

Decision Maker: Executive

For Pre-Decision Scrutiny by the Environment PDS Committee on:

Date: 24th January 2017

Decision Type: Non-Urgent Executive Key

Title: ENVIRONMENTAL SERVICES PROCUREMENT STRATEGY

Contact Officer: Dan Jones, Assistant Director Streetscene, Greenspace and Public Protection
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Chief Officer: Nigel Davies, Executive Director of Environment & Community Services

Ward: All Wards

1. Reason for report

- 1.1 This report sets out the Council's proposed procurement strategy for a range of environmental services and seeks the Executive's approval to commence the tendering process in April 2017. It is intended that all the contracts will commence 1 April 2019, subject to further award of contract reports being presented to the Executive in 2018.
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2. **RECOMMENDATIONS**

That the Executive:

2.1 **Agrees to the proposed lotting structure and procurement routes;**

- **Environmental Services: Competitive Procedure with Negotiation (Lots 1-4)**
- **Arboricultural Maintenance: Restricted Procedure (Lot 5)**
- **Highways Management: Restricted Procedure (Lots 6-7)**

2.2 **Agrees that;**

- **All Lots shall be tendered for an initial eight year term (1 April 2019 – 31 March 2027)**
- **Lots 1-4 may be extended for a further eight year term (1 April 2027 – 31 March 2035) subject to a best value review (in 2024/25) and being let at the Council's sole discretion**
- **Lots 5-7 may be extended on a similar basis to Lots 1-4, if placed in association with Lots 1-4**

Impact on Vulnerable Adults and Children

1. Summary of Impact: The services are used by all residents, including vulnerable adults and children. Reasonable adjustments are made, as required, to ensure services are accessible, e.g. disabled persons through the Special Requirements List for siting waste containers and tactile design and ramps used on footways to aid safe passage.
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Corporate Policy

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

1. Cost of proposal: Estimated Cost Between £535.9m and £640.3m, depending on whether Lots 5 – 7 are awarded with the option to extend for a further eight years
 2. Ongoing costs: Recurring Cost £40.019m
 3. Budget head/performance centre: Environment and PPS Portfolio Budgets as well as TfL funding within the capital programme
 4. Total current budget for this head: £34.253m and £5.766m
 5. Source of funding: Existing revenue budget for 2016/17 and TfL funding within Capital Programme
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Personnel

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

1. Legal Requirement: Statutory Requirement:
 - Waste Collection Authorities (WCAs) duty to collect residual waste ([EPA 1990 Ch. 43 Part 2](#))
 - WCA duty to collect three items for recycling ([Household Waste Recycling Act 2003](#))
 - Duty under [Waste Regulations \(England & Wales\) 2011](#) requires separate kerbside collection of paper, glass, metals and plastics
 - Duty on WCAs to provide free-to-use household waste recycling facilities 'reasonably accessible to persons resident in the area'
 - Duty to dispose of Municipal Waste ([EPA 1990](#))
 - Duty as Principal Litter Authority to remove refuse and litter from public areas: [Environmental Protection Act 1990](#)
 - Duty to remove abandoned vehicles [Road Traffic Regulation Act 1984 Section 99](#) and [Refuse Disposal \(Amenity\) Act 1978](#)
 - Duty to ensure the safe passage of users of the highway according to the [Highways Act 1980](#)
 - Duty to maintain the Highway ([Highways Act 1980](#) section 41)

2. Call-in: Applicable
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Procurement

1. Summary of Procurement Implications: Contracts to be procured through Competitive Procedure with Negotiation (four lots) and Restricted Procedure (three lots) under the [Public Contracts Regulations 2015](#)
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): All residents
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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

Background

- 3.1 A number of key environmental service contracts have been aligned to expire in March 2019 and this report seeks the Executive's approval to commence tendering the services (see 3.3) in April 2017, with a view to awarding new contracts commencing 1 April 2019.
- 3.2 The procurement strategy set out in this report reflects the findings of a series of service reviews, feedback from extensive soft market testing activity, and also the views of the Environmental Services Contract Programme Board – including input from the Environment PDS Member Working Group – which was convened to ensure a wide range of expertise from across the Council was represented in developing the proposals.
- 3.3 Lots 1-4 (Environmental Services) are being procured through the 'Competitive Procedure with Negotiation' route used for complex contracts, to drive innovation and add value through negotiation. Lots 5-7 (Arboricultural Maintenance and Highways Management) are being procured through the more traditional 'Restricted Procedure'.

Table 1: Lotting Strategy (**In-house functions*)

Lot	Environmental Services	Procurement Route	Procurement Timeline	Contract Notice
1	Waste Disposal <ul style="list-style-type: none"> Inc. relevant depot functions 	Competitive Procedure with Negotiation	April 2017 – March 2019	Contract Notice I
2	Waste Collection <ul style="list-style-type: none"> Inc. relevant depot functions Administration functions (re: Trade, Bulky and Green Garden Waste Services*) Customer Services associated with Lots 1-7 (as appropriate) 	Competitive Procedure with Negotiation	April 2017 – March 2019	
3	Street Environment <ul style="list-style-type: none"> Cleaning Graffiti Abandoned Vehicles Environmental Campaigns* Relevant Depot functions Enforcement (elements of) <ul style="list-style-type: none"> In-House Enforcement Team* Parks Security – (inc. Town Centres) Public Protection Enforcement* 	Competitive Procedure with Negotiation	April 2017 – March 2019	
4	Parks Management & Grounds Maintenance <ul style="list-style-type: none"> Inc. relevant depot functions 	Competitive Procedure with Negotiation	April 2017 – March 2019	
Lot	Arboriculture Maintenance	Procurement Route	Procurement Timeline	Contract Notice
5	Arboricultural Maintenance	Restricted Procedure	January 2018 – March 2019	Contract Notice II
Lot	Highways Management	Procurement Route	Procurement Timeline	Contract Notice
6	Highways Major Works <ul style="list-style-type: none"> Street Lighting Maintenance Highways Engineering Consultancy Safety Inspections* Street Works Inspections 	Restricted Procedure	January 2018 – March 2019	Contract Notice III
7	Highways Minor Reactive Works <ul style="list-style-type: none"> Highway Drainage Cleansing Winter Service Inc. relevant depot functions 	Restricted Procedure	January 2018 – March 2019	

