

CONTRACTS & COMMISSIONING BOARD

REVIEW POINT 2 (RP2) – HOW WE BUY CABINET REPORT

CCB AGENDA ITEM:	<Issued by CCB>
Project name:	Arboricultural Services
Dept report author:	Paul Dalton - Trees and Woodlands Manager
Project Sponsor (Director or above):	Steve Iles – Director of Sustainable Communities
Executive Director:	Sarah Hayward – Corporate Director of Sustainable Communities, Regeneration & Economic Recovery
Contract Manager:	James Perkins- Head of service - Environment Services & Sustainable Neighborhoods
Report Version:	V6
Date report to go to CCB:	27 th January 2022
Next Review Date (RP4)	N/A

AWARD REPORT – CHECKLIST:

Estimated Contract start date:	01/10/22	
Estimated Contract end date - excluding any extension periods (for construction and works contracts, officers need to include the period for the defects liability period):	30/09/27	
Is there provision to extend or vary this contract within the terms and conditions?	Yes	
Planned extension type (e.g., 2 x 1 yr., 3 years, etc):	up to 5 years	
What is the maximum end date including all extensions?	30/09/32	
An Equality Analysis has been undertaken, reviewed, and approved by the Equalities Manager, Yvonne Okiyo	Y	
Has an electronic copy of the contract been requested?	Y	

STAGE 1 APPROVAL:

Strategic Procurement Manager	Matthew Devan	27/01/22
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STAGE 2 APPROVALS

Departmental sign-off	Who	Date Circulated	Date Approved
Budget Approved by relevant dept. Head of Finance	Matthew Davis	17/12/2021	20/12/2021
Confirm relevant cabinet member is sighted on the report	Cllr Mohammad Ali Cllr Callton Young	16/12/2021	16/12/21 27/01/22
Relevant Departmental Director	Steve Iles	17/12/2021	27/01/22
Human Resources	Jennifer Sankar	17/12/2021	29/12/21
Legal Services	Hafiza Bashir	17/12/2021	26.01.22
Equalities Manager	Denise McCausland	17/12/2021	29/12/21
Relevant Head of Service C&P	Scott Funnell	17/12/2021	27/01/22
CCB Inbox	ccb@croydon.gov.uk	17/12/2021	N/A

STAGE 3 APPROVALS (CCB)

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CCB sign-off	Approval reference number	Date
Director of C&P Director of Law & Governance Head of Commissioning & Procurement Director of Finance & deputy Section 151 Officer Commissioning & Procurement Governance Manager	CCB1721/21-22	28.01.2022

<p>Key communications Implications</p>	<p>The current supplier has been in Service since 2008 and the contract has reached the maximum extension limit. The proposed tendering of a new contract will allow for the new contract to be in line with current Authority ethos, working practices and available resources. The new contract will also allow the Authority to have a robust contract management element, build on lessons learned and to prioritise risk to meet our Duty of Care whilst meeting the financial challenges facing the Authority.</p> <p>In addition we are further extending the existing contract for an additional 9 months, with an option to extend for 3 months to allow sufficient time to re-procure the contract.</p> <p>Failure to procure a new contract will leave the Authority open to legal challenges if the current contract is again extended beyond contractual terms the Council will in breach of the PCR 2015 Regulations. The new contract will provide a new set of KPI's, terms and ways of working that will improve the contract management elements. It will also allow for the formalisation of the depot usage and potential income from Depot use. A new pricing matrix will also eliminate grey areas of costs associated with tree works historically based on tree height but going forward will be based on tree stem diameter. Not procuring a new contract will either leave the Authority without emergency/duty of care cover or would result in the further contract extension beyond that of the regulated term.</p>
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For General Release

REPORT TO:	CABINET February 2022
SUBJECT:	<i>Arboriculture Services</i>
LEAD OFFICER:	<i>Sarah Hayward Executive Director Steve Iles Director of Sustainable Communities</i>
CABINET MEMBER:	<i>Councillor Muhammad Ali Cabinet Member for Sustainable Croydon</i>
WARDS:	All
<p>CORPORATE PRIORITY/POLICY CONTEXT/ AMBITIOUS FOR CROYDON</p> <p>The new contract will allow the Council to maintain its trees for longevity and with the added benefit of cost saving for the Council. This in turn will help with sustainability and improved air quality, especially in the north of the borough where the air pollution is high. These services are aligned to the following council's new priorities and ways of working:</p> <p>Croydon Council Corporate Plan alignment:</p> <ul style="list-style-type: none"> - We will live within our means, balance the books and provide value for money for our residents. - We will focus on tackling ingrained inequality and poverty in the borough. We will follow the evidence to tackle the underlying causes of inequality and hardship, like structural racism, environmental injustice and economic injustice. - We will focus on providing the best quality core service we can afford. First and foremost, providing social care services that keep our most vulnerable residents safe and healthy. And to keep our streets clean and safe. To ensure we get full benefit from every pound we spend, other services in these areas will only be provided where they can be shown to have a direct benefit in keeping people safe and reducing demand. <p>Council's priorities</p>	
<p>FINANCIAL IMPACT</p> <p>The projected annual revenue and capital budget requirement for the arboricultural service for 2021 onwards (fiscal year starting in April) has been summarised below. Capital funding will be reliant on the successful awarding of external grants on an annual basis, so this figure is variable and unknown.</p> <p>Revenue is currently set across two divisions:</p> <ul style="list-style-type: none"> • Sustainable Communities Budget - Trees and Woodlands annual expenditure £650,000 on Highway, Parks and Woodlands Work 	

