

Decision by Portfolio Holder



Report reference: ENV-006-2016/17

Date of report: 25 April 2017

**Epping Forest
District Council**

Portfolio: Environment

**Author: Qasim (Kim) Durrani / Phil Hawkins Democratic Services: J Leither
(Ext. 4055 / 4267)**

Subject: Extension of the Major Tree Works Contract

Decision: To extend the present Major Tree Works contract by 12 months from 1 August 2017 to 31 July 2018 to enable a procurement under the European Procurement Rules

ADVISORY NOTICE:

*A Portfolio Holder may not take a decision on a matter on which he/she has declared a Pecuniary interest.
A Portfolio Holder with a non-pecuniary interest must declare that interest when exercising delegated powers.*

I have read and approve/do not approve (delete as appropriate) the above decision:

Comments/further action required:

Signed: Councillor W Breare-Hall

Date: 25th April 2017

Non-pecuniary interest declared by Portfolio Holder/ conflict of non-pecuniary interest declared by any other consulted Cabinet Member:

N/A

*Dispensation granted by Standards Committee:
Yes/No or n/a*

N/A

Office use only:

Call-in period begins: 28/04/2017

Expiry of Call-in period: 05/05/2017

After completion, one copy of this pro forma should be returned to Democratic Services IMMEDIATELY

Reason for decision:

The current contract for tree maintenance with Gristwood and Toms Limited comes to an end on 31 July 2017. The need to formalise external funding arrangements with Essex Highways and the workload pressures elsewhere in the Grounds Maintenance team means a procurement exercise cannot be conducted before the end of the current contract. It is for this reason that a twelve month extension is sought.

There are currently no existing Essex Procurement Hub framework agreements that meet the Council's specification requirements.

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Options considered and rejected:

To conduct a procurement exercise excluding agreement for future funding arrangements with Essex Highways. This could result in inefficiencies and potentially higher costs if benefits of greater economies of scale are not realised.

To let the current contract end and employ interim contractors to carry out tree maintenance works as and when required. This could result in higher costs, inconsistency of service and potentially create health and safety risks to road users if competent certified contractors cannot be sourced.

Background Report:

1. The Major Tree Works contract, awarded to Gristwood and Toms in August 2010, comes to an end on 31 July 2017. The contractor is responsible for carrying out planned and emergency tree maintenance works across the District. Given the large the number of trees, circa 15,000, and in most cases their proximity to areas of public access, maintenance works require extensive planning and preparation. It is often the case that traffic management measures are required, additionally, given the age and maturity of many of the trees in the District, only well trained operatives can carry out most of the works under this contract.

2. The contract includes arboriculture work on Housing and Highways land, and on open spaces. The Council has allocated adequate budget for the maintenance and inspection of all the trees that it is responsible for. However, the budget for Highway trees is allocated by Essex Highways annually at the start of each financial year. Essex Highways has indicated that, due to financial constraints, it cannot guarantee to continue this level of contribution. The financial contribution that Essex Highways makes, by virtue of the proportion of Highway Trees in the District, is nearly a third of the total value of this contract. There is a significant financial risk to the Council if this contribution were to discontinue during the term of a contract, as the loss in income could lead the contractor to make a claim against the Council for financial losses or any costs associated with contractors' staff, for example TUPE/redundancy.

3. In anticipation of the procurement for this contact, discussions were held with Essex Procurement Hub (EPH) and other relevant officers of the Council. It has been identified that there is not enough time to carry out a European Procurement exercise (OJEU) before the end of the current contract in July 2017. The delay in commencement of the procurement exercise has resulted from the workload of key officers responsible for this contract.

4. It is recommended that, rather than rush a procurement exercise for the award of the next tree maintenance contract, the current contract be extended by twelve months. This will allow sufficient time to formalise arrangements with Essex Highways. Discussions are ongoing with senior officers at ECC, who recognise the benefits of a jointly delivered service, to establish if it is possible to continue to deliver value for money for both organisations in a joint contract. ECC can only commit to a long term funding arrangement once it has reviewed the technical specifications, which will take a few months. By extending the contract officers will have sufficient time to explore all options, and if funding from Essex Highways is not forthcoming the Council will procure for an Epping Forest-only contract.

