

**CABINET
13 DECEMBER 2022**

***PART 1 – PUBLIC DOCUMENT**

TITLE OF REPORT: SINGLE TENDER IN RELATION TO PROPERTY COMPLIANCE CONTRACT (DRAFT)

REPORT OF: *Service Director: Resources*

EXECUTIVE MEMBER: *Finance and IT*

COUNCIL PRIORITY: SUSTAINABILITY

1. EXECUTIVE SUMMARY

To seek Cabinet approval to use a single tender process for the award of a contract to HTS Property and Environmental Limited Ltd (hereafter referred to as HTS), for a property compliance contract. This will be for a 2 year contract with the option for a 2 year extension. This is being referred to Cabinet due to the value of this contract. The reason for requesting a single tender is because it allows the development of a sustainable contact, in a market where the Council has experience of unsuccessful contracts. Detailed analysis has been carried out to determine that this contract is likely to provide good value to the Council, and therefore it is in the Council's best interests to engage this supplier (as per the Council's Contract and Procurement Rules). Whilst the Service Directors for Resources and Legal & Community could authorise this, it has been referred to Cabinet due to the value of the proposed contract.

2. RECOMMENDATIONS

- 2.1. That Cabinet agrees to the use of a single tender (under the Council's Contract Procurement Rules) *for the award of a contract to HTS Property and Environmental Limited Ltd, for a property compliance contract.*

3. REASONS FOR RECOMMENDATIONS

3.1 It is expected that working with HTS will deliver the following benefits:

- The proposal is to form a collaborative working partnership that is focused on excellent service delivery and cost control, whilst ensuring the arrangement is sustainable for both parties over the longer term. This should avoid a repeat of the contract failures that have been what has transpired over the last two contracts.
- HTS have a large directly employed workforce of trade operatives, administration and management staff, who have the skills, knowledge and ability to deliver the works, and already provide similar services to Harlow Council.
- Elements of the way that the contract is delivered can be developed collaboratively by both parties to ensure the most efficient and cost effective approach.

- HTS have a supply chain with access to both materials and sub-contractors to support delivery.
- Whilst not a local North Herts based supplier, HTS' values are aligned to the North Herts Council's values, as demonstrated by their social and environmental activities. (see sections 13 and 14 below).
- Being wholly owned by Harlow Council, any profits that HTS generate are ultimately fed back into providing public services.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 Due to the previous contract failures, a pre-procurement exercise was conducted in July 2022 to seek feedback from potential suppliers. Some doubts were raised regarding the attractiveness of the contract, given the low value and relatively large geographical spread. It had been hoped that the pre-procurement exercise would provide insight in to how to shape a contract that would make it more appealing to the market. Instead the result was that the Council would be likely to end up in a similar position to previous contracts. As explained in section 7 and paragraph 11.1 this is not an outcome that was desired.
- 4.2 HTS were the only not for profit organisation that attended the pre-procurement event, and the only supplier that suggested a collaborative approach. This led to discussions to test out what a collaborative approach would look like. It is for this reason that the traditional tendering process was rejected.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1. As detailed in paragraph 4.1, a market engagement exercise was carried out with potential suppliers.

6. FORWARD PLAN

- 6.1 The award of this contract is a key Executive decision that was first notified to the public in the Forward Plan on the 4th November 2022.

7. BACKGROUND

- 7.1 The Council has a statutory duty to provide building/premises compliance and maintenance to ensure the safe use of office and public accessible buildings. This primarily involves the maintenance of and repairs to properties, and plant and equipment within those buildings.
- 7.2 For the last 12 years the Council (in collaboration with other local authorities) has awarded building compliance, maintenance, and repairs to a single supplier via a competitive tender route, and on each occasion a large national contractor has been appointed. Each of these contracts has had their difficulties in terms of quality, delivery, and cost. The most recent contract was awarded in February 2019. The contract was a five year contract with an option to extend for a further two years. From early stages of the contractor struggled to provide a quality service and raised concerns over the financial viability of the contract. After a year, the two other local authorities withdrew from the framework adding additional financial pressure, ultimately resulting in the contractor serving the Council with notice to terminate the contract early, citing the contract was losing money and was not financially viable.