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- HRA Budget £100,000 annual expenditure for Tree Works on Housing Communal Land
- Capital External Funding Grants for Tree Planting £unknown - grant reliant

Spend across future years will be related to the Council's overall budget. This contract will look to have an estimated value of £7,500,000 across 5 years with the option to extend for with an option to extend 1 or more times up to a maximum of 5 years, allowing some flexibility in future year's available budget and external capital grant awards.

FORWARD PLAN KEY DECISION REFERENCE NO.:

RECOMMENDATIONS

For CCB

The Contracts & Commissioning Boards is asked to approve the following recommendation(s):

- 1.1** To endorse in accordance with Regulation 30.3 of the Council's Contracts and Tenders Regulations, the extension by way of variation of the contract for Specialist Arboricultural works with City Suburban Tree Surgeons Limited for a period of 9 months from 1st January 2022 to 30th September 2022 at a maximum value of £300,000, with an optional 3 month extension, up until 31st December 2022 with the maximum value for the 12 months extension of £400,000 (maximum contract value, including this proposed extension will be £9,621,396).
- 1.2** The Cabinet is recommended by the Contracts and Commissioning Board, to approve the procurement strategy detailed in this report for a single contractor to deliver Arboriculture Services, as a PCR Open Tender procedure for a proposed contract term of 5 years with an estimated value of £3,750,000 with an option to extend 1 or more times up to a maximum of 5 years with a total estimated contract value of £7,500,000.
- 1.3** To recommend to the Chair of CCB to approve a waiver in accordance with Regulation 19.2 to deviate from the evaluation ratios of 60% Quality and 40% Price under Regulation 22.4 to 60% Price and 40% Quality to apply a stronger emphasis on price for the reasons set out in paragraph 3.15.

For Cabinet

The Leader of the Council has delegated to the Cabinet the power to make the decisions set out in the recommendations below

The Cabinet is recommended to:

- 1.4** Approve in accordance with Regulation 30.3 of the Council's Contracts and Tenders Regulations, the extension by way of variation of the contract for Specialist Arboricultural works with City Suburban Tree Surgeons Limited for a period of 9 months from 1st January 2022 to 30th September 2022 at a maximum value of £300,000, with an optional 3 month extension, up until 31st December 2022 at a maximum value of £400,000 (maximum contract value, including this proposed extension will be £9,621,396).
- 1.5** Approve the procurement strategy detailed in this report for a single contractor to deliver Arboriculture Services, to go to PCR Open Tender procedure for a proposed contract term of 5 years with an estimated value of £3,750,000 with an option to extend 1 or more times up to a maximum of 5 years with an estimated contract value of £7,500,000.
- 1.6** Note that the Director of Commissioning and procurement has approved the waiver listed below under Regulation 19 of the Council's Tender and Contract regulations:
 - 1.6.1** To deviate from the evaluation ratios of 60% Quality and 40% Price under Regulation 22.4 to 60% Price and 40% Quality to apply a stronger emphasis on price for the reasons set out in paragraph 3.15.

2. EXECUTIVE SUMMARY

- 2.1** London Borough of Croydon has had City Suburban as the incumbent supplier since 2008 working with the Trees and Woodlands Teams to carry out tree maintenance, tree planting and emergency call out cover.
- 2.2** The Contract has been extended beyond the original contract term with the current extension (ref CCB1687/21-22) taking the supplier up to 31st December 2021. However, it is envisaged that a further extension to the contract to 31st September 2022 with contingency to extend up to 31st December 2022 will be required to facilitate this tender process.
- 2.3** The purpose of this report is to set out the current position and available choices for the future of tree management for the Authority. The paper recommends procurement through a PCR Open Tender procedure for the award of a new long term 5 year contract with an estimated value of £3,750,000 with an option to extend 1 or more times up to a maximum of 5 years with an estimated total contract value of £7,500,000 to facilitate the tree management requirement. The paper also makes clear that the Authority 'as a responsible landowner' has legal and Statutory obligations to ensure the 'risk from trees' is managed as set out under various regulations and Acts:

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- Health and Safety at Work Act 1974
- The Management of Health and Safety at Work Regulations 1999
- The Highways Act 1980
- The Construction (Design and Management) Regulations 2015

2.4 Financial

It is envisaged that the overall estimated cost spend of the contract term will be £3,750,000 over the initial 5 year period and £7,500,000 over the 10-year term estimate at £750,000 per annum.

The recommended route to market through a PCR Open tender will ensure that costs to the Authority are in line with current market rates and its obligations as set out above and are covered long term from a Duty of Care perspective.