- 3.4 Most of the services are already contracted to external suppliers and the draft tender documentation does not propose significant changes to the current service provision. However, the negotiation process (e.g. service innovation proposed by tenderers) and the Council's evolving position on the client function and customer service / IT provision may well result in changes, which would be reflected in the 2018 award of contract reports to the Executive.
- 3.5 The in-house services included in Table 1 (above) are currently provided by 32.5 FTEs. Further details on the specific service areas provided by in-house staff are included in paragraph 13.1
- 3.6 The Council is open to whether several individual contractors, a joint venture, consortium, or a single main contractor (which may sub-contract) provides the proposed services. For Lots 1-4 (and services placed in conjunction with them as part of the negotiated process), it is proposed that the contracts are tendered for an initial eight year period (01.04.19 – 31.03.27) with the option for an eight year extension (01.04.27 – 31.03.35) following a best value review in 2024/25 (section 9). Any lots not covered by this process (Lots 5-7) shall be tendered for eight years only, unless tendered in combination with Lots 1-4.
- 3.7 Generally speaking, the Council seeks to achieve savings or improve services as a result of any commissioning activity and this approach naturally also applies to this procurement strategy and the tendering process will be designed to drive best value on a whole life basis.

Management & Governance

- 3.8 The Environmental Services Programme Board was established in April 2016 to support the Commissioning Officers. The Programme Board represents Finance, Legal, HR, Commissioning & Procurement, IT, and the individual services being commissioned. The Programme Board meets on a fortnightly basis to support the Commissioners, deal with issues, and ensure that the Programme Plan keeps to schedule and is tendered according to the Council's rules.
- 3.9 The Programme Board is supported by four dedicated Working Groups covering the following workstreams: Legal & Procurement; Human Resources; Information Communications Technology; and Leases & Assets – all supported by Finance as appropriate.
- 3.10 Updates are provided (by the Programme Sponsor – Assistant Director, Environment Services) to the Council's Commissioning Board and the Corporate Leadership Team as required. From a democratic accountability point-of-view, this Procurement Strategy and the 2018 Award of Contract Reports will be scrutinised by both Environment and E&R PDS committees and award decisions made by the Executive.
- 3.11 To give greater opportunity for providers to arrange their services in more flexible and innovative ways, the contracts will be outcome-based: that is the client specifies what is to be achieved rather than the exact detail of how a service is to be provided. The client management function will be to focus on monitoring the Key Performance Indicators by which these outcomes will be measured and to take corrective management action as appropriate. The current client team for Lots 1 – 4 comprises 26.6 FTEs at a cost of £1.19m.
- 3.12 Future client arrangements will be subject to review following the outcome of the tendering process. Contract performance and monitoring data will be reported to Members according to the Council's Contract Procedure Rules.

Risk Management

- 3.13 This procurement programme presents a number of risks, the most obvious of which is the large scale and high value of the activity. This has been mitigated in a number of ways including by:

- lotting the various services to drive best value, allow services to be clearly benchmarked, and be attractive to a range of tenderers
 - establishing a three-year programme to allow sufficient time for deep market engagement and a phased approach to the procurement process
 - identifying a programme management team to ensure effective delivery of the Programme
 - convening an expert Programme Board to advise the commissioners
 - establishing and reporting on the Risk Register
- 3.14 Competitive Procedure with Negotiation is a relatively, though not entirely, new procurement process for the Council and there is a need to ensure that sufficient capacity and expertise is available (to cope with a currently unknown number of negotiation meetings) when required to negotiate effectively with contractors (for whom negotiation is an everyday business activity).
- 3.15 There is also a risk that tendered costs may be higher than the service budgets given that services have not been recently tendered and services, assets and infrastructure may require investment to make them fit for future purpose. These issues will be considered by the Environmental Services Programme Board and be included in the award of contract reports.
- 3.16 There are also risks associated with individual services – which are recorded in the Risk Register. For instance for waste management, risks include failure to secure sufficient (guaranteed but flexible) capacity at waste disposal facilities to handle / process future needs, or an over-reliance on unproven technology or unbuilt plant. These risks will be mitigated, so far as reasonably practicable, during the tendering process.

