

HANDY CROSS PHASE 5 PROCUREMENT PROCESS

Cabinet Member: Councillor S Broadbent

Wards Affected: None

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PROPOSED DECISION

For the procurement of the contractor to build the proposed nursery at Handy Cross, to waive the requirement within Contract Standing Orders which requires the Council to advertise all contracts with a value of more than £10,000, and to delegate the authority to award the contract as set out in paragraph 15.

Reason for decision

To ensure that the procurement process is:

- a) Compliant with good practice
- b) Achieves Value for Money
- c) Supports our wider objectives not to disadvantage SMEs within our procurement approach
- d) To follow the advice of our appointed project managers in ensuring that the contract can be managed to deliver on time and on budget.

Corporate Implications

1. This report varies the usual procedure set out within the Council's Constitution for the award of contracts. The reasons for doing so are to enable our Project Managers to deliver the objectives on the contract on budget and within timescales as well as achieving best value overall.

Executive Summary

2. This report outlines an alternative approach to our usual procurement process because of the size and nature of the project. This contract although significant for a small provider is small scale for larger contractors within the market. As a result there is a risk that the tendering process may put off smaller providers but be too small to demand the attention of larger providers.

Sustainable Community Strategy/Council Priorities - Implications

3. The need to comply with a procurement process which achieves best value is principle within UK law. This continues to apply alongside other requirements for contracts below the EU threshold. Although the council cannot discriminate in favour of local providers there are ways in which we can conduct a

procurement exercise which does not discourage SMEs from submitting a tender. In accordance with the Council's broader obligations this project is designed to achieve our wider economic objectives for Handy Cross.

Background and Issues

4. The Council intends to award a contract for the construction of nursery and toddler gym at Handy Cross hub ("the Contract") at a cost below the EU threshold of £4.1M. The Council has appointed programme management advisors TUV SUD PMSS (TUV) to manage the project on our behalf including the procurement of the contractor and project management of the build through to handover to the tenants. The parties to the works contract would be the Council and the Contractor.
5. The Public Contract Regulations 2015 (PCR) and wider legal framework for procurement sets out broad principles for those contracts which fall below the threshold for EU Procurement. The broad principles include the requirement to prevent, identify and remedy conflicts of interest and to avoid any distortion of competition and to ensure equal treatment of economic operators. However if the process meets the broad principles and falls below the EU threshold it is not necessary to advertise the contract. The Council sets out rules to conduct procurement to comply with the principles but it is possible to comply with the principles without adhering to the rules we have set out and sometimes it is identified that a different process will better deliver best value. The rules should not be waived unless an alternative process is described to Members which is compliant with the requirements. The requirements in relation to any conflicts of interest apply (whether the contract is advertised or not) and TUV or Council Officers will not be able to be involved in the process where a conflict of interest exists. TUV have already been appointed as project managers to conduct the procurement as they have the expertise and market knowledge to do so.
6. TUV have advised that this type of contract would benefit from a different procurement approach which utilises market expertise to identify the appropriate contractors to deliver contracts of this type and size. They are also mindful of the Council's overall objective of conducting a process which does not disadvantage SMEs in the tendering process. In order to address these points TUV have proposed that in this instance the contract is not advertised, instead TUV propose that they together with council officers should draw up a long list of no less than ten potential contractors to be invited to participate in the Stage 1 qualification process. The proposed alternative process is set out below.

Proposed Process

TUV have proposed a two stage procurement process.

7. In Stage 1 potential tenderers would be assessed to ensure they are suitable to provide services to the Council, taking account of factors such as experience, and financial stability. The Stage 1 documentation would include pre agreed qualification criteria and a scoring process to enable the identification of a shortlist of tenderers to invite to participate in Stage 2.

8. Stage 2 is the competitive tender exercise through which the most appropriate tender is selected using a pre agreed evaluation process based on a balance of cost and quality.
9. The Council's Contract Standing Orders require us to advertise all opportunities with a value of more than £10,000.
10. The Contract value is below the EU works threshold.
11. Part 4 of PCR applies to contracts valued between £25,000 and relevant threshold (Part 4 contracts). PCRs require: "where a contracting authority advertises a contract award opportunity". "In those circumstances the Contracting Authority shall publish information about the opportunity on Contracts Finder". Contracts Finder is a national website which provides information to potential bidders about contracts worth over £10,000 with the government and its agencies. So following the standard Council process would result in this opportunity being advertised nationally.
12. It is therefore proposed that the requirement to advertise be waived on this occasion so that process above recommended by our advisors can be followed.

Risks

13. **Publication of contract award.** Where a Part 4 Contract is awarded, Regulation 112 of PCRs requires Contracting Authorities to publish certain basic information about that contract on Contracts Finder. However the risk of successful challenge from contractors who are not invited on to the long list is considered to be low.
14. **Conflict of interests.** Within the documentation at Stage 1 applicants will be required to state any potential conflicts of interest resulting from relationships with Council Members, Council Officers TUV staff and TUV subcontractor's staff. The usual operational risks associated with works contracts will be managed as agreed between Officers and TUV.

Delegated authority

15. In the project programme, contract award is scheduled for early September 2017. Cabinet authority is required for award of contracts between £500,000 and £2M. This contract is expected to fall within these limits. The next Cabinet scheduled for 18th September 2017. Council is therefore requested to delegate authority to the Interim Corporate Director (Growth & Regeneration) in consultation with the Interim Head of Finance and Commercial Services and the Cabinet Members for Economic Development and Regeneration and Finance and Resources.
16. If the actual contract value exceeds the estimate by more than 5% Officers will revert to full Cabinet for authorisation.