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|  | Officer Key Decision |
| | Report to the Strategic Director of Regeneration and Environment |
| AUTHORITY TO AWARD CONTRACT FOR FOOTWAY IMPROVEMENT PROGRAMME | |

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| Wards Affected: | All |
| Key or Non-Key Decision: | Key Decision |
| Part/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: | 2 |
| Background Papers¹: | Cabinet Report: Highways Capital Scheme Programme 2019-20 15 April 2019 |
| Contact Officer(s): (Name, Title, Contact Details) | Jonathan Westell, Highways Contracts & Delivery Manager jonathan.Westell@brent.gov.uk Tony Kennedy, Head of Service, Highways & Infrastructure tony.kennedy@brent.gov.uk Chris Whyte Operational Director, Environmental Services Regeneration and Environment chris.whyte@brent.gov.uk |

1.0 Purpose of the Report

- 1.1 This report concerns the approval to appoint three suppliers to the framework for the Footway Improvement Programme and award of initial call off contracts for certain footway packages identified, with any further call-off contracts to occur in accordance with the framework call-off procedure.

- 1.2 This report requests authority to award contracts as required by Contract Standing Order 88. This report summarises the process undertaken in tendering the framework and initial call-off contracts and, following the completion of the evaluation of the tenders, recommends which organisations should be appointed to the framework and to whom the initial call-off contracts should be awarded.

2.0 Recommendation(s)

- 2.1 That the Strategic Director of Regeneration and Environment in consultation with the Lead Member for Environment approves appointment to the Footway Improvement Programme framework and the award from it of three initial call-off contracts for the delivery of certain footway improvements identified as part of the tender process as follows:

- For the North – Eurovia Infrastructures Ltd in the sum of £5,431,734.75
- For Central – O'Hara Brothers Surfacing Ltd in the sum of £5,341,558.37
- For South – Marlborough Highways Ltd in the sum of £3,823,339.42

3.0 Detail

- 3.1 The highway work primarily consists of footway reconstruction works across the borough. There is also an allowance for additional highway works to be allocated via this framework if required.

- 3.2 The Highways Capital Scheme Programme 2019-20 report went to Cabinet on the 15th April 2019, where the following was agreed (report paragraph numbers retained)

2.3 *That Cabinet gives approval for Officers to invite tenders for a framework / contract primarily to provide for the £20m investment in footways, over the three years (2019/20, 2020/21 and 2021/22).*

2.4 *That Cabinet delegate to the Strategic Director for Regeneration and Environment in consultation with the Lead Member for Regeneration & Environment authority to agree relevant pre-tender considerations for the procurement of a suitable contractor(s) and thereafter evaluate tenders on the basis of such pre-tender considerations.*

2.5 *That Cabinet delegate to the Strategic Director for Regeneration & Environment, in consultation with the Lead Member for Regeneration & Environment authority to select contractor(s) and enter into agreement(s) with the contractor(s).*

- 3.3 The Strategic Director for Regeneration and Environment in consultation with the Lead Member for Environment agreed the pre-tender considerations on the 11 June 2019.

- 3.4 Note that the £1m Kilburn High Road scheme did not form part of this procurement package as this scheme will be delivered jointly with LB Barnet, using their term maintenance contractor.

4. The Tender Process

- 4.1 The requirement was tendered as an OJEU Open Tender on the London Tenders Portal on 14 June 2019. 17 Suppliers expressed an interest in the framework and call-off contracts.
- 4.2 All tenders had to be submitted electronically via the London Tenders portal no later than 12 noon on 22 July 2019. The tender seal on the portal was opened on the 22 July 2019 by Procurement and 10 tender submission were received. The names of the tenderers are in Appendix 1.
- 4.5 The selection questionnaire for each tenderer was evaluated for compliance for which all bidders were compliant and taken forward to the evaluation of tenders.
- 4.6 The tendering instructions stated that the appointment to the framework and call off contracts award would be 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 | Weighting |
|---------------------|-----------|
| Quality / Technical | 35% |
| Social Value | 10% |
| Commercial / Price | 55% |
| Total | 100% |

5.0 Evaluation process

- 5.1 The tender evaluation was carried out by a panel of officers from Highway Team and the Employment, Skills and Enterprise team and was moderated by Procurement.
- 5.2 Each member of the evaluation panel read the tender and carried out an initial evaluation of how well they considered each of the award criteria was addressed in the tender.
- 5.3 The panel met on 25 July 2019 with Procurement and the submission was marked by the panel against the award criteria.
- 5.4 The pricing was evaluated by the Highways & Infrastructure Service and some pricing clarifications were sought from the bidders. There was a wide range of pricing returned, with the most competitive being lower than prices given by existing contractual arrangements.
- 5.5 It should be noted that the package of works tendered was estimated to cost £19m in total to deliver, including incidental costs for tree works, design and supervision. The prices returned have confirmed that the works package can be delivered within budget.

