

To: Procurement Sub Committee

On: 27th January 2016

Report by:

**Report
By
The Chief Executive
and
Director of Community Resources**

Contract Update Report

Update Report for Street Lighting Maintenance and Repairs Award

1. Summary

- 1.1 The purpose of this paper is to update the Procurement Sub Committee on recent developments in relation to the award of Street Lighting Maintenance and Repairs, reference RC1509_4636(MC_9698) under the terms of Renfrewshire Council's Framework for Street Lighting Maintenance, Repairs, Improvements & Developments, Lot 1 maintenance and repairs of street-lighting, reference R1111026690, recommended for approval at the Procurement Sub Committee on 19th October 2015.
- 1.2 The Procurement Sub Committee is asked to note the significance of adjudication proceedings instigated by the Council and currently taking place due to the awarded Contractor's interpretation of the Contract in comparison to the Council's interpretation and intentions.

2. Recommendations

It is recommended that the Procurement Sub Committee note:

- 2.1 The circumstances resulting in the Council raising adjudication proceedings in consequence of a contract dispute with Lightways Contractors Ltd in respect of the Street Lighting Maintenance and Repairs contract reference RC1509_4636(MC_9698) ; and
- 2.2 Further note that due to the result of the adjudication being published after the date of publication of the Sub-Committee agenda, the outcome of the adjudication will be provided separately to the Sub-Committee.

3. Background

- 3.1 The Council awarded the Street Lighting Maintenance and Repairs contract (reference RC1509_4636(MC_9698)) to Lightways Contractors Ltd following the approval of the Procurement Sub-Committee on 19th October 2015. Following award of the contract a dispute arose between the Council and Lightways Contractors Ltd due to Lightways' interpretation of the contract and specifically with respect to the Council's intention with regard to planned and reactive maintenance and repairs of its street lighting infrastructure.
- 3.2 Efforts have been made to negotiate with Lightways Contractors Ltd to resolve the differences in interpretation of the contract. Unfortunately this has not been successful and it was determined that adjudication was necessary to resolve the contractual dispute. Adjudication proceedings were raised by the Council on 9 December 2015.
- 3.3 The adjudication is over a dispute with regard to interpretation of the contract. Subsequent to award, the Contractor has sought an interpretation of the contract which would result in very significant additional payments. It has been calculated for example that should the Contractor's interpretation of the contract be correct, the financial implications would be that the estimated contract value would be substantially in excess of the estimated contract value intimated to this Board.
- 3.4 It is the Council's position that the interpretation of the Contract is clear, the Contractor is not entitled to extra payment over and above what was tendered and this position has been confirmed by external legal advisors and the advice of Queen's Counsel. The Council referred the matter to adjudication for determination on the grounds that all attempts to negotiate a resolution to this issue with Lightways Contractors Ltd were unsuccessful. The process of adjudication was therefore commenced to protect the Council's position. The points submitted for a decision by the adjudicator are as follows:
 - a) that the contractor is under an obligation to carry out only those works instructed in a Task Order

- b) that the contractor is not entitled to seek payment under billed items on the Price List referring to “Repair Physical Fault” on every occasion when they attend site to implement works under a Task Order
 - c) that the contractor is only entitled to receive payment under the “Repair Physical Fault” section of the Price List where that item of work has been expressly instructed by the Council under a Task Order.
 - d) that when instructed to attend site and replace a lamp, the contractor is only entitled to receive payment under the appropriate billed items of the Price List
 - e) that upon receipt of an instruction to attend site and renew a luminaire with free issue luminaire, the contractor is only entitled to receive payment under the appropriate billed item of the price List
 - f) that the remaining sections within the Financial Assessment Model and the Price List fall to be interpreted in the same way as in c) to e) above.
- 3.5 It is the case that the outcome of Adjudication cannot be guaranteed, although the Council’s case is considered robust and is supported by the views of expert legal and technical advisers. A decision is not anticipated however until around the 23rd January 2016 and it is proposed that the outcome be presented to this Board.

Implications of the Report

1. Financial

Financial costs in respect of this Contract are met from the Service’s revenue budget.

2. HR and Organisational Development

None.

3. Community Planning

Safer and Stronger

Renfrewshire Council has a statutory obligation under the Roads (Scotland) Act 1984 for the provision and maintenance of roads and footways.

This type of improvement to the condition of the road network contributes to maintaining network availability and public safety.

4. Legal

The Council is supplementing internal legal expertise with an external legal company who specialise in this type of dispute.

5. Property

None

6. Information Technology

None

7. Equality & Human Rights

None

8. Health and Safety

None

9. Procurement

The procedures for mini-competition under the Renfrewshire Council's Standing Orders Relating to Contracts and the terms and conditions of the original framework agreement were applied.

10. Risk

None

11. Privacy Impact

None

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