

REPORT TO:	Cabinet Member for Sustainable Croydon
SUBJECT:	Arboricultural Services Contract Variation
LEAD OFFICER:	Steve Iles, Director of Public Realm
CABINET MEMBER:	Councillor Muhammad Ali, Cabinet Member for Sustainable Croydon Councillor Callton Young , Cabinet Member for Resources and Financial Governance
WARDS:	All

COUNCIL PRIORITIES 2020-2024

Croydon Council Corporate Plan alignment:

The Council recognises that it has certain legal obligations under the Health and Safety at Work Act 1974, The Management of Health and Safety at Work Regulations 1999, The Highways Act 1980 and The Construction (Design and Management) Regulations 2015 and consequently aims to abide by the duties owed.

The Council recognise that they have a duty of care to the public and visitors to its premises, to do all that is reasonably practicable to ensure that the risk from trees under its control is suitably managed. The council's approach to the management of risk from trees will be proportionate to the risk and resources available.

Summary of Manifesto Obligations

The effective management and maintenance of the borough's trees on the Highway, HRA sites, woodlands, parks and green spaces is a key priority for the Administration, as set out in the manifesto:

"Parks and green spaces are vital to our busy town because they help to make Croydon liveable. They help to create healthy communities where everyone can exercise and have fun".

The key objectives set out in the manifesto that this service supports are:

- Working with local communities to enable them to take the decisions that affect their parks.
- Carry out its duty of care as landowners to mitigate as best as practicable the risk from trees
- Ensuring Croydon is a place that values the arts and culture, where sport is accessible and encouraged.
- Working to make our parks, open spaces and highway safe for all.
- Planting 3,500 new street trees by 2023, on streets and open spaces with priority given to areas of high air pollution.

Croydon Local Plan:

- Improve accessibility, connectivity, sustainability and ease of movement to, from and within the borough.

Theme 5. Where there is a cleaner and more sustainable environment

- *Outcome b. Improved air quality especially at or near schools*

Theme 6. Where we value the arts, culture and sports

- *Outcome a. Croydon's cultural offer enhances our town and creates places where people want to live, work and visit.*
- *Outcome b. Good, affordable and accessible sports and leisure facilities enable people to be as active and healthy as they want to be.*
- *Outcome c. Our parks and open spaces are safe, pleasant, thriving places where everyone can exercise and have fun.*

Theme 10. Where there is an excellent, modern, and efficient council, working closely with residents and communities

- *Outcome b. The Council provides value for money, using council assets more effectively, keeping more spend in Croydon and delivering more services with the voluntary sector and communities.*

FINANCIAL IMPACT

The Arboricultural Services are currently delivered under a contract that was awarded in 2008 for an initial period of 7 years with an option to extend for a further 3 years. This contract was due to expire on 31 July 2018 with a total spend of £6.5m spend (£650k annually over 10yrs).

The contract was further extended twice for a period of 32 months from July 2018 to April 2021 with a spend of £2,321,369 during that 32 month period.

The current proposal for a final extension will be for a further of 9 month period from 1st April 2021 to 31st December 2021. The extension period will have a maximum spend limit of £400k.

Total contract value inclusive of the proposed extension = £9,221,368

Total extension percentage increase from July 2018 to 31st Dec 21 is 42%
Proposed extension percentage increase from 1st April 2021 to 31st Dec 2021 is 4.5%

An extension of the existing arboricultural maintenance service from 1st April 2021 to 31st December 2021 will equate to a maximum revenue and grant award spend of £400,000.

Total cost of Revenue and Capital inclusive of this amendment amounts to £9,221,369.

The annual revenue and capital budget for the arboricultural service since 2008

(financial year starting in April) has been summarised in the table in section 5 below.

The Leader of the Council has delegated to Cabinet the power to make the decisions set out in the recommendations below:

1. RECOMMENDATION

The Cabinet is recommended by the Contracts and Commissioning Board to approve

- 1.1 In accordance with Regulation 30.3 of the Council's Contracts and Tenders Regulations, the extension by way of variation of the contract for Specialist Arboricultural works with City Suburban Tree Surgeons Limited for nine (9) months from 1st April 2021 to 31st December 2021 at a value of £400,000 (maximum contract value, including this proposed extension will be £9,221,369).