- 7.3 In this and previous compliance and repairs contracts the contractor heavily relied on subcontractors. This resulted in poor service and a high administrative burden being placed on the Council.
- 7.4 With the buoyancy within the building/construction industry the Council has struggled to appoint contractors to undertake planned and ad-hoc works. Our main contractor too have struggled to provide these additional services.

8. RELEVANT CONSIDERATIONS

- 8.1 In an attempt to avoid a similar experience of early contract termination a piece of work to consider alternative delivery models was undertaken, which looked at breaking down some of the works into smaller packages. This included elements that relate to checks on the building. A pre-procurement market engagement exercise was subsequently undertaken for the repairs and preventative maintenance elements, at which point the Council were approached by HTS with a proposed collaborative approach. Legal and procurement advice was obtained which confirmed that whilst there was an element of service to this contract in respect of compliance testing, the majority of this was a public works contract this would be below the regulated procurement threshold, so a single tender could be considered (subject to successful discussions with HTS). Where the works element is considered more dominant in the Specification of the requirement under the contract (over the Service element), then the works element takes precedence and the Contract falls under the definition of public works for the purposes of the PCR 2015.
- 8.2 A number of meetings with HTS have taken place. This has generated costed proposals, based on a pricing structure that is fair to both parties. The first building block of the contract price is the cost of the operatives that will be doing the work (various tradespeople), including the cost of travel, overheads and a small profit margin. HTS has provided us with full details of how this is made up and that has allowed us to benchmark against other information (including salaries for different tradespeople, existing contract prices and chargeable rates from other contracts we are aware of) to make sure it was reasonable. This has shown that they are proposing a very fair market rate. The next step would then usually either be to apply a fixed number of hours to each job (which you then multiply by the hourly rate to get the total cost) or have an arrangement where each job is charged based on the hours it takes (making the contract very variable in cost). The former means that if the assumed hours turn out to be wrong then someone loses out (or the contractor prices in a lot of risk) and the latter can mean lots of arguments about how long each job takes. In discussion with HTS, a middle ground has been established where there will be a target time for each job type, which is what the costs will be based on. If a variation to the target time can be justified, then there is a contract meeting about whether to agree that variation to the target time. Where materials are required then these will be charged on at cost.
- 8.3 The above shows that HTS have a willingness to be open and transparent.
- 8.4 The Council's current contractor are either unable to, or their costs are too high, to undertake any additional larger planned or ad-hoc repairs. This was a benefit that was supposed to have been achieved through the contract. It is anticipated that HTS will be able to undertake some of this work via the contract, either through predefined

schedule of rate items (in line with above) or by open and transparent job costing or quotations (where the work does not match up to the schedule of rates). The Council is not obliged to use HTS for these works, so any risk that the schedule of rates is too high is reduced by this. The benefits of using HTS for this work is that it is very hard to get contractors to even quote for certain ad-hoc works, and even when they do, the prices can be very high.

- 8.5 Ordinarily as part of the single tender process the modern slavery question is asked and what a contractors compliance is with that in terms of procurement. Whilst the turnover of the company is below the required level, HTS' commitment to the Act is demonstrated by the following: <https://www.htsgroupltd.co.uk/modern-slavery-act/>

9. LEGAL IMPLICATIONS

- 9.1. As the maximum contract value of £1,227,520 is below the World Trade Organisation (WTO)'s Government Procurement Agreement (GPA) threshold, the Public Contracts Regulations 2015 (PCR) do not apply to this procurement and the contract does not need to be competitively tendered in accordance with these Regulations.

- 9.2 The entering into contracts below the regulation threshold must comply with the Council's Contract Procurement Rules (CPRs) [Part B, Section 20 dated 20 January 2022] and Rule 14 of the CPRs sets out the circumstances in which a Single Tender can be considered.

