



Executive
8th October 2007

**Report from the Director of
Environment and Culture**

Wards Affected:
ALL

Authority to invite tenders for Highway Maintenance Works

Forward Plan Ref: E&C-07/08-018

1.0 Summary

- 1.1 This report requests approval to invite tenders in respect of Highway Maintenance Works contracts to start 1st July 2008, as required by Contract Standing orders 88 and 89.

2.0 Recommendations

- 2.1 The Executive to give approval to the pre-tender considerations and the proposed tender process to be used to shortlist and evaluate the Highway Maintenance Works contracts as set out in section 3, particularly paragraph 3.12.
- 2.2 The Executive to give approval to officers to invite tenders and evaluate them in accordance with the approved criteria referred to in paragraph 2.1 above.

3.0 Detail

- 3.1 Highway maintenance works are currently completed using 6 separate contracts with one main contractor for each contract (except for the the footway relay contract which has 3 main contractors) and either one or two reserve contractors (**Appendix A**). This appendix also includes the annual estimated value of each contract and the name of the company presently contracted to Brent. These contracts are used to complete the majority of works to maintain the footways and roads in Brent. They are also used to implement the majority of the traffic management schemes in the Borough. An overview of the scope of work involved in each contract is set out in (**Appendix B**).

- 3.2 The Highway Maintenance Works Contracts are a set of framework agreements. At contract commencement, the exact requirements of the Council are not known. As a result the contract pricing is based on a Schedule of rates. When tendering, each contractor inserts a rate against each item in the contract. This enables staff within the Transportation Service Unit to cost each of the different schemes during the term of the contract. When the scheme is ready to go ahead, an order (or “specific contract” under EU terminology) is placed using the tendered prices. This type of contract is typically used for services when the demand for each and every item, over a year or longer, is impossible to predict.
- 3.3 All current six contracts commenced on the 1st July 2003 for a period of three years with a right of extension for a further two years. All contracts have been extended by two years and will finish on 30th June 2008.
- 3.4 All West London Alliance boroughs were contacted and invited to explore the possibilities and potential benefits of joint purchasing of Highway works. Hounslow was the only borough that showed interest and discussions took place at Hounslow Town Hall on 2nd August 2007. After due deliberation, officers have decided that any benefits likely to be achieved would be minimal and would not justify the difficulties created by the physical distance between the two boroughs, preparing a workable joint contract and altering timetables.
- 3.5 It is considered that the current contracts have worked well, so it is proposed to re-tender on a similar basis, though with some changes which will now be outlined. Firstly, since the current contract started, no work has been allocated for Micro Asphalt Surfacing, as the costs of this thin veneer are very similar to those for resurfacing which is a far more durable option. This contract will therefore not be included in the proposed tendering process.
- 3.6 Secondly, much of the borough’s street furniture, including barriers and posts, has a painted covering and therefore will require on going maintenance. In the past this was carried out by the Council’s paving contractors, however officers consider that it would be more beneficial from a value for money aspect to appoint a specialist contractor to undertake this type of work. A new contract, Street Furniture Painting & Incidental Repairs/Replacement, has therefore been included in this proposed tendering process.
- 3.7 Thirdly, this procurement is covered by the European public procurement regime. Since the previous tender exercise, a new set of regulations (the Public Contracts Regulations 2006) have come into force which deal with framework agreements more stringently than previously. Consequently, the agreements cannot be longer than 4 years in total. So it is proposed to have a contract term of three years plus one year’s extension as opposed to the current contract arrangements that were three years plus two years’ extension. In addition, where it is proposed to have more than one contractor appointed to a framework at least 3 must be appointed. *As a result, the previous practice as outlined in Appendix A of generally having a main contractor and a reserve contractor to cover for peaks and troughs of work, but also to minimise the risk of the main contractor not performing, is not possible.* Accordingly it will be necessary to appoint a minimum of 3 contractors to each of the framework agreements, with selection for each order being on the basis of lowest price. Fortunately because of the way that the evaluation will be carried out (see

paragraph 3.10), the lowest-price contractor for different activities is generally known once the evaluation is completed without the need for an individual assessment for each order. Supplementary contractors would be appointed where their resources are required to meet the demand of peaks such that the lowest-priced contractor cannot pick up the work. Contractors performance will be monitored by technical staff to ensure compliance to the contract specification utilising the quality management system.

