

REPORT TITLE: TREE MANAGEMENT FRAMEWORK RE-PROCUREMENT

14 MARCH 2024

REPORT OF CABINET MEMBER: Cllr Kelsie Learney – Cabinet Member for the Climate Emergency

Contact Officer: Rick Smith Tel No: 01962 848532
Email rsmith@winchester.gov.uk

WARD(S): ALL

PURPOSE

To renew approval to procure, award and enter into a 4-year multi-contractor Framework Agreement to undertake tree works throughout the district, following the expiry in December 2024 of the current 4-year framework agreement.

RECOMMENDATIONS:

That Cabinet authorise the Strategic Director – Place to procure, award and enter into a contract to secure the services of tree contractors to undertake works to Winchester City Council owned and managed trees, by means of a Framework Agreement, in compliance with public procurement regulations and the Council's constitution.

IMPLICATIONS:

1 COUNCIL PLAN OUTCOME

- 1.1 Tackling the Climate Emergency and Creating a Greener District
- 1.2 The existence of a multi-contractor Framework Agreement for tree works supports the appropriate management and retention of the council's tree stock, thereby helping to meet the priority of tackling the climate and nature emergency and creating a greener district within the Council Plan.
- 1.3 Homes for all
- 1.4 It is important to deliver the right types of homes in locations that are sustainable. Trees have an intrinsic appeal as landscape and cultural features, as well as high biodiversity and heritage value. The Tree Management Framework, in conjunction with the Tree Strategy, allows the council to control risks to people and structures, conserve biodiversity value, and avoid unnecessary removal or damage to trees with amenity, landscape or wildlife value.
- 1.5 Vibrant Local Economy
- 1.6 Investing in a thriving and vibrant natural environment is a powerful tool in regenerating, enhancing and reinvigorating the local economy, and critical to supporting key services. A well-maintained tree cover helps create and enhance resilient places in which we live and work.
- 1.7 Living Well
- 1.8 The Tree Framework Agreement supports the priority of Living Well which seeks to maintain and enhance open spaces and parks that support good mental and physical health for residents of all ages.
- 1.9 Your Services, Your Voice
- 1.10 The Tree Management Framework allows the council to be open, transparent, inclusive and enabling, providing good value.

2 FINANCIAL IMPLICATIONS

- 2.1 This Framework Agreement will cover the council's tree management responsibilities across parks & open spaces, cemeteries, sports pitches, estates, car parks and housing. The total value of works over the 4 years of the contract is expected to be £900,000.
- 2.2 The cost of tree management works will be covered by existing budgets within individual service areas. However, tree management works are reactive by nature; should existing annual budgets prove insufficient then a further paper on the provision of the council's tree management function will be brought

back to Cabinet for decision making and, if necessary, additional budget provision.

- 2.3 The delivery model for the tree management and maintenance service is being reviewed as part of the council's Transformation Challenge programme 'TC25'. This will include reviewing the council's strategy for tree maintenance to ensure the most efficient and cost effective management of the council's tree stock alongside our statutory obligations. Any ad-hoc services that need to use the framework, such as the HRA, will do so using existing budgets.

3 LEGAL AND PROCUREMENT IMPLICATIONS

- 3.1 The procurement process will involve awarding and entering into a framework agreement, in line with the council's Contract Procedure Rules and Public Contract Regulations 2015 (PCR2015).
- 3.2 The procurement procedure will also enable any interested local suppliers and SME's to bid.
- 3.3 Under section 1 of the Localism Act 2011, the council has the power to undertake any activity a normal person could undertake, for the benefit of the authority, its area or persons resident or present in its area. The council is satisfied it has the enabling power(s) to procure and award a contract for services following the robust procurement exercise and subsequent contract.
- 3.4 The council has an obligation as a best value authority under section 3 of the Local Government Act 1999 to "make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness". The awarding and entering into a framework agreement is in line with this obligation.
- 3.5 The legal team was involved in the establishment of the initial Framework Agreement 4 years ago and has been involved again throughout the initial process. The procurement team, seeking advice with Legal Services as required, has been and will continue to be heavily involved in the process.

4 WORKFORCE IMPLICATIONS

- 4.1 The preparation and letting of the tender for the framework agreement will be undertaken by council officers from the Natural Environment and Recreation, Legal, Finance and Procurement teams, within existing resources. The ongoing contract management and letting of works within the Framework will be the responsibility of the Natural Environment Tree Team.

5 PROPERTY AND ASSET IMPLICATIONS

- 5.1 By ensuring the appropriate management and retention of the council's tree stock, this will support the sound management of council owned and

managed property and assets, in accordance with the council's adopted tree Strategy.

