



## **OVERVIEW AND SCRUTINY BOARD**

**6 MAY 2008**

### **ERIMUS HOUSING - GROUNDS MAINTENANCE CONTRACT**

#### **PURPOSE OF THE REPORT**

1. To inform the Overview and Scrutiny Board (OSB) of the Environment Scrutiny Panel's findings following its investigation of the above.

#### **BACKGROUND**

2. At its meeting on 18 April 2008, the Environment Scrutiny Panel considered a report on the Council's loss of the Erimus Housing grounds maintenance contract. The Executive Director of Environment, the Head of Streetscene and the Director of Legal and Democratic Services were present at the meeting, together with Erimus Housing's Director of Housing.
3. The scrutiny panel sought to investigate the circumstances surrounding the Council losing the contract, which was valued at over £900,000. Given that the authority will still be responsible for grounds maintenance of some areas of Erimus Housing's estates (ie those areas of open space which are in Council ownership), the implications for service provision were also considered.
4. A report detailing findings, conclusions and recommendations - as set out below - will be considered by the Environment Scrutiny Panel on 28 April 2008. This report has been written prior to that meeting owing to the deadline for despatching the OSB agenda. Any updates or amendments arising from the scrutiny panel meeting will therefore be reported verbally at the OSB meeting.

#### **THE SCRUTINY PANEL'S FINDINGS**

5. The scrutiny panel heard that, since the transfer of Council housing stock to Erimus Housing in 2004, the Environment Department has carried out grounds maintenance and cleansing operations on behalf of Erimus Housing, predominantly through two service level agreements (SLAs).

6. Work undertaken has included general grass cutting, maintenance of qualifying tenants' gardens, tree and shrub bed maintenance, litter clearance and the removal of fly tipped waste and bonfires. The value of work undertaken to the Environment Department through these SLAs has been approximately £1.1 million per year.
7. It was explained that the document which Erimus put out to tender was a "virtual" contract. This was not a normal contract document, which required a total cost for the works, but a document which allowed Erimus to obtain prices for individual service elements, for example grass cutting or shrub pruning. Submissions made under the virtual contract provision were then used to determine how much the grounds maintenance service would cost Erimus. An "indicative sum" of £900,000 was included in the tender documentation as Erimus' anticipated total cost of the works over the three-year tender period.
8. Five organisations, including the Council, were shortlisted to tender for the contract and submitted tenders were evaluated on the basis of 60% on quality and 40% on price using a points-based matrix. The tender was awarded to the contractor who scored the highest number of points on both quality and price. The winning tenderer had been Vale Contracts Ltd, who submitted a bid of £500,000. The Environment Department's bid was £920,000, plus management costs of £20,000 per annum over the three-year contract.
9. During the course of the discussions at the meeting, it was clarified that the actual price of the works that will be completed by Vale Contracts will be different from the price submitted under the virtual contract. The virtual contract has merely established a baseline for the price for the key elements of the work and additional works will be costed on top of the original contract sum. An element of the virtual contract specification requires the successful contractor to gather information on quantities and areas of land in order to provide a baseline against which the actual and final cost of the works will be established. Owing to the nature of the virtual contract, these quantities and areas can subsequently be varied as required by Erimus.
10. Erimus confirmed that it still anticipates that the full cost of the contract will be approximately £900,000, as estimated at the outset of the process and indicated in the contract documentation. The organisation is to negotiate with Vale Contracts to ensure that all work is completed to at least current standards and frequencies.
11. In terms of the Council's bid, officers prepared a bid for the contract based on the virtual contract specification, supported by knowledge gained in the course of carrying out existing grounds maintenance works for Erimus. This included work which has been undertaken in relation to matters such as waste and fly tipping removals, although these were not specified in the contract documentation. All anticipated works had been costed and included in the Council's tender bid as the Council was aware (through previous experience) that such works would ultimately be required by Erimus. However, on reflection, it is clear that the winning tenderer had not included the cost of these additional works in their tender sum and had

included only the works detailed in the virtual contract. Evaluation of the tenders therefore resulted in the Council achieving a low score on price. Even by achieving a higher score on quality, however, it had not been possible for the Council to win the contract. While the Erimus representative confirmed that the organisation has been “happy with the Council’s work”, they would not confirm how the Council’s quality score compared with that of other bidders as this is commercially sensitive information.