Principles

- 3.17 To ensure the Council achieves best value and contracts which are sustainable in economic, social and environmental terms, a number of principles will underpin the contracts (and will form part of the Invitation to Tender). These indicative principles include:
- Innovative approaches to service provision
 - Shared approach to risk and reward
 - Use of proven 'smart' technologies for service delivery and monitoring
 - Improved environmental performance and local environmental quality
 - Low carbon solutions and contribution to increased environmental resilience
 - Improved service performance and reduced levels of complaint
 - Contribution to the circular / sustainable economy

Depot infrastructure: condition and improvements

- 3.18 The availability of serviceable local depots is fundamental to the delivery of several lots. A number of strategic property activities are being undertaken to assess the depots' condition, future use and any investment requirements. The Programme's service requirements will, therefore, feed into a Depots Options Appraisal process (being undertaken by Cushman & Wakefield as a core strategic property activity) designed to clarify the anticipated requirement for depot space.
- 3.19 A 'Depot Condition Survey' will also need to be undertaken so that the contractor(s) and the Council agree to the state of the Depots prior to contract commencement. The principle is that the depots should be returned to the Council in similar, or better, condition on contract expiry.

3.20 This work will inform any improvement plans required to ensure the depots are fit-for-future-purpose. If depot improvements are required (a distinct possibility given their current condition and the length of contracts), then either the cost to be met directly by the Council or amortised over the contract term through contract payments.

4. SERVICE PROFILES

4.1 A range of lotted services are to be procured (see 3.3) and a simple summary of these (as they are currently provided) is appended in Appendix 1 to this report.

5. CUSTOMER PROFILE

5.1 The services to be procured (e.g. waste collection, highway maintenance, street cleaning and parks and greenspace management) are highly visible, affect everyone's daily lives, and are generally highly valued by residents and visitors. As such, all Bromley residents may be considered to be service users and because the services are broadly universal there is limited purpose in defining the customer profile. That said some profiling is already done, for instance in respect of the number and location of our Green Garden Waste Service customers, and local customer data will be used to help specify the services to be procured as appropriate. There are currently no plans for significantly changing the services and customers should not be significantly negatively impacted by the current proposals. Where significant changes are to be considered (e.g. as a result of the negotiation process), then customer consultations would take place as part of the decision-making process and the results reported to Members.

6. MARKET CONSIDERATIONS

6.1. Most of the services to be tendered under this Programme are already outsourced to private sector companies and it is clear that the market has capacity in general terms (though whether an individual company chooses to bid will be a function of its own priorities at the time). Consideration has been given to alternative modes of service delivery and the recommendation is to tender the lots in accordance with the timetable set out in 3.3 and 9.4 (Lots 1-4).

6.2. Similarly, consideration has been given to whether the contracts should be jointly procured with other councils or whether a framework should be created to enable other councils to 'call-off' from the LB Bromley contract. However, neither approach has generated significant interest (from other councils) and the Programme Board's view is that the services are of such a scale that best value can still be achieved by the Council tendering on its own.

6.3. A number of activities, over a period of a year, were organised to gauge the market's interest in tendering for the contracts and to get the market's view of the lotting structure. In particular:

- Considerable analysis was undertaken of the services procured by neighbouring authorities (e.g. contractors providing street environment and waste contracts to neighbouring councils)
- A Bidders Day was held on 2 September 2016 at the Civic Centre to allow the Council to explain its broad approach to procurement and lotting and for potential tenderers to question officers. Market information was gathered from potential contractors and the Bidders Day was well attended and generally considered a success.
- One-to-one meetings have been held with a range of organisations at their request during October and November 2016. These organisations tended to be larger companies which are interested in bidding for several lots and these meetings allowed potential contractors to gauge the Council's attitude to various service options.
- The Waste Resources Action Programme (WRAP reviewed the approaches taken to waste collection by five neighbouring boroughs (Greenwich, Lewisham, Lambeth, Bexley and Bromley) as part of the Government's waste collection harmonisation review. Bromley ranked

highly in comparison with the other boroughs in terms of value-for-money and fit with the Government's preferred model. Operational information and management costs from the same five boroughs were separately reviewed to consider options for different models of partnership working (e.g. Joint Working Contracts / Teckal company) and that information has been considered by the Programme Board. A third piece of research is also being undertaken to identify any further possible improvements to Bromley's waste collection model (already considered to be efficient) in terms of collection frequency and containment.

- 6.4. This extensive market engagement exercise has assured the Programme Board that a sufficient number and diversity of potential tenderers exists to generate competitive bids and achieve best value for the Council.
- 6.5. The Council does not intend to place restrictions on defining who can bid, though naturally the tendering process will identify the most appropriate organisations through the usual two-part process. Indeed the lotting strategy is specifically designed to allow the Council to achieve best value by dividing the contracts into discrete services. So, just as consortia bids are welcome, so too would joint-venture and main-contractor bids.
- 6.6. All that said, the nature and scale of the services suggests it would be difficult for small and / or local service providers to tender but this does not mean that they should be excluded. Therefore, the Invitation to Tender will explicitly state that the use of subcontractors, including local and or small sub-contractors, is welcome.
- 6.7. In summary, the environmental services market is mature and a range of service providers have expressed an interest in every lot. Indeed, the market testing exercise has identified that some organisations could provide all the services and may tender on that basis.

7. STAKEHOLDER CONSULTATION

- 7.1. The Council has already consulted widely with the environmental services sector and this activity has already been described in Section 6 (Market Considerations) and this has informed this procurement strategy and the tender documentation.
- 7.2. Although the tender documentation has been developed in a new format, with a greater emphasis on outcomes rather than inputs, the specifications will still broadly reflect the current service provision. While officers have paid due regard to the public sector equality duty under section 149 of the [Equalities Act 2010](#), no significant change is being anticipated at this point in time, and therefore no public or service user consultation has been undertaken to date.
- 7.3. In the event that significant service changes are proposed, say as a result of the negotiation process and particular groups may be impacted, then appropriate consultation would be undertaken including, but not necessarily restricted to, discharging the Council's Public Sector Equalities Duty under the Equalities Act 2010. The outcome of such consultation would form part of the award of contract report.

