



Cabinet
17 January 2022

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

Authority to Tender Contract for Grounds Maintenance Services

Wards Affected:	All
Key or Non-Key Decision:	Key
Open or Part/Fully Exempt: (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)	Part Exempt – Appendix 1 is exempt as it contains the following category of exempt information as specified in Paragraph 3, Schedule 12A of the Local Government Act 1972, namely: “Information relating to the financial or business affairs of any particular person (including the authority holding that information)”
No. of Appendices:	One Appendix 1: Contract Risks & Mitigations (Exempt Information)
Background Papers:	None
Contact Officer(s): (Name, Title, Contact Details)	Kelly Eaton Parks Policy and Projects Manager Tel: 020 8937 5565 Email: Kelly.eaton@brent.gov.uk

1.0 Introduction

- 1.1 In 2018, Brent adopted a deliberate strategy to synchronise the end dates for its outsourced environmental services so that they coincide for reconsideration at the same time. The Redefining Local Services (RLS) programme was subsequently initiated in May 2019 to develop and implement a commissioning strategy in time for new service arrangements to take effect from 1 April 2023.
- 1.2 In August 2021, Cabinet agreed the Final RLS Delivery Model, which is a “specialist contracts delivery model with low to moderate levels of insourcing” including the high level procurement strategy for those services which will be

outsourced and approval to invite tenders for the first and most pressing procurement in the timetable – an Integrated Street Cleansing, Waste Collections and Winter Maintenance contract ('Integrated Street Cleansing and Waste Contract').

- 1.3 This report presents the procurement strategy and timetable for the second of the RLS services to be issued for tender, the Grounds Maintenance Services contract ('Grounds Maintenance Contract'). This report requests approval to invite tenders in respect of the Grounds Maintenance Contract, as required by Contract Standing Orders 88 and 89.

2.0 Recommendation(s)

- 2.1 That Cabinet approves inviting tenders for the Grounds Maintenance Contract on the basis of the pre-tender considerations set out in paragraph 4.7 of this report, subject to due consideration by officers of any leaseholder observations in response to the stage one section 20 leaseholder consultation, and delegates the final decision to proceed with inviting tenders to the Strategic Director for Regeneration & Environment in consultation with the Lead Member for Environment.
- 2.2 That Cabinet approves Officers evaluating the tenders for the Grounds Maintenance Contract on the basis of the evaluation criteria set out in paragraph 4.7 of this report.

3.0 Background

RLS Aims and Objectives

- 3.1 The aim set by members for the RLS programme is to design and implement a better, more integrated and flexible local services delivery model that improves the look and feel of Brent's public realm. The following RLS programme objectives were defined by Brent's members following the launch of the programme in May 2019:
- Meet residents' and businesses' requirements for the services: fully engage with the community to understand their needs and aspirations
 - A clean, green environment: place clean streets, clean air, carbon reduction, quality green spaces, trees & biodiversity at the heart of the programme
 - Be bold and innovative: explore all possible delivery options and seek out best practice and innovation from other providers, from the UK and abroad
 - Provide the best value possible with available council resources, in the context of post-Covid financial pressures
 - Ensure services are flexible and adaptable to change: build in control, flexibility and resilience to manage future change

RLS Programme Scope

3.2 The RLS programme's scope covers the following functions led by the Environmental Services Directorate (these are outsourced unless indicated otherwise):

- Waste and recycling collections
- Recyclates reprocessing
- Street cleansing
- Winter maintenance
- Grounds maintenance for parks, council housing and highways verges
- Arboricultural services
- Highways services (all works outsourced, policy and projects insourced)
- Street lighting services
- Parking services
- Highways and environmental crime enforcement (insourced)
- Regulatory services (environmental health, food safety, trading standards, licensing) - (insourced)
- Commercial services (cemeteries, pest control) (insourced)
- Community protection (CCTV maintenance outsourced, anti-social behaviour insourced)
- Special Needs Transport (shared service)

3.3 A key element of the RLS programme is the recommissioning of functions that are currently delivered through contracts. The key contracts are included in Table 1 below.

Table 1: Contracts in scope of RLS

Contract	Supplier	Annual Value (2020/21)	End / extension
Special Needs Transport (shared service)	LB Harrow	£11m	2022
CCTV Maintenance	Tyco	£0.2m	2022 + 1
Highways Services	FM Conway	£8m	2023
Parking Services	Serco	£6m	2023
Arboricultural Services	Gristwood & Toms	£0.77m	2023 + 2
Street Lighting Services	FM Conway	£1.1m	2023 + 2
Public Realm	Veolia	£18 m	2023 + 7

3.4 The Public Realm contract included waste and recycling collections, recyclates reprocessing, street cleansing, winter maintenance, grounds maintenance and burials. Burials and grounds maintenance in cemeteries were brought in house in December 2020.