12. The Executive Director of Environment acknowledges and accepts that, with the benefit of hindsight, it would have been beneficial for him to have been personally more closely involved in the virtual contract tendering arrangements and to have established a more senior tendering team with a greater knowledge of the virtual contract process.
13. The scrutiny panel also queried the position in regard to the 32 Council employees who will transfer to Vale Contracts under the new arrangements. Detailed negotiations with Erimus and Vale Contracts are ongoing, with staff initially transferring under TUPE (The Transfer of Undertakings (Protection of Employment) Regulations 2006) arrangements. It was confirmed that while the legal position concerning staff transferred under TUPE can be complex and open to legal interpretation, it is generally accepted that conditions of employment are protected for around 12 months following transfer. As the staff will be employed by Vale Contracts, the longer-term position will, of course, be determined by that organisation.
14. Members also questioned the implications of losing the grounds maintenance contract on management, fleet and administration within the Environment Department. Although the value of the lost contract is significant, it forms only approximately 7% of the turnover of the services concerned given the scale of grounds maintenance works throughout the borough as a whole. There will therefore be no adverse implications in terms of management positions, fleet and machinery or administration requirements.
15. The panel recognises that it will be necessary for the Council to liaise with Erimus Housing and Vale Contracts Ltd. to ensure that service standards are not detrimentally affected by the new grounds maintenance arrangements. Members were assured that Erimus is to put mechanisms in place to ensure that existing service standards are at least maintained, if not improved. This will include contract monitoring and liaison with residents. In addition, the Council is to ensure that working relationships are developed with Erimus and Vale Contracts to ensure that a high standard of service continues to be provided for Middlesbrough residents. An officer working group has been established to ensure smooth transfer arrangements. Erimus also confirmed that its next grounds maintenance contract will not be let on the basis of a virtual contract but will be based on a fixed price based on an agreed specification.

16. The new contract arrangements were originally scheduled to come into force on 1 April 2008. However, in view of ongoing discussions regarding the transfer of staff to Vale Contracts etc, the existing service level agreement has been extended for an interim period.
17. Having considered the detailed information which has been submitted to the Environment Scrutiny Panel, the panel reached the following conclusions:
  1. The Environment Department was inexperienced in dealing with virtual contract tender documentation.
  2. A stronger, higher level team with greater involvement from senior management would have been likely to benefit the tendering process.
  3. The points at 1. and 2. above were the major factors in the Council submitting a bid which costed works which were over and above the level required by the virtual contract. The Council's total bid of £920,00 (plus management costs) was based on detailed knowledge of existing grounds maintenance arrangements undertaken as part of the existing service level agreement with Erimus Housing. The bid reflected the actual works which the Council considered would need to be undertaken and not the works contained in the virtual contract.
  4. Owing to the nature of the virtual contract, Erimus Housing will ultimately pay a tender sum significantly higher than the winning bid of £500,000 and closer to the indicative sum of £900,000 included in the tender documentation. Taking all factors into account, the Council's bid was not inefficient and will not be too far removed from the bid submitted by Vale Contracts when all payments are made by Erimus Housing to the contractor.
  5. Although The Transfer of Undertakings (Protection of Employment) Regulations (TUPE) will initially apply to staff transferring to Vale Contracts from the Council, the longer term position for those staff is unclear and will be determined by the employing organisation.
  6. The discussions which are to take place between the Council, Erimus and Vale Contracts to ensure a smooth transition in service provision and to ensure that a high level of service provision is maintained, are welcomed by the scrutiny panel.
  7. The fact that Erimus confirmed that any future grounds maintenance contract will not be let on the basis of a virtual contract but will be based on a fixed-price specification is welcomed by the panel.
18. Having reached the above conclusions, the Environment Scrutiny Panel recommends to the Overview and Scrutiny Board and Executive as follows:
  1. That the Council learns from this tendering process and takes steps to ensure that any tender bids which it submits in relation to virtual contracts are managed at a senior level and the implications and requirements of such contracts are fully understood, with prices being submitted accordingly.

2. That the Council continues discussions with Erimus Housing and Vale Contracts, and works with both organisations in the future, to ensure that grounds maintenance works on Erimus estates continue to be provided to the existing high standard - for example by ensuring that grass is cut by both organisations on the same day.

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