8. SUSTAINABILITY / IMPACT ASSESSMENT

- 8.1 The Council's Sustainable Procurement Policy recognises that considering sustainability factors in procurement decisions can bring about improved social, economic and environmental outcomes, maximise value for money and help deliver joined-up services.
- 8.2 The [2016/19 Environment Portfolio Plan](#) states that as well as maintaining high service standards, we aim to enhance our environment and contribute to a good quality of life for all and tenderers will be asked how their proposals will contribute to achieving this ambition.

8.3 Therefore, and In line with the requirements of the [Public Services \(Social Value\) Act 2012](#), officers will consider how the tenders can help to improve local economic, social and environmental well-being.

9. OUTLINE PROCUREMENT STRATEGY AND CONTRACTING PROPOSALS

Estimated Contract Value

9.1 The Council is required to state an estimated total contract value in the OJEU tender notice. The information set out in Table 3 identifies that £40m was budgeted for these services in 2016/17. It is proposed that the services are tendered for eight years with an option to extend for a further eight years. This would give an indicative value of between £535.9m and £640.3m, depending on whether Lots 5 – 7 are awarded with the option to extend for a further eight years. The actual value will reflect tendered prices and the chosen inflation metric and be reported to Members in 2018.

Proposed Contract Period

9.2 It is proposed that the term for each lot shall be for an eight-year core period: 1 April 2019 – 31 March 2027. This is because contractors require a sufficiently long-term contract to allow for capital costs (such as vehicle purchase) to be amortised and, more generally, to allow certainty for any contractual relationships into which they may wish to enter.

9.3 It is further proposed that, subject to a Best Value Review being undertaken in 2024/25, an eight-year extension (1 April 2027 – 31 March 2035) is offered at the Council's sole discretion, subject to the Executive's approval at the time (for those lots placed in combination). In this way and, subject to the agreement of all parties, lots 1-4 are offered as 8+8 year contracts together with any other lots placed in combination with them.

Programme Plan

9.4 A detailed Programme Plan is maintained on a dedicated Team Site containing key documents including the programme timetable. Two procurement timelines are envisaged:

- Environmental Services (Lots 1-4) April 2017 – March 2019: a two-year period being required due to the size of the contract and to allow sufficient time for negotiation/evaluation and mobilisation determined by the number of tenderers involved and the number of negotiations
- Arboriculture & Highways Contracts (Lots 5-7) January 2018 – March 2019: a 15-month period is considered sufficient for the less complicated 'restricted' procurement process (to be the subject of a future procurement strategy report to the Executive)

The detailed high-level timeline is appended to this report (Appendix 2) but the key steps involved in the procurement of the Environmental Services lots (1-4) is set out below.

Table 2: Procurement Programme (Lots 1 - 4: Environmental Services)

	Phase	Activity	Timetable
Service Review & Options	Phase 1	Research	October 2015 – September 2016
	Phase 2	Development	October 2016 – November 2016
	Phase 3	Procurement Strategy / Documentation Development	December 2016 – March 2017
		Tender Documents Complete	April 2017
		Advert Issued	

	Phase	Activity	Timetable
ITT	Phase 4	Suitability Questionnaire	April 2017 – June 2017
Tender Evaluation	Phase 5	Tender Submissions First Evaluation Negotiation Final Evaluation	July 2017 – September 2017 October 2017 – December 2017 January 2018 – May 2018 June 2018 – August 2018
Award Process	Phase 6	Award of Contract Mobilisation Contract Commencement	September 2018 October 2018 – March 2019 1 April 2019

Development of Tender Documentation

- 9.5 The Programme Board has oversight of the development of all the tender documentation but most of the detailed activity is undertaken by the Legal & Procurement Working Group. It is proposed that all the contract documents will be completed (and uploaded to Due North's ProContract system) by the end of March 2017. In the event that unforeseen issues arise, the timetable allows an additional month (April 2017) to complete the process.
- 9.6 Separate specifications will be produced for each lot and it is intended to use the Form of Contract used by the Council for the Total Facilities Management contract to help enable consistent contract procedures across the Council.

Evaluation Criteria

- 9.7 In line with the Council's standard policy, it is proposed that a 60/40 price/quality ratio will apply to the tender evaluation for all lots. It is not considered appropriate to increase the percentage allocated to price (say to 70%) as the contracts are for front-line services which are experienced by all residents and visitors on a daily basis and service quality is considered crucial in terms of both service delivery and tender evaluation.
- 9.8 Furthermore, adopting a common (to all lots) price/evaluation split will enable tenders to be more easily assessed should contractors wish to bid for more than one element.
- 9.9 Tender evaluation will be undertaken in line with CIPFA's model, which should ensure that submissions should be neither too high to be affordable nor too low to be financially sustainable. The evaluation model will be created and tested from January to March 2017.
- 9.10 Tenders will also be assessed in line with the Council's Sustainable Procurement Policy and in particular evaluation will reflect 'whole life costing'.
- 9.11 In addition, discounting will be encouraged to reflect the economies of scale associated with tendering for more than one lot. Minimum scores will apply to ensure that bids which do not adequately address quality issues do not progress to the negotiation stage.
- 9.12 While certain quality criteria will be common to all lots, some criteria will be lot-specific and will be crucial in ensuring that the Council achieves high levels of service performance.
- 9.13 An assessment of both price and quality, in the round, will allow the Council to demonstrate that it is achieving 'best value' over the term of the contract.