RLS Service Improvement Priorities

- 3.5 A comprehensive review of existing environmental services provision was undertaken as part of the RLS programme in order to identify areas for service improvement. The Final RLS Delivery Model will aim to achieve the following overarching objectives, informed by the outcomes of the RLS reviews:
- A neighbourhood approach to managing local issues to meet the needs of local areas
 - A borough-wide approach to managing our assets and infrastructure (e.g. highways, street lighting) to ensure investment is spent well
 - A specialist contracts approach for outsourced services
 - Improved contract management and monitoring for contracted services
 - An intelligence-led approach to the deployment of resources
 - Integrated deployment of environmental enforcement services across public realm
 - Greater responsiveness to addressing issues and problems in the public realm
 - Better digital customer interface with real-time information and issue reporting
 - Additional council capacity for continuous service improvement and innovation
 - Focusing specialist officers where they can add the greatest value, with more triaging between generalist and specialist roles
 - Deliver improved Social Value outcomes via our Social and Ethical Procurement Policy, including: striving for carbon neutrality by 2030 and enhancing nature and biodiversity; the number of local jobs created (where appropriate for the contract), including focus on disadvantaged groups; and the number of SMEs and third sector organisations that benefit from the procurement exercises.

Final RLS Delivery Model

- 3.6 Following statutory best value consultation, the Final RLS Delivery Model, agreed by Cabinet on 16 August 2021, is a “specialist contracts delivery model with low to moderate levels of insourcing”. This delivery model comprises outsourcing using discrete, specialist contracts, and the insourcing and enhancement of a small number of client functions that would provide the Council with greater strategic and financial control and improved contract management and stakeholder engagement.
- 3.7 The agreed future configuration of outsourced services, insourcing and enhancement of related client functions is set out in Table 2 below.

Table 2: Final RLS Delivery Model – Service Configuration

Specialist contracts with either low to moderate level insourcing
Specialist contracts
• Integrated street cleansing, waste collections and winter gritting
• Recyclates reprocessing
• Grounds maintenance
• Parking services
• Tree maintenance
• Street lighting
• Highways Services
Insourcing (TUPE noted where applicable)
• Education, Communication and Outreach function from waste contract (TUPE)
• Informal Parking Appeals (TUPE)
• Tree surveying, data, work orders (TUPE)
• Highways gang for 20% reactive repairs OR full reactive highways maintenance (TUPE)
• Park wardens function (TUPE)
Stronger client (new posts)
• 1 additional highways inspector
Total additional cost recurring revenue: £0.2m - £0.8m
Mobilisation costs can be contained within existing R&E budgets
£0.02m - £0.65m Capital required for tree database and highways reactive maintenance

- 3.8 Grounds maintenance services will be procured as a standalone contract giving specialist green space providers the opportunity to bid directly for the contract. The benefits of this approach are set out in paragraph 4.4 of this report. This approach reflects the trend in London whereby outsourced grounds maintenance service delivery is dominated by specialist green service companies, with these companies serving 14 of the 17 boroughs that have outsourced provision. Boroughs' Good Parks for London scores are on average higher for boroughs serviced by specialist contractors than for boroughs where grounds maintenance is included in an integrated public realm services contract.
- 3.9 Insourcing of the Head Park Warden and five Park Wardens from this service will enable better integration of education and enforcement across the whole public realm in Brent. It will also enable a more strategic and holistic approach to stakeholder management and community engagement of park interests groups and park users and help to increase participation and volunteering in parks. All these staff are on existing LGPS via an Admission agreement with the Council, but there is an additional cost estimated at £32k per annum to

cover Brent's higher employers' pension contribution (35% compared to Veolia's 20%).

Grounds Maintenance Services

- 3.10 Grounds maintenance is currently included in the Public Realm contract and covers Brent's parks and open spaces, housing estates, highways grass verges and allotments. There are approximately 114 parks and open spaces, over 150 playgrounds and sport pitches, over 270 housing estates, over 350 highways grass verges and 21 allotments across the borough which are regularly maintained. The estimated cost of grounds maintenance service provision within the total Public Realm contract is £2.6m per annum, with £400k of this funded from the Housing Revenue account for grounds maintenance on housing estates.
- 3.11 Grounds maintenance services are discretionary, however the Council has a duty of care to maintain our green spaces and ensure health and safety is not compromised. Moreover, providing quality green spaces and enhancing green space provision are key aims of both the RLS programme (a clean, green environment) and the Brent Climate & Ecological Emergency Strategy (theme: nature and green space). Our objective for the borough is ambitious: for Brent to be one of the greenest, most biodiverse and climate-resilient boroughs in London, with our residents better connected to nature. The delivery of an effective grounds maintenance service will ensure that the borough's green spaces are well maintained and create a high quality, safe environment which encourages residents and visitors alike to use the available facilities, adding to their health, wellbeing and quality of life.