3. DETAIL

3.1 Introduction

The Council's approximated trees and woodlands asset consists of 35,000 Highway trees, an unknown number of trees across 120 parks and open spaces. Croydon also has award winning ancient woodlands covering an area of over 500 hectares which is used by the forestry commission as sites of best practice woodland management holding training days for other professionals at these sites. The Authority also has an unknown number of trees across multiple housing communal sites.

The Council has a statutory requirement and legal obligation under the Health and Safety at Work Act 1974, The Management of Health and Safety at Work Regulations 1999, The Highways Act 1980, and The Construction (Design and Management) Regulations 2015 to ensure as best as practicable that risk from trees is managed and will consequently aim to abide by the duties owed.

The Council recognise that they have a duty of care to the public and visitors to its premises, to do all that is reasonably practicable to ensure that the risk from trees under its control is suitably managed. The Council's approach to the management of risk from trees will be proportionate to the risk and resources available. The Authority also has signed up to the Climate Emergency and has a duty to protect and enhance habitats and improve biodiversity through best practice and environmental legislation.

3.2 Current position

Historically, the Council has had an established three-to-five-year tree maintenance and management plan for trees within its portfolio where appropriate. The focus has been on maintenance for Highway trees and Housing trees in the form of regular pruning and risk reduction works across the Borough. Safety and biodiversity works has been the focus within its Parks and Woodlands portfolio.

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However due to the serious nature of the Authorities financial situation it has been agreed that only emergency and essential tree works will be undertaken across all the asset for the short to medium term with a view to ramp up non-emergency works such as general pruning within the term of the proposed contract. External capital funding will still be applied for in areas such as new tree planting and biodiversity works in the hope that these essential functions can still be maintained be it at a reduced capacity.

The historic tree management and current emergency and essential works are delivered through a long-standing contractor, City Suburban. The Contract was originally awarded in August 2008 until July 2019. It was extended under CCB approval (CCB1599/20-21) until March 2021. It was then further extended under CCB approval (CCB1687/21-22) and was due to end on 31st December 2021, as above, a further extension to this will be required to facilitate this tender process to be effective from 1 January 2022.

3.3. Rationale and Drivers for Change

The rationale and drivers for change are twofold:

1) The existing contract was originally awarded in 2008 and has not changed since it was originally awarded. During this time the service delivery scope, risk allocation, pricing mechanics and performance targets have remained static; and

2) The incumbent supplier was originally appointed to deliver the service in August 2008, with all multiple contract extensions ending December 31st 2021. The incumbent supplier has agreed a further contract extension proposed from effect of 1st January 2022 to to 31st September 2022. The Council's procurement timeline is based on the existing contract to end on 31 September 2022. However, this report is also requesting approval for an optional additional 3 month contingency period between 1 October 2022 to 31st December 2022 with the existing supplier. This 3 month contingency will only be utilized if there are unforeseen delays to the procurement process; and is subject to agreement with the incumbent supplier.

The Council is seeking this extension to take effect from 1 January 2022. It has taken a significant length of time to progress the depot lease re-negotiations as set out in paragraph 2.2 of the Part B report. We have now reached a position in relation to these lease negotiations that allow us to seek approval for this contract extension. The 9 month extension has been agreed by both parties, pending Council authorisation that is being sought via this Cabinet Report.

3.4 Commissioning Intentions

The Council has carried out a review of all the future service provision commissioning solutions available to it and concluded that the preferred option for future commissioning of the arboricultural service has been identified. More details of the commissioning and procurement options considered can be found at paragraph 13.4. Procurement Options Assessment. The outcome of the options assessment informed the recommendation to procure via PCR Open

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compliant tender process.

3.5 Key Policy Objectives

The management of the borough's trees on the Highway, woodlands, parks, communal grounds, and green spaces is a legal Health and Safety requirement and a Statutory Duty of Care of the Authority and enshrined in Law.

- The Health and Safety at Work Act 1974
- The Management of Health and Safety at Work Regulations 1999
- The Highways Act 1980
- The Construction (Design and Management) Regulations 2015

Other commonly used industry guidance and Standards can be found on the HSE website:

- Management of the risk from falling trees and branches.
Forestry Commission website:
- The National Tree Safety Group Common Sense Risk Management of Trees.

Tree management is also a key priority for the Administration, as set out in the manifesto: "Parks and green spaces are vital to our busy town because they help to make Croydon livable. They help to create healthy communities where everyone can exercise and have fun."

The key objectives set out in the manifesto **and** best industry practice and Duty of Care are:

- Working with local communities to enable them to take the decisions that affect their parks.
- Ensuring Croydon is a place that values the arts and culture, where sport is accessible and encouraged.
- Working to make our parks, open spaces, communal grounds, and the public highway safe for all.
- Planting 3,500 new street trees by 2023, on streets and open spaces with priority given to areas of high air pollution. Note since 2020 this objective is external grant reliant.
- To reduce the environment impact of tree works and recycle 100% of arisings in a sustainable manner.
- To improve the important habitats and to protect and improve biodiversity.

A key consideration was the ambition to insource some aspects of the function previously supplied by specialist Arboricultural contractors for routine maintenance. However, due to the reduction in resources within the Grounds

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Maintenance Team this option is currently seen as unrealistic.

