



**Report of Development Manager  
Report to Chief Officer Parks and Countryside**

**Date: 4<sup>th</sup> June 2019**

**Subject: Streetscene Grounds Maintenance Procurement**

Are specific electoral wards affected? If yes, name(s) of ward(s):	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Is the decision eligible for call-in?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, access to information procedure rule number: Appendix number:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

**Summary of main issues**

1. The current contractual arrangements for streetscene grounds maintenance are with Continental Landscapes Ltd due to end on 31<sup>st</sup> December 2021. Suitable delivery arrangements will need to be put in place to continue service delivery at acceptable standards that are affordable in the context of the medium term financial strategy.
2. The current contractual arrangement represents value for money and the contractor has demonstrated good levels of performance. It can reasonably be anticipated the council may see a large rise in the cost of delivery if either a tender process or in house approach was taken.
3. There is an option to vary the existing contract by extending the current contract period through the issuance of a contract modification notice (under Public Contracts Regulations 2015 72 (1) (b)). This is a legal notice that sets out the purpose of any arrangement, the anticipated value and duration and would be published in the European Journal (OJEU) to inform other potential interested parties that this was the Councils intention.
4. The benefit of this approach is that it could be put in place ahead of a June 2019 tender deadline and provide some financial certainty over the difficult period associated with the medium term financial strategy. Significantly, it would provide opportunity to explore other options in more detail and potentially align existing arrangements to provide a more efficient and effective service. In the interim there is an opportunity to adopt a 'real' living wage to enable all staff employed by the contractor to meet the council minimum pay level.

## **Recommendations**

The Chief Officer Parks and Countryside is recommended to approve the following:

- To enter into formal negotiations with Continental Landscapes Ltd to vary the existing contract under Public Contracts Regulations 2015 72 (1) (b) for a three year period within the constraints indicated in the confidential appendix.
- Subject to a suitable agreement, to publish a modification notice of the intention to vary the existing contract on the EU procurement (OJEU) website.
- Subject to the satisfactory conclusion of a 30 day notice period vary the existing contract with Continental Landscapes Ltd to commence for a three year period from the end of the existing contract until 31<sup>st</sup> December 2024.
- To vary the existing contract with Continental Landscapes Ltd to implement the Leeds 'real' living wage with effect from the date of decision publication by providing additional funds which would ensure that employee pay is matched to the minimum pay point adopted by the council.

## **1. Purpose of this report**

- 1.1 This report considers issues and a proposed solution to delivering streetscene grounds maintenance in an affordable way that sustains service delivery standards.

## **2. Background information**

- 2.1 The current contracted arrangements for horticultural maintenance of verges and incidental land around dwellings (referred to as streetscene grounds maintenance) arose from a tender exercise completed in 2011 commencing formally on the 1<sup>st</sup> January 2012. The contract is with Continental Landscapes Ltd and ran for an initial period of 5 years with options to extend for further periods up to 5 years formally ending on 31<sup>st</sup> December 2021. This arrangement is a successor to the contract with Glendale Ltd, arising from an original decision to outsource the work taken in 2003/4 establishing contracted arrangements in 2005.
- 2.2 The council's medium term financial strategy notes that significant pressures exist in the financial year 2021/22 onwards following the end of the 4 year settlement in 2019/20 when a 7.7% reduction in government grant is anticipated. In the three years up to March 2023 there is a predicted 'funding gap' of £97m in council finances.
- 2.3 At the end of the current contract suitable delivery arrangements will need to be in place to continue service delivery at acceptable standards that are affordable in the context of the pressures identified as outlined above. This report considers an interim arrangement to defer risks associated with alternative solutions.

## **3. Main issues**

### **3.1 Retender or In House Provision**

- 3.1.1 A financial appraisal of the likely impact of a retender process or in house provision has been undertaken and is included in the confidential appendix. In respect of retender it can reasonably be anticipated the council may see a large rise in the cost of delivery if a further tender process was undertaken at this stage. With regard to in house provision there are significant identified risks related to service transition and potential ongoing negative impacts on parks and green space quality.

