

Report to: Cabinet

Date of meeting: 15 December 2015

By: Director of Communities, Economy and Transport

Title: Highways Contract Re-procurement Project

Purpose: To present the outcomes and recommendations from the procurement stage of the Highway Contract Re-procurement Project

RECOMMENDATION: Cabinet is recommended to consider the process and outcomes from the procurement stage of the Highways Contract Re-procurement Project and agree to award the Highways Infrastructure Services Contract 2016-23 to the preferred bidder (Bidder 4).

1 Background Information

1.1 The purpose of this project is to procure a new highway maintenance contract to replace the existing separate contract arrangements for highways, street lighting and traffic signals maintenance that end on 30 April 2016. The contract is designed to enable delivery of the outcomes agreed by Cabinet in December 2014 including the amended principal requirement to have 'the best network condition for the funding available' included in Appendix 1.

1.2 The project has adopted the Council's Strategic Commissioning approach to determine the service and outcomes required. In April 2014 Cabinet approved the recommendations from the Outline Business Case that had been developed from the first stage of the commissioning approach, the 'analysis' stage. This provided three options for further consideration, the Executive, the Strategic and the Staged (Executive transitioning to Strategic) client-led models.

1.3 In December 2014 Cabinet approved the recommendations from the Detailed Business Case developed during the 'Plan' stage of the commissioning approach to develop the Executive Client-led contract and authorised the Director of Communities, Economy and Transport (CET) to develop the contract model and undertake the procurement process to determine the preferred contractor to be awarded the contract (the 'do' stage of the commissioning approach).

1.4 This report summarises the contract that has been developed, the procurement process followed, the tender evaluation, the key outcomes (including affordability), the recommendation for award of a new contract, and the arrangements to be put in place to manage the new contract (the Executive Client).

2 Supporting Information

The Contract

2.1 Section 2 of Appendix 2 summarises the documents that form the basis of the new Highways and Infrastructure Services Contract 2016-23. The contract is for a fixed seven year term. The contract includes the services in section 2.4.3 of Appendix 2 set out as Core Activities and priced as lump sums (fixed annual price with no inflation allowed for the duration of the contract) plus provisions for improvement works commissioned as actual costs with target cost (only actual cost is paid) and un-planned works as cost reimbursable actual cost works.

2.2 The new highways contract contains both incentives and penalties that, in conjunction with a new purpose built Executive Client team, will better safeguard the interests of the County Council, and enable the Council to seek proper redress for poor contractor performance. The County Council's requirements are very clearly defined in the contract and both contractor performance and quality of workmanship will be controlled through a suite of key performance indicators and a clearly defined compliance governance regime.

2.3 The new contract fixes the cost of routine maintenance activities such as grass cutting and winter gritting for the life of the contract, inclusive of future inflationary pressures. Fixing these costs gives the County Council greater certainty of the cost of the core Highways Service over the next seven years and enables the contractor to manage the future risks.

2.4 The contract is based on the industry standard NEC3 Engineering and Construction Contract, modified as appropriate, with output focused specifications to deliver our current policy and levels of service as a minimum.

2.5 The contract includes the transfer of 107 East Sussex County Council staff and approximately 150 of the existing contractor's staff to the new provider. The contract includes 24 specific performance measures and targets linked to contract payments that incentivise the contractor to deliver works for more value in order to access a potential bonus share, generated from any saving if a required performance level is achieved. If performance is not achieved there is no access to any bonus 'pot' generated. In addition, poor performance entitles the County Council to remove part or all of the contractor's profit or works from the contract.

2.6 The contract includes protection for timely payment of the supply chain by use of a project bank account, specific social value requirements to invest in local communities through apprenticeships and 10% of bonus share committed being delivered to local communities through resources or cash to support ambitions for their local network.

The Procurement Process

2.7 Section 3 of Appendix 2 sets out the process followed to select the preferred bidder on the basis of the Most Economically Advantageous Tender. This included a two-stage, 10-part evaluation process using a 50:50 quality/price model. The tender period was 14 weeks with 6 contractors invited to tender following a pre-qualification process. During the tender period 587 clarifications were received.

