

**SURREY COUNTY COUNCIL****CABINET****DATE: 14 DECEMBER 2017****REPORT OF: MR TIM OLIVER, CABINET MEMBER FOR PROPERTY AND BUSINESS SERVICES****MR COLIN KEMP, CABINET MEMBER FOR HIGHWAYS****LEAD LUCY MONIE, HEAD OF HIGHWAYS & TRANSPORT****OFFICER: ROSS DUGUID, ACTING ASSISTANT DIRECTOR OF PROCUREMENT AND COMMISSIONING****SUBJECT: AWARD OF FRAMEWORK AGREEMENT FOR THE PROVISION OF ADVERTISING SERVICES FOR STATUTORY NOTICES****SUMMARY OF ISSUE:**

This report seeks approval for the Council to award a framework agreement to TMP Worldwide for the provision of Advertising Services for Statutory Notices to commence on 1 March 2018.

The advertisement of Statutory Notices in relation to orders under the Road Traffic Regulation Act 1984 is governed by the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996 and the Road Traffic (Temporary Restrictions) Procedure Regulations 1992. Under these Regulations the Council has a statutory duty as the Traffic Authority to publish two notices in the press for both permanent and temporary Traffic Orders.

This report outlines the procurement process undertaken, including the results of the tender evaluation. When considered in conjunction with the Part 2 report, it demonstrates why the recommended framework award will deliver value for money, quality and consistency across the Council's Statutory Notices.

Due to the commercial sensitivity involved in the framework award process, the names of the bidders and their financial details have been circulated as a Part 2 report.

**RECOMMENDATIONS:**

It is recommended that:

The framework agreement is awarded to TMP Worldwide for three years from 1 March 2018 with an option to extend for one period of one year.

Over the full term of the framework, the anticipated value is £1.4m (approximately £368,000 per annum).

**REASON FOR RECOMMENDATIONS:**

The Council has a contract for Advertising of Statutory Notices, which is due to expire on 28 February 2018 and needs to be replaced.

The Council conducted an Official Journal of the European Union (OJEU) tender process, in compliance with the requirements of the Public Contracts Regulations 2015 and the Council's Procurement Standing Orders.

A thorough evaluation process has identified awarding the framework to TMP Worldwide will provide the Council with the best value for money.

## **DETAILS:**

### **Business Case**

1. The advertisement of Statutory Notices in relation to orders under the Road Traffic Regulation Act 1984 is governed by the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996 and the Road Traffic (Temporary Restrictions) Procedure Regulations 1992. Under these regulations the Council has a statutory duty as the Traffic Authority to publish two notices in the press for both permanent and temporary Traffic Orders. Extracts from the regulations are attached to this report in Appendix I - Road Traffic Regulation Act 1984.

### **Legal Advice**

2. The requirement to publish Statutory Notices in paper publications has been reviewed with Highways against more cost effective options, such as using a digital technology platform e.g. the Council's website. Advice has also been sought from Orbis Public Law regarding alternative methods. The requirement is that the advertising regulations need to be followed to the letter.
3. Other local authorities (for example, East Sussex County Council, Brighton & Hove City Council and Hampshire County Council) have confirmed that they also publish notices in the appropriate paper publications.
4. Therefore, the Council has an ongoing requirement for the co-ordination of advert placement for Statutory Notices and general advertising requirements, including (but not limited to) formatting, proof reading and booking of media space. This requirement needs to be delivered after the expiry of the existing contract at the end of February 2018.

### **Background and Options**

5. After a full and detailed options analysis, several procurement routes were considered in the Strategic Sourcing Plan and presented to the Sourcing Governance Board on 25 July 2017 prior to commencing the procurement activity. These were as follows:
  - a. Conduct an OJEU tender for Statutory Notices Advertising – this was the recommended and approved route for the reasons stated under paragraph 9 below;
  - b. Conduct a mini-competition under the ESPO Advertising Solutions Framework – this option was discounted because the Council wanted to give a wider range of local suppliers the opportunity to bid for the framework agreement and as the current contract has worked really well, conducting an OJEU tender allowed the Council to ensure the