- 3.8 The tendering process will be managed by officers from Transportation, Procurement, Management Services, Finance and Legal Services through periodic steering group meetings. Officers will decide on the form of contract that offers the Council best value for money and consider; retention as against bonds, economies of scale, performance related rewards and damages, indices for inflationary increases, variation orders, engineering technical developments and the effectiveness of the existing contract documents.
- 3.9 In order to assess whether it is best for the Council to award these contracts together, or continue to let them separately, the contracts will be packaged in two ways: as one large combined contract and in separate lots (as at present) with firms being asked to tender for both options. There is also the potential to ask for discounts, should a company be awarded say three lots. The final decision, regarding award and choice of contract package options, will be made by the Council on value for money grounds.
- 3.10 The tender prices will be evaluated on the basis of a number of common maintenance scenarios. Each scenario will draw together a number of different activities, each of which will have been priced by tenderers in their schedules of rates. The highest scorer on price will be the tenderer with the lowest price on the most scenarios.
- 3.11 It is proposed to follow a two-stage tender, so that contractors express interest in the form of a pre-qualification questionnaire, and only those meeting the requisite standards of probity and business practice, economic and financial standing and technical ability will be invited to tender. It is anticipated that there will be a lot of expressions of interest, and as a result the Council's standard Pre-Qualification Questionnaire will be tailored to ask more questions about technical ability, including experience and health and safety, so that the numbers invited to tender are manageable. As a result of technical ability being partly assessed at PQQ stage, it is then proposed to have a price:quality weighting of 70:30.
- 3.12 In accordance with Contract Standing Orders 88 and 89, the procedure and timetable to be followed has been set out below.

Ref.	Requirement	Response
(i)	The nature of the works	See Appendix B
(ii)	The estimated value	Over a total of a potential 4 years: In excess of £40.0 million

Ref.	Requirement	Response	
(iii)	The contract term	3 years and option to extend for 1 year <i>(recent Legislation now limits Framework agreements to a maximum period of 4 years)</i>	
(iv)	The tender procedure to be adopted	European Public Procurement Restricted Procedure	
(v)	The procurement timetable (dates are indicative)	<p>Adverts placed and Notice despatched to OJEU</p> <p>Expressions of interest returned (pre-qualification questionnaire PQQ)</p> <p>Evaluate PQQ's and shortlist firms(Stage 1: including Technical, Health & Safety and Financial)</p> <p>Invite to tender</p> <p>Deadline for return of Tenders</p> <p>Evaluate tenders</p> <p>Undertake clarification interviews</p> <p>Recommendations to the Executive for the award of the contracts</p> <p>Award Contracts</p> <p>Contracts start</p>	<p>16th Oct 07</p> <p>26th Nov 07</p> <p>7th Dec 07</p> <p>11th Dec 07</p> <p>22nd Jan 08</p> <p>7th Feb 08</p> <p>15th Feb 08</p> <p>mid April 08</p> <p>mid April 08</p> <p>1st July 08</p>

Ref.	Requirement	Response
(vi)	The evaluation criteria and process	<p>Shortlists of those to be invited to tender are to be drawn up in accordance with the Council's Contract Management Guidelines namely the Pre-Qualification questionnaire and thereby meeting the Council's financial standing requirements, business probity and technical expertise, including experience, health and safety and available resources such as suppliers and plant. Tenders will be evaluated and the contract awarded using the following criteria:</p> <ul style="list-style-type: none"> • Price (70% weighting) • Quality (30% weighting) covering: <ul style="list-style-type: none"> - Proven ability to meet the Requirements of the works specification - Approach to the delivery of the works - Approach to ensuring standards are achieved - Development of a working relationship with the Council. <p>The relative weighting given to each individual evaluation criteria will be stated in the tender documentation.</p>
(vii)	Any business risks associated with entering the contract	<p>Because of the difficulties in predicting the budget/workload during any financial year the procurement process will involve the appointment of at least 3 contractors to each framework to cover any gaps where increased funding may result in a delay to the works/projects/schemes being completed. Risk of poor performance is reduced by use of retention scheme (see Financial Implications)</p>
(viii)	The Council's Best Value duties	<p>The competitive tender for the Highways Maintenance contracts will ensure value for money and future compliance with specified standards.</p>
(ix)	Any staffing implications, including TUPE and pensions	<p>No implications for Council staff.</p>

Ref.	Requirement	Response
(x)	The relevant financial, legal and other considerations	See sections 4.0 and 5.0 below.

3.13 The Executive is asked to give its approval to these proposals as set out in the recommendations and in accordance with Standing Order 88.

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 and/or General Purposes Committee for approval to invite tenders and in respect of other matters identified in Standing Order 89.
- 4.2 The total cost of the Highway Maintenance Works Contracts will be above the £500k threshold.
- 4.3 The estimated total value of the Highway Maintenance Work Contracts (recommendation 2.1 of this report) over the full four years is in excess of £40.0 million. This expenditure will be met from the annual Capital and Revenue budgets during the four years.
- 4.4 The current contract conditions allow for the deduction of a retention, rather than the use a default bond for performance security. The retention entitles the Council to deduct a sum equal to 5% of the amount due on each individual order. This sum is released after a six month period subject to;
- the completion of any outstanding remedial work
 - any outstanding non-conformance reports have been addressed to the satisfaction of the Engineer
 - the health and safety file has been returned to the CDM Coordinator under the Construction (Design and Management) Regulations 2004.
- 4.5 Full financial implications will be reported when the Executive consider the award of the tender.
- 4.6 The cost of developing tendering documentation, receiving legal advice and managing the tendering process will be contained within existing budgets.

