

Nottingham City Council Delegated Decision



Nottingham
City Council

Reference Number:

4870

Author:

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Department:

Communities, Environment and Resident Services

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Subject:

Temporary Extension of Tree Services Framework Contract and Increase in the Corporate Procurement Approval

Total Value:

£250,000 (Type: Capital and Revenue)

Decision Being Taken:

1. Extend the existing Tree Services Framework contract beyond 31 March 2023 until a new framework is in place early in financial year 2023/24.
2. Increase the value of the spend approval and Corporate Procurement Approval (CPA) by an additional £250,000 as an interim measure to allow urgent Health and Safety (H&S) and Streets for People funded tree works to be carried out until a new framework contract and CPA is in place.
3. Delegate the authority to the Director of Resident Services to carry out procurement and enter into contracts relating to the works as detailed in Appendix 1.

Reasons for the Decision(s)

Tree Services runs on a limited budget where Health & Safety tree work is carried out by our internal team but there are situations where contractors are also required due to large scale work requiring specialist equipment. The existing framework contract runs out at the end of March 2023 and has already reached its spend limits . A new framework is currently being tendered but is not likely to be confirmed until later in the year. This approval will help bridge the gap and maintain service delivery until the new framework contract is in place.

There is currently £88,000 worth of tree work that needs to be completed by the end of March 2023 as that is the H&S target date provided for these works. If any of the trees failed as the work had not been completed within the recommended timescale then it would make it difficult to defend a case if it went to Court. The Tree service has recently secured funding as part of the Street For People project and the service is also managing a programme of Ash Dieback removals. In order to deliver these works an extension is required to the current CPA. See Appendix 1 for further details.

This spend decision value is proportionally higher than the spend profile of the previous framework contract and its CPA spend approval. This is because the service has both additional Health and Safety works to complete and a programme of additional works that are funded through external grants such as the Streets for People fund.

The £250k extension to the framework is required to cover immediate emergency tree works and to cover a contingency for any winter storm events that may occur. The extension also covers additional spend for surveys and any subsequent works that are identified alongside the delivery of a programme of works (funded by streets for people funding) until the new framework contract is confirmed.

Briefing notes documents:

Appendix 1.pdf

Other Options Considered:

Option 1. Do nothing, this was rejected because letting the framework contract lapse would prevent Tree Services from completing urgent health and safety works, which require the assistance of external specialists.

Option 2. Delay works until a new framework is in place. A new framework is being developed and is expected in early 2023/24. This option was rejected as delaying works until this time would create health and safety risks.

Option 3. Carry out individual tender processes for each of the works packages. This was rejected because the service does not have the capacity or time to carry out individual tender processes when work needs to be carried out quickly.

Background Papers:

N/A

Published Works:

N/A

Affected Wards:

Citywide

Colleague / Councillor Interests:

N/A

Consultations:

Those not consulted are not directly affected by the decision.

Crime and Disorder Implications:

Some of the tree works will help to improve site lines and visibility within the neighbourhood's.

Equality:

EIA not required. Reasons: There are no negative impactive resulting from this decision.

Decision Type:

Portfolio Holder

Subject to Call In:

Yes

Call In Expiry date:

07/03/2023

Advice Sought:

Legal, Finance, Procurement

Legal Advice:

This report seeks to extend a framework agreement that was initially set up four years ago with a value of £800,000. The reports seeks an extension to the term of the framework until a new framework is put in place, which is understood to be August 2023. The report seeks an extension of the framework in financial value of £250,000.

The framework offers a route to market to address emergency work required on trees. The requirements set out in the Council's constitution must still be complied with.

Procurement colleagues have identified a possible basis to extend the existing framework agreement under regulation 72 of the Public Contract Regulations 2015. The Council also needs to be cognisant of regulation 33 of the Public Contract Regulations 2015 which states that framework agreements shall not exceed 4 years in term "save in exceptional cases duly authorised" by reference to the subject matter of the framework agreement. The subject matter of the framework agreement is emergency tree work; since that is the subject matter of the framework agreement it is highly unlikely to satisfy the definition of an exceptional case.

If the decision is made to extend the term of this framework agreement, that creates a legal risk. The risk of a formal legal challenge being made is probably low, and attempts can be made to manage that including reference to the proposed new framework agreement. The risk of a challenge, if made, being successful appear high in the absence of robust reasons to justify this as an exceptional case.

It is, however, acknowledged that there are very real Health & Safety risks inherent in dealing with trees in these conditions and the lack of capacity to undertake individual tender processes. The Council, therefore, finds itself balancing the inherent risks of dealing with trees requiring urgent remedial action against the risk of a successful challenge if a challenge is made, which appears to have a low probability or risk.

Advice provided by Anthony Heath, Senior Solicitor, Contracts and Commercial, 22/2/23

Advice provided by Anthony Heath (Senior Solicitor) on 22/02/2023.

Finance Advice:

It is planned to spend £168k in 2022/23 and the balance of £82k will be incurred and funded from the Parks and Open Spaces Budget in 2023/24.

£80k of the 22/23 spend will be funded from the Streets for People Grant. Unfortunately, the balance of spend in 2022/23, £88k , will put an additional pressure on the Parks and Open Spaces budget which was forecasting a £36k overspend as at period 9

This has been identified as a financial risk throughout the year.

Advice provided by Paul Nicholas Hector (Senior Commercial Business Partner) on 22/02/2023.

Procurement Advice:

Permission is sought to extend the current tree services framework to enable emergency works to continue.

The Public Contract Regulations 2015, 72 (Modification of contracts during their term), state that a contract or framework may be modified where all of the following conditions are fulfilled:-

- (i)the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen;
- (ii)the modification does not alter the overall nature of the contract;
- (iii)any increase in price does not exceed 50% of the value of the original contract or framework agreement.

In this instance, each of those criteria have been satisfied. Extending the framework also ensures that contractors are operating under existing NCC terms and conditions following a competitive exercise.

Advice provided by Holly Fisher (Lead Procurement Officer), 08.02.23
 Advice provided by Paul Ritchie (Procurement Manager) on 21/02/2023.

Signatures

Audra Wynter (Portfolio Holder for Highways, Transport and Parks)
SIGNED and Dated: 28/02/2023
Frank Jordan (CD Communities Environment Resident Services)
SIGNED and Dated: 27/02/2023