

Agenda Item No:

Report No:

Report Title: **Contract Renewal: Grounds Maintenance of Parks and Open Spaces**

Report To: **Cabinet**

Date: **15 May 2014**

Cabinet Member: **Councillor Tony Nicholson**

Ward(s) Affected: **All**

Report By: **Director of Service Delivery**

Contact Officer(s)-

Name(s): **Andy Frost**
Post Title(s): **Parks and Cemeteries Manager**
E-mail(s): Andy.frost@lewes.gov.uk
Tel No(s): **01273 484398**

Purpose of Report:

To update Cabinet on the proposed procurement of a grounds maintenance contract to commence in April 2015 and to seek Cabinet approval on the way forward.

Officers Recommendation(s):

- 1** To authorise officers to proceed with the tendering process for the procurement of grounds maintenance services for a 5 year contract extendable by up to 3 years at the discretion of LDC.
 - 2** To authorise officers to continue discussions with Town Councils concerning future contract arrangements and to manage any contractual implications, in consultation with the Leader of the Council.
 - 3** To authorise officers to undertake a thorough assessment of service costs against tender prices, commissioning in the necessary expertise, to ensure best value is secured for the Council over the 5 to 8 years.
 - 4** To agree that the parks wardens are managed directly by the Council as from 1 April 2015.
 - 5** To endorse the course of action suggested in paragraph 4.5 in respect of consultation for the purposes of the Public Services (Social Value) Act 2012.
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Reasons for Recommendations

- 1** In order to proceed with the procurement of grounds maintenance services in a timely fashion ensuring that services are not disrupted when the current contract comes to an end in March 2015.
- 2** To ensure that best value is achieved in providing grounds maintenance services.
- 3** To ensure that Town Councils are fully involved in the procurement process in order to facilitate the future devolution of sites.

Information

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- 2.1** At the Cabinet meeting in July 2013, officers were asked to bring a future report to Cabinet setting out detailed proposals for the procurement of a long term contract to commence April 2015.
- 2.2** The current grounds maintenance contract with G.Burley & Sons Ltd comes to an end on the 31 March 2015 and cannot be extended.
- 2.3** This is one of the Council's largest contracts, with a total value of over £900,000.
- 2.4** The contract currently covers the grounds maintenance of parks, open spaces, cemeteries, children's play areas, sports fields and larger housing areas.
- 2.5** It is proposed that the new contract will be for a period of 5 years, extendable for up to a further 3 years on a year by year basis, at the Council's discretion. This timescale will allow us to get best value from potential contractors, whilst allowing flexibility for the future.

Devolution of Parks and Open Spaces

- 2.6** Discussions are currently under way regarding transferring the ownership of assets to Town Councils so that they can be managed at a more local community level. At the same time, Town Councils are being asked whether they would like to be a partner within the new contract in order to achieve the expected benefits of a larger contract.
- 2.7** To ensure that the devolution process is not hindered in any way, the Town Councils have been fully involved in this procurement process to ensure that:
 - The process is "open and transparent" to all involved;
 - The specification meets the needs of the Town Councils, both for sites that they already own and for sites that they may take ownership of during the course of this contract;

- Town Councils are fully involved in the tender evaluation process.

- 2.8** Due to the fact that negotiations on devolution are unlikely to be completed prior to the start of the contract procurement, the contract will need to be structured to allow for sites to be removed / added or changed at a later date, depending on the outcomes of devolution. There is a risk that if sites are maintained by differing organisations that the economy of scale may be lost, however, this is an assessment that will need to be made by all parties over the course of the procurement and during the contract term.
- 2.9** It is proposed that the contract follows a collaboration structure whereby the Council is the lead buyer of a grounds maintenance service in the district. The Council will order a specified level of service for itself and provide an opportunity for additional services to be purchased by Town and Parish Councils, and other organisations ie East Sussex County Council and Eastbourne Borough Council (i.e. “partner organisations”). Towns and Parishes can choose to benefit from the contract by entering into their own direct contracts with the successful contractor for additional services based on the same terms and contract prices agreed by the Council as lead buyer. The contract will not place the Towns and Parishes under any obligation to buy the services. Rather, the successful contractor will be required to provide the additional services if these are required by the Council’s partner organisations. This arrangement does require that Town and Parish Councils and other potential organisations indicate that they wish to be named as potential buyers for the purpose of the OJEU. Collaboration contracts of this type must identify actual or potential purchasers and the contract value (i.e. the potential spend) so as to satisfy EU rules relating to transparency, non-discrimination and equal treatment.
- 2.10** Throughout the procurement process the Council will work in partnership with Town Councils holding regular meetings to ensure the contract and procurement process is fit for purpose.