2.8 There were two areas of significant concern raised by the bidders that required detailed consideration and resulted in contract amendments. These were third party claims and the Local Government Pension Scheme (LGPS) pension liabilities. Clarity was required around responsibilities for handling and settling of third party claims. Additional contract documentation was provided in the form of a claims handling protocol that satisfied the liability concerns. There were also concerns regarding pension risk related to the market related cessation liability. A pass through agreement was included to enable any market related pension liabilities at the cessation of the contract to be passed back to East Sussex County Council. The value of this risk cannot be guaranteed, nor can the likelihood of it occurring. Therefore, the pension fund actuary has provided analysis of the market related risk at the end of 7 years; this shows that in the worst 15% of cases, the average deficit is expected to be £3.0m. Of this amount, £2.0m relates to past service benefits (i.e. benefit accrued up to transfer date) and £1.0m relates to future service benefits (i.e. benefits expected to be accrued after the transfer date). This risk recognises the contractor's employer contribution to the pension scheme has been fixed at the increased rate of 23.6%. If the cessation liability materialises, the Pension Fund may agree to absorb the deficit, however it is recommended that a contingent liability is noted in the accounts to recognise this risk.

2.9 During the tender period, one of the bidders withdrew from the process citing that local authority highway maintenance was no longer part of their future delivery strategy. On 11 September 2015, five tenders were returned; however, three of the bids were qualified (non-compliant). Following review and consideration by the Project Team, Legal Services and the Director of CET, all three companies were asked to unconditionally remove the qualifications from their bids. Two companies removed their qualifications, the third company did not and therefore their bid was not considered further.

Tender Evaluation

2.10 The four remaining tender submissions were assessed by dedicated independent quality and price evaluation panels from the Project Team. Evaluation of the quality submissions was undertaken against four key themes: General, Strategic, Service Delivery and Contract Management, consisting of 24 individual quality statements (Table 2, page 24 of Appendix 2) using a scoring matrix (Table 1, page 23 Appendix 2).

2.11 An evaluation of Bidders' price submissions was undertaken against three pre-determined price evaluation models, consisting of core activities, schedule of cost components (industry standard items), a 'basket of goods' (selection of typical works) and the application of fee (Table 3, page 26 Appendix 1). Only the prices for core activities (lump sums) represented the actual price to be paid for services. The schedule of cost components and the basket of goods prices were for evaluation purposes only and provide a benchmark for agreeing future target cost and actual cost of works.

2.12 The initial combined scores for price and quality are shown in Section 14 on page 12 of Appendix 2. All bidders were also required to articulate their bids during a 45 minute presentation with further clarification provided through a number of pre-determined questions (Section 15 page 12 Appendix 2). The

initial scores were then moderated as required producing the final stage 1 scores shown in section 15.5, page 13 Appendix 2.

2.13 Two bidders were taken through to stage 2 site visit validation with each sent an individual validation information pack setting out the areas the evaluation panels wanted to see and that they would be assessing during their site visits. The information packs consisted of three key areas, Key People interviews, Quality Statement demonstration, Financial substantiation and validation. A summary of the findings from these visits is included in Sections 18 – 23 of Appendix 2.

2.14 During Stage 2, the evaluation panels satisfied themselves that the bidder's submissions, for both quality and price had been substantiated and demonstrated by the bidder and therefore there was no adjustment made to the overall evaluation score awarded at the end of stage one, resulting in the two bidders tying on equal scores of 70 points each. However, Section J 'Preferred Bidder Award' of the evaluation process (Section 10.4 of Appendix 2) states that in the event of statistically equal scores, the contract will be awarded to the Preferred Bidder with the highest validated price score (i.e. the lowest price). Section 24 of Appendix 2 shows the final position with Bidder 4 scoring the highest validated price score of 72 points compared to the other preferred bidders score of 64 points for price.

Awarding the Contract

2.15 From the tender evaluation process and in accordance with the criteria set out in the tender documents it is recommended that the Highways and Infrastructure Services Contract 2016-23 is awarded to bidder 4 (a synopsis of their bid is set out in Appendix 2 of Appendix 2).

2.16 A summary of the future service value this award will provide is set out in Section 25 of Appendix 2. This includes: providing the required £1.1m revenue savings set out in the Medium Term Financial Plan (MTFP) (see paragraph 2.19 below for details); better cost certainty for Core Activities, with targeted performance to ensure key services are delivered on time and as a minimum, a safe and usable network is provided; transparency of prices and actual cost for planned works with the opportunity for additional value from an incentivised target cost approach; the benefit of the expertise of a market leader in asset management with the ability to support our outcome to provide the best network condition for the funding available; the introduction of new market leading customer management and mobile technologies to manage the service and provide real-time and timely information for Councillors and stakeholders; ability to reduce third party claims through proactive management of the network; a demonstrable approach to collaborative working and customer focus with commitment to invest in our communities and to promote the economy of East Sussex through the use of local supply chains and local employment.

