

Decision by Portfolio Holder



Epping Forest
District Council

Report reference: ENV-001-2017/18

Date of report: 26 June 2017

Portfolio: Environment

Author: Q Durrani (ext 4055)

Democratic Services: J Leither (ext 4756)

Subject: Award criteria for the tender assessment of the contract for planned and emergency maintenance of major trees across the District

Decision:

- (1) To agree a five year term, with option to extend by another two, for the contract for planned and emergency maintenance and upkeep of all major trees that are the responsibility of the Council;
- (2) To set the award criteria as the most economically advantageous with a 60% / 40% price / quality ratio; and
- (2) To note that officers are in discussion with Essex County Council to consider inclusion of all those trees that are their responsibility.

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: Cllr W Breare-Hall

Date: 26 June 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: 30 June 2017

Expiry of Call-in period: 06 July 2017

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

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Initialled as original copy by Portfolio Holder:

Reason for Proposed Decision:

To procure a contract for the maintenance and management of all major trees within the Epping Forest District that are the responsibility of the Council and, if an agreement is reached, those trees that are the responsibility of Essex Highways.

Other Options Considered and Rejected:

To not tender for a term contract and employ contractors as and when required. This would present operational difficulties as availability of contractors to deal with urgent and emergency work cannot be guaranteed.

The option of inclusion of trees that are the responsibility of the Highways Authority is still under consideration. Larger economies of scale could be achieved if all tree works are procured under one contract, however the Council should not be under any risk of claim from the contractor should external funding cease.

A 70% / 30% price / quality ratio has not been recommended as this could adversely impact the high quality of work that is required to ensure the major trees, of significant amenity value, across the District remain well looked after and maintained.

Background Report:

1. The Major Tree Works contract, awarded to Gristwood and Toms in August 2010 for a five plus two year term, comes to an end on 31 July 2017, a further one year extension has been agreed to enable more time for negotiations with Essex County Council regarding the inclusion of all highway trees in the next contract. The contractor is responsible for carrying out planned and emergency tree maintenance works across the District on circa 15,000 trees. 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. Given the technical and specialist nature of the contract it is proposed that a five plus two year term be agreed for the new contract.
2. It is recommended to set the contract award criteria as the most economically advantageous with the existing price versus quality ratio of 60 to 40. The significant quality component reflects the importance the Council places on the unique green character of the District and its commitment to protecting and enhancing the green infrastructure.
3. 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 its previous 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.
4. It would be easier to exclude the Essex Highway element of the work, which has historically always been delivered jointly, and commence the procurement. However, this will mean that the potential advantage of larger economies of scale could not be realized and the management of major trees across the District would be done to different standards. This may mean that trees in close

proximity but in different land ownership could be managed differently, at different frequency, or to a different standard. Officers will endeavor to achieve a consistency in management of major trees and try to procure a contract for management of all the trees in the District, whether the responsibility of the Council or Essex Highways.

Resource implications:

Adequate budget allocations exist to pay for works required to maintain and enhance all the major trees that are the responsibility of the Council. Any works carried out to the trees on behalf of Essex Highways are paid for by Essex County Council (ECC), who pay the Council on a yearly basis for managing their tree stock.

If ECC decide to directly deliver tree management then the benefit of economies of scale could be lost. Equally the procurement exercise may result in a higher or lower value of the contract.

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. This includes responding to calls for assistance from District and County officers, the Police and members of the public who report fallen and damaged trees.

Consultation Undertaken:

Essex Procurement Hub
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
Portfolio Holder Report of 11 April 2017 to agree a further one year extension to enable further discussions with Essex County Council on the future management of highway trees

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.

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 for 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 may 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 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: No