- 9.14 The evaluation will also consider any inward or Council investment required for the proposed services as part of the financial assessment.

Lotting Strategy

- 9.15 The services have been lotted (see Table 1) because this is a procurement regulation requirement but also because the Council does not wish to restrict the market – lotting allows contractors of variable sizes to tender. In addition, lotting allows individual services to be priced and thereby aids benchmarking. Lotting also encourages the application of discounts for tendering several services.
- 9.16 The Programme Board considered and refined the lotting strategy during October and November 2016 and the strategy was agreed at the 23 November 2016 Programme Board.

10. POLICY IMPLICATIONS

- 10.1 The [Environment Portfolio Plan 2016-19](#) (the Council's environmental service aims and objectives) identifies 'developing commissioning options for the Portfolio's larger contracts (e.g. waste services, grounds maintenance, highways management and street cleaning) from 2019 onwards' as a key initiative for 2016/17. The development of the commissioning programme set out in this report is referenced in Outcome 1.7 (Improving the Streetscene) and Outcome 2.1 (Minimising Waste & Increasing Recycling).
- 10.2 The Council's renewed ambition for the borough is set out in the 2016-18 update to [Building a Better Bromley](#) and this procurement activity will help in delivering two of the key aims: an 'Excellent Council' and a 'Quality Environment'. For an 'Excellent Council', this strategy will help by 'ensuring good contract management to ensure value-for-money and quality services'. And for a 'Quality Environment', the contracts will help to 'sustain a clean, green and tidy environment through value-for-money services provided to a consistently high standard'.

11. COMMISSIONING AND PROCUREMENT IMPLICATIONS

- 11.1 The services comprise the major proportion (by value) of the contracts provided by Environment & Community Services and most are already outsourced to private sector organisations. Some services are currently managed in-house and this activity may be outsourced but no decision has yet been made on this. Depending on the outcome of the negotiation process, some back office activities (e.g. aspects of IT and Customer Services) may also be outsourced (as indicated in the Lotting Strategy)
- 11.2 The Procurement Strategy developed in this report makes best use of the different approaches to contracting provided for in the [Public Contracts Regulations 2015](#). Its use enables an appropriate route for each of the contracted services in the way most likely to secure value for money and provide opportunities for service investment and development. At the same time, the approach allows the smaller contractors to actively participate in the tender process, either as sole providers or members of consortia bidding across a range of services. The extent to which the negotiated procedure can be used is set out in PCR 2015 regulation 26 and while the arrangements are complex, it is only by using the opportunities that the use of these regulations provides for innovative procurement solutions to be adopted that the Council is likely to be able to develop the services in a holistic and affordable manner for future service delivery.

12. FINANCIAL IMPLICATIONS

12.1 Table 3 sets out the 2016/17 budgets associated with each of the services to be tendered:

Table 3: Service Annual Budgets

Services	2016/17 £'000
<u>Lots 1 - 4</u>	
Abandoned Vehicles	25
Depots Security	15
Enforcement	1,871
Graffiti	184
Parks	4,550
Street Cleansing	3,366
Waste Services	16,957
Total for Lots 1 - 4	26,968
<u>Lots 5 -7</u>	
Highways - revenue	6,782
Highways - capital (TfL funding)	5,766
Aboricultural Maintenance	503
Total for Lots 5 - 7	13,051
Total for Lots 1 - 7	40,019

12.2 As mentioned in 3.11 above, the current client team for Lots 1 – 4 comprises 26.6 FTEs at a cost of £1.19m. Details for Lots 5 – 7 will be included in the future procurement strategy report for these services. Future client arrangements for all lots will be determined following the outcome of the tendering processes.

12.3 It should be noted that there may be additional investment required for the depots or other assets following the results of the condition surveys. The cost of the surveys is being met from within existing revenue budgets.

12.4 It is proposed that after the first two years of the contract that the contract prices are reviewed in line with the relevant inflation indices.

12.5 No TUPE or pension costs have been considered in this report as the client / contractor split has yet to be determined.

13. PERSONNEL IMPLICATIONS

13.1 Whilst the majority of services outlined in this report are already contracted out to private sector organisations there are nevertheless a number of in-house staff may be in scope, depending on the outcome of the tendering process, as set out below:

Service	Number of Staff (up to)	FTE (up to)
Enforcement Team	7	6.5
Waste Administration	3	3
Environmental Campaigns	1	1
Public Protection Enforcement	14	14
Highways Inspection	8	8

- 13.2 There has been engagement with staff, trade unions and departmental representatives around the market testing of these services. Meetings have been held with staff from the service areas currently affected by the proposals as set out in this report. Further communication with staff and their representatives will be taking place before the date of the Committee and any feedback from these discussions will be provided at the meeting.
- 13.3 If Members agree the recommendations in the report, staff and their representatives will be engaged and formally consulted as early as practical at each stage of the process going forward, subject of course to any commercially sensitive information, consistent with the Council's legal obligation pursuant to the Collective Redundancies Consultation Regulations and the Employment Rights Act. There will also be engagement with representatives and stakeholders who might be affected by the proposals.
- 13.4 Any staffing implications arising from the recommendations in this report will need to be carefully planned for and managed in accordance with Council policies and procedures and with due regard for the existing framework of employment law. Subject to the outcome of the process, the staffing considerations are likely to include the application of TUPE or not and possible redundancy implications.