5. The above activities (complexity of funding arrangements with Essex Highways and officer workload elsewhere) have led to a position where a tendering exercise cannot be completed in time for a replacement contract to be in place by the cessation of the existing contract. The present contractor, who is operating the existing contract well and within budget, is willing to extend the current contract on the existing terms and cost to enable a new and robust procurement exercise to be undertaken.

Resource implications:

If the existing contract is extended on the same terms and conditions for twelve months there will be no additional costs to the Council. However, if discussions with Essex Highways result in them withdrawing future funding then it is possible, due to the loss of economies of scale, that future cost of the contract to the Council may increase.

Legal and Governance Implications:

Local Government Act 1974, Wildlife and Countryside Act 1981, British Standard Recommendations for Tree Work, Health and Safety at Work Act 1974, Managing Health and Safety at Work Regulations 1999, New Road and Street Works Act 1991.

Financial Regulations/Procurement Rules

Safer, Cleaner and Greener Implications:

The Council is responsible for looking after all the trees that are on its land. By awarding a contract to a competent arboricultural contractor the Council ensures that all the trees are maintained in accordance with best practice and that their health is monitored and fostered. This both improves the District's street scene and reduces the risk of injury and harm to the public.

The District's tree stock is part of the special character of the District and adds considerable amenity value. Looking after and maintaining the tree stock to a good standard enhances the green and unique nature of the District. This serves to conserve and enhance the living environment that residents and visitors enjoy.

The major tree works contractor is responsible for responding to emergencies when trees cause obstruction on the public highway. In the most recent heavy storm (Doris) a total of 37 calls were received by the service from District and County officers, the Police and members of the public to report fallen and damaged trees. All of the reported trees were attended to, ensuring the safety of road users.

Consultation undertaken:

Essex Procurement Hub
Current contact Gristwood and Toms
Head of Commissioning at Essex County Council

Background Papers:

Cabinet report of 19 April 2010 to the award of the first five years of the current contract with Gristwood and Toms Limited,
Portfolio Holder Report of 13 May 2015 to agree a two year extension, permitted under the terms of the contract, to Gristwood and Toms Limited

Impact Assessments:

Risk Management

If the tree stock is not maintained then the health of the stock will deteriorate, resulting in potentially more accidents and claims for damages and injury against the Council.

If the time extension is not agreed a procurement exercise will not be concluded in time for the end of the current contract. This will result in an increased cost, as short term suppliers will have to be arranged, and deterioration in service if all the current maintenance commitments cannot be fulfilled.

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There are two risks associated with the outcome of discussions with Essex Highways over their future funding arrangements:

- a) If Essex Highways cannot guarantee an ongoing funding commitment, with the implicit possibility of the withdrawal of the yearly award of funding for the management of Highway Trees, this will result in a third of the work load being removed from the contract. This could potentially result in a claim of loss of income by the contractor against the Council. In the absence of any contractual relationship between Essex Highways and the contractor it would be for the Council to address the claim. There are very likely to be staff TUPE implications and again the onus would be on the Council to deal with these.
- b) If Essex Highways do not wish to be part of the contract in future, or a formal funding agreement cannot be reached, then the Council will have to consider if the contract specifications need to be revised. The withdrawal of Highway Trees from the contract may well result in an increased cost to the Council, however this cannot be stated with any level of certainty until the procurement exercise has concluded.

Equality Analysis:

The Equality Act 2010 requires that the Public Sector Equality Duty is actively applied in decision-making. This means that the equality information provided to accompany this report is essential reading for all members involved in the consideration of this report. The equality information is provided at Appendix 1 to the report.

Key Decision Reference (Y/N): N

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