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|  | Officer Key Decision |
| | Report to the Corporate Director, Neighbourhoods & Regeneration |
| | Lead Cabinet Member for Environment |
| Authority to award contract for Highway Structures Services | |

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| Wards Affected: | All |
| Key or Non-Key Decision: | Key Decision |
| Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small> | Open |
| No. of Appendices: | None |
| Background Papers: | None |
| Contact Officer(s): <small>(Name, Title, Contact Details)</small> | <p>Jonathan Westell Highways Contracts & Delivery Manager jonathan.Westell@brent.gov.uk</p> <p>Tony Kennedy Head of Service, Highways Management tony.kennedy@brent.gov.uk</p> <p>Chris Whyte Director Environment & Leisure chris.whyte@brent.gov.uk</p> |

1.0 Executive Summary

- 1.1 This report concerns the award of a contract for highway structures services via the SCAPE Consultancy framework (the Infrastructure Consultancy (Lot 2) (the “Framework”)). . This report requests authority to award a contract as required by Contract Standing Order 88. This report summarises the process undertaken

in procuring a contract and recommends to whom the contract should be awarded.

2.0 Recommendation(s)

That the Corporate Director, Neighbourhoods & Regeneration:

- 2.1 Approves the pre-tender considerations set out in paragraph 3.8.
- 2.2 Approves the award of a contract for highway structures services to Perfect Circle JV Limited for 24 months for the sum of £450,000 p.a. for a total sum of £900,000.00 excl VAT.

3.0 Detail

Background

- 3.1 The Council requires the provision of highway structures services; both for day-to-day operational support in managing its highway structures and also for carrying out inspections, studies and assessments and the design of measures or maintenance interventions for those structures. Officers have considered whether the highway structures services can be provided by the Council itself but have concluded that highway structures services is best provided by a contractor. Previously the highways team included a structures / asset engineer, who left around five years ago and was not replaced due to financial constraints. From that point on the highways structures client function was provided at a basic level by a engineer seconded from AECOM, 1- 1.5 days a week. This allowed the Council to achieve required savings. AECOM were then commissioned to carry out consultancy works as an when required on an adhoc basis, allowing the Council access to scarce skilled staff at flexible resource levels commensurate with Council's limited budgets As a stopgap measure Officers propose the use of a framework is the most viable and effective means of procuring a contractor to provide service continuity.
- 3.2 Officers propose to call off from the SCAPE Framework - Infrastructure Consultancy (Lot 2) (the "Framework"). (see SCAPE Consultancy EWN1 - Tender Report Client version). Officers have identified a contractor providing the effective option for service continuity and therefore recommend award of a contract for highway structures services (the "Contract").

Contribution to Borough Plan Priorities & Strategic Context

- 3.3 This work aligns well with our Borough Plan, particularly "Prosperity & Stability in Brent" and "A Cleaner Greener Future". Our efforts to reduce the carbon footprint of our highways works help our "Climate and Ecological Emergency Strategy". Overall, highway maintenance including maintenance of structures allows our highway assets their continued availability to contribute towards the "Transportation Strategy".

The Procurement Process

- 3.4 The Contract will be called off from the Framework, using the form of award and standard call off terms and conditions prescribed under the Framework with minor amendments.
- 3.5 The Framework permits award by way of a direct award. A member of the Perfect Circle JV Limited, has provided highway structures services since 2013 when they were initially part of the ConwayAECOM joint venture which provided Brent's highway maintenance services as a call-off from TfL's LoHAC NW London contract. That prior contract was extended and novated to FM Conway in 2021, but the service was continued via a subcontracting arrangement. As the prior contract has now expired with FM Conway, alternative arrangements for service provision have been sought.
- 3.6 Officers have reviewed the Framework information for all contractors on the Scape Infrastructure Consultancy Framework (Lot 2). Officers have identified appointing Perfect Circle JV Limited as the most viable option to maintain service continuity. The Contract is for 24 months in the sum of £450,000 p.a. for a total sum of £900,000.00 excl VAT.
- 3.7 The contract will commence on 13th May 2024 subject to call-in

Pre-tender Considerations

- 3.8 The pre-tender considerations relevant to the Contract are as follows:

| Ref. | Requirement | Response | |
|-------|--|---|---------------------------|
| (i) | The nature of the services / supplies / works. | As detailed above | |
| (ii) | The value. | 24 months at £450,000 p.a. = £900,000.00 excl. VAT. | |
| (iii) | The contract term. | 24 months | |
| (iv) | The tender procedure to be adopted. | Direct Award from a Framework | |
| (v) | The procurement timetable. | Stage in Procurement | Indicative dates |
| | | Authority to Award | 13 th May 2024 |
| | | Initial Client Engagement | 14 th May 2024 |
| | | Production of Service Request Proposal | 20 th May 2024 |

| Ref. | Requirement | Response |
|--------|---|---|
| | | Pre-Procurement Engagement activities – if required by Client |
| | | Execution of Delivery Agreement via DocuSign |
| | | n/a |
| | | 27 th May 2024 |
| (vi) | The evaluation criteria and process. | N/A – Direct Award pursuant to the Framework. |
| (vii) | Any business risks associated with entering the contract. | No specific business risks are considered to be associated with entering into the Contract. |
| (viii) | The Council's Best Value duties. | For the reasons set out in Section 3, it is considered that Direct Award will result in the council taking the best option for service continuity to maintain important highways assets |
| (ix) | Consideration of Public Services (Social Value) Act 2012 | This is a direct award via an existing framework, consideration of Public Services (Social Value) Act 2012 was not part of the process |
| (x) | Any staffing implications, including TUPE and pensions. | There are no implications for Council staff arising from the procurement. |
| (xi) | The relevant financial, legal and other considerations. | Financial – See Financial Considerations at Section 5. Legal – See Legal Consideration at Section 6. Other – N/A |
| (xii) | Sustainability | Given the nature and value of the Contract, it is not possible to include specific sustainability requirements. |
| (xiii) | Key Performance Indicators / Outcomes | N/A |
| (xiv) | London Living Wage | Given the nature of the Contract it is not appropriate to include provision requiring payment of the London Living Wage. |
| (xv) | Contract Management | A contract manager will be appointed and appropriate contract management provisions will be included in the Contract. |

