

Agenda Item 65C

Brighton & Hove City Council

Meeting: Policy & Resources Committee

Date: 2 February 2004

Report of: Deputy Chief Executive & Director of Corporate Services

Subject: New Contractual Arrangements

The special circumstances for non-compliance with Council Procedure Rule 19, Access to Information Rule 5 and Section 100B(4) of the 1972 Local Government Act as amended (items not to be considered unless the agenda is open to inspection at least five days in advance of the meeting) are that evaluation information was not available at the time the agenda was printed.

1. Purpose of the report

- 1.1 To advise Policy & Resources Committee on the outcome of the tendering process for those services currently provided under the Ecovert/EML Contract.
- 1.2 To seek approval to either award the contracts or to bring the services in-house based upon the results of the tender evaluation exercise and the consideration of the appropriate Service Committee.

2. Recommendations

- 2.1 Policy & Resources Committee is requested to note this report and to refer to the confidential report in Part II of the same Agenda which deals with each individual service area.

3. Information/background

- 3.1 In April 1995 Brighton Borough Council let a contract (the Umbrella Agreement) backed by Saur UK Ltd (the parent company) to Ecovert South Ltd and EML Ltd whereby the Council's Contract Services Department (which at the time comprised the Building Division, Grounds Maintenance Division, Refuse Division, Leisure Division, Catering Division and Property Management Services Section) were transferred to Ecovert South. Brighton Borough Council also let fourteen individual Service Contracts under the Umbrella Agreement mostly to Ecovert South to undertake for varying periods of years.

- 3.2 When the Umbrella Contract was let some 600 staff from Brighton Borough Council's DSO were transferred to Ecovert South or EML. The estimated annual contract value in 1995 was over £10 million and the structuring of the arrangement as an Umbrella Contract with a series of Service Contracts of varying length generally related to the prevailing CCT time scales and the levels of capital investment involved in individual service areas.
- 3.3 Additional contracts were awarded to Ecovert South for Highways Maintenance (1995) and Civic Amenity Sites (1997) and with the creation of the new Unitary Authority of Brighton & Hove Council in April 1997 the contracts vested in Brighton & Hove Council.
- 3.4 In 1999 Ecovert South approached the council seeking agreement to the voluntary surrender of the Refuse Collection and Street Cleansing Contracts. A package of variations including the proposed surrender was negotiated and a variation agreement was executed between the parties.
- 3.5 In 2002 a further package of variations was negotiated creating a core of contracts in a new partnership arrangement with a common end date of 31 March 2004.
Currently the core of contracts consists of:
- Leisure Management
 - Catering
 - Grounds Maintenance
 - Professional Services
- 3.6 The original decision to engage in a Hosting Agreement was an innovative approach to the challenges and opportunities that faced local government under the regime of compulsory competitive tendering which existed in the early 1990s. The advent of best value and the development of a commercial market place providing services to local authorities has meant that the approach of packaging a large number of services together to create a single supplier relationship is no longer the best strategic approach.
- 3.7 The Policy & Resources Committee of 22 January 2003 confirmed that the Council was not intending to continue with the single supplier relationship for catering, leisure management, professional services and grounds maintenance post 2004. Officers were charged with preparing contract procurement strategies for consideration by the appropriate Executive Committee with a view to awarding new contracts for these services by December 2003, for commencement of 1 April 2004. The Policy & Resources Committee of 18 June 2003 considered a report concerning service continuity and achieving Best Value for those services currently provided under the Ecovert/EML Contract. Members approved the Strategy relating to individual service contracts for Leisure Management, Grounds Maintenance, Catering and Professional Services. These services were further split into the following contracts:
- Leisure Facilities Management

- Grounds Maintenance
- Arboricultural Maintenance
- Golf Courses
- Consultancy Services (Housing)
- Brighton Centre Catering
- Royal Pavilion Catering – The Queen Adelaide Tea-Room
- Staff and Civic Catering