3.6 Service Areas

The service area elements identified in the table below have been identified for inclusion within the Council's next arboricultural services contract.

On those that are optional, as the council are looking at the ways it delivers its services, these may come in to scope at a later date.

Item	Key Activities	Service Area Requirement
1	On-street/Highway	Essential
2	Parks & Open Spaces	Essential
3	Ancient Woodlands	Essential
4	Housing HRA	Essential
5	Crematorium and Gardens	Optional
6	Schools	Optional
7	Other LBC properties and land (e.g., libraries)	Optional

The service will allow the Council to maintain its trees for longevity and with the added benefit of cost saving for the Council. This in turn will help with sustainability and improved air quality, especially in the north of the borough where the air pollution is high. These services are aligned to the following council's new priorities and ways of working:

- We will live within our means, balance the books and provide value for money for our residents.
- We will focus on tackling ingrained inequality and poverty in the borough. We will follow the evidence to tackle the underlying causes of inequality and hardship, like structural racism, environmental injustice and economic injustice.
- We will focus on providing the best quality core service we can afford. First and foremost, providing social care services that keep our most vulnerable residents safe and healthy. And to keep our streets clean and safe. We will live within our means, balance the books and provide value for money for our residents.

3.7 Business Scope

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The functions identified in the table below have been identified as being key business scope items for inclusion within the Council's next arboricultural services contract.

Item	Service Delivery	In-house Council	External Supplier
1	Risk management (operational management and support)	•	
2	Customer care and stakeholder Engagement	•	
3	Tree inspections and planned maintenance. (ongoing condition monitoring)	•	
4	Tree safety inspections (data collection)	•	•
5	Planned network maintenance (routine preventative maintenance)		•
6	Reactive emergency call outs (non-routine works)		•
7	Capital delivery (Tree planting & improvement works)		•
8	Professional services (technical expertise)		•

3.8 Personnel implications (including TUPE)

The arboricultural services contract will not significantly impact existing Council Officers, the Council's human resource department will however be informed throughout.

The arboricultural service has been delivered by a supply chain partner (City Suburban Tree Surgeons Limited) originally engaged and contracted to deliver the service in 2008. There is the potential for TUPE implications on the incumbent contractor's personnel. It is expected that the primary source of TUPE staff will be at an operative level (estimated at 9 employees but to be confirmed).

3.9 Social Value

In line with the Council's Social Value Framework, potential bidders will need to demonstrate initiatives to support Croydon residents, local economy, the local supply chain, employment and skills and environmental factors. A strong social value offer is anticipated by potential bidders due to both the nature and value of the contract. Social Value is to be evaluated at 10% of the total Quality score and bidders will be evaluated based on their social value proposal proportionate to the size of contract.

3.10 GDPR

The Council has determined that the GDPR service provision for arboricultural services is identical to that required for delivery of the Highways term service contract. Data protection Assessment is yet to be carried out. A DPIA will also be carried out.

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3.11 Other Considerations - Depots

The existing contract provides the external supplier with the use of a Council owned depot facility located at Oaks Road Depot, Off Oaks Road, Croydon, CR0 5HL. The depot facilities are currently under review by Legal and Estates for the future use as part of this contract

3.12 The previous 9-month extension (ref CCB1687/21-22) was for the procurement of a new contract, but due to the reasons set out in paragraph 2.2 of the Part B report, there was a delay in the procurement process and the service area ran out of time to procure a new contract. A lease for Conduit Lane depot will be negotiated, and will not impact on the new contract, as it does not form part of it. The new contract will give the supplier the option to choose whether they will use Oak Road Depot under a contracted out-lease with the Council or their own facilities to manage the service.

The length of time taken to progress the depot solution to this point has caused a further delay in starting the re-procurement process. Due to this further delay this report is asking for approval for a further extension proposed from effect of 1st January 2022 to to 31st September 2022. The Council's procurement timeline is based on the existing contract ending on 31 September 2022. However, this report is requesting an optional additional 3 month contingency period between 1 October 2022 to 31st December 2022 with the existing supplier. This 3 month contingency will only be utilized if there are unforeseen delays to the procurement process; and is subject to agreement with the incumbent supplier.

3.13 Proposed Procurement Route

The anticipated contract value of the new contract is estimated at £7,500,000 exclusive of VAT or £9,000,000 inclusive of VAT and more than the PCR thresholds, the procurement is to be therefore undertaken through an Open compliant process. From 1st of January 2022 the VAT inclusive value is used to determine if the contract value is above the PCR threshold. For other purposes, primarily budgeting, it is the VAT exclusive values that is relevant and therefore all other values in this report are exclusive of VAT. Due to the high volume and diverse range of sole traders, SME's and National providers in the market, the intention is to undertake procurement under a PCR Open procedure.

Other routes to market were considered including the use of Public Sector Frameworks. The framework option explored did not fully meet the needs of the Service. More details can be found at paragraph 13.4 Procurement Options Assessment.

