

12th July 2012		ITEM <u>8</u>
Cleaner, Greener and Safer Overview and Scrutiny Committee		
Procurement of Specialised Highways Works Contracts		
Report of: Cllr Victoria Holloway – Portfolio Holder for Environment		
Wards and communities affected: All	Key Decision: Yes	
Accountable Head of Service: Daren Spring – Street Services Manager		
Accountable Director: Andrew Murphy – Director of Environment		
This report is Public		
Purpose of Report: To seek the comments of the Committee prior to seeking tenders for specialist highways works and services contracts		

Comment [s]: The recommendations should be set out in bold in the form of the decision that the decision-maker is being asked to make - See para. 5.2 of the report writing guidelines

EXECUTIVE SUMMARY

The Council currently has in place a number of specialised highways works/services contracts that will expire in April 2013 and therefore require tendering in order to maintain the Highways Maintenance service and for the Council to fulfil its responsibilities as the Highways Authority.

1. RECOMMENDATIONS:

That the Cleaner, Greener and safer Overview and Scrutiny Committee:

- 1.1 Considers the contents of the report**
- 1.2 Endorses the approach laid out in the report to procuring specialist highways contracts**

2. INTRODUCTION AND BACKGROUND:

- 2.1 Thurrock Council is the Highways Authority and as such has responsibility for the safety and maintenance of the public highway.
- 2.2 Maintenance works and services are varied in scope and type. Some works and services are specialised and not all works/services can be carried out in-house by Environment. For this reason these works and services are provided by contractors.
- 2.3 Due to the likely value of these contracts a Cabinet decision is required before procurement can commence.

3. ISSUES AND/OR OPTIONS:

- 3.1 The works/services that need to be tendered are as follows:-
 - Street lighting repairs
 - Machine surfacing
 - Electrical testing of highways installations
 - Barrier repairs
 - Highways signs - repairs and installation
 - Road markings
 - Bridge repairs
 - Traffic control systems
 - Major highways improvement schemes
- 3.2 Workflow and the value of work are not guaranteed and depend on repairs and maintenance that is actually required. Options for this type of contract include:
 1. Calling off from an existing framework agreement that has been set up by another contracting authority. Procurement Services are currently looking into framework agreements that may be available and suitable for the Council to use.
 2. Procure a four year Framework Agreement where the works/services are divided into lots. The Council will be able to call-off works/services as and when they are required. This will involve a full OJEU tender process.
 3. Setting up single contracts for each type of works or services. This option does not meet the Councils requirement as the amount of work and value of the contract is not guaranteed and depending on the value each contract may need to be seperately competitively tendered.

Comment [s]: Other headings may be appropriate. The report should outline the reasoning that leads to its recommendations and **must** include:

1. a brief summary of options considered;
2. consultation outcomes
3. a risk assessment.
4. Whether the responsible cabinet members have been consulted/contributed to the report (NB professional and political advice must be clearly distinguished)

- See para.5.5 of the report writing guidelines.

In any event the award of contracts will follow a competitive process to ensure good value and quality for the Council and compliance with the Councils Contract Procedure Rules and the procurement regulations.

- 3.3 A project team including Procurement and Legal services has been set up to review the options available and to determine the most appropriate procurement method for these contracts.

4. CONSULTATION (including Overview and Scrutiny, if applicable)

- 4.1 The Cleaner, Greener and Safer Overview and Scrutiny Committee is being consulted through this report.

5. IMPACT ON CORPORATE POLICIES, PRIORITIES, PERFORMANCE AND COMMUNITY IMPACT

- 5.1 This service impacts directly on the community priority to “ensure a safe, clean and green environment”.

6. IMPLICATIONS

- 6.1 **Financial**
To follow.

- 6.2 **Legal**

Implications verified by: **Catherine Bogoje**
Contracts & Procurement Solicitor
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cbogoje@thurrock.gov.uk

Under section 41 of the Highways Act 1980 the Council as a Highways Authority has a duty to maintain adopted highways that it is responsible for to a standard where they are reasonably passable and safe for ordinary traffic.