4. Further information

Tendering Process

- 4.1 The tendering process has been conducted in accordance with the EU Public Procurement guidelines. This has provided a framework for the process and facilitated its management. Advertisements were placed in the Official Journal of the European Union (OJEU) and trade publications inviting companies with relevant experience to register their interest.
- 4.2 All companies who registered an interest were sent the Council's Pre Qualification Questionnaire (PQQ) to complete. Having undertaken a pre qualification process to make an initial assessment of their suitability and capacity as a partner for the Council in providing these services companies were invited to tender. A minimum of six interested parties were invited to tender for each contract (except the Brighton Centre Catering, where only five potential contractors were identified at the pre qualification stage).
- 4.3 In accordance with the Public Services Contracts Regulations the criteria for the evaluation of tenders and award of contract were included in the Tender Information Pack based upon a weighting of Financial and Quality.
- 4.4 A cross-functional evaluation panel consisting of representatives from Finance, Legal Services, Procurement, Client Contracts Officers, Human Resources, Health & Safety, Sustainability and Environmental Health have evaluated the tenders according to a methodology set out in the Invitation to Tender. The results of the tender evaluation are set out in the individual reports on each contract in Part II of this Agenda.
- #### **5. Transfer of Undertakings (Protection of Employment) Regulations (TUPE)**
- 5.1 TUPE and the European Directive 77/187 apply to the above contracts. The numbers of staff eligible for TUPE within the existing contracts is currently 589.
- 5.2 Contractors are required under the Council's Terms & Conditions to observe and comply with the provisions of the 'Statement of Practice on Staff Transfers and the Public Sector' issued in January 2000, the annexure 'A Fair Deal on Pensions', Section 101 and 102 of the Local Government Act 2003, the 'Best Value' regime for local authorities and codes of practice issued under the same including the Office of the Deputy Prime Minister (ODPM) 'Code of Practice on

Workforce Matters in Local Authority Service Contracts' set out at Appendix A and the Council's own Procurement Code of Practice on Workforce Matters and Equalities. For the avoidance of doubt the former Code of Practice is not to be interpreted or implemented in a way which would leave any group of transferring employees on worse terms following the transfer.

5.3 Tenderers were required to submit with their bids:

- Confirmation that they will comply with any information and consultation requirements under TUPE;
- Details of the measures, including non-transfer related changes to terms and conditions, which they propose to take in respect of any staff transferring to their employment so that the Council can be satisfied that there will be a smooth transition between the old and the new contracts and no detriment to service delivery;
- Details of any changes to the information supplied in answers to the pre-qualification questionnaire;
- Their track record as a bidding entity (or that of their parent or associated companies if appropriate) in dealing with TUPE, their approach to TUPE in past transactions and their experience in managing staff transfers;
- A transition plan for taking on staff under TUPE that demonstrates that the company understands and can manage obligations under TUPE and describes the company's intended approach to negotiation of measures with the workforce;
- Details as to how they will comply with their obligations to provide pensions broadly comparable to the existing pensions of transferring employees together with details of the steps that will be put in place so as to enable those employees to enforce the pension rights.

6. Consultation

6.1 The Trade Unions have been consulted at each stage of the tendering process but have not participated in the evaluation. The Union Representatives have expressed concern at the tightness of the mobilisation plan particularly in relation to consultation with the Trade Unions, meetings with the existing workforce and one to one meetings with individual members of staff.

COMMITTEE REPORT APPENDIX

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Wards affected	All

Financial implications

The 2004/5 budget currently makes contingency provision of £500,000 in total for the potential financial effects of re-tendering all contracts. Detailed financial implications are included within each contract tender report and overall the implications can be contained within existing budgets plus the contingency provision.

Finance Officer consulted: Mark Ireland

Date: 30/01/04

Legal implications

The main legal implications concerning TUPE and the procurement process have been integrated into the report. There do not appear to be any adverse Human Rights Act implications.

Lawyer consulted: Bob Bruce

Date: 30/01/04

Corporate/Citywide implications

All the services tendered affect all parts of the City. Extensive stakeholders consultation has taken place as part of the Best Value Reviews.

Risk assessment

Full risk assessments will be carried out by all incoming contractors in conjunction with the Client Contract Officers. Key risks identified will need to be dealt with and regularly reviewed and updated by the respective parties.

Sustainability implications

The Council's Code of Practice on Sustainability was passed to all bidders at the Invitation to Tender stage and tenderers were required to demonstrate how they had considered sustainability issues.

Equalities implications

Responses on Equalities issues provided by the tenderers in their tender documents were evaluated. Preferred contractors will be required to comply with all relevant legislation, Codes of Practice including the Council's 'Procurement Code of Practice – Workforce Matters & Equalities' (incorporating the government's Code of Practice on Workforce Matters in Local Authority Service Contracts), the Council's Race Equality Scheme and good employment practices.

Implications for the prevention of crime and disorder

A more holistic approach to Grounds Maintenance is expected to have a positive impact in reducing minor crime in parks.

Background papers

None

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