Ensuring Best Value

- 2.11** In order to ensure that the Council will achieve best value by using external contractors, it is proposed that detailed public sector comparator testing takes place in parallel to the procurement process.
- 2.12** This process will involve producing a parallel set of costs of what it would cost the Council to provide the services directly to the same specification standards. It should be noted that a public sector comparator is not a “rival” bid against external contractors.
- 2.13** If at any time this process highlighted that we were not achieving best value for the Council through the external procurement, Cabinet would be informed so that a decision could be made on the best way to proceed. Cabinet would then have an opportunity to terminate the

procurement process (i.e. the competition for an external provider) on the basis that the in-house solution provides best value.

iESE (Improvement and Efficiency Social Enterprise) will act as a critical friend to the Council throughout the procurement process.

Opportunities for Small and Medium Enterprises (SME)

- 2.14** Historically, the grounds maintenance contract has been let as one single contract. Although this has the advantage of providing the economies of scale, it may make it difficult for smaller local businesses to compete.
- 2.15** The Council already use small, local contractors for landscaping and tree works outside the remit of the grounds maintenance contract. For instance, in 2012-13 the Council procured £238,389 worth of work with small local businesses and a level of procurement in this way will continue.

In order to give better opportunities to SMEs, and to follow the Council's commitment to the National Procurement Concordat for small and medium sized enterprises, it is proposed to split the main contract into 4 distinct lots based on area as follows:

Lot 1: Seaford Area

Lot 2: Newhaven Area

Lot 3: Lewes / Rural Area

Lot 4: Peacehaven / Telscombe Area

- 2.16** The Council cannot prevent larger companies from tendering and it is likely that their prices may reflect economies of scale gained from securing all of the lots, which may in effect, become one single contract.
- 2.17** The lots have been defined to reflect Town Council administrative boundaries or a sensible quantity of work within a geographical area (Peacehaven and Telscombe). However, the intentions of Peacehaven and Telscombe in terms of the maintenance arrangements for their own land and future devolved land will determine whether Lot 4 will be viable.

Contract Timetable

- 2.18** A draft procurement timetable is shown in Appendix 1. The timetable includes stages that are appropriate for the opportunity and timescales that are long enough (a) to allow bidders to make a meaningful assessment of the opportunity and the time to prepare a bid and (b) to fit into the Council's decision-making process. This timetable is subject to change as the process develops.

2.19 The key points are:

3rd June 2014 – Contract advertised.

23rd June 2014 – Return of Pre Qualification Questionnaires to be evaluated by nominated LDC Councillor, representative from the Town Councils (the Town Clerk of Lewes Town Council has been nominated by the Town Councils) and LDC Officers.

8th September 2014 – Tender return date

December – special Cabinet – Results of final evaluation to Cabinet.

5th January 2015 – Award of Contract (s).

1st April 2015 – Commencement of new contract (s).

Parks Warden Service

2.20 The Parks Wardens provide a high profile ‘front of house’ role linking council services on the ground. They provide cover up until 8pm during the summer months, seven days a week to carry out essential inspections of play areas, monitor and address the state of green spaces. In addition, they carry out a range of work outside of the contract including checks on car parks, arrange maintenance and emergency repairs, handle concerns about anti-social behaviour, damage and vandalism, handle issues with sports clubs at weekends etc.