The Executive Client Group and Future Service Delivery

2.17 In addition to developing a new contract and identifying and appointing a new service provider, a new client organisation is required to manage the contract on behalf of the County Council to ensure good contract management and value for money is delivered throughout the life of the contract.

2.18 The proposed Executive Client structure is shown in Appendix 3. The County Council's client team will be headed by a Contract Manager, the 'Head of Service', supported by Commercial, Performance and Compliance, Asset Management and Service Improvement teams. The focus of this new team will be on the day-to-day management of the contract and ensuring the requisite contractor performance to deliver the desired outcomes. This team will provide key client functions to ensure the contract and the service is managed and delivered correctly, reflects service and community needs and the service can develop over the life of the contract. The new client service includes putting Asset Management at the centre of our approach in managing our network and enables us to understand our asset needs and ensure it is functional and sustainable. A strong Commercial and Contract Management ability will ensure the solutions and approach to maintaining and improving our network proposed by the contractor present value for money and ensures professional contract administration and risk management.

2.19 This will be combined with a dedicated team to monitor and benchmark Service Performance and Compliance and will inform and evidence our approach to enable us to measure our success against the project outcomes and the Council's priorities. Equally importantly, a specific Service Development Team will work with the contractor to promote a 'one organisation' approach, which works with our Members and communities to develop the culture, reputation, funding and services people want, whilst also supporting our local communities and economy. Meanwhile, Members will continue to enjoy their close relationship with their local Highway Steward as their first point of contact and existing arrangements will be maintained for Parish Councils through their Highway Steward and through Strengthening Local Relationship (SLR) meetings with Parish Councils.

Under the proposed new arrangements, the new contractor will be responsible for correspondence and for the first stage of complaints (in accordance with our current policies and processes) and the new client team will ensure that appropriate and timely responses are completed through proactive performance and compliance governance.

Affordability and Future Service Value

2.20 Section 25.3 of Appendix 2 sets out the principles and methodology of evaluating the current and future cost of the service. This was developed in a separate 'Future Service Cost Model' (Appendix 3 of Appendix 2) with only the Core Activities (lump sums) prices included from the tender prices. This model includes all staff, works and service costs using existing salaries, employment overheads and works costs based on existing contract rates and prices. These prices were inflated to 2016/17 prices in order to be able to compare with the tendered prices on a like-for-like basis. Total revenue costs were included in the model including the current MTFP pressure of £280k for 2015/16 (which is to be mitigated by inclusion in the new contract), future client costs (the Executive Client Team) and annual asset depreciation costs.

2.21 When the preferred bidder's tendered price for the Core Activities are included in the model, the future revenue cost for the same level of service is reduced, offering a saving of £1,404,455 when compared to the current budget. This is summarised in the table on page 22 of Appendix 2.

2.22 The preferred tender therefore provides the £1.1m reduction in revenue costs set out in the MTFP plus an additional £304,455 reduction in future revenue costs compared to today's revenue costs. It is recommended that the additional saving of £304,455 is retained within the service for the first year of the contract to manage and offset 'legacy' works that will undoubtedly be carried over from the existing arrangements (for example high levels of pothole works resulting from a cold winter).

2.23 In addition, the indicative prices submitted by the preferred bidder for the basket of goods and cost components elements of the pricing model suggest that up to 18% more value will be available through the contract for target cost capital works.

3. Conclusions and Recommendation

3.1 The tender received from the preferred bidder (Bidder 4) meets the requirements of the procurement process and the proposals for managing and delivering the service set out in the contract. The Project Team have assessed their prices and determined that they are affordable and sustainable. They have also satisfied themselves that the preferred bidders organisational approach, experience and market ability meet the requirements to organise, manage and deliver our future highway services to support the County Council's ambitions for the network and enable the delivery of the project outcomes.

3.2 The recommended tender delivers the savings set out in the MTFP and fixes a large part of the revenue budget with Core Activities being delivered as lump sums (fixed annual price with no inflation) over the life of the contract.

3.3 Following the evaluation process, two of the submitted bids were identified as the Most Economically Advantageous Tenders (including Bidder 4's submission). However, in accordance with the 'tie break' criteria set out in Section J of the evaluation process (Section 10.4 of Appendix 2), Bidder 4 emerged as the 'preferred bidder', as the bid with the highest validated price score (i.e. the lowest price). It is therefore recommended that Cabinet agree that the preferred bidder (Bidder 4), selected from the procurement process summarised in section 2 of this report, be awarded the Highways and Infrastructure Services Contract 2016-23.

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LOCAL MEMBERS

All

BACKGROUND DOCUMENTS

None