

Report

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Report to:	Community and Enterprise Resources Committee
Date of Meeting:	6 March 2018
Report by:	Executive Director (Community and Enterprise Resources) Executive Director (Finance and Corporate Resources)

Subject:	Tanker Applied Roads Surface Coatings Contract
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1. Purpose of Report

1.1. The purpose of the report is to:-

- ◆ seek approval for the negotiation and award of a contract for Tanker Applied Roads Surface Coatings to Scottish Borders Council, under Regulation 13 of the Public Contracts (Scotland) Regulations 2015

2. Recommendation(s)

2.1. The Committee is asked to approve the following recommendation(s):-

- (1) that the contract for Tanker Applied Roads Surface Coatings be negotiated and awarded as described, for a period of 5 years, incorporating an annual break clause.

3. Background

3.1. The Council's Roads and Transportation Services has a historic and ongoing requirement for an external provider to provide services relating to the supply and application of liquid bitumen emulsion to carriageways to support its maintenance operations.

3.2. There are two operations supported by this external service, the first for the supply and application of Bond Coat for carriageway resurfacing and the second for the supply and application of Binder for surface dressing operations. Both operations are, however, similar in nature and require specialised vehicles to facilitate, which the Council does not operate.

3.3. Consideration has been given to the purchasing or leasing of these vehicles, however, there are two main factors which makes this impractical and uneconomical.

- ◆ The surface dressing operation which accounts for the majority of the spend on these operations can only be undertaken during the summer months. In practice this means that a number of vehicles (Tankers) are required over a short period of time which will then sit largely unused for the remainder of the year.
- ◆ Whilst the Council is able to apply Bond Coat to small areas using existing hand held sprayers, the specialist vehicle is required for larger works. These larger works do not, however, occur with sufficient frequency to ensure that the vehicle will be utilised to its maximum potential and again there may be long periods where this will remain dormant.

- 3.4. The Council has openly tendered this opportunity on two previous occasions over the last 10 years and has achieved the same result both times, with Scottish Borders Council (SBC) winning the Bond Coat work and an external provider, Colas Ltd, winning the Surface Dressing. Colas Ltd do not, however, own sufficient numbers of the specialised vehicles to service this contract and instead sub-contract the application of the material to SBC. The net effect of this arrangement has been that whilst Colas Ltd. may have held part of the contract and supplied some of the material, SBC have undertaken all of the actual work.

4. Public Contracts (Scotland) Regulations 2015

- 4.1. The aforementioned regulations govern how all Public bodies in Scotland procure goods, works and services and the previous two contracts for these works have been offered to the market under these Regulations and those before them via a traditional Open Tender. These Regulations do, however, offer other wholly compliant routes to market where justification can be provided.
- 4.2. Regulation 13(8) of the 2015 Regulations provides that the Regulations will not apply to procurements for the award of a public contract between 2 or more contracting authorities subject to certain specific requirements being fulfilled. These are as follows:-
- ◆ The purpose of the contract is to ensure that public services which each of the contracting authorities have to perform are provided with a view to achieving their common objectives;
 - ◆ The co-operation is governed solely by considerations relating to the public interest; and
 - ◆ The contracting authorities perform less than 20% of the activities concerned on the open market. The % of activities is determined by reference to the contracting authority's average turnover for the 3 years prior to the date of proposed contract award.
- 4.3. It can be confirmed that as SBC have the spare capacity to undertake these works, common objectives and best value for the public in both authorities will be met. SLC will continue to obtain the required services from a trusted provider and SBC will ensure that its fleet of specialised vehicles are utilised to their fullest potential. It can in addition be confirmed that the Council's anticipated spend of £400k per annum is a fraction of the overall turnover and well below the 20% threshold required.

5. Current Position

- 5.1. The facility within the PCS Regulations to permit two Authorities to contract with each other was only introduced in 2015. However, it had been in place via European Procurement case law for a number of years previously.
- 5.2. This confirmation by the Scottish Government that they are content for Local Authorities to act in this way provides the opportunity for Councils to share resources and services where best value is served, and to ensure that the interests of the public are met in a way that minimises external expenditure and ensures continued employment opportunities within one or both parties.
- 5.3. The Council's Procurement Strategy describes the commitment to Fair Work Practices and the steps to ensure that we will achieve this through the contracts that we award, in compliance with the Procurement Reform (Scotland) Act 2014. The Strategy describes that we will:

- ◆ encourage the promotion of fair working practices
- ◆ encourage suppliers to pay the Living Wage to their workforce
- ◆ promote equality
- ◆ limit the use of zero- hours contracts.

In awarding to SBC the Council will achieve all of these objectives

- 5.4. It is consequently proposed to negotiate a contract based on a 5 year contract period. There will be no minimum purchase commitments within the contract and an annual break clause will be incorporated.

6. Employee Implications

- 6.1. None

7. Financial Implications

- 7.1. Costs will be met from existing capital and revenue budgets.

8. Other Implications

- 8.1. There are no implications for sustainability or risk in terms of the information contained within this report.

9. Equality Impact Assessment and Consultation Arrangements

- 9.1. There is no requirement to carry out an impact assessment in terms of the proposals contained within this report.
- 9.2. There is no requirement to carry out any consultation in terms of the content of this report.

Michael McGlynn,
Executive Director (Community and Enterprise Resources)

Paul Manning
Executive Director (Finance and Corporate Resources)

20 February 2018

Link(s) to Council Values/Objectives/Ambitions

- Accountable, effective, efficient and transparent
- Ambitious, self aware and improving
- Improve road network, influence improvements in public transport and encourage active travel

Previous References

None

List of Background Papers

None

Contact for Further Information

If you would like to inspect the background papers or want further information, please contact:-

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