Section 62 of the Highway Act 1980 Act gives the Council a general power to carry out work to improve the highway, including amongst others, the provision of barriers, rails, fences or posts for the use or protection of persons using a highway and the construction and reconstruction of bridges and the Council may alter or remove any works executed by them under this section. Improvement also includes the erection, maintenance, alteration and removal of traffic signs.

Regular inspections and maintenance of the highways should reduce the risk of any potential accidents to the general public using the highways. In addition section 58 of the Highways Act 1980 provides the Council as a Highway Authority with a statutory defence against third party claims where it can establish that reasonable care has been taken to ensure that the highway was not dangerous to traffic or pedestrians.

Comment [j]: This should include any consultation with Ward Members and Shadow Portfolio Holders, as well as any public or statutory consultation

Comment [a]: Please refer to Section 5.7 of the Report Writing Guidelines

Comment [cb]: Is there a highways maintenance and repair plan or strategy? If so say that the proposed contracts would satisfy the plan/strategy etc

Although there is no statutory duty on a Highway Authority to provide street lighting section 97 of the Highways Act 1980 empowers a Highway Authority to construct and maintain such lamps, posts or other works as deemed necessary. The Council has a duty of care to road users and where street lighting is provided there is a duty to maintain.

The proposals set out in this report will support the Council in complying with its statutory duties as a Highway Authority and defending itself against potential claims of negligence.

Construction of highways, roads, streets and other vehicular and pedestrian ways, bridges, painting of road markings and the installation of illumination and signalling systems for roads are considered activates constituting works under the Public Contract Regulations 2006. Procurement Services have advised that machine surfacing and major highways schemes are works under the Public Contract Regulations 2006.

The current EU threshold for works is £4,348,350.00. If the total estimated value of the works proposed meet or exceed the threshold the Council will be required to fully comply with the Public Contract Regulations 2006 and EU treaty principles.

In accordance with Chapter 9 Part 2 of the Constitution (Contract Procedure Rules) where the works contracts are valued at £10,000.00 - £499,999.00 at least three written quotes are required making use of any available framework agreements. Contract Procedure Rule 7 stipulates that where the value of the works contracts are over £500,000.00 a full competitive process should be undertaken.

Where the procurement department determine that any of the services outlined at 3.1 above are Part A services under the Public Contract Regulations 2006 then the Council will be required to fully comply with the 2006 Regulations if the value of the service contract meets or exceeds the current EU threshold for services which is £173,934.00.

In accordance with Rule 7 of the Contract Procedure Rules where a service contract is valued at £10,000.00 - £74,999.00 at least three written quotes must be obtained (making use of any national or local framework agreements). If the total value of the service contract is £75,000.00 - £173,934.00 the contract must be advertised and at least two written tenders obtained.

Legal Services will be available to assist the client department throughout the procurement process and will prepare any contracts required.

In accordance with Rule 8.1(a) the Responsible Officer must obtain approval to proceed to tender and approval to award the contract from the Cabinet for contracts above the value of £750,000.

Under Article 13 of the Constitution the Cabinet has the authority to approve the recommendations set out in this Report.

6.3 **Diversity and Equality**

Implications verified by: **Samson DeAlyn**
 Telephone and email: **01375652472**
sdealyn@thurrock.gov.uk

There are no direct equality or diversity implications arising from this report. Although Cabinet should note that where a public authority has a contract with a private company to carry out its functions, the public authority remains responsible for meeting the general equality duties that apply to those functions. It is possible to review and address any future equality issues as options are reviewed or as part of the proposed tendering process.

6.4 **Other implications (where significant) – i.e. Section 17, Risk Assessment, Health Impact Assessment, Sustainability, IT, Environmental**

None

7. **CONCLUSION**

7.1 The Council needs to make arrangements to award specialised highways works contracts by April 2013 in order to maintain the public highway.

7.2 This report seeks comments before beginning the competitive tendering process to allow contracts to be awarded with the results of the process being reported back to Cabinet before contract award takes place.

BACKGROUND PAPERS USED IN PREPARING THIS REPORT:

- None

APPENDICES TO THIS REPORT:

- None

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Comment [sj]: This should inform the recommendations in the report

Comment [sj]: See Guideline 8. If any Papers are to be placed in the Members room that relate to this report, you should also list them here

Comment [sj]: List the Appendices referred to in the Report

Comment [sj]: Insert the full contact details of the author of the report