

Decision Maker: EXECUTIVE

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

Date: 20th November 2018

Decision Type: Non-Urgent Executive Key

Title: COMMISSIONING STRATEGY AND CONTRACT VARIATION –
HIGHWAY ENGINEERING CONSULTANCY SERVICES

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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 considers the need for highway engineering consultancy services, future proposals for the service and the service offer made by JB Riney within the context of the OJEU(Official Journal of the European Union) Notice issued for the Council's Major Highway Works and Street Lighting Contract 2018.
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2. RECOMMENDATION(S)

The Executive approves:

- 2.1 The Highway Engineering Consultancy Services is included as part of the Highway Major Works and Street Lighting contract with JB Riney via a contract variation.

Impact on Vulnerable Adults and Children

1. Summary of Impact: Beneficial outcomes to vulnerable adults and children by helping to ensure access and availability to the Council's highway and car parking assets.

Corporate Policy

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

1. Cost of proposal: Estimated cost £3m
 2. Ongoing costs: Recurring cost. Up to £363k costs per annum and an annual saving of £10k from staffing
 3. Budget head/performance centre: Various budgets within Environment & Community Services and Capital Programme
 4. Total current budget for this head: £144k, £20k and up to £200k
 5. Source of funding: Revenue budgets for highways, transport and parking, contributions from developers and TfL funding.
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Staff

1. Number of staff (current and additional): 0.5 fte
 2. If from existing staff resources, number of staff hours: 0.5 fte
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Legal

1. Legal Requirement: Statutory requirement. : Highways Act 1980
 2. Call-in: Call-in is applicable : Key decision
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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: Not applicable

3. COMMENTARY

- 3.1 The Council has duties and powers for the safe use of its highway infrastructure and for use of its multi storey car park asset. Since the Council's decision in 1993 to utilise voluntary competitively tendering, the professional services element of these duties has been delivered using Consulting Engineers. The broader service includes inspection/studies of structures (bridges, culverts, retaining walls), engineering emergencies involving the highway, ad hoc Transport and Flood Studies, larger highway development schemes and inspection/studies of the Council's stock of multi storey car parks. The service has been tendered regularly since 1993 to help ensure the Council maintains a best value engineering consultancy service.
- 3.2 The current contract was tendered according to an access agreement (dated 28th January 2015) with the Homes and Communities Agency (HCA) Multidisciplinary Framework Contract. According to the Framework terms, an initial sifting exercise was undertaken leading to electronic tender invitation to five framework consulting engineers. AECOM was the successful consultant and was awarded the contract on a one year basis beginning on 21st July 2016. This was subsequently extended to the Framework end date of 3rd November 2018 with approval to continue to work with AECOM until 31st March 2019. New measures need to be considered for any future service beyond that date.
- 3.3 Environmental Services Procurement Strategy was presented to Environment and Community Services PDS at the meeting held on 24th January 2017, Report No ES 17002. The report included a lotting structure and identified that Highway Engineering Consultancy Services should be included in Lot 6 Highway Major Works as a provision to be investigated in the future, if best value could be shown.
- 3.4 In December 2017 a report (ES 17088) provided an update on the Environment Services commissioning programme. The proposal to let the Highways Major Works and Street Lighting (previously know as Lot 6) through a separate procurement exercise was approved by Executive.
- 3.5 The Major Highway Works and Street Lighting Contract 2018 was subsequently tendered in March 2018 and the contract awarded to JB Riney (JBR) with start date of 1st July 2018 (Report No ES18040).

4. SUMMARY OF THE BUSINESS CASE

- i) The majority of commissions placed the Highway Engineering Consultancy Contract support either the Council's statutory responsibilities as Highway Authority under the Highways Act 1980 (broadly, the safe passage of members of the travelling public), or the Council's responsibilities as the Transport Authority delivering the Mayor of London's Transport Strategy in accordance with Bromley's Local Implementation Plan (LIP). However access to Engineering Consultancy Services also supports the Council's resilience during times of major emergencies and provides the Council with the ability to call on specialised engineering resources at any time, allowing staffing levels to quickly peak but then diminish when the initial response is complete. The ability to fluctuate the Council's call on resources is equally relevant to times when the Council has major projects to deliver, a current example is the work the Council is doing in respect of wall building and waterproofing the Grade 2 listed structure at Crystal Palace Subway.

- ii) On the basis that the Council's statutory (highway) responsibilities will not alter in the short term and the Council will continue to deliver traffic and transportation solutions, there will remain a need for the Council to procure engineering consultancy services for the foreseeable future.