4.0 Stakeholder and ward member consultation and engagement

4.1 N/A.

5.0 Financial Considerations

5.1 Part 3 of the Council's Constitution states that the Corporate Director, Resident Services has delegated authority to approve the award of contracts for services valued at less than £2 million. The estimated value of the Contract is under this threshold.

5.2 The cost of the Contract will be funded from existing Highways revenue and capital maintenance budgets.

6.0 Legal Considerations

6.1 The estimated value of the Contract over its lifetime is in excess of the Public Contracts Regulations 2015 (the "PCR 2015") threshold for Services and the award of the Contract is therefore governed by the PCR 2015.

6.2 Officers recommend the use of a framework to procure the Contract. The PCR 2015 allow the use of framework agreements and prescribe rules and controls for their procurement. Contracts may then be called off under such framework agreements without the need for them to be separately advertised and procured through a full procurement process. Call offs under the framework agreement need to be carried out in accordance with the framework rules, to include using evaluation criteria specified in the framework agreement and utilising the terms and conditions set out in the framework agreement.

6.3 The Council's Contract Standing Orders state that no formal tendering procedures apply where contracts are called off under a framework agreement established by another contracting authority, where call off under the framework agreement is approved by the relevant Corporate Director or Director and provided that the Corporate Director, Governance has advised that participation in the framework is legally permissible. The Corporate Director, Governance has confirmed that participation in the Framework is legally permissible.

6.4 Section 41 of the Highways Act 1980 places a duty on the council as highways authority to maintain the public highway. The Highways Maintenance Scheme Programme must make sufficient provision for the Council to comply with this duty. Breach of this duty can render the council liable to pay compensation if anyone is injured as a result of failure to maintain the highway. There is also a general power under section 62 of the Highways Act 1980 to improve highways.

6.5 The award of the Contract is subject to the Council's own Standing Orders in respect of Medium Value Contracts. The Corporate Director has delegated

power to award Medium Value Contracts in accordance with paragraph 9.5 and paragraph 9.7 of Part 3 of the Constitution.

- 6.6 The decision to award the Contract will be subject to call-in as provided for in the Council's Constitution. As the procurement of the Contract is from a framework, there is no requirement for the Council to observe a 10 day standstill period under the PCR 2015, and no voluntary period will be observed. Subject to no challenge preventing award through call-in, Officers will seek to implement the decision to award.

7.0 Equality, Diversity & Inclusion (EDI) Considerations

- 7.1 Pursuant to s149 Equality Act 2010 (the "Public Sector Equality Duty"), the Council must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination, harassment and victimisation and other conduct prohibited under the Act
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it,

- 7.2 The Public Sector Equality Duty covers the following nine protected characteristics: age, disability, marriage and civil partnership, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

- 7.3 Having due regard involves the need to enquire into whether and how a proposed decision disproportionately affects people with a protected characteristic and the need to consider taking steps to meet the needs of persons who share a protected characteristic that are different from the needs of persons who do not share it. This includes removing or minimising disadvantages suffered by persons who share a protected characteristic that are connected to that characteristic.

- 7.4 There is no prescribed manner in which the council must exercise its public sector equality duty but having an adequate evidence base for its decision is necessary.

- 7.5 The proposals in this report have been subject to screening and officers believe that there are no adverse equality implications

8.0 Climate Change and Environmental Considerations

- 8.1 The Highways Management service are keen to play an ever-increasing role in reducing carbon and other greenhouse gas emissions from within our remit. The industry code of Practice "Well Managed Highway Infrastructure" recommends:

“The effects of extreme weather events on highway infrastructure assets should be risk assessed and ways to mitigate the impacts of the highest risks identified.” [Recommendation 21]

“The impact of highway infrastructure maintenance activities in terms of whole life carbon costs should be taken into account when determining appropriate interventions, material and treatments.” [Recommendation 32]

- 8.2 It is important that decision making in highways asset management be taken with these recommendations in mind. At the same time, London Boroughs should work to ensure that the Mayoral policy of London being carbon neutral by 2030 is achieved.
- 8.3 The challenge of reducing carbon footprint for the maintenance of the highways asset dovetails well with the aim of highways asset management; which is to have a structured approach to managing assets effectively and minimise the whole life cost of the asset whilst delivering the required levels of service.
- 8.4 Given that our aim is to minimise ongoing maintenance; all maintenance has its carbon footprint and so by minimising maintenance - especially by increasing planned maintenance (which is by its nature more cost effective) and thereby decreasing the need for reactive maintenance – we also decrease carbon emissions.

9.0 Human Resources/Property Considerations (if appropriate)

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

10.0 Communication Considerations

- 10.1 N/A

Report sign off:

Alice Lester
Corporate Director Neighbourhoods and Regeneration