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| 4 October 2013 | | ITEM: |
| Urgent Decision to be taken by the Leader | | |
| Re-tendering of ex-Europa contracts | | |
| Report of: Cllr Andy Smith – Regeneration, Highways and Transportation | | |
| Wards and communities affected: All | Key Decision: Yes | |
| Accountable Head of Service: Basil Jackson – Head of Transportation and Highways | | |
| Accountable Director: David Bull – Director of Planning and Transportation | | |
| This report is Public | | |
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| Date of notice given of exempt or confidential report: n/a | | |
| Purpose of Report: To undertake a re-tendering process for two contracts previously procured through Europa, and establish those new contracts directly with Thurrock Council, thereby allowing the highway service to provide professional highway network management for safety and congestion minimisation. | | |

EXECUTIVE SUMMARY

Although Europa staff were successfully transferred to Thurrock Council on 1st August 2013, the consultants procured through this company did not. These consultants provide important technical assistance to the Highways service. Such work includes: highway network inspections, highway design and supervision of bridgework repairs. Given the value of this work, it is imperative that the Council tenders for new Thurrock contracts.

1. RECOMMENDATIONS:

Cabinet is asked to agree that delegated authority is given to the Director of Planning & Transportation, in consultation with the Portfolio Holder, to commence the tender process to replace the two contracts currently held by JSM and Pell Frischmann (originally procured directly to Europa) and award the subsequent contracts after the completion of a competitive process in accordance with the Council’s contracting procedures.

2. INTRODUCTION AND BACKGROUND:

- 2.1 On 1st August 2013, the highways function and full responsibility for its delivery was transferred from Serco/Europa to the Council. Our aim over the next year is to renew all existing contracts and improve performance of this high profile service.
- 2.2 Although Europa staff were successfully transferred to Thurrock Council, the consultants procured through the company did not. These consultants provide important technical assistance to the Highways service. Such work includes: highway network inspections, highway design and supervision of bridgework repairs. Given the value of this work, it is imperative that the Council tenders for new Thurrock contracts. A procurement exercise of this nature is necessary if the highway service is to continue to provide professional network management for safety and congestion minimisation.

3. THE TENDER PROCESS:

- 3.1 Once Cabinet approval is given, a contract notice will be issued in the Official Journal of the European Union (OJEU) and on Thurrock Council's online Buyer Portal. Pre-qualification questionnaires will be issued so that at least 3 contractors can be shortlisted to tender for each lot.
- 3.2 An officer evaluation panel will be established to evaluate all tender bids to determine the 'most economically advantageous tender', taking into account both price and quality. Submissions will then be marked against a set of award criteria. The successful tenderer will be the tenderer with the highest overall score.
- 3.3 The criteria for the assessment of quality will cover a number of areas including: Health & Safety, Method of Delivery of the service and Performance Management (KPIs).

4. THE PROPOSED CONTRACTS:

- 4.1 Once Cabinet approval has been given, officers will tender for two contracts as follows:

Covering highway design and supervision of bridgework repairs - current incumbent Pell Frischmann –

- current spend is £180k p.a. and roughly £90k p.a project work
- total a contract value of approximately £1.1 million

Covering highway network inspections - current incumbent JSM

- current spend is £340k p.a.
- Total contract value of approximately £1.4 million

- 4.2 It should be noted that the new contracts will be let on the basis of a four-year Framework Agreement where the Council will be able to call-off works/services as and when required. Workflow, and the value of work, are not guaranteed for these contracts; instead, workflow is solely dependent on repairs actually required.
- 4.3 A new performance management regime (based on a penalty point system) will be included within each new contract. This gives officers better ability to hold contractors to account for the quality of work being undertaken.

5. CONSULTATION (including Overview and Scrutiny, if applicable)

- 5.1 N/A.

6. IMPACT ON CORPORATE POLICIES, PRIORITIES, PERFORMANCE AND COMMUNITY IMPACT

- 6.1 This service impacts directly on the community priority to “ensure a safe, clean and green environment”.

7. IMPLICATIONS

7.1 Financial

Implications verified by: **Mike Jones**
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7.2 Legal

Implications verified by: **Courage Emovon**
Contracts Lawyer
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Under section 41 of the Highways Act 1980 the Council, as a Highways Authority, has a duty to maintain adopted highways, for which it is responsible, to a standard where they are reasonably passable and safe for ordinary traffic.

Section 62 of the Highway Act 1980 Act gives the Council a general power to carry out work to improve the highway for the use or protection of persons using a highway and the construction and reconstruction of bridges and the Council may alter or remove any works executed by them under this section.

Regular inspections and maintenance of the highways should reduce the risk of any potential accidents to the general public using the highways. In addition section 58 of

the Highways Act 1980 provides the Council as a Highway Authority with a statutory defence against third party claims where it can establish that reasonable care has been taken to ensure that the highway was not dangerous to traffic or pedestrians.

The proposals set out in this report will support the Council in complying with its statutory duties as a Highway Authority and defending itself against potential claims of negligence.

Construction of highways, roads, streets and other vehicular and pedestrian ways, bridges, painting of road markings and the installation of illumination and signalling systems for roads are considered as constituting works under the Public Contract Regulations 2006. Procurement Services have advised that machine surfacing and major highways schemes are works under the Public Contract Regulations 2006.

The current EU threshold for works is £4,348,350.00. Since the total estimated value of the works proposed meet or exceed the threshold the Council is required to fully comply with the Public Contract Regulations 2006 and EU treaty principles.

In accordance with Chapter 9 Part 2 of the Constitution (Contract Procedure Rules) where the works contracts are valued at £10,000.00 - £499,999.00 at least three written quotes in advance are required for making use of any available framework agreements as advised by Procurement services. Contract Procedure Rule 7 stipulates that where the value of the works contracts are over £500,000.00 a full competitive process should be undertaken.

Where the procurement department determine that any of the services outlined in this report are Part A services under the Public Contract Regulations 2006 then the Council will be required to fully comply with the 2006 Regulations if the value of the service contract meets or exceeds the current EU threshold for services which is £173,934.00.

In accordance with Rule 7 of the Contract Procedure Rules where a service contract is valued at £10,000.00 - £74,999.00, at least three written quotes must be obtained (making use of any national or local framework agreements). If the total value of the service contract is £75,000.00 - £173,934.00 the contract must be advertised and at least two written tenders obtained.

Legal Services will be available to assist the client department throughout the procurement process and will prepare any contracts required.

In accordance with Rule 8.1(a), the Responsible Officer must obtain approval to proceed to tender and approval to award the contract including approval in respect of any waivers or extensions in writing from the Cabinet or a Cabinet member with delegated power for contracts above the value of £750,000.

Under Article 13 of the Constitution the Cabinet has the authority to approve the recommendations set out in this Report. I confirm the legal implications in this report have been covered and the proposals set out in this report are to enable the Council meet its statutory obligations and defend itself against potential claims of negligence as a Highway authority.

7.3 Diversity and Equality

Implications verified by: **Samson DeAlyn**
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Creating an attractive and accessible public realm has a part to play in getting people out and about. A well maintained highway ensures that the most vulnerable members of the community have fair access to the public realm. Disabled people, in particular, place a high priority on the provision of well maintain roads and footways.

7.4 Other implications (where significant) – i.e. Section 17, Risk Assessment, Health Impact Assessment, Sustainability, IT, Environmental

n/a

BACKGROUND PAPERS USED IN PREPARING THIS REPORT (include their location and identify whether any are exempt or protected by copyright):

- None

APPENDICES TO THIS REPORT:

- None

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