4.1 SERVICE PROFILE/DATA ANALYSIS

- 4.1.1 This service is for the provision of Highway Engineering Consultancy Services. The annual spend will average between £250k and £350k per annum and this will depend in particular on the level of Capital Funds received from Transport for London.
- 4.1.2 The service will impact across the whole borough dealing with highway structures, traffic and transportation and Council owned multi storey car park schemes.

4.2 OPTIONS APPRAISAL

- 4.2.1 A tender procedure has been followed leading to the award of the the Major Highway Works and Street Lighting Contract 2018. Included in the OJEU Notice to that Contract was a Common Procurement Vocabulary (CPV) code for Professional Services, which provides an option for the Council to issue a contract variation for Highway Engineering Professional Services. Information regarding best value is provided below in 4.3. Alternativley the Council would revert to a further tender procedure using an appropriate Framework
- 4.2.2 A further tender exercise through a Framework may result in the Council receiving lower unit cost rates although it is felt this is unlikely, in particular as the supply chain chosen by JB Riney includes the same service providers accessible through a Framework. The benefits of efficiencies and improved quality through adoption of Early Contractor Involvement (ECI) would not be realised from a Framework where the Council would directly employ a Consulting Engineer. In addition the Council would need to take into account the cost of creating a new Framework Access Agreement and the cost of tendering –the Council's current contract with JB Riney is for 8 years (with the possibility of a 1 year extension), Frameworks have a maximum duration of 4 years, and therefore the service would need to be tendered twice and two access agreements formed during the nine year period. This approach to procurement would ignore the commissioning agenda the Council is currently promoting.

4.3 PREFERRED OPTION

- 4.3.1 Environmental Services Procurement Strategy was presented to Environment and Community Services PDS at the meeting held on 24th January 2017, (Report No ES 17002). The report included a lotting structure and identified that Highway Engineering Consultancy Services should be included in Lot 6 Highway Major Works as a provision to be investigated in the future, if best value could be shown. The Major Highway Works and Street Lighting Contract 2018 (was subsequently tendered via the Due North Portal in March 2018 and the contract awarded to JB Riney (JBR) with start date of 1st July 2018 (Report No ES18040).
- 4.3.2 Working with JBR and their supply chain for Highway Engineering Consultancy Services will impart a culture of early contractor involvement (ECI) to enable their expertise in building schemes to be drawn into the design/project management processes and hence to help in choice of materials, scheme programming and minimising disruption to highway users. Given previous experience of 'design and build' public realm projects, such as Bromley North and Beckenham Town Centres,

the estimated financial value of these benefits would result in a saving in scheme design costs of between 5% and 10%. In addition the level of project management required through Bromley's own resources could reduce. Hence ECI processes can improve the quality of schemes, reducing overall costs and offering better value solutions providing the positive gateway the Council was seeking to investigate the financial viability of working with JBR in this way.

- 4.3.3 JBR have provided unit, hourly and percentage fee rates from three suppliers. All three organisations have track records of working for London Highway Authorities delivering similar work and therefore are well suited to working in this Borough.
- 4.3.4 An evaluation has been undertaken using a sample of the different types of work that would be undertaken. Sensitivity testing was also undertaken to consider the impact of varying workloads including 'scheme' or percentage fee works and a comparison between the assessment of the yearly model valued using current rates (incumbent) and those for JB Riney's service providers.
- 4.3.5 The cost comparison between the assessment of the yearly model valued, using rates from the incumbent supplier and those from the supplier yielding the lowest costs from the model indicates a 4% increase. The prices received from the three suppliers represent current market rates that are likely to be achieved should the services be obtained via a new framework through a tender exercise.
- 4.3.6 Under the terms of the Highways Major Works and Street Lighting Contract 2018, JB Riney would charge a sliding scale of handling/overhead fee, (dependant on the service element) in managing the Highway Engineering Consultancy Services through their supply chain and providing ECI throughout the project delivery.
- 4.3.7 The value of engineering consultancy services that could be commissioned through a new contract arrangement are estimated to be up to £330k per annum. These costs, along with the full charges of the commissions, would be met from individual revenue maintenance or capital project scheme budgets.
- 4.3.8 The unit rates submitted by JB Riney are competitive and working through this supply chain should herald benefits through adopting an ECI approach. It is believed this would represent the best value delivery of this service as required by the original lotting of the Major Highway Works and Street Lighting Contract 2018. It is recommended an appropriate change control notice is generated for JB Riney to provide the Highway Engineering Consultancy Services for the duration of the remaining Major Highway Works and Street Lighting Contract term.