### **3.2 Short Term Negotiated Procurement**

- 3.2.1 There is an option to vary the existing contract by extending the current contract period through the issuance of a contract modification notice (under Public Contracts Regulations 2015 72 (1) (b)). This is a legal notice that sets out the purpose of any arrangement, the anticipated value and duration and would be published in the European Journal (OJEU) to inform other potential interested parties that this was the Councils intention. This notice would be subject to a 30 day period during which it could be open to challenge following publication.
- 3.2.2 The proposed contract extension is for a three year period to enable Continental Landscapes Ltd to establish appropriate arrangements for secondary lease on plant and equipment as well as renewing leases on depot facilities. Given this time period an alternative contract could not affordably be established as any new contractor would be required to lease the required plant and equipment from new.
- 3.2.3 There is a precedent for this as in 2015 the London borough of Bromley used a similar procedure in relation to their green space management with idverde, a

private sector provider of grounds maintenance services. Idverde (previously trading as The Landscape Group) were the existing provider of services to Bromley and had a contract arrangement in place that was due to end on 31<sup>st</sup> December 2017. They decided to extend their contract beyond its normal end date to March 2019 to provide time to examine alternative mechanisms for service delivery and 'bundling' of various types of works to seek efficiencies.

- 3.2.4 An extension of this nature would provide time for the council to examine the scope of works that could be included in any future arrangement. It would provide a timeframe beyond June 2019 to explore options to expand the scope of works, improve the seasonal balance and reduce the need for temporary staff. This would have the added benefit of potentially aligning other existing arrangements to provide a more efficient and effective service.
- 3.2.5 The benefit of this approach is that it could be put in place in a short time period with the aim of providing financial certainty over the difficult period associated with the medium term financial strategy. There would also be an opportunity to provide additional funds to implement the Leeds 'real' living wage (including implementing this in 2019/20) which would be matched to the minimum pay point adopted by the council. The estimated cost of undertaking this is included in the confidential appendix.
- 3.2.6 It is also anticipated that Continental Landscapes Ltd would seek an uplift in the schedule of rates from that currently used alongside an agreement to meet other inflationary rises during the period any further contractual agreement was in force. However this would provide reassurance to the council of knowing the future delivery costs at the outset. It is anticipated that an agreement can be secured within parameters and estimated cost indicated in the confidential appendix.

## **4. Corporate considerations**

### **4.1 Consultation and engagement**

- 4.1.1 Continental Landscapes Ltd have been approached and have indicated a willingness to discuss a potential arrangement for a short term contract extension as set out above. Under this arrangement the existing scope of works would continue to be delivered in line with the existing frequency and specification. At this stage it would therefore not be necessary to undertake any further consultation. The contract modification notice process would enable pan-European engagement with the sector.

### **4.2 Equality and diversity / cohesion and integration**

- 4.2.1 An equality, diversity, cohesion and integration screening has considered the implications of these proposals and has not identified any issues that need any further action at this stage.

### **4.3 Council policies and best council plan**

- 4.3.1 The proposals in this report support the Vision for Leeds 2011 to 2030 and in particular the aspiration that 'there are high quality buildings, places and green spaces, which are clean, looked after, and respect the city's heritage, including buildings, parks and the history of our communities' as part of the overall aim that 'all Leeds' communities will be successful'. The proposals contribute to the Best

Council Plan outcomes to 'enjoy happy, healthy, active lives', and 'enjoy greater access to green spaces, leisure and the arts' and also priority 20 'enhancing the quality of our public realm and green spaces'.

