

Subject:	Procurement of the Highway Safety Maintenance Works Contract		
Date of Meeting:	11 July 2013		
Report of:	Executive Director, Environment, Development & Housing		
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Ward(s) affected:	All		

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 This report seeks approval for the procurement of highway safety maintenance works to maintain the highway in a safe condition and to carry out emergency repairs.
- 1.2 Highway safety maintenance is a statutory function of the council.

2. RECOMMENDATIONS:

That Policy and Resources Committee:

- 2.1 Approves the procurement of a contract for the provision of highway safety maintenance for a 4 year period, with an option to extend for a further 2 years;
- 2.2 Grants delegated authority to the Executive Director, Environment, Development & Housing –
 - 2.2.1 to award the contract for 4 years following the recommendations of the evaluation panel and the results of the tendering process; and
 - 2.2.2 to extend the contract for up to 2 years, subject to satisfactory performance of the contractor.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 Duty to maintain the highway
The Highways Act 1980, Section 41(1) states:
“The authority who are for the time being the highway authority for a highway maintainable at the public expense are under a duty...to maintain the highway.”

Failure to maintain the highway would result in an increase in safety defects and potential substantial public liability costs to the authority. The local authority has no defence in a court of law if maintenance regimes are not in place.

- 3.2 If the authority can demonstrate that it has a maintenance regime, which includes routine inspections and repairs, then it is taking reasonable care.
- 3.3 The Council must inspect and repair 620 km (387 miles) of roads and 1400 km (875 miles) of footways. The minimum inspection schedule for little-used residential streets is twice per year whilst for busy streets, inspection takes place once a month.
- 3.4 All reports of potential hazards that are received from members of the public, elected members and other agencies are also investigated and repairs are raised if appropriate.
- 3.5 The inspection, response and repair regime is managed by the Council's Highway Maintenance Team, with Highway Inspectors carrying out this primary function.

3.6 Safety Maintenance Works Contract

The Council is seeking to procure a contract to provide the necessary highway works raised under the safety maintenance inspection/investigation regime. The works contractor will provide the labour, equipment and materials to effect the relevant safety repairs anywhere in the city.

- 3.7 The contract will also provide for emergency response out of hours.
- 3.8 The budget for safety maintenance is approximately £1.7 million per annum. The value of the contract will therefore be: approximately £10.2 million over 6 years.
- 3.9 There will be a variation in the value of individual works orders depending on the type and size of repair required.
- 3.10 All works orders are raised by qualified and experienced highway officers or by the Maintenance Manager, and all works undertaken by the contractor are checked following completion.
- 3.11 Insurance Implications
- 3.12 The contract enables the Council to meet its statutory duty to maintain the highway in a safe condition. This includes every road, pavement, footpath and cycleway in the city.
- 3.13 An ineffective maintenance and repair regime would have implications for the Council's public liability and costs resulting from increased insurance claims.

4. COMMUNITY ENGAGEMENT AND CONSULTATION

There will be no major changes to the new Highway Safety Maintenance Works Contract as compared to the current contract let by the Council. Therefore there

is no need for consultation with the community as part of this procurement process.

Legal and Procurement Officers will work closely with Highway Officers on this procurement.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 The budget for safety maintenance is approximately £1.7 million per annum. The value of the contract will therefore be: approximately £10.2 million over 6 years.

Finance Officer Consulted: Jeff Coates Date: 07/06/13

Legal Implications:

- 5.2 The Council is under a statutory duty under the Highways Act 1980 (as amended) to maintain all highways that are maintainable at the public expense. Failure to comply with the duty would leave the Council liable to a claim for damages in the event of any accident caused as a result.
- 5.3 The Policy & Resources Committee is the appropriate decision-making body in respect of the recommendations at paragraph 2 above, given that the value of the contract which is the subject of the proposed tendering exercise is likely to have corporate financial implications.
- 5.4 Further, the Council's Contract Standing Orders require that authority to enter into a contract valued at £500,000 or more be obtained from the relevant committee, which in this instance is the Policy and Resources Committee due to the value involved.
- 5.5 The decision not to include this contract for safety repairs within the Highway Works Framework Agreement can be justified due to the nature of the responsive and emergency repairs that will be needed under this contract, and the decision to seek only one provider will assist the Council to respond most appropriately to procure responsive repairs to the highway. The contract is to be tendered at the same time as the Framework and will run for the same period of four years, with an option to extend for a further two years.
- 5.5.1 The Council is not under a duty to enter into any collaborative partnership with regard to the SE7 umbrella, if it is not in the best interests of the Council to do so. It is considered that the procurement of a separate highway safety maintenance works contract most appropriately serves the Council's interests at the present time.
- 5.6 The value of the proposed contract means that the UK Public Contracts Regulations will apply in full to the process to be followed in awarding the contract. The contract will need to be advertised in OJEU. The tender will be scored on the criteria of quality and price as part of the evaluation process.

