

PART 1 - PUBLIC

Decision Maker: Executive

**For pre-decision scrutiny by the Environment PDS
Committee on 4th October and Executive & Resources PDS
on 12th October**

Date: 19th October 2011

Decision Type: Non-Urgent Executive Key

Title: **FORMAL CONSULTATION ON OUTLINE SERVICE
PROPOSALS AND PROCUREMENT STRATEGY -
INSPECTION OF STREETWORKS CONTRACT**

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Chief Officer: Nigel Davies, Director of Environment Services

Ward: Borough Wide

1. Reason for report

The Contract for the inspection of streetworks, currently let to B&J Enterprises (Kent), will expire on 31st March 2013. As this Contract falls within the EU procurement regulations, options for the future of the service need to be considered at an early stage.

2. RECOMMENDATION(S)

Subject to any views of the Environment PDS Committee, Executive is recommended to endorse the proposal that a new Contractor is appointed to undertake the inspection of streetworks from 1st April 2013, following a competitive tendering process based on the arrangements identified in this report.

Corporate Policy

1. Policy Status: Existing policy.
 2. BBB Priority: Quality Environment.
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Financial

1. Cost of proposal: Estimated cost £355k pa and income generated £1.2m
 2. Ongoing costs: Recurring cost.
 3. Budget head/performance centre: Highways
 4. Total current budget for this head: £355k and Cr £1.2m
 5. Source of funding: Existing revenue budget 2011/12
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Staff

1. Number of staff (current and additional): 6
 2. If from existing staff resources, number of staff hours: 6 fte
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Legal

1. Legal Requirement: Non-statutory - Government guidance.
 2. Call-in: Call-in is applicable
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Borough wide
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? No.
2. Summary of Ward Councillors comments: n/a

3. COMMENTARY

Estimated Contract Value – Other Costs

- 3.1 The estimated contract value is £355,000 p.a, with an expected income recovery of £1,200,000, based on the 2011/12 budget and levels of service.

Proposed Contract Period

- 3.2 It is proposed that a contract is tendered for initial period of three years, with the option of an extension for a further two years.

Background

- 3.3 Most utility apparatus, such as gas and water mains, telecommunications networks etc, are located under the public highway, and the relevant utility companies have a legal right to excavate the highway in order to maintain existing apparatus or install new assets. Aside from emergency and routine utilities' works, there remains significant capital replacement programmes of work to be carried out by utility companies in London.
- 3.4 Local Highway Authorities have powers and responsibilities under the New Roads and Streetworks Act 1991 (NRSWA) to monitor the works of utility companies on the public highway in an effort to protect the highway asset; faulty utility reinstatements have a significant negative impact on the life of the Council's highways, in some cases bringing forward the need for major works. The following inspections are carried out both during and after their works, to ensure they meet the national quality standards;
- (i) Safety of traffic management
 - (ii) Sample inspections to monitor the quality of reinstatement works
 - (iii) Defect inspections to identify faulty reinstatements
 - (iv) Monitoring of works to identify over-running projects
- 3.5 In 2010 tenders were invited from specialist Contractors for the inspection works, with the contract being awarded to B&J Enterprises for an initial two year period from 1st April 2010, with an option of a one year extension. As the contractor performed well during the first year of their Contract, the optional one year extension was agreed by ES PDS in April 2011.

Future Service Options

- 3.6 As it is not possible to extend the arrangement further a new Contract will need to be in place for the inspection regimes to continue after 31st March 2013, when the existing Contract finishes. In terms of service arrangements considered these will be directed at minimising costs while maximising income generated at an optimum level.
- 3.7 Discussions have been held with neighbouring authorities to consider joint procurement for this service, but unfortunately these inspections are either undertaken using in-house resources or existing contracts are already in place. It is therefore considered that there are two options available for the future procurement of this service;
- (i) Retender - a new Contractor could be appointed to undertake the inspection of streetworks from 1st April 2013, following a competitive tendering process.

- (ii) In-house service provision – The current contract provides four inspectors to complete the range of streetworks inspections and complete the necessary administrative functions. Prior to 2006 this service was provide in-house using inspectors employed through a staff agency agreement. This arrangement could be resurrected using directly managed staff or agency inspectors.
- 3.8 The existing Contract has worked well during the last two years, and offers the Council the flexibility of varying the number of inspections required each year in relation to the works being carried out by utility companies, as the resources would be supplied by the Contractor.
- 3.9 With the current financial climate and unpredictable nature of utility works, it is proposed that a new framework agreement be in place from 1st April 2013 for a period of three years, with the option to extend for a further two years at the Councils discretion. A framework agreement would also allow other borough's to make use of the contract.
- 3.10 In line with the Council's Procurement Strategy, the contract will be offered on a 3 year fixed price basis with no provision for cost indexation in this period of time. Any proposals to extend the contract will incorporate a discussion with the contractor around any provision for cost uplift.