14. LEGAL CONSIDERATIONS

- 14.1 The value of the contracts to be tendered is above the EU threshold level for services and will need to be tendered in compliance with the [Public Contracts Regulations 2015](#) (Regulations). Compliance with the Regulations will also ensure compliance with the Council's Contract Procedure Rules in relation to competitive tendering. Under Regulation 26 (4) (iii), the Council may use the Competitive Procedure with Negotiation where "the contract cannot be awarded without prior negotiation because of specific circumstances related to the nature, the complexity or legal and financial make up or because of risks attaching to them. Furthermore, Regulation 26(4) (iv) provides this procedure may be used where the services to be procured include "design or innovative solutions". It is proposed that Lots 1-4 (Environmental Services) will be procured using the Competitive Procedure with Negotiation pursuant to Regulation 26 (4) due to the complex nature of the services and to drive innovation and add value through negotiation.
- 14.2 Lots 5-7 (Arboricultural Maintenance and Highways Management) will be procured using the more traditional Restricted Procedure.
- 14.3 When using the Competitive Procedure with Negotiation, the Council will be required to provide a description of its need, define minimum requirements to be met by all tenderers, and specify the contract award criteria in the procurement documents. The contract documentation will follow the model established as part of the Total Facilities Management contract but will be adapted to reflect service-specific issues. Officers will also carefully consider the need for leases or licenses in relation to the various properties and assets associated with the contracts.
- 14.4 Most of the services to be procured are being provided by external contractors and any staff transfer issues under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) will relate the transfers from contractor to contractor. As mentioned in other parts of the report, some activities currently carried out by internal Council staff may be outsourced, although no decision has been made at this stage. In the event the proposal is agreed to outsource services, then appropriate TUPE consultation with staff will need to take place. Further if staff subject to a TUPE transfer are in the Local Government Pension Scheme, then the Council is under a statutory obligation to secure appropriate pension protection for staff.
- 14.5 Many of the services to be procured are services which the Council has a statutory duty to provide including but not restricted to:
- Waste Collection Authorities (WCAs) duty to collect residual waste ([EPA 1990 Ch. 43 Part 2](#))

- WCA duty to collect three items for recycling ([Household Waste Recycling Act 2003](#))
- Duty under [Waste Regulations \(England & Wales\) 2011](#) requires separate kerbside collection of paper, glass, metals and plastics
- Duty on WCAs to provide free-to-use household waste recycling facilities ‘reasonably accessible to persons resident in the area’
- Duty to dispose of Municipal Waste ([EPA 1990](#))
- Duty as Principal Litter Authority to remove refuse and litter from public areas: [Environmental Protection Act 1990](#)
- Duty to remove abandoned vehicles [Road Traffic Regulation Act 1984 Section 99](#) and [Refuse Disposal \(Amenity\) Act 1978](#)
- Duty to ensure the safe passage of users of the highway according to the [Highways Act 1980](#)
- Duty to maintain the Highway ([Highways Act 1980](#) section 41)

14.6 In addition, the following legislation will also be considered during the procurement process:

- [Equalities Act 2010](#) (Public Sector Equalities Duty)
- [Localism Act 2011](#) (Community Right to Challenge)
- [Public Services \(Social Value\) Act 2012](#) (Consider social, environmental and economic benefits)
- [Sustainable Communities Act 2007](#) & [2010 amendment](#) (improving the economic, social and environmental well-being of an area)

Non-Applicable Sections:	None
Background Documents: (Access via Contact Officer)	Resource London / WRAP research Appendix 1: Service Profiles Appendix 2: High Level Procurement Plan

ENVIRONMENTAL SERVICES PROCUREMENT STRATEGY REPORT: ES17002

APPENDIX 1: Current Service Profiles

This Service Profile (Appendix 1 to Report ES17002) sets out a simple description of the services as currently provided – divided into the proposed lotting structure. It is for information purposes only and not intended to be a service specification for the proposed contracts.

Lot	Environmental Services	Service Profile
1&2	Waste Collection & Disposal	<ul style="list-style-type: none"> • Waste Collection & Disposal: Collection and disposal of municipal (household and trade) waste through a comprehensive door-to-door refuse and recycling collection service, bring banks and Household Waste Recycling Centres. Contract is based on a need both to provide value for money customer services and to reduce landfilled waste. Service developments included separate collections for glass/cans/plastics, paper/card, and food waste, wheeled bin green garden waste subscription service, re-engineering the HWRCs and expanding the range of materials which can be recycled. <i>Current Contractor:</i> Veolia Environmental Services Ltd
3	Street Environment <ul style="list-style-type: none"> • Cleaning • Graffiti • Abandoned Vehicles • Enforcement (In-House Team, Parks & Town Centre Security, and Public Protection - part) 	<ul style="list-style-type: none"> • Street Cleaning: Day-to-day routine street cleaning activities and response to service requests including mechanical and manual sweeping, fly-tipping and fly-poster removal, emptying and replacing litter bins, weed control, autumn leafing and, in the event of severe winter weather, snow clearance and pavement salting. <i>Current Contractor:</i> Kier Services Ltd • Graffiti Removal: Removal of graffiti visible from the highway and within 50m of street boundary, on public or private property as reactive work. Works may also include removal of fly-posters, paint spillages and other stain removal works. <i>Current Contractor:</i> Community Clean • Abandoned Vehicles: Removal, storage and disposal of nuisance, abandoned and surrendered vehicles (motorised or non-motorised). <i>Current Contractor:</i> Pickapart Ltd • Enforcement: Including Parks Security, on-street enforcement activity (<i>Current Contractor:</i> Ward Security) and elements of Public Protection enforcement (currently in-house)
4	Parks Management , Grounds Maintenance & Cemetery Services	<ul style="list-style-type: none"> • Grounds Maintenance: Maintenance of some 156 parks, recreation grounds and open spaces, including some 3,000 acres of open space, 71 play areas, the cemeteries' and burial service, and maintaining highway grass verges & shrubs. <i>Current Contractor:</i> ID Verde (formerly the Landscape Group) • Soft Landscaping Works: Covers range of activities including Woodlands Works: managing Public Rights of Way; Rural Grass Cutting: Rural Hedge Cutting: Japanese Knotweed control on LBB land; Hanging Baskets supply and maintenance; and Non-routine