4.0 Detail

- 4.1 The procurement strategy for a new Grounds Maintenance Contract is set out in detail in this section.

Soft Market Engagement

- 4.2 The Council held a soft market engagement exercise to discuss the potential approach to tendering for a new grounds maintenance contract with potential bidders. The soft market engagement opportunity was advertised via the Brent e-tendering portal and on the Find a Tender Service. Four expressions of interest were received. Interviews were held with four companies. It was made clear in this process that any proposed procurement approach was provisional and subject to Cabinet decision in January 2022.
- 4.3 The aims of the market engagement were to seek views from potential bidders on the Council's outline procurement strategy and to understand what would make any procurement exercise attractive to the market. The discussions were highly informative and can be summarised as follows:

- There was consensus on the length of the contract linked to the expected life of fleet; a main term of eight years and mutually agreeable extensions of up to a maximum of eight years.
- Most companies would prefer the council to finance the fleet, with the contractor to specify, procure and maintain the fleet at their own risk.
- The proposed use of Competitive Procedure with Negotiation for the procurement of this contract was favoured overall
- There was consensus that litter picking and litter bin emptying functions in parks and open spaces would be best served by the grounds maintenance contractor to aid operational requirements
- Most companies would prefer that fly-tip removal from parks and open spaces is dealt with by the council's cleansing and waste services provider due to risks around tonnages and resourcing requirements
- Although few providers had their own arboriculture division, most would be able to assist with ad hoc tree risk issues such as storm damage, to ensure a reduction in risk to visitors to our green spaces. It was suggested that emergency tree maintenance could be included as a schedule of rates item.
- There was strong support for adopting a neighbourhoods model to delivering grounds maintenance services, with stated benefits including that it provides ownership, familiarity with local residents and potential efficiencies around carbon emissions and overheads
- All companies were supportive of the council's plan to insource the Parks Warden function and confirmed their ability to work alongside an insourced function to achieve shared goals around park safety and community engagement
- All companies shared their experience of enhancing biodiversity and working with 'friends of parks' and community groups in delivering grounds maintenance services
- All companies shared their experience of using intelligence-led approaches to enable efficient delivery of grounds maintenance services. All companies also confirmed the ability to provide a Management Information System (MIS) to track and provide the council access to this data
- All companies supported our Social Value and Ethical Procurement Policy objectives and now see social value as a core part of their business.

Benefits of a Standalone Grounds Maintenance Contract

4.4 A standalone grounds maintenance contract will provide the following benefits and opportunities:

- Maximising the physical and mental health and well-being benefits arising from access to nature and outdoor sports and physical activity
- Promotion of nature and biodiversity, including enhanced horticultural standards
- Implementing a consistent green infrastructure vision and standards across all Council-owned land

- Delivering climate change adaptation measures such as increasing spaces for cooling and shelter and reducing surface water flood risk
- Engagement and involvement of local people in green activities (e.g. tree planting, flower bed maintenance)

Vision for the Grounds Maintenance Contract

4.5 The vision for this contract is to:

- Improve the way Brent 'looks and feels' to residents, businesses and visitors including good quality and clean parks and green spaces;
- Enhance the vibrancy, biodiversity and climate resilience of the borough's parks and green spaces, contributing to the council's objective for Brent to be one of the greenest, most biodiverse and climate resilient boroughs in London by 2030;
- Promote a greater connection to the natural environment for Brent residents, with more opportunities for local stakeholders to access and get involved in 'green activities' and the management and upkeep of their local green spaces;
- Promote the use of the borough's parks as a place where residents can improve their health and mental wellbeing by undertaking exercise in a structured way on good quality sports pitches and well maintained outdoor gyms and playgrounds;
- Make a positive impact on social, environmental and economic sustainability.

Business risks associated with the Grounds Maintenance Contract

4.6 The risks and mitigations associated with the grounds maintenance procurement and contract are identified in the table set out in Appendix 1.

Pre-Tender Considerations for the Grounds Maintenance Contract

4.7 In accordance with the Contract Standing Orders 88 and 89, pre-tender considerations for the procurement of the Grounds Maintenance Contract have been set out in Table 3 below.