- requirements previously specified could be covered as a minimum for further improvement;
- c. Go directly to newspapers to advertise notices - this option was discounted because the Council would miss out on the following benefits of using an agency: shorter timescales; the ability to group notices to improve economies of scale; typesetting services to reduce errors; proof reading; additional time spent by the Highways team merging the notices to save on costs; and long established relationships with newspapers and favourable rates. Additionally, this route would have been approximately 38% more expensive than the current provision;
  - d. Do nothing – this option was discounted because Orbis Public Law advised that the Council is required by law to publish Statutory Notices. The Council's spend is over the EU Threshold therefore is legally obliged to go to the market.
6. Subsequent to obtaining authority from the Sourcing Governance Board, Procurement and Highways Officers conducted an open OJEU tender process, following advertisement of the opportunity in the OJEU on 21 August 2017. This was deemed the most appropriate route and selected because:
- a. The Council could seek to achieve efficiencies, improve the quality of the service and obtain a best value and innovative fully managed solution by giving suppliers an opportunity to compete;
  - b. The Council could tailor the tender to their requirements and ensure other Orbis Partners and Districts and Boroughs would have the ability to access the framework agreement;
  - c. Social value considerations and the Social Value Charter could be incorporated within the tender. None of the existing frameworks had included this element and were therefore non-compliant for the Council's purposes.
7. When drafting the tender documents, Procurement and Legal Services agreed that a framework agreement would be most appropriate for Advertising Services for Statutory Notices as the nature of the requirements are ad hoc and volumes could not be guaranteed. In addition, a framework agreement would allow other authorities, including Orbis partners and Districts and Boroughs to be named on the OJEU notice and therefore able to use the framework at their discretion.
8. The tender specification sought the following benefits from the successful Bidder:

- a. Efficient and accurate advertisement of Statutory Notices;
- b. Flexibility of deadlines to ensure adverts are placed by the required date of publication;
- c. A good knowledge of and relationships with national and local publications in which the Council place Statutory Notices;
- d. To develop an understanding of the services the Council provides, in order to produce effective advertisements;
- e. Ability to promptly supply certified copies of advertisements with invoices;
- f. Work with the Council to develop consistent practices for all Statutory Notices;
- g. Demonstrate best Value for Money and deliver ongoing cashable and non-cashable efficiency savings;
- h. Ensure that quality of service is maintained and improved;
- i. Provide a single point of contact for managers;
- j. Provide accurate electronic invoices and necessary information to Council departments so they can manage the finance of advertising effectively;
- k. Deliver a streamlined electronic process for managers;
- l. Provide real time Management Information on usage and spend.

### **Tender Process**

9. The Council conducted a tender process via an open tender procedure following advertisement of the opportunity in the OJEU on 21 August 2017. Eleven suppliers expressed an interest in the tender opportunity, out of which, three suppliers submitted responses to the invitation to tender. These were evaluated against the criteria and weightings described in the Part 2 report.
10. A procurement and project team was set up to include representatives from Highways.
11. The tender evaluation was scored on two components with the following weightings: quality questionnaire (60%) and price schedule (40%).

### **Key Implications**

12. The framework agreement is for the period from 1 March 2018 to 28 February 2022 (including one further one year extension period).
13. The framework agreement sets out the terms and conditions under which specific purchases known as “call-offs” can be made on behalf of the Council during the term of the framework agreement.
14. Performance will be monitored through a series of robust key performance indicators and reviewed at contract management meetings.
15. The management responsibility for the framework agreement lies with the Highways Service and will be managed in line with the contract management strategy and plan as laid out in the framework documentation which also provides for review of performance and costs, including efficiency savings from identified continuous improvements in performance.

### **RISK MANAGEMENT AND IMPLICATIONS:**

16. The framework agreement has been prepared jointly by Orbis Procurement, Orbis Public Law and representatives from Highways.
17. Key risks associated with the framework have been identified, along with mitigation activities.
18. The incumbent supplier has confirmed that the Transfer of Undertakings (Protection of Employment) Regulations 1981 will not apply to any of their employees for this service.
19. The framework terms and conditions include various termination clauses including a termination for convenience clause, which will allow the Council to terminate the framework for any reason should priorities/requirements change.
20. TMP Worldwide provided complete and compliant invitation to tender submissions and passed the mandatory and optional exclusion questions including financial checks.

### **Financial and Value for Money Implications**

21. Full details of the framework value and financial implications are set out in the Part 2 report. The total anticipated framework value is £1.4m (approximately £368,000 per annum).
22. Bidders provided pricing against a price schedule and the successful bidder offered the most economically advantageous tender both in terms of price and quality. A saving of approximately 8% is anticipated against the current contract and the framework will be monitored through the term to measure actual savings delivered.
23. It is anticipated that the framework agreement will also deliver efficiency savings and Social Value benefits, further details are set out in the Part 2 report.
24. The framework agreement sets out clear performance objectives and key performance indicators stating reporting requirements and the service levels to be delivered under the framework along with benchmarking/market testing to be conducted by the Council/supplier.

### **Section 151 Officer Commentary**

25. The Section 151 Officer can confirm that the costs of the proposed framework agreement for Statutory Notices Advertising Services are within the budget envelope for these services included within the Medium Term Financial Plan, and represent a saving against current costs as set out in this paper.
26. The County Council is facing a very serious financial situation, whereby there are still substantial actions to be identified and delivered to achieve a balanced budget in the current year and a sustainable budget plan for future years. This framework agreement will support the council to meet its statutory responsibilities, and will do so at a reduced cost compared to

current arrangements. Notwithstanding this, it is important to recognise that agreeing to this recommendation will reduce the council's options to balance its budget.