6 CONSULTATION AND COMMUNICATION

- 6.1 Consultation and communication will be undertaken as part of the procurement process, in line with council policy and procedures for the letting of council works tenders. This will include a Prior Information Notice to be issued in advance of any tender, as a means of advising the market of a potential tender. It may include a potential pre-tender market engagement event for which they may register interest or an opportunity for a pre-tender phone discussion with the Principal Tree Officer. This notice will be issued at least 35 days before any official tender notice. A draft specification will be made available. Any feedback received from contractors through the pre-tender engagement process will be considered and potentially changes made to the final tender.

7 ENVIRONMENTAL CONSIDERATIONS

- 7.1 Trees provide a significant number of benefits including acting as carbon sinks thereby helping to mitigate the effects of climate change and weather; they also filter pollutants from the air, provide habitats to benefit biodiversity and people, and enhance the quality of the landscape. By ensuring the council has an effective Framework in place, tree works will continue to be undertaken by reputable and qualified tree contractors, in accordance with the standards laid out within BS 3998 (2010) thereby helping to preserve the life of the trees and consequently the benefits they provide.
- 7.2 All bidders will need to complete and 'pass' a UK standard qualification Selection Questionnaire as part of the procurement exercise. The questionnaire is designed to check the business conduct of suppliers including proven offences of grave professional misconduct, including environmental matters and modern slavery.
- 7.3 Consistent with Procurement and Contract Management Strategy, the procurement process will apportion a minimum of 10% to Environmental and Social Value evaluation criteria. We will be seeking for bidders to provide innovative solutions to assist the council in achieving carbon neutrality for the city by 2030.
- 7.4 In addition, the Framework specification will require contractors to arrange for the recycling of wood arisings from council tree work operations and convert it to wood chip mulch, for use on council shrub beds.

8 PUBLIC SECTOR EQUALITY DUTY

- 8.1 This tender process and contract must uphold the principles of equality, transparency and fairness of all suppliers. Therefore, the council will include a discretionary question in the Selection Questionnaire to determine whether any of the suppliers has had any complaints made against them in the last three years which were upheld following an investigation by the Equality and Human Rights Commission (or equivalent). An EqlA assessment was undertaken and no issues were identified (Included in Appendix A)

9 DATA PROTECTION IMPACT ASSESSMENT

- 9.1 There are no data protection impacts associated with this Framework, as no personal information will be given to any prospective tenderers other than that which is already in the public domain (ie. trees owned and managed by the Council). The tenders will be assessed following the council's procurement procedures ensuring that confidentiality and data protection is ensured.

10 RISK MANAGEMENT

- 10.1 Ensuring the council has an appropriate Framework in place is essential in managing the risks relating to the management of a large tree stock and to demonstrate that the council is taking appropriate account of its legal responsibilities. As part of this, the council has a duty of care to manage the risk from its trees (Occupiers Liability Act 1957 and 1984 and Health and Safety at Work Act 1974). If the council fails to manage the risk adequately it could result in injury or death to persons or damage to property; litigation costs; temporary impact on traffic movements; and loss of reputation. The setting up of a robust and fair framework will ensure the council can respond to urgent works quickly, and use reputable and appropriately skilled contractors.
- 10.2 In addition, the Framework will demonstrate that the council is operating in a transparent, fair and appropriate manner in regards to the Constitution, Contract Procedure Rules and PCR2015, when allocating tree works to contractors.

Risk	Mitigation	Opportunities
<i>Financial Exposure – value for money. There is a need to ensure value for money when letting contracts for tree works.</i>	By setting up a Framework which includes a Schedule of Rates, this will ensure the Council achieves value for money and saves officer time when	This will allow for better future budgeting of the cost of tree works.

Risk	Mitigation	Opportunities
<i>Additional costs if trees are not maintained to a healthy and safe standard</i>	commissioning all prescribed tree works. In addition, the framework will save time for both suppliers and officers as work will be awarded more quickly than the normal RFQ/tender process as contractors have already been pre – assessed and for high value work it will avoid standstill periods.	
<p><i>Exposure to challenge - Legal – Not following due process.</i></p> <p><i>To be legally challenged if a tree fails causing injury to person or damage to property.</i></p> <p><i>There is a risk if the council does not renew the Framework Agreement of a challenge that reverting to letting of small scale works do not conform to the Public Contract Regulations 2015</i></p>	Procured in line with the council’s Contract Procedure Rules and Public Contract Regulations 2015 (PCR2015)	The agreement is robust and enables a sound working relationship between the council and its contractors, fully supportive of the council’s objectives
<i>Innovation</i>		<p>The framework agreement includes:</p> <ul style="list-style-type: none"> - the need to recycle the wood arisings from Council tree works operations and to use these as wood chip mulch. - wood that cannot be converted into woodchip mulch will be sent to a Biomass plant, to