Table 3: Grounds Maintenance Contract pre-tender considerations

Ref.	Requirement	Response
(i)	The nature of the services.	Grounds maintenance services in parks and open spaces, housing, highways and allotments.
(ii)	The estimated value.	Circa £43m in nominal terms including indexation and exclusive of VAT over 16 years. (£53m inclusive of VAT).
(iii)	The contract term.	The contract term will be a maximum of 16 years, with an initial term of eight years and the option for mutually agreeable extensions of up to eight additional

Ref.	Requirement	Response	
		years.	
(iv)	The tender procedure to be adopted.	<p>The Competitive Procedure with Negotiation (CPN). The grounds for the use of CPN are set out in the legal implications section of this report. The ground that is relevant to the procurement of the Grounds Maintenance Contract is that:</p> <ul style="list-style-type: none"> “the contract cannot be awarded without prior negotiation because of the nature of the requirement, the complexity of its legal and financial make-up for because of its risks”. <p>The envisaged key areas for negotiation where these grounds are applicable currently comprise: the fleet and equipment strategy, in particular with regard to opportunities for electrification and carbon minimisation; enhanced horticultural standards and biodiversity; improving recycling in parks; community engagement and volunteer programmes; enhanced participation in sports and physical exercise; and business development plan for events arrangement and income generation.</p> <p>In each key area, negotiation with suppliers may be required in order to achieve an overall position that best meets the Council’s requirements, is affordable based on the Council’s budgets, and achieves an agreeable apportionment of risk between Council and provider.</p>	
v)	The procurement timetable.	Indicative dates are:	
		Statutory consultation with BHM leaseholders – Stage 1 Notice of Intent	29/11/21 – 10/01/22
		Cabinet approval to issue Contract Notice	17/01/22
		Decision to proceed with issuing Contract Notice (Recordable / Delegated Decision)	25/01/22
		Adverts placed	26/01/22
		Expressions of interest returned	26/02/22

Ref.	Requirement	Response	
		Shortlist drawn up in accordance with the Council's approved criteria	11/03/22
		Issue invitation to Submit Initial Tender (ISIT)	15/03/22
		Deadline to submit Initial Tenders (ISIT)	22/04/22
		Letters to successful bidder(s) / Issue invitation to Participate in Negotiation (if required)	09/05/22
		Issue Invitation to Submit Final Tenders (ISFT)	14/06/22
		Deadline to Submit Final Tenders (ISFT)	08/07/22
		Evaluation and moderation of Final Tenders	11/07/22 – 22/07/22
		Report recommending Contract award circulated internally for comment	August 2022
		Cabinet approval to award (in principle decision)	12/09/22 [TBC]
		Cabinet call in period of 5 days	13/09/22 - 19/09/22 [TBC]
		Minimum 10 calendar day standstill period and notification issues to all tenderers and additional debriefing of unsuccessful tenderers	13/09/22 – 23/09/22
		Statutory consultation with BHM leaseholders – Stage 2 Notice of Proposal/Estimates	13/09/22 – 18/10/22
		Period for Council response to written observations from BHM leaseholders	19/10/22 – 9/11/22
		Decision to proceed with award (Key / Delegated Decision)	10/11/22
		Key Decision call in period of 5 days	11/11/22 – 17/11/22

Ref.	Requirement	Response									
		Contract Award letter issued to successful tenderer	18/11/22								
		Contract Mobilisation	21/11/22 – 31/03/23 [4 months]								
		Contract start date	01/04/23								
(vi)	The evaluation criteria and process.	<p>1. At selection stage shortlists are to be drawn up in accordance with the Council's Contract Procurement and Management Guidelines by the use of a selection questionnaire to identify organisations meeting the Council's financial standing requirements, technical capacity and technical expertise.</p> <p>2. At tender evaluation stage, the panel will evaluate the tenders against the following criteria:</p> <table border="1" data-bbox="762 887 1323 1041"> <tbody> <tr> <td data-bbox="762 887 1066 925">Quality</td> <td data-bbox="1070 887 1323 925">40%</td> </tr> <tr> <td data-bbox="762 931 1066 969">Social Value</td> <td data-bbox="1070 931 1323 969">10%</td> </tr> <tr> <td data-bbox="762 976 1066 1014">Commercial Risk*</td> <td data-bbox="1070 976 1323 1014">5%</td> </tr> <tr> <td data-bbox="762 1021 1066 1041">Price</td> <td data-bbox="1070 1021 1323 1041">45%</td> </tr> </tbody> </table> <p>This proposed evaluation criteria supports the goal of enhanced quality of service provision at an affordable cost within the Council's overall budget provision.</p> <p>*The full Tier 1 criteria for Commercial and Risk is: acceptability of the contractual and risk position based on bidder commentary on and/or mark-up of the Contract, including both the Conditions of Contract and the Schedules.</p>		Quality	40%	Social Value	10%	Commercial Risk*	5%	Price	45%
Quality	40%										
Social Value	10%										
Commercial Risk*	5%										
Price	45%										
(vii)	Any business risks associated with entering the contract.	Business risks and mitigations are outlined in the table in Appendix 1 of this report.									
(viii)	The Council's Best Value duties.	This procurement process and on-going contractual requirement will ensure that the Council's Best Value obligations are met.									