2.21 At the present time, the two Parks Wardens are employed by the grounds maintenance contractor, but are directed by LDC managers, are based in LDC offices and have access to LDC IT.

2.22 This current employment of the Parks Wardens is not ideal, as there is a blurring of council and contractor functions over management responsibilities. Further, in the new contract, this method of employment may well not be possible if different contractors were to win different “lots”.

2.23 Therefore it is proposed that the Parks Wardens Service be brought in-house as from 1st April 2015, with the costs being offset by the removal of their services from the grounds maintenance contract.

Financial Appraisal

3 The budgeted cost of the current Grounds Maintenance contract, incorporating both site specific activity (eg grass cutting), Parks Wardens and a small contingency sum, is £920,000. Of this amount, £224,000, is the cost of work carried out on behalf of Town and Parish Councils at sites which they currently own and which is recharged to them. The current contract was put in place for a single year only, and the procurement approach set out in this report with a

minimum contract term of 5 years, may reduce the cost for both this Council and the Town and Parish Councils.

Legal Implications

4 The Legal Services Department has made the following comments.

4.1 Part B contract

The proposal is a “Part B” service contract for the purposes of the current EU procurement regime. Part B services are governed by the principles contained in the Treaty on the Functioning of the European Union (TFEU). This will be an above threshold procurement. For above threshold procurements of Part B services the Council must act in a transparent way and treat all potential providers equally and in a non-discriminatory way. This includes the obligation to advertise the opportunity and use a procurement process which is fair and impartial.

4.2. EU “cross border interest”

Procurement which might attract EU “cross border interest” must also comply with the minimum requirements arising out of the fundamental principles of the TFEU. This is a contract where there might be cross-border interest from operators in other member states. In cases of cross-border interest the principles of equal treatment and non-discrimination require transparency in the procurement process. This includes the necessity for a degree of advertising sufficient to enable the market to be opened up to competition.

4.3. Process

4.3.1 The best way to comply with the Council’s advertising obligations is to place a voluntary advertisement in OJEU (the Official Journal of the European Union).

4.3.2. Part B services are subject to a more flexible process than “fully regulated” procurements and this includes a less rigid timetable. However, the need for a fair and transparent procurement process includes the following elements:

- Any time limits must be appropriate and long enough to allow for meaningful assessment of the opportunity and the time to prepare a bid.
- Transparent and objective selection and award criteria must be used.
- Favoured treatment for individual bidders is not permitted.
- Shortlisting (i.e. a qualification process) is permitted. Where shortlisting takes place there should be enough shortlisted providers to ensure adequate competition. The mechanism for selecting a shortlist must be transparent and non-discriminatory.

The Council’s procurement process will be run so that the above requirements are satisfied. Particular care is needed in respect of selection and award criteria

and how these will operate in the context of a procurement based on four lots. The use of lots is an added level of complexity. iESE will be providing expert help on the selection and award criteria.

4.4. Public Sector Comparator

Authorities can use a public sector comparator to establish whether external bids in the procurement process represent best value. It should be noted that a public sector comparator is not a rival bid. Public sector comparators are a legitimate means of deciding whether private sector competition should continue or be terminated. An authority may terminate the procurement process on the basis that the in-house solution provides best value. The Council's tender documentation must make it clear that this is an option so as to avoid challenges based on grounds that the Council has breached the principles of transparency and fair treatment in its conduct relating to the procurement.

4.5. Public Services (Social Value) Act 2012

The Act applies to various public contracts including above threshold Part B services contracts. The Act places an obligation on contracting authorities to consider how what is proposed to be procured might improve the economic, social and environmental well-being of the relevant area. Authorities also have to consider whether they should consult on these matters. These steps must be undertaken before the procurement process starts because they can inform the whole shape of the procurement and the design of the services required. The relevant area is the area in which the authority primarily exercises its functions. The Cabinet Office in its Procurement Policy Note 10/12 provides guidance on complying with the Act.