2. EXECUTIVE SUMMARY

- 2.1 Arboricultural services within the borough has been delivered by a supply chain partner (City Suburban Tree Surgeons Limited) by a formal contract since 2008. The last contract extension ended on the 31st July 2019. A further extension was requested from 1st Aug 2019 to 31st March 2021. Due to a legal challenge from the incumbent tree works supplier, City Suburban, in relation to utilising the incumbent Highway supplier for future tree works, the potential financial risk from the challenge to the Authority was deemed too high. A further extension now is required from 1st April 2021 to 31st December 2021. During this period the Council will go out to open procurement for the service.
- 2.2 The works will consist of only emergency and essential tree works required by the Council to ensure its compliance and duty of care in regard to health and safety regulations.
- 2.3 An extension of the existing arboricultural maintenance service from 1st April 2021 to 31st December 2021 will equate to a maximum spend of £400,000 for this financial year.
- 2.4 The 9 month extension will also allow Estates Department to regularize the basis of occupation of two depots used by City Suburban since 2008, by way of formal lease arrangement. City Suburban have agreed to this in principle. Currently no information is available on this agreement and the two depots have been utilised free of charge since that date. It is envisaged that a peppercorn rent will be charged for the extension period until 31st December 2021, to ensure the schedule of rates remain unchanged.

- 2.5 The content of this report has been endorsed by the Contracts and Commissioning Board.

CCB ref. number	CCB Approval Date
CCB1687/21-22	09/06/2021

3. BACKGROUND

- 3.1 The Councils approximated trees and woodlands asset management liability consists of on-street trees (C,35k), parks and open space areas (C,130 estimate), ancient woodlands (C, 500 hectares) and housing sites (C, unknown).
- 3.2 Historically the Council has an established three to five year tree management plan for all trees within its portfolio. The focus is maintenance in the form of general maintenance, pruning and risk reduction across the borough. However due to the serious nature of the Authorities financial situation it has been agreed that only emergency and essential tree works will be undertaken for the duration of this extension period.
- 3.3 The maintenance and investment element of the service has been delivered by a supply chain partner (City Suburban Tree Surgeons Limited) formally engaged and contracted to deliver the service in 2008.
- 3.4 In July 2018 a one (1) year contract extension was applied by issue of a deed of variation, this started in August 2018 and ended in July 2019. The extended contract value (price) was not fixed, it was subject to agreed rates measured on a works instructed and completed basis (Deed of Variation Seal number 244739). The contract extension value was £921,000.
- 3.5 The existing contract including extensions ended on the 31st July 2019. This variation report is proposing that the Council issue a deed of variation, for extension of the contract from 1st April 2021 to 31st December 2021. The extended contract value (price) by application of agreed rates measured on a works instructed and completed basis will be £400,000. The proposed deed of variation extension to December 2021 equated to percentage increase measured against the value of the original contract of 12%.
- 3.6 The Council is preparing a procurement strategy which provides a full evaluation of the procurement and future delivery options available to the Council for future service provision.

4. CONSULTATION

- 4.1 There are no statutory consultation requirements for this type of service. Internal consultation has taken place with Finance, Legal, ICT and HR departments.

5 FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

- 5.1 No risk to the Authority if extension is agreed as existing terms have been agreed with the current provider. Revenue budget is available as previous years so no additional costs or savings are assumed.

5.2 Revenue and Capital consequences of report recommendations

	Current year 2020/21	Medium Term Financial Strategy – 3yr forecast 2021/22	2022/23	2023/24
Revenue available	£813,000	£650,000	£650,000	£650,000
Expenditure	£634k	£400k	£ 650k	£650k
Income	£0 k	£0k	£ k	£ k
Effect of decision from report				
Expenditure	£643k	£400k	£650 k	£650 k
Income	£0 k	£0 k	£ k	£ k
Remaining budget	£170k	£250k	£0 k	£0 k
Capital Budget available (External GLA Grant Money)				
Expenditure	£116 k	£not known	£ k	£k
Effect of decision from report				
Expenditure	£116 k	£ k	£ k	£ k
Remaining budget	£0 k	£0 k	£0 k	£0 k

5.3 The effect of the decision

- 5.3.1 The effect of the decision is an expected revenue spend of £400,000 for essential and emergency tree works from 1st April 2021 to 31st December

2021. The contract extension will be implemented by issue of a deed of variation, the existing supplier has already agreed to accept this proposal.

5.3.2 The approval of this recommendation will provide continuity of the emergency and essential services needed and further allow the Council to go to tender for the services for a new contract start date of 1st January 2022.

5.3.3 The essential spend justification is that all emergency works for trees is a statutory service for the Council. Preemptive work on trees, will also decrease the costs of emergency works in the future, for the Council.

