to work alongside former local government staff, the Code requires the Council to require the new contractor to offer those new staff fair and reasonable terms and conditions (excluding pensions) which are, overall, no less favourable than those of the former local government staff and to secure for those staff:
 - Membership of the LGPS i.e. where the employer has admitted body status; or
 - Membership of a good quality employer pension scheme, either being a contracted out, final salary based defined benefit scheme or a defined contribution scheme (benefits are based upon the investment returns made by the employee and employer). The employer must match employee contributions up to 6% in a defined contribution scheme; or
 - A Stakeholder Pension Scheme under which the employer must match employee contributions up to 6 % (basically a defined contribution scheme with special rules e.g. 25% of the annuity can be

used to purchase a tax free lump sum)

4.6 During the evaluation of tenders, regard was had to pension arrangements proposed by tenderers. Of the 10 staff that were originally employed by Brent Council, at least one has been a member of the LGPS and therefore provisions in the Code of Practice with regard to bulk transfer arrangements are relevant. However, Council policy does allow these provisions not to be applied if the Director of Finance and Corporate Resources considers there are exceptional circumstances justifying the Council not applying these provisions. A decision concerning this will be made by the Director prior to the contract start date. Connaught Environmental Ltd confirmed during the tender process that it would provide the former Council employees with pension arrangements which offer broadly comparable benefits to those available under the LGPS, something that it has done in connection with staff previously transferred to it under a contract with Brent Housing Partnership. Connaught Environmental Ltd has provided proof of comparability of its pension arrangements through the provision of a Government Actuaries Department's certificate. With regard to the provisions in the Code of Practice relating to staff joining the contract subsequent to the transfer to work alongside former local government staff, during the evaluation process officers concluded that it would not achieve Best Value in the circumstances of this tendering exercise. Former local government staff are very much in the minority of the transferring workforce. The provisions of the Code of Practice relating to staff joining the contract subsequent to the transfer to work alongside former local government staff would not affect the majority non Council staff transferring and there would still exist a two tier workforce, even if the Council required Connaught Environmental Limited to comply with these provisions. Moreover the provisions of the Code of Practice concerning securing pension provision for staff joining the contract subsequent to the transfer only apply to an outsourcing and not, as in this procurement exercise, to a retendering.

5.0 Legal Implications

- 5.1 The estimated value of this contract over its lifetime exceeds the Public Contracts Regulations 2006 ("the EU Regulations) threshold for Service Contracts. The contract is subject to the full application of the EU Regulations.
- 5.2 As the contract is subject to the full application of the EU Regulations, the restricted procurement procedure was used for the tender. This is akin to the two stage tender process under the Council's Standing Orders. Full application of the EU Regulations required the advertising of the contract in OJEU
- 5.3 As advised in the Executive Report of 15th November 2006 requesting authority to tender this contract, the Council must observe the EU Regulations relating to the observation of a mandatory minimum 10 calendar day standstill period **before** the contract can be awarded.

Therefore once the Executive has determined which tenderer should be awarded the contract, all tenderers will be issued with written notification of the contract award decision. A minimum 10 calendar day standstill period will then be observed before the contract is concluded – this period will begin the day after all Tenderers are sent notification of the award decision – and additional debrief information will be provided to unsuccessful tenderers in accordance with the EU Regulations.

As soon as possible after the standstill period ends, the successful tenderer will be issued with a letter of acceptance and the contract can commence.

- 5.4 The estimated value of this contract over its lifetime (including any extension) is in excess of £500,000 and the award of the contract is consequently subject to the Council's Contract Standing Orders and Financial Regulations in respect of High Value contracts. As a result, Executive approval is required for the award of this contract.
- 5.5 The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) would appear to apply to the letting of the contract. As a result those employees who are assigned to the various existing cleaning contracts immediately prior to the contract start date and who do not object to transferring will transfer to the employment of the contractor awarded the contract on their existing terms and conditions. It is understood that of the staff that may transfer under TUPE, there are a number of former Council employees. When this matter was initially considered by the Executive on 15 November 2006 it was believed that there were 5 former Council employees but following further disclosure by existing contractors, this number has now increased to 10. As part of the tender process, contractors were required to confirm their intention to undertake the necessary consultation process under TUPE and regard has been had in the evaluation process to the comparability of their pension schemes for the former Brent employees.
- 5.6 In exercising its contracting functions, the Council must have regard to guidance issued by the Government under the Local Government Act 1999 (LGA 1999). The Council has a statutory duty as a best value authority to achieve continuous improvement in the way in which those functions are exercised as required by Section 3 of the LGA 1999. The Council is entitled not to follow the guidance if it has proper and rational grounds for so doing, for example, if it considers that not following the guidance in some respect is necessary for it to fulfil its statutory duties under section 3.

The Code of Practice on Workforce Matters in Local Authority Service Contracts, which forms part of the guidance issued under the LGA 1999, contains requirements relating to pensions referred to in Section 4.5 of this report. The Code also requires the new contractor in a tendering exercise who recruits new staff to work on a local authority contract alongside former local government staff, to offer those new

staff fair and reasonable terms and conditions (excluding pensions) which are, overall, no less favourable than those of the former local government staff. Officers consider these requirements of the Code, would not achieve Best Value in the circumstances of this tendering exercise.

6.0 Diversity Implications

6.1 The proposals in this report have been subject to screening and officers believe that there are no diversity implications.

7.0 Staffing/Accommodation Implications (if appropriate)

7.1 This service is currently provided by external contractors and there are no implications for Council staff arising from retendering the contract.

7.2 It is anticipated that staff will transfer to any new external contractor under TUPE. As detailed at paragraph 4.4 and 4.5 there are currently 10 former Brent Council employees employed by the current cleaning contractor under the 2001 contract and these employees may also TUPE. As a result, officers have considered the Code of Practice on Workforce Matters in Local Authority Service Contracts, which forms part of the guidance issued under the LGA 1999, and decided to apply the Code by making requirements with regard to pension protection for transferred former Council staff contractually binding on the successful Tenderer.

8.0 Background Papers

- ◆ Tender correspondence files.
- ◆ Tender submission documents
- ◆ Evaluation documents

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**CLEANING CONTRACT FOR MUNICIPAL BUILDINGS
PRICING SCHEDULE**

Contractors	Pricing per annum
Contractor 1	£445,668.76
Contractor 2	£431,267.50
Contractor 3	£372,633.72
Contractor 4	£424,885.00