Paragraph 2.15 of this report sets out the way in which the procurement might improve the economic, social and environmental well-being of the relevant area. It is proposed to split the main contract into 4 distinct lots to give better opportunities to SME's, and to follow the Council's commitment to the National Procurement Concordat for small and medium sized enterprises.

Paragraphs 2.6 to 2.10 mention that Town and Parish Councils have been fully involved in the procurement process. This will ensure that the specification meets their needs, takes account of the devolution process and puts in place a collaboration contract that can be used by the Town Councils in their capacity as partner organisations. This level of engagement with stakeholders demonstrates that the Council is already consulting on the proposed procurement and it is not considered that any further consultation is required.

Sustainability Implications

- 5** I have completed the Sustainability Implications Questionnaire and there are no significant effects as a result of these recommendations.

However, there will be opportunities within the new contract to ensure that high standards are maintained and improved. This will include;

- The reduction in pesticide use as new methods become available.
- The restriction of the types of pesticides used on council land.
- The use of bio degradable oils in machinery such as chain saws.
- The use of electric strimmers and hedge cutters where practical to reduce noise and pollution.
- The use of bedding plants grown in peat free compost.
- Compliance with the Councils Environmental Policy.

Risk Management Implications

6 I have completed a risk assessment.

The following risks will arise if the recommendations are not implemented, and I propose to mitigate these risks in the following ways:

Risk: There is a risk that if a new contract is not implemented, there will be a delay in providing service provision when the existing contract comes to an end. This service includes cemetery services such as burials and services to our third party partners.

Mitigation: A detailed contract timetable has been drawn up to ensure that the project does not fall behind and iESE will support the council

The following risks will arise if the recommendations are implemented, and I propose to mitigate these risks in the following ways:

Risk: With the contract being split into lots, there is a risk that one or more less favourable lots may not be tendered for, meaning that grounds maintenance services for that area will not continue after 1st April 2015.

Mitigation: It is anticipated that most companies will price for all of the lots in total. However, if this were not the case, then the area in question could be maintained by several existing local contractors used by LDC or Town Councils until an alternative solution is agreed.

Risk: There is a risk that, if a large proportion of sites are removed from the contract during the contract period, the contractor may break from the contract as it becomes unsustainable.

Mitigation: Discussions are currently under way with Town Councils to agree, as far as is reasonable at this stage, which sites should be in or out of the contract. A different contract structure is being proposed to allow flexibility for the Councils and that liabilities for significant changes rest with the appropriate partner.

Risk: There is a risk that, due to the potential uncertainty of which sites may be removed from the contract during its term, contractors price in this risk. There is also a risk that contractors will price higher for the less favourable lots.

Mitigation: The best value comparison to determine how much it would cost to provide the services directly will give a good indication if the tender costs are high. Cabinet could then decide which course of action to take.

Equality Screening

- 7 An Equalities Screening Report has been completed (AF33974) and there are no negative or significant impacts arising from this report.

Background Papers

- 8 Cabinet Report: Proposed Contract Renewal 20 March 2013
Cabinet Report: Proposed Contract Renewal 11 July 2013
Cabinet Report: Proposed Contract Renewal 18 November 2013

Appendices

- 9 Appendix 1: Draft Contract Timetable

APPENDIX 1

Draft procurement timetable

Main steps

<i>Step</i>	<i>Timeframe</i>	<i>Comment</i>
Agree contract scope		
Cabinet (to approve procurement)	15 th May	
OJEU notice	3 June	
PQQ return date	23 rd June	
Issue invitation to tender	7 July	
Tender submission date	8 September	
Evaluation Panel decision	6 October	Evaluation Panel to make recommendation to Cabinet
Cabinet (to award contract)	Special Cabinet meeting in December	
Issue standstill letter	24 November	
Issue contract	From 24 November	
Complete contract	5 January 2015	
Contract set up period	5 January 2015 – 1 April 2015	
Contract start date	1 April 2015	