

**To: Procurement Sub Committee**

**On: 27 January 2016**

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**Report by:**

**Joint Report  
by  
The Chief Executive & Director of Community Resources**

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**Contract Authorisation Report**

**Revised Report  
for  
Strategic Review of Street Lighting – LED Lantern Replacement 2016/2017  
re-tender**

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**1. Summary**

- 1.1 On the 11<sup>th</sup> November 2015 the Chief Executive and the Director of Community Resources requested the Procurement Sub Committee, authorise the Head of Corporate Governance to award Lightways Contractors Ltd a contract for the Strategic Review of Street Lighting - LED Lantern Replacement 2016/2017, reference RC1509\_4859\_ITT10106.
- 1.2 The contract was for the value of £1,700,688.88 and was intended to commence on 14 January 2016 for a period of 63 weeks.
- 1.3 The procurement exercise was conducted in accordance with the above EU Threshold Open Procedure (Works) and the Council's Standing Orders Relating to Contracts.
- 1.4 Since this authorisation was given, post tender negotiations with regard to the contract terms have taken place. The context of the negotiations was to provide clarity of contract terms, to appropriately manage contract risk, and to ensure

the sequencing of the installation programme was within the control of the Council. Unfortunately, there has been no meaningful negotiation that would result in a workable solution for the Council. In the absence of agreement with Lightways Contractors Ltd, and in recognition that Lightways Contractors Ltd view is that the changes are 'substantial' and would result in an increase in the tendered prices, the Board is advised that it would be prudent to re-tender this contract.

## **2. Recommendations**

2.1 It is recommended that, for the reasons outlined in this Report, the Procurement Sub Committee agree that:

- 2.1.1 the tender procedure to award a contract for the Strategic Review of Street Lighting-LED Lantern replacement 2016/17, reference RC1509 \_ 4859\_ ITT 10106 referred to in the report to the Sub Committee on 11 November 2015 is terminated; and
- 2.1.2 the authorisation to the Head of Corporate Governance to award the contract in that tendering procedure to Lightways Contract Ltd is withdrawn; and
- 2.1.3 a new tendering procedure for the LED Lantern Replacement 2016/2017 contract be commenced using revised tender documents.

## **3. Background**

- 3.1 At the Procurement Sub Committee on the 11th November 2015 authorisation was given to award a contract to Lightways Contractors Ltd (contract reference RC1509\_4859\_ITT10106) for a value of £1,700,688.88 (the "LED Installation Contract").
- 3.2 At the Procurement Sub Committee on 19th October 2015 authorisation was given to award the contract for street lighting maintenance and repairs (contract reference R1111026690) to Lightways Contractors Ltd (the "Street-lighting Maintenance Contract"). The Council is in dispute with Lightways Contractors Ltd under the Street-lighting Maintenance Contract. This is the subject of a separate report to this Board which describes the circumstances of the dispute and why the Council commenced Adjudication proceedings against Lightways Contractors Ltd.
- 3.3 In the context of the dispute on the Street-lighting Maintenance Contract, it has become apparent that Lightways Contractors Ltd had a different interpretation than the Council on some elements of the LED Installation Contract as originally tendered. It was considered prudent to revise the LED Installation Contract to ensure clarity of the contract terms for both Parties. Such clarity was intended to minimise the risk of compensation events arising under the contract, which may entitle the contractor to additional payments (it should be noted that, in the context of a construction contract the risk of compensation events cannot ever be completely eradicated, only minimised). The Council also required to amend the requirement on the Contractor to provide a works programme to ensure that the Council retained control over the sequencing of the installation, particularly to ensure the Council could

provide accurate information to constituents about the LED replacement programme within their area.

- 3.4 Since the Procurement Sub-Committee approved the award of the LED Installation Contract on the 11<sup>th</sup> November 2015 negotiations have taken place between the Council and Lightways Contractor Ltd on the proposed changes. The Council's position with respect to the negotiations was flexible and extended to considering an increase to the rates originally submitted by the Contractor, always ensuring that Lightways Contractors Ltd remained the most economically advantageous bid. The Council also required to carry out the negotiations within the remit of the Public Contracts (Scotland) Regulations 2012.
- 3.5 Lightways Contractors Ltd have intimated that they consider that the changes proposed by the Council are 'substantial', would result in an increase in prices, and to date, there has been no meaningful negotiation that would result in a workable solution for the Council.
- 3.6 The Council has discretion not to award the contract under the Council's Contract Standing Orders Relating to Contracts (Standing Order 25.5) and it is considered that in this instance it would be prudent to commence a new procurement exercise. This will ensure certainty of programme, certainty of contract terms, and certainty of contract scope. It is suggested that due to the identification of issues around the terms of the tender documentation, the potential emerging for different interpretations of some of those terms between the parties and a failure to successfully negotiate a solution to those issues, there has been a material change in circumstances that was not apparent when the sub-committee made its decision on 11 November 2015. Therefore, the sub-committee is justified in reviewing its previous decision.
- 3.7 The procurement process will progress immediately with a view to reporting back to this Board in due course. It should be noted that in consequence of this decision there will be a delay on the commencement of LED replacement programme.

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## **Implications of the Report**

### **1. Financial**

Financial costs in respect of the LED replacement programme will be met from approved capital resources.

The timescales for the delivery of savings which will be realised by replacing existing street-lighting with LED lighting will be delayed as a result of the re-tender exercise.

### **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 procurement exercise was tendered in accordance with Council's Standing Orders Relating to Contracts for below EU Threshold Open Procedure (Works), Public Contracts (Scotland) Regulations 2012, as amended.

The Council is able to terminate an ongoing tender procedure prior to award of the contract in terms of its Standing Orders Relating to Contracts.

### **5. Property**

None.

### **6. Information Technology**

None

### **7. Equality & Human Rights**

None.

### **8. Health and Safety**

None.

### **9. Procurement**

The procurement exercise was conducted in accordance with Renfrewshire Council's Standing Orders Relating to Contracts for below EU Threshold Open Procedure (Works), Public Contracts (Scotland) Regulations 2012, as amended.

### **10. Risk**

None.

### **11. Privacy Impact**

None.

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