		<p>work; and Plant & Shrub Supply</p> <ul style="list-style-type: none"> • <u>Playground Maintenance</u>: Inspection, servicing, and repair of the borough's 67 equipped play areas
Lot	Arboriculture Maintenance	
5	Arboricultural Maintenance	<ul style="list-style-type: none"> • <u>Arboricultural Maintenance</u>: Inspection and maintenance of the Council's tree stock, which includes street trees, park trees, school trees and trees in conservation sites. The Council takes direct responsibility for inspecting 12,000 street, 7,000 parks and 2,500 school trees each year to identify trees requiring remedial works under the contract and responding to public enquiries regarding the Council's tree stock. The Contract's key elements include completion of all remedial works issued and replacing some 400 street trees each year. <i>Current Contractor: Gristwood & Toms</i>
Lot	Highways Management	
6	Highways Major Works <ul style="list-style-type: none"> • Street Lighting Maintenance • Highways Engineering Consultancy • Safety Inspections • Street Works Inspections 	<ul style="list-style-type: none"> • <u>Highways Major & Planned Works</u>: Completion of all planned highway maintenance works and improvement projects. Some 40 major projects are traditionally undertaken annually involving resurfacing / reconstructing roads and footways. <i>Current Contractor: FM Conway Ltd</i> • <u>Street Lighting</u>: Maintenance of the Borough's lighting stock including street lighting columns, and both lit and unlit signs and bollards and nameplates. • <u>Highways Engineering Consultancy</u>: Inspections and assessments of the Council's highway structures and multi storey car park stock using a call-off arrangement and to draw up, procure and supervise schedules of maintenance to ensure the safety of the travelling public. <i>Current Contractor: AECOM</i> • <u>Safety Inspections</u>: Programmed inspections of footway and roadway currently undertaken by qualified LBB officers to identify hazards requiring timely repair • <u>Street Works Inspections</u>: Inspection of utility reinstatement works and compliance with permit conditions and timescales.
7	Highways Minor & Reactive Works <ul style="list-style-type: none"> • Highway Drainage Cleansing • Winter Service 	<ul style="list-style-type: none"> • <u>Highways Minor & Reactive Works</u>: Deals with day-to-day frontline safety issues including minor reactive repairs to the fabric of the highway. In practice this involves carriageway, footway and street furniture (excluding street-lighting) repairs. Contract also includes works to the highway drainage infrastructure. Small traffic scheme installations (e.g. TfL funded pedestrian crossings) use this contract. Contract deals with Emergency & out-of-hours call-out service. <i>Current Contractor: O'Rourke Construction & Surfacing Ltd</i> • <u>Gulley Cleaning</u>: Annual planned cleansing programme of all highway drainage infrastructure including carrying out a range of other tasks such as drainage condition surveys using CCTV, the provision and disposal of sandbags, attendance in storm conditions and at times

		<p>of a major flooding incident, and the removal of items lost by the public in the highway drainage infrastructure. <i>Current Contractor:</i> <u>Veolia Environmental Services Ltd</u></p> <ul style="list-style-type: none">• <u>Winter Service:</u> Minor & Reactive Works Contract supports the Winter Service Policy & Plan (both carriageway and footways) <i>Current Contractor:</i> <u>O'Rourke Construction & Surfacing Ltd</u>
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ENVIRONMENTAL SERVICES PROCUREMENT STRATEGY REPORT: ES17002
APPENDIX 2: High Level Programme Plan

This indicative Programme Plan (Appendix 2 to Report ES17002) sets out a high level description of the phasing of the procurement activity for the Environmental Services (Lots 1-4).