5.0 Legal Implications

- 5.1 Section 41 of the Highways Act 1980 imposes a duty on the Council to maintain those highways for which it is the highway authority. This includes all the highways in the Borough except the North Circular Road.

- 5.2 The Highway Maintenance contracts outlined in this report fall within the EU public procurement regime, governed by the Public Contract Regulations 2006 (“the EU Regulations”). Some of the proposed works are classified as “works” and some as “services” within the meaning of the EU Regulations. It will be necessary to do a detailed analysis of which applies before the EU contract notice is finalised. While there is a different threshold as to when the EU Regulations apply, depending upon whether there is predominantly works or predominantly services, the high value of the contract at £40m means that even the higher threshold for works of £3.8million is exceeded.
- 5.3 The procurement is also subject to the Council's Standing Orders for 'High Value Contracts'. The procurement process and timetable is set out at paragraph 3.12 of this report and this is in compliance with both the EU Regulations and Standing Orders.
- 5.4 Once the tendering process is undertaken, officers will report back to the Executive in accordance with Contract Standing orders, explaining the process undertaken in tendering the contracts and recommending award.
- 5.5 The Transfer of Undertakings (Protection of Employment) legislation may apply to transfer staff from current contractors to new contractors as a result of the tendering exercise. There may be among such staff who transfer under TUPE from current providers to new providers employees who originally transferred from the Council under TUPE when the service was first outsourced. In that case the officers conducting the tendering process will need to have regard to the Best Value guidance issued by the Government called “the Code of Practice on Workforce Matters in Local Authority Service Contracts” and decide which if any parts of that guidance are likely to achieve Best Value and therefore should be applied in the tendering process. These officers will also need to ensure that the requirements of the Best Value Authorities Staff Transfers (Pensions) Direction 2007 are met. This Direction requires the Council to ensure the protection of the pension rights of current and former Council staff transferring to a contractor under TUPE as a result of a tendering exercise.

6.0 Diversity Implications

- 6.1 Officers have screened the proposals in this report and believe that there are no diversity implications from it.

7.0 Staffing/Accommodation Implications

- 7.1 Staff in the Transportation Service Unit manage the Highway Maintenance Works Contracts.
- 7.2 There are no TUPE implications for Council staff associated with the recommendations contained in this report. However TUPE may apply to transfer staff from current providers to new providers.

Background Papers

- Contract files 2002 - 2007
- Code of Practice for Highway Management

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Appendix A

CURRENT HIGHWAY MAINTENANCE CONTRACTS

Contract	Estimated Average Value per annum
Footway Relay	£5.9 million
Line Markings	£0.2 million
Machine Surfacing	£3.1 million
Hand Surfacing	£1.1 million
Anti Skid Surfacing	£0.2 million
Micro Asphalt Surfacing	£0.0 million

EXISTING ARRANGEMENTS

Contract	Main Contractor(s)	Reserve Contractor
Footway Relay	1 st - L&C Building & Civil Engineering Ltd 2 nd J&B Construction Co Ltd 3 rd Gabriel (Contractors) Ltd	Mc Nicholas PLC
Line Markings	Ringway Roadmarkings Ltd	1 st Highway Maintenance Specialists 2 nd Wilson & Scott (Highways) Ltd
Machine Surfacing	London Surfacing Co Ltd	Granville- Steel Contracting PLC
Hand Laid Surfacing	Granville- Steel Contracting PLC	O'Hara Bros Surfacing Ltd
Anti Skid Surfacing	Highways Maintenance Specialists Ltd	1 st Glendining (Roads) Ltd 2 nd Prismo Contracting Services
Micro Asphalt Surfacing	T E Beach Ltd	

Appendix B

Overview of Schemes/Projects/Works Forming Each Contract starting 1st July 2008

1. **Footway Relay**

Responsive repairs (patching) to paved surfaces, constructing footway crossings (Highways Act Section 184) funded by residents/developers, dropping kerbs in shopping area (to aid movement), tactile paving at controlled and non controlled crossings (to aid the visually impaired), footway upgrading projects funded through TfL, Brent Revenue & Capital funding, civils works associated with all traffic management schemes (duct works, new kerbs, blocked paved entry treatments and road humps, etc.).

2. **Line Markings**

Maintenance of existing line markings, implementation of all new line markings associated with controlled parking zones (CPZ), traffic management schemes and implementation of London Bus Priority Network (LBPN).

3. **Machine Surfacing**

Remove existing surface to specified depth, provide and lay new wearing course Material to the Principal road network (Transport for London TfL funded), Borough Road network (revenue funded) and implementation of London Bus Priority Network LBPN Schemes.

4. **Hand Surfacing**

Responsive repairs (patching) to road and footways, associated black top works with all traffic management schemes.

5. **Anti Skid Surfacing**

Lay anti skid surfacing materials on new schemes at approaches to controlled and non-controlled crossing points (funded with Brent Capital and Transport for London budgets). This contract is also used to replace existing areas where new machine surfacing schemes have been implemented.

6. **Street Furniture Painting & Incidental Repairs/Replacement**

The painting and maintenance of street furniture including barriers, bollards, posts etc.