Ref.	Requirement	Response
(ix)	Consideration of Public Services (Social Value) Act 2012	The Council is under duty pursuant to the Public Services (Social Value) Act 2012 (“the Social Value Act”) to consider how 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. Officers have had regard to considerations contained in the Social Value Act in relation to the procurement and 10% of the evaluation criteria will be assigned to evaluating the bidders’ social value proposals.
(x)	Any staffing implications, including TUPE and pensions.	See section 9 below.
(xi)	The relevant financial, legal and other considerations.	See sections 6, 7 and 8 below.
(xii)	Sustainability	This procurement will be undertaken in line with the Council’s Sustainable Procurement Policy.
(xiii)	Key Performance Indicators / Outcomes	<p>The strategic outcomes for the contract are as follows:</p> <p>Strategic Outcome 1: Provide best value and an affordable solution for Grounds Maintenance service provision that lies within the parameters of the Council’s available resources</p> <p>Strategic Outcome 2: Improve the way Brent ‘looks and feels’ to its residents, businesses and visitors, by adopting a neighbourhood approach to meet the needs of local areas, including opportunities for the involvement of local stakeholders in the development and maintenance of green spaces</p> <p>Strategic Outcome 3: Enhance biodiversity and climate-resilience in the borough’s parks and green spaces through differentiated planting strategies and the development of measures to tackle the impacts of climate change (e.g. flooding and drought), ensuring the service contributes to the council’s Climate and Ecological Emergency Strategy objective for Brent to be one of the greenest, most biodiverse and climate-resilient boroughs in London by 2030</p> <p>Strategic Outcome 4: Ensure a user focused</p>

Ref.	Requirement	Response
		<p>approach, improving the quality, clarity and timeliness of information shared with stakeholders on how the service is being deployed, and quickly resolving service failures</p> <p>Strategic Outcome 5: The Contractor reduces the greenhouse gas (GHG) emissions from the operations of the Services to support the Council's commitment to achieve carbon neutrality by 2030 and contribute to the Mayor of London's Emissions Performance Standard (EPS)</p> <p>Strategic Outcome 6: The Contractor commits to support the Council's objective to reduce the use of harmful pesticides in the maintenance of green space across the borough</p> <p>Strategic Outcome 7: Deliver better Social Value outcomes via the Council's Social and Ethical Procurement Policy</p> <p>The Grounds Maintenance Contract will include a robust KPI framework.</p>
(xiv)	London Living Wage	<p>The existing contractor pays staff working on the Public Realm Contract the London Living Wage. The new Grounds Maintenance Contract will require the payment of the London Living Wage to London based staff working on the contract.</p>
(xv)	Contract Management	<p>The contract will be monitored by the Parks Service of the Environmental Services Directorate. The team will audit the contractor's work and help identify and deliver further opportunities for service efficiencies.</p> <p>The contract will be managed through: a fortnightly (or more frequently if parties agree) Contract Operations Group discussing day to day issues; a monthly Contract Management Group monitoring performance and payment, and a quarterly Contract Partnership Board ensuring that the goals of the contract are being met and determining the future direction of the contract.</p> <p>A partnership/team approach will be fostered in relation to joint delivery of services on the ground between council and contractor staff.</p>

- 4.8 Cabinet is asked to give its approval to these proposals as set out in the recommendations and in accordance with Standing Order 89.

Further Detail

Core Functions

- 4.9 The core functions to be delivered through the Grounds Maintenance Contract can be summarised as follows:
- Comprehensive grounds maintenance service to deliver agreed standards in all the Borough's parks, open spaces and green space on Brent Housing Management estates, while maximising opportunities for biodiversity and climate resilient planting.
 - Grounds maintenance service for all grass verges and shrub beds on public highways.
 - Maintenance of communal pathways and perimeter hedges in all allotment sites
 - Maintenance of trees within parks, open spaces and Brent Housing Management land
 - Sports pitch management and maintenance service that meets the needs of users and the applicable standards set by the relevant sport governing bodies
 - Litter picking on all green spaces and bin emptying services in parks and open spaces
 - Identification of fly-tipped waste in parks and open spaces
 - Emergency tree works in parks