- 9.3 Rule 14.1 (which relates to contracts below the WTO GPA Threshold) states that:

"Below WTO GPA Threshold

14.1 A single tender may be obtained when:

- (a) Prices are wholly controlled by trade organisations or government order and no reasonably satisfactory alternative is available; or*
- (b) The works, goods, or services to be supplied consist of repairs to or the supply of parts or upgrading of existing proprietary machinery, equipment, software, hardware or plant and the repairs or the supply cannot be carried out practicably by alternative contractors; or*
- (c) Specialist consultants, suppliers, agents or professional advisors are required and:
 - (i) Evidence that there is no satisfactory alternative; or*
 - (ii) evidence indicates that there is likely to be no genuine competition; or*
 - (iii) it is in the Council's best interest to engage a particular consultant, supplier, agent or advisor; (Contact Procurement and Legal Services for advice) or**
- (d) Products are sold at a fixed price and market conditions make genuine competition impossible."*

Rule 14.1 C (iii) applies in this case. The rules allow for a single tender to be entered into under clause 14.1 C (iii) as it's considered in the Council's best interests to appoint this supplier for the reasons outlined within this report.

- 9.4 Single Tenders with a contract value below the WTO GPA threshold must have prior written approval of the Service Director responsible, the Service Director: Legal and

Community and the Service Director: Resources [Rule 14.2 of CPRs dated 20 January 2022]. Whilst not specifically referenced in the Contract and Procurement Rules, section 14.6 e) of the Constitution provides that “[a]n officer may always refer a delegated decision to the Cabinet or Council or any of their respective Committees rather than make the decision”. Due to the value of this contract, the decision is being referred to Cabinet.

10. FINANCIAL IMPLICATIONS

- 10.1 The estimated value of this contract over the maximum 4 year period (if extended from the initial 2 years) is £1,228k (+ inflationary uplifts). This is based on an annual contract sum in 2023/24 of £307k. This will be within the available budget, subject to Council agreeing the proposed increase (proposed in the 2023/24 budget papers) of £30k. This increase reflects that there has been no inflation applied to this budget over the period of the existing contract. This increase is less than the prevailing inflation over that period.
- 10.2 The accounts of HTS have been reviewed to assess their viability as a company. In each of the last 4 years (up until the latest publicly available accounts for the year to 31 March 2021) they have had a turnover in excess of £20m and have achieved a gross profit margin of over 10%. This provides reassurance that the Council's contract would not be of a size that it would cause delivery issues, and also that the company have a realistic pricing model. Whilst in 2021, the company made a small loss (of £9k) in each of the three previous years they made a pre-tax profit in excess of £500k. This means that the company has retained earnings of over £1.3m. This level of retained equity would provide a lot of protection against any future risks and issues. The company has a current ratio greater than 1, and due to low stock holding, also has an acid test ration greater than 1. Both of these demonstrate that the company is able to manage its cashflow, and therefore has no liquidity concerns. A credit report has been obtained for the company which scores the company as low risk, and recommends a contract limit of up to £2.7million.

11. RISK IMPLICATIONS

- 11.1 The risk of not taking this approach is that it would be very likely to lead to the reappointment of a national contractor, which over previous contracts has not proved to be the best option. The pricing of these contracts has focused on the ultimate delivery of the repairs and maintenance tasks, with less emphasis on ensuring that they are completed in a timely manner and ensuring that the Council is aware of when they have been completed. For buildings where the Council's Property Services team do not have day-to-day involvement, this makes it extremely difficult to keep building users informed of what is happening.
- 11.2 There are procurement risks with awarding this as a single tender, in terms of challenge from any 'unsuccessful' contractors. However the contract is under threshold and single tenders are part of the Council's Contract and Procurement Rules. The Council will further reduce this risk by publishing a voluntary transparency notice and following a stand-still period when the contract is awarded. This risk has been assessed as very low.
- 11.3 There is a risk that this contract approach will not be right either. However the impact of this is considered to be relatively low for the following reasons.