4.4 MARKET CONSIDERATIONS

- 4.4.1 Procurement for the Highways Major Works and Street Lighting Contract was conducted according to the Council's Contract Procedure Rules.
- 4.4.2 The commissioning strategy of including Highway Engineering Consultancy Services in the OJEU notice for the Highway Major Works and Street Lighting Contract 2018 provides a provision for future investigation of best value and including the service as a contract variation has been reviewed.
- 4.4.3 All three Highway Engineering Consultancy organisations selected by JB Riney from their supply chain, have track records of working for London Highway Authorities delivering similar work and hence are well suited to working in this Borough.

5. STAKEHOLDER ENGAGEMENT

- 5.1 There would be no additional impact on Council resources or other projects involving property, customer access, Information Technology or the Customer Services Centre.

6. PROCUREMENT AND PROJECT TIMESCALES AND GOVERNANCE ARRANGEMENTS

- 6.1 The current contract for Highway Major Works and Street Lighting commence 1 July 2018 for an eight year period (with the option to extend for up to a further year) at an estimated whole life value of £90m.

- 6.2 It is proposed to vary the contract to incorporate Highway Engineering Consultancy requirements.

6.3 Estimated Variation Value – Up to £3m

6.2 Other Associated Costs – None

- 6.3 **Proposed Variation Period** – 7.25 years with the potential to extend by 1 year, as per the current contract.

7. SUSTAINABILITY AND IMPACT ASSESSMENTS

- 7.1 Ensuring the highway remains both safe for use and available for use, without hazards, will be beneficial for all sections of the community and in particular for vulnerable adults and children.

8. POLICY CONSIDERATIONS

- 8.1 The Borough's carriageways and footways, highway structures and multi-storey car parks have a high profile and benefit most residents and businesses on a daily basis. Helping to protect the integrity of these key assets and ensuring they are safe, available and of sufficient capacity will contribute to the Council's vision of providing a place where people choose to live and do business. They support the priority outcomes for a Quality Environment set out in the Environment Portfolio Plan – Managing our Transport Infrastructure and Improving Travel, Transport and Parking.

9. IT AND GDPR CONSIDERATIONS

- 9.1 There are no specific IT or GDPR considerations in relation to the provision of Highway Engineering Consultancy Services by JB Riney.

10. PROCUREMENT RULES

- 10.1 A tender procedure has been followed leading to the award of the the Major Highway Works and Street Lighting Contract 2018. Included in the OJEU Notice to that Contract was a Common Procurement Vocabulary (CPV) code for Professional Services, which provides an option for the Council to include such services as part of the overall contract via a contract variation.

- 10.2 The variation can be completed in compliance with Regulation 72 of the Public Contract Regulations. Following Approval, the extension must be applied via a

suitable Change Control Notice, or similar, agreed with the Provider. The actions identified in this report are provided for within the Council's Contract Procedure Rules (CPR 23.7 and 13.1) and the proposed actions can be completed in compliance with their content.

11. FINANCIAL CONSIDERATIONS

- 11.1 This report is proposing that the Highway Engineering Consultancy Services is included as part of the Highway Major Works and Street Lighting contract with JB Riney via a contract variation. The estimated value of the variation is estimated to be £3m.
- 11.2 The budgets available to fund the Engineering Consultancy Services is made up of £144k from within the Transport, Highways and Parking revenue budget, TfL funding of up to £200k, (although this can vary depending on the number of one-off project funding agreed), and approximately £20k contributions from developers through specific agreements.
- 11.3 The use of 'design and build' and 'early contractor involvement' would reduce the requirement for project management by the Council, which would result in a saving of £10k per annum from staffing.

12. PERSONNEL CONSIDERATIONS

- 12.1 The adoption of 'design and build' and 'early contractor involvement' would reduce the requirement for project management on the Council. A reduction of officer time of 0.2 FTE would be achieved as part of a restructuring following working arrangements of the team manager.
- 12.2 There would be no TUPE or pensions considerations for this Council.

13. LEGAL CONSIDERATIONS

- 13.1 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.
- 13.2 The Council as owner and operator of multi storey car parks has duties under law to provide and maintain premises so that they do not pose risks to the safety of their employees, other persons using the premises as a place of work, visitors and the public at large, specifically according to:-
 - a) The Health and Safety at Work etc Act 1974, sections 2, 3 and 4.
 - b) Construction Design and Management Regulations 2015.
 - c) Occupiers Liability Acts 1957 and 1984.

Non-Applicable Sections:	None
Background Documents: (Access via Contact Officer)	a) ES Procurement Strategy-Report No ES 17002, Executive 24 th January 2017. b) ES Report No ES17047, Executive 12 th July 2017 c) ES Report No ES18040, Executive 20 th April 2018