#### **4.4 Resources and value for money**

- 4.4.1 The council's medium term financial strategy notes that significant pressures exist in the financial year 2021/22 onwards following the end of the 4 year settlement in 2019/20 when a 7.7% reduction in government grant is anticipated. In the three years up to March 2023 there is a predicted 'funding gap' of £97m in council finances.
- 4.4.2 At the end of the current contract on 31<sup>st</sup> December 2021 suitable delivery arrangements will need to be in place to continue service delivery at acceptable standards that are affordable in the context of the pressures identified as outlined above.
- 4.4.3 It can reasonably be anticipated the council may see a large rise in the cost of delivery if either a tender process or in house approach was taken. The maximum potential cost exposure is outlined in the confidential appendix. This would allow the council to get over a difficult financial period allowing a re-evaluation of scope of works included in future arrangements.

#### **4.5 Legal implications, access to information, and call-in**

- 4.5.1 This is a significant operational decision and therefore not subject to call-in. There is a confidential appendix which sets out financial information that would prejudice the outcome of negotiations with the existing contractor if divulged at this time.
- 4.5.2 It is proposed that regulation 72 (1) (b) of the Public Contracts Regulations 2015 is used to vary the existing contract as set out in the terms below:

*For additional works, services or supplies by the original contractor that have become necessary and were not included in the initial procurement, where a change of contractor*

- *cannot be made for economic or technical reasons such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement, or*
  - *would cause significant inconvenience or substantial duplication of costs for the contracting authority,*
  - *provided that any increase in price does not exceed 50% of the value of the original contract;*
- 4.5.3 As explained in paragraph 3.2.2 it does not make economic or technical sense to engage with another supplier for the 3 year interim period. The process of carrying out the interim contract tender process would also cause significant inconvenience and duplication of costs when the resources of the parks service could be better spent carrying out the comprehensive review of service provision.
- 4.5.4 The original contract value is approximately £29m. The additional 3 year term will amount to a sum that is considerably less than 50% of this value.
- 4.5.5 The Council will be required to publish a specific form of modification notice on the EU procurement (OJEU) website. The service proposes to wait for 30 days from publication of the notice before the variation is entered into. Suppliers that feel that

they have a claim for a breach of the regulations generally have 30 days from the date of knowledge to raise a claim.

## **4.6 Risk management**

- 4.6.1 It can reasonably be anticipated the council may see a large rise in the cost of delivery if either a tender process or in house approach was taken. Given the current financial position for the council and the potential necessity to reduce service quality in order to ensure affordability it is considered that these would be unacceptable risks at this time.
- 4.6.2 There is a risk of challenge during the 30 day notice period which if successful could require the council to conduct a further options appraisal. This is not considered to be a significant risk as this approach has as indicated been successfully used by Bromley without challenge in relation to similar works and purpose.

## **5. Conclusions**

- 5.1 There is an opportunity to consider a broader approach to streetscene grounds maintenance and related activities in a way that reduces seasonal fluctuations and clarifies responsibility for delivery. This would however require consultation with a range of stakeholders and seek alignment with current contractual arrangements and other planning activity which could take some considerable time. There is limited capacity to consider a more holistic approach given pressures associated with delivering initiatives in support of the medium term financial strategy. It is therefore proposed that a short term negotiated arrangement is put in place that provides minimal financial and operational risk allowing time to consider alternative approaches.

## **6. Recommendations**

- 6.1 The Chief Parks and Countryside Officer is recommended to approve the following:
- To enter into formal negotiations with Continental Landscapes Ltd to vary the existing contract under Public Contracts Regulations 2015 72 (1) (b) for a three year period within the constraints indicated in the confidential appendix.
  - Subject to a suitable agreement, to publish a modification notice of the intention to vary the existing contract on the EU procurement (OJEU) website.
  - Subject to the satisfactory conclusion of a 30 day notice period vary the existing contract with Continental Landscapes Ltd to commence for a three year period from the end of the existing contract until 31<sup>st</sup> December 2024.
  - To vary the existing contract with Continental Landscapes Ltd to implement the Leeds 'real' living wage with effect from the date of decision publication by providing additional funds which would ensure that employee pay is matched to the minimum pay point adopted by the council.

## **7. Background documents<sup>1</sup>**

- 7.1 None.

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<sup>1</sup> The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.