3.14 Contract Terms and Conditions

Contract terms and conditions will be based on a term service contract, to be produced in consultation with legal services, in relation to tree and woodlands

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work. The Council are proposing that the new arboricultural services provision should start on the 1st of October 2022 and the service will be awarded on the basis that the contract term will run for 5 years with the option to with an option to extend 1 or more times up to a maximum of 5 years. This extension period allows sufficient flexibility to ensure the Council achieves best value when agreeing an extension provision with the contractor. This will allow the contractor to price in a way to recoup the additional capital costs they will incur in providing the service over the extension period over a reasonable time period; e.g. leasing of vehicles, plant etc.

3.15 Evaluation

a) **Tender Evaluation**

The Council's Standard Selection Questionnaire (SSQ) is to be used to set the minimum criteria relating to technical, economic, and financial capabilities. Financial checks will be undertaken by Finance to confirm the financial standing of selected suppliers, in consideration to the contract value, risk and the supplier's financial capability.

The Tender will be evaluated at 60% Price and 40% Quality and will be made up of weightings to ensure there are mechanisms in place to evaluate a broad range of requirements.

The Council is deviating from the from the evaluation ratios of 60% Quality and 40% Price under Regulation 22.4 to 60% Price and 40% Quality via a waiver under Regulation 19 of the Council's Tenders and Contracts Regulations. The reason for this weighting change is to apply a stronger emphasis on price due to the need to ensure the affordability of the Contract. This is required due to the Council's current financial situation and requirement to deliver savings as part of its Medium Term Financial Strategy. Whilst 60% of the weighting on price encourages the market to provide the best possible price, the 40% quality weighting is deemed sufficient to incentivise the bidders to provide a bid that offers a good quality service offering. This is a mature market with numerous well-established suppliers that are capable of meeting the service requirements, and therefore the risks of increasing the price weighting are considered low.

Price – 60%

Price weightings. In accordance with Tender and Contract regulation 19 a waiver has been requested as it is recommended to apply Tier One weighting of 40% Quality and 60% Price. Market research have been carried out to help inform the Council's proposed procurement strategy. The deviation from the standard 40% price is to achieve the best possible price for the Council due to the current circumstances in relation to its financial position and tight budgets and are in line with other similar Councils where prices are generally 60% to 70% of the evaluation criteria.

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Tenderers/bidders will be required to submit pricing based on a schedule of rates across a range of service requirements outlined in the specification. The Bidder(s) which submit the lowest Total Contract value will receive the maximum price score of 60%.

The Schedule of Rates Pricing Matrix will have a maximum scoring of 60%

PSP will be included as part of the price evaluation.

Quality – 40%

Method Statement Questions will be made up of a range of questions to evaluate supplier's technical merit, experience and capability and providers will be required to demonstrate how well they can meet the Council's requirements. To ensure an extensive evaluation of Quality, a broad range of questions relating to service capability, health and safety standards, performance monitoring, quality assurance practices and social value will be published in the Tender. A weighting will be applied to each Method Statement question and will be scored against the Council's standard score criteria between scores 0-5. An example of questions (but not limited to) is outlined below.

Management and Personnel Structure for Contract	10%
Meeting Clients KPIs and Service Levels	15%
Health and Safety Compliance	15%
Permitting and Traffic Management	10%
Dealing with Complaints	15%
Reporting, Standards and Auditing	10%
Social value including Environmental Policy & Sustainability	25%
Total	<u>100%</u>

The tender is to be evaluated by evaluators from the Arboriculture Service who will independently evaluate responses to Method Statement Questions and be participant in a moderation session led by Procurement.

Evaluation panel members:

The panel will consist of the following key officers with other roles across the Council evaluating as appropriate

1. Trees and Woodlands Manager – Arborist
2. Head of Service, Environment Services & Sustainable Neighbourhoods
3. Trees and Woodlands Officer – Arborist
4. Representative from the Housing Department

b) Procurement Timeline

Activity	Proposed Date
Procurement Board	27 th January 2022
Cabinet	21 st February 2022
Final ITT Pack to be drafted and approved	7 th March 2022
PCR Contract Notice and ITT Pack published	14 th March 2022
Tender return deadline	14 th April 2022
Tender evaluation	17 th -21 st April 2022
Moderated scores and feedback finalized, and award report drafted.	25 th – 27 th April 2022
Procurement Board	12 th May 2022
Cabinet meeting (if applicable) Delegated Cabinet Members signing/approval of decision with 5 days scrutiny period	June 2022
Standstill period conclude	July 2022
Contract award	July 2022
Mobilisation/TUPE	August 2022
Contract commencement	1 October 2022
PCR Contract Award Notice dispatch (if applicable)	September 2022

Advice is currently being obtained in relation to leaseholder consultation (Section 20 of the Landlord and Tenant Act 1985 (as amended)), for trees within the Housing portfolio and this may affect the timetable.

c) Risks

Risk	Impact	Existing Controls	Impact (1 to 5)	Likelihood (1 to 5)	Total
Contractor - low staff morale causing unrest because the contract has a defined end date.	Could result in incumbent contractors having performance issues due to retention issues.	Council management team to introduce de-mobilization items into monthly contract management meetings and keep incumbent contractors informed.	5	3	15