Fleet Financing

- 4.10 In August 2021, Cabinet gave their approval for a total allocation of £15m from prudential borrowing to finance fleet for both the Integrated Street Cleansing and Waste Contract and the Grounds Maintenance Contract. This included a provisional allocation of £2.0m to purchase grounds maintenance fleet and equipment on an "as is" basis, subject the market expressing an interest in this approach during Soft Market Engagement. This capital allocation will allow vehicles to be financed upfront rather than through the life of the contract, and was deemed necessary in order to broaden the number of bidders who can bid for the contracts and to achieve savings for the Council.
- 4.11 The fleet financing strategy will be developed during the Grounds Maintenance Contract procurement process in which we will consider the market's offer and negotiate (if necessary) on the best solution for fleet in relation to the reliability of service provision and our net carbon zero and air quality targets. This will include consideration of the most appropriate timings and phasing of fleet financing and procurement to ensure the Council benefits from reductions in manufacturing costs and developments in the reliability of new technologies as these are introduced and trialled in the market.

- 4.12 It is stressed that this figure is for a like for like fleet and that should the Council wish to introduce electrification of fleet, this will require additional cost not included in these figures above. Officers will consider options in respect of electrification during negotiation on the Grounds Maintenance Contract and will bring back an additional bid for fleet electrification in spring 2022.

5.0 Alternative Options Considered

- 5.1 The alternative delivery model options applicable to the Grounds Maintenance Contract that were identified and assessed as part of the RLS review, and included in the Best Value Consultation that took place in June 2021, are listed below. Further detail on these options can be found in the appendices contained within the August 2021 Cabinet report on the Final RLS Delivery Model. It should be noted that there was limited support for any of these options in the Best Value Consultation responses.

- The 'as is' model of integration within a public realm services contract
- An integrated 'clean and green' contract with street cleansing services
- Local Authority Company
- Internal Provision (i.e. insourcing)
- Multiple contracts model with multiple contracts within service areas

6.0 Financial Implications

- 6.1 The grounds maintenance service is currently included in the Public Realm Contract. The estimated cost of the grounds maintenance provision within the total Public Realm Contract cost is £2.6m per annum, including the Park Wardens function. Of the current provision, £400k of this funded from the Housing Revenue Account for grounds maintenance on housing estates.
- 6.2 The cost of the new Grounds Maintenance Contract will be funded from the existing allocation in R&E budgets for the Public Realm Contract, and from the Housing Revenue Account for grounds maintenance on housing estates.
- 6.3 The additional cost of insourcing the Park Wardens function (£32k per annum) as part of the Final RLS Delivery Model will be met by finding efficiencies or savings within existing Regeneration and Environment budgets.
- 6.4 The £15m capital allocation from prudential borrowing for financing vehicles for the Integrated Street Cleansing and Waste Contract and the Grounds Maintenance Contract (described in paragraph 4.10 to 4.12 above) was approved by Cabinet in August 2021. This included a £2.0m allocation for the purchase of Grounds Maintenance fleet. This figure includes 20% contingency for market and inflationary variations.
- 6.5 This capital allocated will be fully funded by a reduction in the Integrated Street Cleansing and Waste and Grounds Maintenance contract revenue budgets.

7.0 Legal Implications

- 7.1 The Grounds Maintenance Contract falls within the definition of a ‘public services contract’ under the Public Contracts Regulations 2015 (‘PCR 2015’) and is above the procurement threshold for services (£213,744 (inclusive of VAT) from 1 January 2022). As such, the procurement is subject to the full application of the procurement rules under PCR 2015. The contract is also categorised as a high value contract under the Council’s contract standing orders and accordingly is subject to the Council’s rules for high value contracts.
- 7.2 It is proposed to use the Competitive Procedure with Negotiation (CPN) for the procurement of the Grounds Maintenance Contract. The CPN is a specific legislative procurement route set out in the PCR 2015 which allows contracting authorities to negotiate with bidders on various aspects of the procurement. Use of this procedure is restricted to the circumstances set out in the PCR 2015, namely:
- Where needs cannot be met without adaptation of readily available solutions;
 - Where the works, services or supplies include design or innovative solutions;
 - Where the contract cannot be awarded without prior negotiation because of the nature of the requirement, the complexity of its legal and financial make-up or because of its risks;
 - Where the technical specifications cannot be established with sufficient precision with reference to particular standards; and
 - In the case of where only unacceptable/irregular tenders have been submitted in an open or restricted procedure.
- 7.3 In order to use the CPN procedure for the procurement of the Grounds Maintenance Contract, the Council must establish that the procurement of the services falls within one of the grounds above. The justification for use of the CPN procedure is set out in (iv) of the table at paragraph 4.7 of this report.
- 7.4 The CPN process allows for acceptance of an initial tender following evaluation of initial tenders if that option is included in the Contract Notice advertising the procurement for the contract. In the event that an initial tender is accepted, there would be no negotiation with bidders. The Council will have the freedom to decide whether to proceed with negotiation to seek an improvement to tenders.
- 7.5 Regulation 29 of PCR 2015 requires contracting authorities using the CPN process to define the minimum requirements to be met by all tenderers. This must be done in the procurement documents which are usually issued at the same time as the Contract Notice. Those minimum requirements cannot be subject to negotiation. Accordingly, when conducting any negotiation and taking account of resident feedback from the public engagement exercise referred to in paragraph 10.4 to 10.6, the minimum requirements cannot be changed. However, there will be scope for officers to take resident feedback into account in matters which fall outside of the minimum requirements.