Options for savings

- 3.11 In line with current corporate operating principles, and in an effort to reduce the cost of the service within new contracts, the specification and levels of service will be reviewed with the aim of delivering significant financial savings compared to current budgets. However, in the case of this contract the income generated from the inspection regimes far exceeds the cost of the contract, and any reduction in resources provided under the contract would have a detrimental effect on income and our ability to protect the highway asset.
- 3.12 The existing contract includes a monthly performance target for inspections with an additional payment if this is exceeded. It is proposed that the specification is changed to encourage increased productivity from the same level of resources to maximise the number of inspections completed.
- 3.13 The option to allow access to the framework by other highway authorities has the potential to reduce tender prices due to the increased volume of work available to the contractor.
- 3.14 Detailed options for increasing performance will be taken into account as part of the tender evaluation and acceptance process.

4 POLICY IMPLICATIONS

- 4.1 The Borough's carriageways and footways have a high profile and are used by most residents and businesses on a daily basis. Helping to protect the integrity of these key assets will contribute to the Council's vision of providing a place where people choose to live and do business and links well with policy priorities of a quality environment, vibrant town centres and supporting independence/safer communities.

5 FINANCIAL IMPLICATIONS

- 5.1 NRSWA and TMA legislation provide the Council with the ability to charge for inspection of Utility works and matters dealing with occupation of the highway. This service provides the resource for the Council to perform inspections and collect performance information about statutory utilities' work. The contract is self funded through fees chargeable to the utility companies for undertaking sample inspections, charging for the high number of defective reinstatements identified from statutory and non-statutory inspections and from the issue of fixed penalty notices
- 5.2 The budget available for the Inspection of Street Works contract for 2011/12 is £355k. This contract significantly contributes to the generation of £1.2m income per annum.
- 5.3 Income from Streetworks inspections is in excess of £1m a year, with the majority being raised from defective reinstatements. Effective working arrangements will need to be in place by April 2013 to ensure this income is not affected

6 LEGAL IMPLICATIONS

- 6.1 Under the Highways Act 1980 the Council as Highway Authority has duties to ensure the safe passage of users of the highway and to maintain the highway
- 6.2 Legislation held within the New Road and Street Works Act 1991, associated Regulations and Codes of Practice, the Traffic Management Act 2004 and the London Permit Scheme for Road Works and Street Works enables local authorities to undertake inspection of Utility Companies works on the highway and to make charges for the cost of the site inspection process.

7. PERSONNEL IMPLICATIONS

- 7.1 Although there are no implications on LB Bromley staff, the contract will be subject to TUPE for the existing contractor's staff and operatives

8. PROCUREMENT IMPLICATIONS

- 8.1 The Procurement Strategy identified is designed to give the optimum level of flexibility in terms on the need to ensure the delivery of a cost efficient service while maximising potential income opportunities. The proposal also considers possible joint contracting arrangements and also incorporates the Council's policy aims around SME and similar sustainability issues.
- 8.2 In line with the Council's reduced funding provision, the contract is being offered on a fixed price basis for 3 years and then linked to appropriate basket of increased cost indices to reflect the labour and equipment used its provision rather than RPIX. This should provide a level of price certainty in the short to medium term and also link more closely future increases to actual cost incurred in delivery of the service. In addition, in line with the current Council's Procurement Strategy, it allows for the consideration of a 25% reduction in the contract cost base.
- 8.3 The "Gate Report", which is provided in line with the Council's Contract Procedure Requirements, accurately reflects the procurement strategy resulting from discussions between the services area and other "interested "corporate" parties, including Procurement, Legal and Finance.

9. OUTLINE CONTRACTING PROPOSALS & PROCUREMENT STRATEGY

- 9.1 The new contract will need to be in place by 1st February 2013 to allow handover to be completed prior to 1st April 2013 when the contract starts. The key dates within the project plan are;

	Nov-11	Dec-11	Jan-12	Feb-12	Mar-12	Apr-12	May-12	Jun-12	Jul-12	Aug-12	Sep-12	Oct-12	Nov-12	Dec-12	Jan-13	Feb-13	Mar-13	Apr-13
Gateway report approved by Executive	█																	
Agree levels of service and specification		█																
Prepare contract documents			█	█	█	█												
Publish OJEU Notice							█											
Agree select list									█									
Issue tender documents										█								
Tenders returned												█						
Evaluate tenders													█	█				
Award report approved by Executive																█		
Award contract																	█	
Contract start																		█

Tender Evaluation

- 9.2 Tender evaluation will be undertaken by the Project Board, in line with the Council's 'Evaluation Of Bids At Tender Stage' guidance. Due to the nature of the works it is proposed that the evaluation is based 60% on the financial submission and 40% on the quality bid.

Non-Applicable Sections:	Customer profile Stakeholder consultation Service profile / data analysis Market considerations Sustainability / impact assessments
Background Documents: (Access via Contact Officer)	1. New Roads & Street Works Act 1991; 2. HAUC Code of Practice for Inspections; 3. The Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2001; 4. Traffic Management Act 2004