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Cost of delivering the project.	Costly support costs during procurement including Finance, HR, Procurement, Legal, and project management.	Ensure support and budget is available to deliver the project.	5	1	5
Project does not deliver value for money.	The preferred option does not deliver value for money.	Ensure correct due diligence is carried out before committing to a preferred service delivery solution.	4	1	4
Ability of future contract to cover every eventuality.	Amendments / additions to contracts would be costly post service commencement because competitive tension is no longer present.	Apply established model form contracts, ensure that lessons learnt from previous contract provision are built into the new contract.	4	2	8
Risk associated with appointment long contract term with single contractor	Poor service quality and/or failure to deliver the works. The Council's expectations and customer satisfaction are affected.	Ensure required outcomes and service delivery requirements are clearly defined so that performance can be measured, and business improvement initiated when required.	4	2	8
EU / UK severance may lead to economic instability.	Instability in supply chain / market	The procurement route will follow Open Procedure and model contract documentation to ensure attraction to the market.	5	1	5

d) Performance Monitoring

Contract Performance will be monitored and reported through auditing of works. This will be done through monthly Contract meetings with suppliers, monthly audits on completed works by in-house Tree Officers and a monthly report created on findings to be sent to senior management. KPI's may include senior

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user satisfaction surveys, Satisfaction with Health & Safety Management including Permitting, Number of Defects from audit of completed jobs, Number of jobs meeting Contract delivery dates, Number of responses to enquiries within 3 working days.

4. CONSULTATION

- 4.1 Consultation has taken place with colleagues in legal, HR, finance, and procurement.

5 PRE-DECISION SCRUTINY

- 5.1 The process for awarding the contract will follow set procurement rules and as such will not be considered by Scrutiny.

6 FINANCIAL AND RISK ASSESSMENT CONSIDERATION

6.1 Revenue and Capital consequences of report recommendations

	Current year	Medium Term Financial Strategy – 3-year forecast		
	2021/22	2022/23	2023/24	2024/25
	£750,000	£750,000	£750,000	£750,000
Revenue Budget available				
Expenditure	750,000	750,000	750,000	750,000
Income				
Effect of decision from report				
Expenditure	150,000	£0	£0	£0
Income				
Remaining budget	<u>£360,000</u>	<u>£570,000</u>	<u>£750,000</u>	<u>£750,000</u>
Capital Budget available	£0	£0	£0	£0
Expenditure	£0	£0	£0	£0
Effect of decision from report				
Expenditure	£0	£0	£0	£0
Remaining budget	<u>£0</u>	<u>£0</u>	<u>£0</u>	<u>£0</u>

6.2 The effect of the decision

The above £750,000 is already in existence and is the annual revenue budget set for tree works. Capital budget was cut in 2020 and external grants are being applied for to fill that hole. For the near future only, essential work will be undertaken to ensure Duty of Care obligations are fulfilled and actionable nuisance issues are resolved. This is to keep expenditure in line with current Authority's Financial challenges and ensures the proposed spend meets the Council's essential spend criteria in accordance with the financial guidance. The budget will cover dead dying or dangerous trees, Highway access issues such as low growth removal or pruning to reduce the risk from subsidence.

Depot and waste recycling facilities yet to be agreed.

Although the estimated contract value is £7,500,000 the Find a Tender notice will include a range of contract values between £5,000,000 and £10,000,000 to allow for any extra costs including any grant funded capital projects.

6.3 Risks

Not going out to tender and ending the contract could result in no emergency cover for arboriculture, and a failure of the Authorities Duty of Care obligations. Not going out to tender and further extending the existing contract could lead to breach of Council and National legislation leading to a potential legal challenge from past applicants to potential bidders.

6.4 Options

See Options listed in section 13 and the Part B report for options considered and rejected.

6.5 Future savings/efficiencies

A new contract will allow the Authority to modernise the requirement and come in line with current ways of working, Policy, and financial limitations. New KPI's will also allow for easier auditing and contract management.

6.6 Approved by: Matthew Davis, Interim Director of Finance.

7. COMMENTS OF THE COUNCIL SOLICITOR AND MONITORING OFFICER

The Council is under a general Duty of Best Value 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 (Section 3 of the Local Government Act 1999 (as amended by s137 of the Local Government & Public Involvement in Health Act 2007))

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The Cabinet is empowered to make the decision in accordance with the recommendations pursuant to the Tenders and Contracts Regulations, which form part of the Council's Constitution

- 7.2 Approved by: Kiri Bailey Interim Head of Commercial & Property Law on behalf of the Interim Director of Legal Services

8. HUMAN RESOURCES IMPACT

- 8.1 There is no immediate HR impact in regards to the extension of the contract in this report. If any should arise, these will be managed under the Council's policies and procedures.
- 8.2 However, just to make you aware, when the tendering for the new contract takes place, there may be a TUPE implication for whichever company is successful in bidding for the contract, if the work remains the same.
- 8.3 Approved by: *Jennifer Sankar, Head of HR Sustainable Communities, Regeneration and Economic Development Directorate and Housing Directorate, for and on behalf of Dean Shoemith, Interim Director of Human Resources*