- 7.6 For High Value Contracts valued over £5 million for services, the Cabinet must approve the pre-tender considerations set out in paragraph 4.7 of this report (Standing Order 89) and the inviting of tenders (Standing Order 88).
- 7.7 Once the tendering process is undertaken, Officers will report back to the Cabinet explaining the process undertaken in tendering the contract and recommending award of the contract subject to completion of the leaseholder consultation process.
- 7.8 As the procurement is subject to the full application of the PCR 2015, the Council must observe the requirements of the mandatory minimum 10 calendar day standstill period imposed by the PCR 2015 before the contract can be awarded. The requirements include notifying all tenderers in writing of the Council's decision to award and providing additional debrief information to unsuccessful tenderers on receipt of a written request. The standstill period provides unsuccessful tenderers with an opportunity to challenge the Council's award decision if such challenge is justifiable. However if no challenge or successful challenge is brought during the period, at the end of the standstill period the Council can issue a letter of acceptance to the successful tenderer and the contract may commence.
- 7.9 There are a number of staff who TUPE transferred to the current contractor in respect of the Public Realm Contract who are entitled to pension protection if they transfer to a new contractor for the Grounds Maintenance Contract and continue to work on delivery of the services. Pension protection will either be via access to the Local Government Pension Scheme or by provision of a broadly comparable scheme. In the event that the Contractor selects the option of access to the LGPS, the Council will enter into an admission agreement with the contractor in respect of such staff. The implications for Council staffing levels are identified in section 9 of this report.

Leaseholder Consultation

- 7.10 Given that this is a Qualifying Long-Term Agreement (QLTA) for the purposes of Section 20 of the Landlord and Tenant Act 1985 (as amended), the consultation procedure set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 ('the 2003 Regulations') must be followed. The applicable provision in the 2003 Regulations is Schedule 2, as this is a QLTA where Public Notice is required to be given via the Find a Tender Service at <https://www.find-tender.service.gov.uk/>
- 7.11 The purpose of the consultation procedure is for leaseholders to be kept informed at the key stages of entering into a new contract for grounds maintenance services in Brent, and to permit leaseholders to make written observations within stipulated time periods, to which the Council is required to have regard.

- 7.12 Although leaseholders may encourage contractors to apply through the Find a Tender Service, given the value of the proposed contract they are not entitled to nominate contractors themselves as part of the consultation process.

Purchase of the Fleet for the Grounds Maintenance Contract

- 7.13 In August 2021 Cabinet gave provisional approval to use prudential borrowing to fund the fleet for the Grounds Maintenance Contract. The legal implications associated with that decision were addressed in the August Cabinet report. Officers will explore the options for financing the fleet through the CPN procurement process. Proposals will be finalised and the detail will be included in the contract award report for the contracts in due course.

8.0 Equality Implications

- 8.1 In 2020 an Equality Analysis was undertaken in relation to the RLS programme as a whole and no adverse equality or diversity implications were identified. This was updated in July 2021 to include consideration of the Final RLS Delivery Model and again no adverse equality or diversity implications were identified.

- 8.2 We will develop an equality impact assessment (“EIA”) for the Grounds Maintenance Contract during the negotiation process as we start to gain an understanding of any potential changes to the specification and this will be completed in time to inform the contract award report scheduled for September 2022. The EIA will identify if there are any adverse impacts on those with protected characteristics from the proposals and if there are, to decide what acts (if any) should be carried out to mitigate any identified adverse impacts on equalities arising from the proposal(s).

9.0 Any Other Implications (HR, Property, Environmental Sustainability – where necessary)

- 9.1 The Final RLS Delivery Model includes the insourcing of the park warden function. This will involve the TUPE transfer to the Council of contractor staff currently assigned to that function (6 members of staff). The TUPE transfer will need to be managed in partnership with Human Resources and in line with current HR Policies and Procedures and legislative requirements. Throughout these processes, consultation will be required with relevant individuals, partners, stakeholders and Trade Unions as appropriate.