		Start Date	Deadline
Service Review and Options Appraisal	<u>Phase 1: Research</u>		
	Investigate possible Joint Working Opportunities / Initial Soft Market Testing	01/10/2015	31/10/2016
	Commission any supporting reviews - External Parties (WRAP)	01/10/2015	31/10/2016
	Develop PIN	N/A	27/05/2016
	Issue PIN	N/A	06/06/2016
	Service Reviews completed for each relevant contract area	01/06/2016	30/09/2016
	Bidders Day	N/A	02/09/2016
	Bidders Day Review	N/A	30/09/2016
	<u>Phase 2: Development</u>	Start Date	Deadline
	Position on Risks and Liabilities Investments in Service (i.e. Service Development, Pensions and IT)	01/10/2016	30/11/2016
	Establish Legal Work Stream - Legal Sub Group	19/10/2016	ONGOING
	Establish HR Work Stream	25/10/2016	ONGOING
	Establish Member Working Group	11/10/2016	ONGOING
	Establish Finance Work Stream - Client and External Resources / Budget Review	18/10/2016	ONGOING
	Contract Structure including interface with supply chain and other contracting arrangements: Procurement and Lotting Strategy agreed	N/A	12/10/2016
	Options Appraisals -	N/A	ONGOING
	Client /Contractor Split – Position support arrangements to be retained or placed with others	01/10/2016	30/11/2016
	Soft market Testing / Supplier Meetings - Contractor 1:1's	01/10/2016	30/11/2016
	Stakeholder Consultation Requirements; Impact Assessments (Equalities/best/social value)	01/10/2016	30/11/2016
	Initial Staff Consultation (discussion)	01/10/2016	30/11/2016
	Policy Amendments / Agreement	01/10/2016	30/11/2016
	Consider Consortium/Sub Contractor position	01/10/2016	30/11/2016
	<u>Phase 3: Procurement Strategy / Development of tender documents</u>	Start Date	Deadline
	Procurement Strategy Report - Programme Board	30/09/2016	07/12/2016
	Gate 2: Commissioning Board	N/A	12/12/2016
	Gate 2 Report – Draft Complete	N/A	21/12/2016
	Gate 2 Report: PDS	N/A	24/01/2017
	Gate 2 Report : E&R PDS	N/A	01/02/2017
	Gate 2 Report L: Executive	N/A	08/02/2017
	Agreement of Procurement Route	N/A	12/10/2016
Prepare Specification	19/10/2016	28/02/2017	
Prepare T&Cs	19/10/2016	28/02/2017	
Prepare Bidding Pro Forma	19/10/2016	28/02/2017	
Create draft evaluation matrix	01/12/2016	31/01/2017	
Test evaluation matrix	01/02/2017	31/03/2017	
Finalise Contract/Tender Documents	19/10/2016	28/02/2017	
Prepare EU Notice/Adverts	01/02/2017	28/02/2017	
Programme Board (Management) Approval	N/A	15/03/2017	
Commissioning Board Approval	N/A	20/03/2017	

		Start Date	Deadline
Invitation to Tender	<u>Phase 4: SQ / Issue Advert</u>		
	Set up (and Maintain) Pro Contract	01/04/2017	01/04/2017
	Issue SQ	01/04/2017	01/04/2017
	Complete Financial Competency	01/05/2017	01/06/2017
	Select Negotiation Participants	N/A	01/06/2017
	Despatch of OJEU – Publication of UK advertisement.	N/A	01/04/2017
	Publish Relevant Documents	N/A	01/04/2017
	Finalise Evaluation Arrangements and Task Team Membership - Financial Model	01/04/2017	01/04/2017
	Return of SQ (30 Day Minimum)	N/A	01/05/2017
	Deadline for Questions	01/04/2017	30/06/2017
	Client References and any Site Inspections as required – Organisation basis – Capacity and Capability	01/04/2017	01/06/2017
	Complete review of responses and finalise selection of preferred bidders invited to participate	01/05/2017	30/06/2017
Tender Evaluation	<u>Phase 5: Tender submission / Negotiation</u>	Start Date	Deadline
	Invitation to Submit Initial Tender	01/07/2017	01/07/2017
	Stage 1 of Negotiation	01/07/2017	31/10/2017
	Evaluation of Stage 1 (First Evaluation)	01/11/2017	30/11/2017
	Stage 2 of Negotiation	01/01/2018	31/03/2018
	Evaluation of Stage 2 (Second Evaluation)	31/03/2018	31/05/2018
	Bid Clarification Process / Evaluation / Downsizing of list as necessary	01/04/2018	31/05/2016
	Final Tender Submission	01/06/2018	31/08/2018
	Tender Evaluation - Clarification and Questions (Final Evaluation)	01/06/2018	31/08/2018
	Client visits to test basis of bid as necessary	01/06/2018	31/08/2018
	Finalise Contract on all substantive issues	01/06/2018	31/08/2018
	Assess Readiness to Award	01/08/2018	31/08/2018
	Financial Close	01/08/2018	31/08/2018
	Evaluation Report to Management (Commissioning Board / Programme Board)	01/06/2018	31/07/2018
	Draft Award of Contract Report (Gate 3)	01/06/2018	31/07/2018
	Award of Contract Report – to Commission Board	01/06/2018	31/07/2018
Award of Contract report to Executive Committee / PDS as necessary	01/06/2018	31/07/2018	
Informal Notification to successful contractor/s (submit to alcatel)	01/09/2018	15/09/2018	
Award Process	<u>Phase 6: Award Process – including ‘Stand still’ (10 days) and ‘Go Live’</u>	Start Date	Deadline
	Mandatory stand still period (10 days)	15/09/2018	30/09/2018
	Any Residual Due Diligence both parties	01/10/2018	31/03/2019
	Contract Lead in Arrangements Contractor – Including TUPE Consultation and pension arrangements as appropriate	01/10/2018	31/03/2019
	Contract Lead in Arrangements Council – Including TUPE Consultation and pension arrangements as appropriate	01/10/2018	31/03/2019
Contract Mobilisation	01/10/2018	31/03/2019	