9. EQUALITIES IMPACT

- 9.1 The Council does not consider that there are any direct impacts on equality. An Equalities Assessment has been carried out and signed off.
- 9.2 Trees are a key part of the Council's environmental amenities and these environmental amenities foster good relations between groups.
- 9.3 In the event of a change in contractor the incumbent staff will be protected by TUPE regulations. This will ensure the contractor's staff are not made redundant due to the change of provider and protects their Terms and Conditions. This contract will require the contractor to pay their staff the London Living Wage which meets the Council's core priority, to tackle ingrained inequality and poverty in the borough, following the evidence to tackle the underlying causes.
- 9.4 The Council will encourage the successful contractor to adhere to and sign up to the George Floyd Race Matters Pledge and Equalities Pledge as the Council's standard in equalities.
- 9.5 Denise McCausland – Equalities Programme Manager

10. ENVIRONMENTAL IMPACT

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- 10.1 Since April 2021 Arboricultural works have been re-aligned to fit within the financial challenges for the next three years. This has resulted in a significant reduction of works orders being raised and thus a reduction of travel and machinery use.
- 10.2 The last three years has seen planting of up to 2500 new street trees requiring irrigation. The long-term benefits of new trees are seen as outweighing the establishment and irrigation impacts.
- 10.3 Timber arising from existing and future contract are and will be recycled. The main purposes of the Arboricultural Contract are to manage risk from trees and improve habitat quality through best practice management.

11. CRIME AND DISORDER REDUCTION IMPACT

- 11.1 There are no crime and disorder reduction impacts arising from this report.

12. REASONS FOR RECOMMENDATIONS/PROPOSED DECISION

- 12.1 The current supplier has been in Service since 2008 and the Contract has reached the maximum extension limit. The proposed tendering of a new contract will allow for the new contract to be in line with current Authority ethos, working practices and available resources. The new contract will also allow the Authority to have a robust contract management element, build on lessons learned and to priorities risk to meet our Duty of Care whilst meeting the financial challenges facing the Authority.
- 12.2 Failure to procure a new contract will leave the Authority open to legal challenges if the current contract is again extended beyond contractual terms, the Council will be in breach of the PCR Regulations.
- 12.3 The new contract will provide a new set of KPI's, terms and ways of working that will improve contract management elements. It will also allow for the formalisation of the depot usage and a potential income from Depot use. Suppliers will be able to bid to use their own depot or can use ours at a cost factored into the evaluation process. A new pricing matrix will also eliminate grey areas of costs associated with tree works historically based on height but going forward will be based on tree stem diameter at 1.5m from the ground. Not procuring a new contract will leave the Authority without emergency cover in the event of fallen trees blocking the highway or falling onto property. Works to reduce insurance risk and general risk from trees will also be unavailable and could lead to an increase in subsidence claims or negligent claims.

13. OPTIONS CONSIDERED AND REJECTED

13.1 Procurement Options Considered

The main advantages and disadvantages associated with each option and the recommendation on validity of the option for future service provision has been summarised at paragraph 13.4 (Procurement Options Assessment).

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13.2 Preferred Procurement Option

The Council carried out a review of the future service provision commissioning solutions identified and concluded that preferred option for future commissioning of the arboricultural service was to tender the works to the open market to ensure value for money through tested market rates. This preferred option is identified as option Bi in paragraph 13.4 (Procurement Options Assessment). The Council would be extending the original contract to allow time for a full procurement to be conducted.

13.3 Preferred Procurement Option Due Diligence

The Council recognised that through the tender process technical due diligence would be required as part of the tender documentation and scoring process before committing and awarding the contract.

An earlier proposal to provide future tree works to the incumbent Highway supplier (option is identified as option E in the Procurement Options Assessment table in Part B of this report, was ruled out after a legal challenge from the incumbent arboricultural supplier. The remaining options are shown in more detail below.

13.4 Procurement Options Assessment

Options considered are for both the extension and the procurement.

Option Summary	Pros	Cons
Option Ai – Do nothing, - allow the contract to expire and stop the arboriculture service. (Not Recommended)	Saves costs of running the service. Reduced Council management input.	No emergency cover for arboriculture, and failure of the Authorities Duty of Care obligations. Unable to fulfil statutory duty to clear the Highway for emergency services. Health and safety issues with damage to property and people. Legal costs resulting from the damage caused to property and people.
Option Aii – Further extend the existing contract to continue with the existing outsourced term service contract arrangement. (Not Recommended)	Reduced Council management team input at tender preparation stage. Council officers are familiar with the outsourced single contractor service currently delivered.	Existing contract terms and conditions are outdated. The Council's key objectives and strategy for delivery of arboricultural services has changed significantly since 2008. The current contract specification is to pre

