

REPORT TITLE: TREE FRAMEWORK AGREEMENT

22 JANUARY 2020

REPORT OF CABINET MEMBER: Cllr Neil Cutler Deputy Leader and Cabinet Member for Finance and Risk

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WARD(S): ALL

PURPOSE

To seek approval to procure, award and enter into a 4 year Framework Agreement to undertake tree works on Council owned and managed trees.

RECOMMENDATIONS:

That Cabinet authorise the Strategic Director – Services 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.

## IMPLICATIONS:

### 1 COUNCIL STRATEGY OUTCOME

- 1.1 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 emergency and creating a greener District" within the Council Plan. In addition it 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.

### 2 FINANCIAL IMPLICATIONS

- 2.1 This Framework Agreement has a likely expenditure of £666,000 across the 4 year period. It will cover all tree works undertaken by the Council in relation to its own tree stock. This will be delivered within existing budgets.
- 2.2 The Framework Agreement once awarded will include a Schedule of Rates for prescribed works. These rates will be competitively tendered thereby ensuring the Council achieves value for money.

### 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 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.
- 3.3 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.
- 3.4 The legal team have been involved throughout the initial process and legal advice supports the recommendations in this report. In addition the project team have been and will continue to be 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.

## 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.

## 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 to 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 Consistent with the emerging 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 by 2024.
- 7.3 In addition, the Framework specification will require contractors to arrange for the recycling of wood arising from Council tree work operations and convert it to wood chip mulch, for use on Council shrub beds.

## 8 EQUALITY IMPACT ASSESSEMENT

- 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 EqIA assessment will be undertaken at all relevant points of the process.

## 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.

| <b>Risk</b>   | <b>Mitigation</b>   | <b>Opportunities</b>   |
|---|---|--|
| <i>Property – damage to property due to tree failure</i>  | Reputable and suitable contractors employed to undertake tree works.  | Enhancement to visual amenity of 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 have this framework in place as soon as possible. However, the earliest this can be achieved is July 2020.</i> | A Prior Information Notice will be submitted prior to despatch of the OJEU to speed up the tender return times.<br>Officers to work to the timetable required to meet the July 2020 deadline. |  |
| <i>Project capacity</i>   | This framework will apply to all trees owned and managed by Winchester  |  |

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|   | 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>Financial / VfM<br/>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 commissioning all prescribed tree works. In addition, the framework will save time for both suppliers and officers as large value work will be awarded more quickly than the normal RFQ/tender process as it will avoid standstill periods. | This will allow for better future budgeting of the cost of tree works.  |
| <i>Legal –<br/>Not following due process.<br/><br/>To be legally challenged if a tree fails causing injury to person or damage to property.<br/><br/>There is a risk if the Council does not set up a new Framework Agreement of a challenge that the current letting of small scale works do not conform to the Public Contract Regulations 2015</i> | 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>   |   | The new framework agreement includes: <ul style="list-style-type: none"> <li>- the need recycle the wood arising from Council tree works operations and to use these as wood chip mulch.</li> <li>- wood that cannot be converted into</li> </ul> |

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|  |   | woodchip mulch will be sent to a Biomass plant, to be converted into electricity for the National Grid.<br>- Rain water harvesting will be used to water newly planted trees |
| <i>Reputation – impact on people or property due to tree failure</i> | Reputable and suitable contractors employed to undertake tree works | Enhanced reputation with suppliers.  |
| <i>Other - none</i>  |   |  |

## 11 SUPPORTING INFORMATION:

- 11.1 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.
- 11.2 The Council has previously had a Tree Framework Agreement which ceased in 2014. Led by Hampshire County Council, this Framework Agreement covered a number of local authorities, including Winchester City Council.
- 11.3 Following the cessation of this Agreement, the City Council continued to work to the Framework Agreement whilst discussions took place with Hampshire County Council and other Districts to set up a new Framework. However, it was not possible to procure a joint Framework Agreement as each Council decided to set up Agreements bespoke to their areas.
- 11.4 Simultaneously, the Council started to review its tree survey methodology, with the aim of streamlining the process, thereby ensuring the Council could deliver a tree survey programme within existing resources. 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. This agreement will take effect July 2020.
- 11.5 Whilst the review of the wider work has been underway, any essential tree works have been contracted by obtaining three written quotes for significant tree works, and the use of reputable local contractors for small scale works.
- 11.6 Adopting a new Framework Agreement will rationalise the current arrangements and 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).
- 11.7 The number of contractors who will be approved will depend on submitted tenders. However, it is likely the framework will be awarded to a number of companies, to allow the council to allocate work based on price, location of works, experience and availability of contractors.
- 11.8 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.
- 12 OTHER OPTIONS CONSIDERED AND REJECTED
- 12.1 Doing nothing or continuing with the current arrangements is not possible due to the need to achieve value for money and to ensure the Council complies with the *Public Contract Regulations 2015*.
- 12.2 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.
- 12.3 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:-

No recent reports

Other Background Documents:-

None

APPENDICES:

None