#### **Legal Implications – Monitoring Officer**

27. A thorough evaluation was done of suppliers' bids and the tender process was conducted correctly via the Official Journal of the European Union. The recommended supplier has been selected in accordance with Public Contract Regulations 2015 and the Council's Procurement Standing Orders. The recommended supplier will provide the best value for money and also provide social value benefits to Surrey.
28. The advertising procedures, relating to permanent and temporary Traffic Orders under the Road Traffic Regulation Act 1984, are governed by the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996 and the Road Traffic (Temporary Restrictions) Procedure Regulations 1992. Under these regulations the Council has a statutory duty as the Traffic Authority to publish two notices in the press for both permanent and temporary Traffic Orders. In relation to permanent orders, traffic authorities are also required to take such other steps as they consider appropriate for ensuring that adequate publicity about the order is given to persons likely to be affected by its provisions, such steps including publication in the London Gazette.

#### **Equalities and Diversity**

29. There is no requirement for an Equality Impact Assessment (EIA) as there are no implications for any public sector equalities duty due to the nature of the services being procured. However, all suppliers are required to comply with the Equalities Act 2010 and any relevant codes issued by the Equality and Humans Commission. In addition, the successful bidder was required to agree to the Framework Terms and Conditions which included provisions for the Equalities Act 2010 in order to deliver services which would help the Council meet its statutory duties. The successful bidder accepted the terms and conditions.

#### **WHAT HAPPENS NEXT:**

30. The timetable for implementation is as follows:

<b>Action</b>	<b>Date</b>
Cabinet decision to award (including 5 day 'call in' period)	27 December 2017
'Alcatel' Standstill Period	2 January 2018 to 12 January 2018
Contract Signature	19 January 2018
Contract Commencement Date	1 March 2018

31. The Council has an obligation to allow unsuccessful bidders the opportunity to challenge the proposed framework award. This period is referred to as the 'Alcatel' standstill period.

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**Contact Officer:**

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**Consulted:**

Orbis Procurement

Orbis Public Law

Highways Team

## **Appendix I - Road Traffic Regulation Act 1984**

Below are extracts from the regulations stating the requirement to publish the two notices (one prior to the Order being made and another after the Order has been sealed and made, but prior to its operation):

### **The Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996**

#### Publication of proposals

7. (1) An order making authority shall, before making an order,—
- (a) publish at least once a notice (in these Regulations called a “notice of proposals”) containing the particulars specified in Parts I and II of Schedule 1 in a newspaper circulating in the area in which any road or other place to which the order relates is situated;
  - (b) n/a
  - (c) Take such other steps as it may consider appropriate for ensuring that adequate publicity about the order is given to persons likely to be affected by its provisions and, without prejudice to the generality of this subparagraph, such steps may include.....publication of a notice in the London Gazette

#### Making an order and bringing it into force

16. (3) No provision of an order shall come into force before the date on which the order making authority intend to publish a notice of making as respects the order.

17. (2) The order making authority shall, within 14 days of the making of the order-

- (a) publish in a newspaper circulating in the area in which any road or place to which the order relates is situated, a notice (in these Regulations called a “notice of making”)
  - (i) stating that the order has been made; and
  - (ii) containing the particulars specified in Parts I and III of Schedule 1;
- (3) n/a
- (4) The order making authority shall take such other steps of the kinds referred to in regulation 7(1)(c) (*see above*) as it considers appropriate for ensuring that adequate publicity is given to the making of the order.

### **The Road Traffic (Temporary Restrictions) Procedure Regulations 1992**

#### Procedure for making a temporary order

3. (1) Subject to the following provisions of this Part, this regulation makes provision for the procedure to be followed in connection with the making of an order under section 14 of the 1984 Act.

(2) Not less than 7 days before making an order, the traffic authority shall publish notice of their intention to make the order in one or more newspapers circulating in the area in which any road to which the order relates is situated.

(3) The notice mentioned in paragraph (2) above shall state —

- (a) the reason or purpose mentioned in section 14(1) of the 1984 Act for the making of the order;
- (b) the effect of the order and, where applicable, the alternative route or routes available for traffic; and
- (c) the date on which the order would come into force and its maximum duration.

(5) Within 14 days after making the order the traffic authority shall publish a notice of the making of the order in one or more newspapers circulating in the area in which any road to which the order relates is situated.

(6) The notice mentioned in paragraph (5) above shall state —

- (a) the reason or purpose mentioned in section 14(1) of the 1984 Act for the making of the order;
- (b) the effect of the order and, where applicable, the alternative route or routes available for traffic; and
- (c) the date on which the order will come into force and its maximum duration.

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