- a) HTS are wholly owned by Harlow Council

- b) HTS have the resources and experience in place to deliver the contract as they currently provide similar services to Harlow Council.
- c) By having a year one no fault break clause this mitigates risks to a maximum of two years.
- d) Contract efficiencies and savings can potentially be achieved via a collaborative approach.
- e) The Council does not have to use HTS to deliver any larger planned or ad-hoc repairs.

12. EQUALITIES IMPLICATIONS

- 12.1. In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.2. There are no direct equalities implications arising from this report.

13. SOCIAL VALUE IMPLICATIONS

- 13.1 As the recommendations in the report relate to a contract with a value above £100,000 but below WTO GPA threshold, the go local policy does not apply. It has nevertheless been considered, however during the pre-procurement exercise there was little interest from local contractors who we consider have the expertise to deliver the contract.
- 13.2 HTS have a track record of delivering social value. Some examples are listed below.
 - Of the activities which can be monetised HTS created £383,185 social (wellbeing) value and £171,630 of public sector costs savings and economic benefits as well as making £90,000 worth of donations and staff time to charitable and community causes in the 2020-21 year.
 - HTS provide work experience and apprenticeship opportunities to people in Harlow. In the last year, HTS have had a number of work experience placements and currently have seven apprentices going through training in mechanical, plumbing, carpentry and finance disciplines.
 - HTS are a Living Wage accredited employer.
 - Any job vacancies are advertised locally, and HTS have also attended job fairs to promote opportunities to disadvantaged people.
 - HTS is a disability confident employer which means a commitment to recruiting, retaining, and developing disabled people. Currently 10% of the workforce are identified as disabled well above the minimum statutory requirement threshold of 3%.
 - HTS have recently partnered with Rainbow Services to enhance their offering; particularly in providing work experience placements to people who have found it difficult to thrive in an educational environment and need further support in this area. To date HTS have provided work experience placements to 140 students from the local area.
 - HTS have developed a good working relationship with Jewson, who are now co-located on

their site in central Harlow. This provides HTS with quick and easy access to materials. HTS also jointly sponsor Parrington Football Club with Jewson and have joint Apprenticeship arrangements where apprentices can get experience working with both organisations.

- 13.3 Whilst HTS will not be able to replicate all the above in North Herts, they will look to apply the same principles. The extent to which this is achieved will partly depend on the volume of larger and ad-hoc works (within the contract total) that the Council places with HTS.

14. ENVIRONMENTAL IMPLICATIONS

- 14.1. An Environmental Impact Assessment has been undertaken. The actions have been considered and there are mitigation measures that can be applied to the contract as detailed below.
- HTS are certified to ISO 14001, the international standard for environmental management. In 2018 they won a Green Apple award for their environmental management regarding fuel efficiency and safe driving. Green Apple is an independent organisation that recognises and rewards environmental best practice globally.
 - HTS is a licensed waste carrier and have a waste processing facility at their Harlow office. Across all workstreams, they currently recycle 70% of waste. This is within their annual target under ISO 14001. The waste that does go to landfill is generally household waste and unrecyclable goods from house clearances. This would not apply to the contracted works that they would do for North Herts.
 - HTS are currently procuring three electric vans this year and look to increase this year on year in line with the availability and costs of new technology and the development of the EV charging points.
 - Working collaboratively with HTS, the Council will seek to reduce the number of maintenance visits and thereby reduce CO2 emissions from vehicles.

15. HUMAN RESOURCE IMPLICATIONS

- 15.1 There are no direct HR implications on Council staff arising from this report.

16. APPENDICES

- 16.1 *None.*

17. CONTACT OFFICERS

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18. BACKGROUND PAPERS

- 18.1 This recommendation is supported by correspondence with HTS detailing how their rates have been derived, and discussions around changes to those rates. It is also supported by analysis of their pricing proposals and comparison with other sources of costing information to show that their pricing provides best value. This information would be exempt Part 2 information by virtue of Schedule 12A para 3, but will be made available to Cabinet members if requested.