5.4 Risks

5.4.1 Although an extension of the existing arboricultural services provision will not have any additional or altered impact on the risk profile of the service there is a requirement for the Council to formalise its contracted requirement for service delivery in the short, medium and long term.

5.4.2 The Council is preparing a business case which will identify future risks and appropriate mitigation measures.

5.4.3 As with any variation to extend, there is a potential risk of challenge however under Regulation 72(1) (b) PCR 2015 modifications are permitted during their term for additional works, services or supplies by the original contractor that have become necessary and were not included in the initial procurement, where a change of contractor (i) cannot be made for economic or technical reasons, and (ii) would cause significant inconvenience or substantial duplication of costs, provided that any increase in price does not exceed 50% of the value of the original contract. This section applies to this extension because changing the contractor cannot be made for economic reasons, would significant inconvenience or substantial duplication of costs for the Council and this modification is a 42% increase in price. Therefore, the Council considers that this is a permitted modification under the PCR.

5.5 Options

See Section 12 below.

5.6 Future savings/efficiencies

5.6.1 The short / medium term cost of continued engagement with the existing supplier will be low when compared with current industry practice and rates, primarily because:

- The measured rates included within the existing contract have been reviewed / adjusted for inflation (indexed) annually since 2008.
- The specification and delivery requirements included within the existing contract have not changed since 2008.

5.6.2 Although the costs will remain lower in the short to medium term continued engagement with the existing supplier cannot be considered as an acceptable

long-term solution, the key reasons being:

- The existing specification and contract terms and conditions are outdated in terms of quality, performance and the latest health and safety requirements.
- At contract term end (March 2021), extended by issue of deed of variation, the contract will have been extended 2.5 years beyond the original ten (10) year contract provision (ie, seven (7) contract plus year (2.5) extension).

5.6.3 The Council has therefore prepared a business case which provides a full evaluation of the procurement and future delivery options available to the Council, this document will form the content of the Review Point 1 (RP1) document for future service provision.

Approved by: Geetha Blood Head of Finance Place Department.

6. LEGAL CONSIDERATIONS

6.1 The legal considerations are as set out within this report.

Approved by: Doutimi Aseh, Interim Director of Law and Governance

7. HUMAN RESOURCES IMPACT

7.1 An extension of the existing arboricultural services provision will not have any additional or altered impact on human resources.

7.2 The Councils business case which outlines the options for future arboricultural services provision and makes recommendation on the preferred long-term solution for the Council will consider the impact on human resource.

8. EQUALITIES IMPACT

8.1 An Equality Analysis has not been undertaken because the proposed change is not relevant to equality. There are no known equalities matters arising from the recommendation to continue with this model of delivery.

Approved by, Yvonne Okiyo, Equalities Manager

9. ENVIRONMENTAL IMPACT

9.1 The current supplier recycles 100% of the waste arising's with much of the woodchip going to energy from waste.

10. CRIME AND DISORDER REDUCTION IMPACT

10.1 There are no crime and disorder reduction impacts arising from this report.

11. REASONS FOR RECOMMENDATIONS/PROPOSED DECISION

11.1 A 9 month extension of the existing arboricultural services contract is required so the Council can continue to deliver its statutory duty of care and essential works, whilst allowing time to consider the future delivery options available.

12. OPTIONS CONSIDERED AND REJECTED

12.1 Do Nothing (rejected) – Cannot be considered as a viable option because the Council has a statutory obligation to maintain the highway.

12.2 Procure Alternative Service (rejected) – Cannot be considered as a viable option within the given timescales. However -

A number of options have been identified within the Council's business case but they cannot be procured within the timescales available. The timetable has been so tight because the current provider started legal action against the Council's strategy to work with a term contractor. It was therefore decided that a contract extension would be requested and a new service provision would then be implemented by 1st January 2022.

12.3 Contract Extension (preferred option) – This is the preferred option because procurement of an alternative service provision within the given timescales is impractical.

13. DATA PROTECTION IMPLICATIONS

13.1 **WILL THE SUBJECT OF THE REPORT INVOLVE THE PROCESSING OF 'PERSONAL DATA'?**

NO

13.2 **HAS A DATA PROTECTION IMPACT ASSESSMENT (DPIA) BEEN COMPLETED?**

NO

Approved by: Steve Iles, Director of Public Realm

CONTACT OFFICER: Mathew Burnell, Trees and Woodlands Manager

BACKGROUND DOCUMENTS: None