Lawyer Consulted: Johann Wyllly Date: 10 June 2013

Equalities Implications:

- 5.7 Maintaining the highway in a safe condition helps meet the Council's responsibilities for accessibility.

Sustainability Implications:

- 5.8 If repairs were not carried out to the highway, this would result in hazards for users such as cyclists, pedestrians and powered two-wheelers. These transport users are more vulnerable to injury from road or pavement hazards.
- 5.9 Poor condition carriageways also impact on public transport such as buses and taxis.
- 5.10 Sustainability is promoted in all highway engineering contract procurement. Specifications allow for recycling and development of sustainable processes. Contractors are required to have current ISO14001 certification or a recognised equivalent. Sustainability issues will be addressed in the specification and considered as part of the evaluation process.
- 5.11 Living Wage has been considered for this future contract but is not applicable in this case due to the national statistics giving road maintenance workers a higher mean average hourly rate than the Living Wage figure. Current contracts have also been considered in reaching this conclusion that Living Wage is not applicable.

Crime & Disorder Implications:

- 5.12 There are no crime and disorder implications arising directly from this report.

Risk and Opportunity Management Implications:

- 5.13 There are risks involved in failing to fulfil the Council's statutory duty as Highway Authority to maintain the public highway in accordance with the Council's approved Highway Maintenance Plan. If safety repairs are not carried out, the resulting deterioration of the network would result in more costly repairs in the longer term. Failure to maintain will not only adversely affect the highway asset, but also lead to more claims in relation to health and safety, and other types of damage, such as damage to vehicles, which will mean increased insurance claims.
- 5.14 The importance of the safety maintenance work has increased over the last couple of years due to reductions in the preventative budget, which funds work to prevent roads or pavements deteriorating to the point that they need emergency or safety maintenance.
- 5.15 As a result, there is more pressure on the safety maintenance function which now undertakes the majority of routine and reactive repairs to the highway network in this city, overseen by the Highway Inspectors.

Public Health Implications:

5.16 None.

Corporate / Citywide Implications:

5.17 The safety maintenance regime assists the Council's aims to tackle inequality and engage people who live, work or visit the city by helping to provide a safe environment.

6. EVALUATION OF ANY ALTERNATIVE OPTION(S):

6.1 An alternative is not to procure a safety maintenance works contract but this would mean the Council would not be able to effect safety repairs and would thus fail in its statutory duty.

6.2 A single provider is being sought due to the nature of the repairs, which requires the contractor to provide a dedicated response 24/7 to all locations in the city, sometimes within 2 hours. A framework agreement with call-off to different providers would result in huge amounts of work and resources to "call off" each time a works order is raised and would result in unacceptable time delays for safety repairs.

6.3 Combining the safety maintenance contract with the Minor Highway Works contract was considered by officers in Highways, Legal and Procurement with specialist consultancy support to review and advise, but was decided against due to the very different nature of the works for transport schemes or large-scale maintenance projects compared to small-scale reactive repairs in multiple locations.

6.4 There is no suitable collaboration that the Council can enter into with other local authorities from SE7 at present due to the differing requirements of our city highway safety maintenance regime as compared to the other counties' requirements. However, future collaboration opportunities with other SE7 local authorities will still be considered as and when they arise to ensure the best interests of the City Council are met.

7. REASONS FOR REPORT RECOMMENDATIONS

7.1 Various procurement options have been discussed with Strategic Finance and Procurement and this form of contract, procured through the EU process, is considered most suitable to ensure that the Council fulfils its statutory obligations and obtains the best value for money.

SUPPORTING DOCUMENTATION

N/A