		<p>BS3998 2010 specification, leaving our tree stock with large pruning wounds and entry points for pathogens, which would lead to early tree failure and increased cost to the council.</p> <p>Working methods and practices built into the original contract have changed significantly. Additional service requirements have been identified and become the Council's responsibility during the existing contract term and these requirements have not been agreed formally.</p> <p>A further extension of the contract term would extend beyond the bounds of what was originally communicated to the competitive market when procuring the original contract in 2008. It could be open to a challenge from one or more of the originally unsuccessful bidders and not re-tendering the works does not represent value for money for the Council. This would be in breach of the PCR Regulations.</p>
<p>Option Bi – Open Procurement. The Council would appoint a contractor to deliver a contract based on the Council's latest requirements. (Recommended Option)</p>	<p>Experience of monitoring and managing external contractors is already retained within the Council.</p> <p>Enables a competitive Open procedure procurement process to be undertaken in accordance with PCR 2015. This would reduce the risk of challenge.</p> <p>This would be a PCR compliant route and least</p>	<p>Management styles and philosophies may differ from Council's view.</p> <p>Requires a strong Council management team to get the right delivery.</p> <p>The scope, specification and key service requirements will need to be clearly defined for the Council to realise the financial and performance benefits.</p> <p>Larger contractors are commercially driven, and organisations can make</p>

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	<p>likely to be challenged. Also, the original contract scope has changed.</p> <p>The scope</p> <p>Ability for the Council's requirements relating to Premier Supply Programme (PSP), London Living Wage and Social Value to be incorporated within the ITT pack.</p> <p>Obtain Competitive market prices and experiences</p>	<p>claims difficult for the Council to handle.</p> <p>Preparation of a contract that delivers in accordance with the Council's requirements would require significant technical input from both technical and legal experts.</p>
<p>Option Bii – Procurement via a compliant framework The Council would appoint a contract to a contractor to deliver a contract based on the Council's latest requirements.</p> <p>The most suitable Framework Found was ESPO Grounds Maintenance Services (Ref 245_21) Lot 2 Arboriculture Services</p> <p>(Not Recommended)</p>	<p>Quicker route to market than open procurement whilst still ensuring competitive element.</p> <p>Standardised framework contract and documentation that can be used which speeds up the procurement process and reduces costs</p> <p>Experience of monitoring and managing external contractors is already retained within the Council.</p> <p>Using a compliant framework is permitted under PCR 2015. This would reduce the risk of challenge.</p> <p>This would be a PCR compliant route and is unlikely to be challenged.</p>	<p>Limited pool of contractors on framework may reduce competition and exclude local organisations not on the framework.</p> <p>Limits the ability to incorporate bespoke Council requirements relating to Premier Supply Programme (PSP), London Living Wage and Social Value.</p> <p>Management styles and philosophies may differ from Council's view.</p> <p>Requires a strong Council management team to get the right delivery.</p> <p>Larger contractors are commercially driven, and organisations can make claims difficult for the Council to handle.</p>
<p>Option C – In-house Service The Council would introduce its own in-house Direct Labour</p>	<p>Greater control over service delivery and the adjustment of service levels to accommodate budget constraints or political</p>	<p>A phased establishment of the service would be required – interim employment of external management consultants,</p>

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<p>Organisation (DLO) to deliver a term service contract based on the Council's latest requirements. (Not Recommended)</p>	<p>agenda's – Most, if not all, outsource contract models rigidly apply key performance indicators. Governance can be structured to be more flexible with less scrutiny applied to spend. Greater control of how revenue is spent, prioritised, and allocated.</p>	<p>local contractors and agency staff would be required to back fill gaps in service. Council retain responsibility for appointment and management of local specialist subcontractors. Potential for future TUPE issues if Council decide to revert to outsourcing. Difficult to attract the additional high caliber management and delivery resources required to deliver the service. Prohibitive cost of the training and development and maintaining competencies that are not needed on a permanent or continuous basis. Prohibitive cost of purchasing and maintaining a vehicle fleet and plant.</p>
<p>Option D – Multiple SME Contractor Service The Council would employ multiple small to medium sized contractors to deliver a term service contract based on the Council's latest requirements. (Not Recommended)</p>	<p>Allows access to the market for organisations that would be otherwise overlooked or unable to provide commercially and technically compliant solutions. It is often easier to develop and maintain meaningful client / customer relationships with smaller contractors. Smaller contractors tend to be less commercially aggressive than the larger contractor. Flexible working can be achieved by having more than one small contractor option for each work element. Introduces the potential for more local contractor involvement.</p>	<p>The management systems run by the larger contractors are not normally held by smaller organisations - i.e., quality, health, and safety and environmental. The management of multiple small contractors would require significant additional resources within the Council. Smaller contractors may find it difficult to cope with the workload, especially when an emergency occurs (e.g., multiple incidents resulting from inclement weather).</p>
<p>Option E - as detailed in Part B of this report</p>		

Option F- as detailed in Part B of this report.		
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14. DATA PROTECTION IMPLICATIONS

14.1 WILL THE SUBJECT OF THE REPORT INVOLVE THE PROCESSING OF 'PERSONAL DATA'?

NO

No Personal data will be processed.

14.2 HAS A DATA PROTECTION IMPACT ASSESSMENT (DPIA) BEEN COMPLETED?

NO

No personal details will be processed.

The Director of Sustainable Communities comments that the council's information management team have advised that a DPIA would not be required in this instance and that... The subject of the report does not involve the processing of personal data

(Approved by: Steve Iles the Director of Sustainable Communities)

CONTACT OFFICER: Paul Dalton, Tree and Woodlands Manager

APPENDICES TO THIS REPORT

BACKGROUND PAPERS