Risk	Mitigation	Opportunities
		<p>be converted into electricity for the National Grid.</p> <ul style="list-style-type: none"> - Rain water harvesting can be used to water newly planted trees. <p>The 4 yr contract will provide time to foster a collaborative approach with the appointed contractors; to seek continuous improvement</p>
<i>Reputation - impact on people or property due to tree failure</i>	Reputable and suitably qualified contractors employed to undertake tree works	Enhanced reputation with suppliers.
<i>Achievement of outcome</i>	The timescale of the current Tree Management Framework agreement means updating now ensures timely approval process and subsequent implementation.	
<i>Property & Life – damage to property & life due to tree failure</i>	Reputable and suitable contractors employed to undertake tree works.	Enhancement to visual amenity of property. Safeguard life and property
<i>Community Support</i>		The maintenance and preservation of council trees will benefit the whole community within the Winchester district.
<i>Timescales – there is a need to renew this framework for 01 January 2025.</i>	A Prior Information Notice will be submitted to advise the market of the forthcoming opportunity, and this also enables the council to speed up the tender return times, if desired /required. Officers to work to the timetable required to	

Risk	Mitigation	Opportunities
	meet the January 2025 deadline.	
<i>Project capacity</i>	This framework will apply to all trees owned and managed by Winchester City Council within the district. This equates to c.30,000 trees across open space, parking sites, estates land and housing owned and managed land.	
<i>Other - none</i>		

11 SUPPORTING INFORMATION:

- 12 The current Tree Management Framework has been both successful and beneficial, receiving positive feedback from contractors involved and this is why we are seeking to re-procure. NERT is currently meeting contractors to reflect on the existing Framework and undertake a “lessons learnt” exercise to help inform the new Framework agreement.
- 12.1 The council is responsible for c.30,000 trees across its land holdings including open space, car parks, housing and estates land. Once works to trees have been identified, the council engages external contractors to undertake the works.
- 12.2 The current tree framework agreement expires on 31/12/2024. There is a need to create a new 4 year tree framework agreement to start on 1/1/2025.
- 12.3 Simultaneously, the council’s tree surveyor has completed the first tree survey of all council trees thereby reducing the risk of harm to life and property from council trees. This work has progressed well and there is now a need to procure, award and enter into a new Framework Agreement for tree works, to help deliver the new survey programme methodology. The agreement will take effect 01 January 2025.
- 12.4 Adopting a new Framework Agreement will ensure the council:-
- a) Operates a fair and transparent process for undertaking tree works across its land holding.
 - b) Achieves value for money through a competitive tendering process which includes a Schedule of Rates for prescribed works.

- c) Has access to a flexible and responsive workforce, particularly at key times of the year.
- d) Uses approved and reputable contractors thereby minimising risk to the council.
- e) Is better able to plan and budget for tree works, as the prices will be known for a four year period (including any increases in the cost of labour/materials over the lifetime of the framework).

12.5 The number of contractors who will be approved will depend on submitted tenders. However, it is likely the framework will be awarded to six companies, to allow the council to allocate work based on price, location of works, experience and availability of contractors.

12.6 Assuming approval is given to proceed with the tender process to procure a framework, further work will be required to detail the selection and objective award criteria. This will be based on 60% on price and 40% on quality, in line with the council's procurement process for (i) appointing suppliers to the framework and (ii) fairly calling-off and awarding individual pieces of work from the established framework (ie "Objective Conditions for determining which of the economic operators that are party to the framework agreement shall perform them (Regulation 33, PCR 2015)"). This call-off protocol will need to be transparent and imbedded in the tender documents at advertisement stage. Options may include (i) direct award (without reopening to further competition) and (ii) mini-competition using the same or similar objective criteria.

13 OTHER OPTIONS CONSIDERED AND REJECTED

13.1 Doing nothing is not possible due to the need to achieve value for money and to ensure the council complies with the Public Contract Regulations 2015.

13.2 There is an option to employ an in-house contractor in line with other Local Authorities such as Southampton. However, this has been rejected as it would require an increase in resources to deliver this work. In addition, this workforce would be less flexible than external contractors and less able to respond to high/peak demand.

13.3 There is also an option to offer the tender to a single contractor. This has been rejected, as this would limit the council's ability to provide a highly flexible and responsive service, particularly in times of greatest need. In addition, the use of multiple contractors will ensure that there is a competitive, realistic schedule of rates which is sustainable for the length of the 4 year contract.

BACKGROUND DOCUMENTS:-

Previous Committee Reports:-

CAB3215 Tree Framework Agreement 2020

Other Background Documents:-

APPENDICES:

Appendix A – CAB3448 Equality Impact Assessment – Tree Management Framework re-procurement