- 9.2 Council-owned satellite depot sites located within the borough’s parks will be made available to the appointed service provider to deliver the Grounds Maintenance Contract. It is envisaged that at least one of these sites will be designated for exclusive use by the Grounds Maintenance contractor, while the remainder may be leased on a shared basis with the provider of the Integrated Street Cleansing and Waste Contract. This will be done by granting a lease to the Grounds Maintenance Contractor and the lease will permit sharing occupation of the depot thereby allowing the Ground Maintenance

Contractor to enter into a sharing arrangement with the Integrated Street Cleansing and Waste contractor.

- 9.3 A clean and green environment is a key priority for the RLS programme and every opportunity is being explored to ensure that future services and depot arrangements are aligned to our commitments to tackle the climate emergency, air pollution, waste and enhance green spaces and biodiversity.

10.0 Consultation with Ward Members and Stakeholders

- 10.1 Targeted consultation on the RLS Delivery Model Options to comply with Section 3 LGA 1999 took place from 17 May to 28 June 2021 and the results of this exercise and how these have influenced the Final RLS Delivery Model are set out in section 4 of the August 2021 Cabinet Report, with further detail in Appendix 1 of that report.
- 10.2 The RLS Members' Reference Group has met several times to consider the RLS programme, the RLS Review, the Delivery Model Options and statutory consultation results, the Final RLS Delivery Model and proposals for public engagement on waste, cleansing and grounds maintenance services this winter.
- 10.3 An All Member meeting took place on 17 November to provide further information on the public engagement programme described in the section below and opportunities for all members to participate.

Public Engagement: Let's Take Climate – Waste and Green Space Edition

- 10.4 The procurement of the Grounds Maintenance Contract, together with the Integrated Street Cleansing and Waste Contract, provides a once in a decade opportunity to address the following objectives in a holistic way:
- Raise awareness amongst the whole community of the council's climate and ecological commitments and the challenges we all face
 - Drive more sustainable behaviours
 - Reduce the environmental impact of our public realm contracts.
- 10.5 An engagement programme titled, 'Let's Talk Climate: Waste and Green Space Edition', will take place over 12 weeks from 15 November 2021 to 4 February 2022, allowing for 9 active weeks avoiding the festive season. The engagement will focus on what the community can do as much as what the Council can do, to work towards net zero and cleaner, greener neighbourhoods.
- 10.6 This engagement will be concluded prior to the commencement of competitive dialogue sessions with bidders in March 2022 on the Integrated Contract and prior to negotiation with GM contract bidders in April 2022, assuming that the competitive procedure with negotiation is used for the GM procurement as is

currently proposed. The procurement process will therefore enable officers to take account of the community's feedback at the appropriate stages.

- 10.7 Further detail on the planned for public engagement programme is set out in the November 2021 Cabinet Member Decision report.

Brent Housing Management Leaseholder Consultation

- 10.8 Grounds maintenance services on housing estates is a core function of the Grounds Maintenance Contract. As stated above in paragraph 7.10, the Council is required (pursuant to section 20 of the Landlord and Tenant Act 1985) to consult with its leaseholders when entering into any Qualifying Long Term Agreement (QLTA).

- 10.9 The statutory consultation with Council Leaseholders will take place in two stages:

- **First Stage - Notice of Intention:** 29 November 2021 to 10 January 2022
- **Second Stage - Notice of Proposals / Estimates:** 13 September 2022 – 18 October 2022

- 10.10 Both notices are to be completed in accordance with Schedule 2 to the Service Charges (Consultation Requirements) (England) Regulations 2003 ('the 2003 Regulations').

- 10.11 The purpose of the first notice is to provide leaseholders with general information about the proposed contract and to invite their written observations on it, which the Council is required to have regard to.

- 10.12 The purpose of the second notice is for the Council to send leaseholders information about the proposed agreement, including the name of every contractor involved in that agreement and the leaseholders' estimated contributions (if known; otherwise the estimated costs or if these are also not known at the time, the Council should provide this information to the leaseholders once received). The second notice should also include a copy of the proposal itself, or the option to inspect it, inviting written observations from the leaseholders on the same.

Related Documents:

Cabinet – 16 August 2021 – RLS: Final Delivery Model & Integrated Street Cleansing and Waste Contract Procurement Strategy

Cabinet Member Decision – 10 November 2021 – Public Engagement Proposals: Let's Talk Climate – Waste and Green Space Edition

Report sign off:

Alan Lunt
Strategic Director of Regeneration
and Environment