5.6 The table below details the bids received. A more complete breakdown is included in Appendix 2.

| Summary | Weighting | Supplier 1 | Supplier 2 | Supplier 3 | Supplier 4 | Supplier 5 | Supplier 6 | Supplier 7 | Supplier 8 | Supplier 9 | Supplier 10 |
|--------------|-------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|
| Quality | 35% | 25.55% | 22.26% | 23.10% | 14.14% | 17.85% | 18.20% | 23.45% | 17.15% | 16.10% | 12.25% |
| Social Value | 10% | 6.00% | 6.00% | 8.00% | 6.00% | 8.00% | 4.00% | 8.00% | 4.00% | 4.00% | 6.00% |
| Commercial | 55% | 42.76% | 38.79% | 32.35% | 36.18% | 55.00% | 35.63% | 45.72% | 47.84% | 25.66% | 46.43% |
| Total | 100% | 74.31% | 67.05% | 63.45% | 56.32% | 80.85% | 57.83% | 77.17% | 68.99% | 45.76% | 64.68% |

5.7 Following the evaluation, the three highest scoring suppliers were identified.

5.8 Officers recommend the appointment of the following contractors to the framework and the call off contracts for the specific areas for the Footway Improvement Programme:

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| North | Eurovia Infrastructure Ltd |
| Central | O'Hara Brothers Surfacing Ltd |
| South | Marlborough Highways Ltd |

5.9 The appointment of the contractors to the specific areas was decided by the combination of the three contractors' tendered prices for the three areas which gave the lowest overall sum.

5.10 The framework and call-off contracts are envisaged to commence in November 2019.

6.0 Financial Implications

6.1 At the time of the tender process Brent council officers validated the financial standing of the shortlisted contractors and they all met the required standards as specified in the tender pack.

6.2 The budget approved by the April 2019 cabinet decision is sufficient to fund the awarded contracts.

7.0 Legal Implications

7.1 The nature and value of the framework agreement makes it subject to the Public Contracts Regulations 2015 (the EU Regulations). Appointment to the framework agreement and award of call-off contracts is subject to the Council's own Standing Orders in respect of High Value contracts and Financial Regulations.

- 7.2 Cabinet on 15 April 2019 approved the procurement of the framework agreement and delegated authority to the Strategic Director of Regeneration and Environment in consultation with the Lead Member for Regeneration, Highways and Planning to approve the pre tender considerations in accordance with Standing Order 89 and the award of contracts and the subsequent selection of contractors and entry into agreements with those contractors.
- 7.4 As this procurement is subject to the full application of the EU Regulations, the Council must observe the requirements of the mandatory minimum 10 calendar days' standstill period imposed by the EU Regulations before appointment to the framework. Therefore, once the Strategic Director of Regeneration and Environment has approved appointments to the framework and award of call-off contracts from it, all tenderers will be issued with written notification of the decision. A minimum 10 calendar day standstill period will then be observed before appointment to the framework is concluded – this period will begin the day after all Tenderers are sent notification of the appointment 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 tenderers will be issued with a letter of acceptance and the appointments to the framework and call-off contracts from it can commence.
- 7.5 As this contract involves new additional works to footways, it is not considered that the Transfer of Undertakings (Protection of Employment) Regulations 2006 will apply to the framework or call-off contracts.

8.0 Equality Implications

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

9.0 Consultation with Ward Members and Stakeholders

- 9.1 Members' nominations for footway maintenance over the last five years were taken into account in drawing up the programme
- 9.2 A Members' briefing session was held on 8th April. The draft programme was tabled and Members were then invited to give feedback, which was taken on board in finalising the programme.

10.0 Human Resources/Property Implications (if appropriate)

- 10.1 This service is currently provided by an external contractor and there are no implications for Council staff arising from tendering the contract.
- 10.2 Additional resource will be required to monitor the contracts, carry out the contract administration and overview the works as they progress on site. This will include an internal counterpart to the contractor's Public Relations Officers, to ensure full stakeholder engagement and prompt resolution of any issues arising. It is envisaged

that these resources can be accommodated within the existing office space allocated to the Highways & Infrastructure service.

11.0 Public Services (Social Value) Act 2012

- 11.1 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. This duty does not strictly apply to the proposed framework and contracts as they are not services contracts. Nevertheless, Officers have had regard to considerations contained in the Social Value Act in relation to the procurement.
- 11.2 10% of the overall evaluation criteria was allocated to Social Value. The recommended bidders commit to pay London Living Wage. The social value commitments made by the preferred bidders were across employment & training, supporting the community, supporting local businesses and environmental.

Report sign off:

CHRIS WHYTE
Operational Director Environment

AMAR DAVE
Strategic Director Regeneration and Environment