

TO: HOUSING AND TECHNICAL SERVICES COMMITTEE		SUBJECT:	
FROM: DIRECTOR OF HOUSING AND PROPERTY SERVICES		SERVICE PROVISION FOR THE RENEWAL OF TARMAC FOOTPATH SERVICES FOR: NORTH - FINCO CONTRACTS LTD AIRDRIE - FINCO CONTRACTS LTD. COATBRIDGE - FINCO CONTRACTS LTD. MOTHERWELL/) FORGEWOOD) McKEAN & CO. (GLASGOW) LTD BELLSHILL/) VIEWPARK) McKEAN & CO. (GLASGOW) LTD WISHAW/SHOTTS - McKEAN & CO. (GLASGOW) LTD	
DATE: 11 January 2002	REF: TMcK/RM/EW		

1.0 Introduction

1.1 The purpose of this report is to seek Committee approval to extend 3 of the existing contracts and to negotiate the 3 other contracts, with the new arrangements covering a 3 year period with the contractor who has provided a satisfactory service.

2.0 Background

2.1 Committee will recall my previous report of 3 October 2001 where Committee homologated officers' actions in extending the above mentioned contracts for a 3 month period up to 4 January 2002 with the contract rates increased by 3% over the extension period.

2.2 Committee was advised that the 3 month extension period would allow time to consider any issues in respect of former Building and Roads DLO staff who had previously transferred over to the above contractors under TUPE. Given this situation, Committee instructed that the matter be the subject of a further report.

2.3 In addition, the Council made 5 vehicles available to the contractors for the purposes of carrying out work under the contracts.

3.0 Performance of Existing Contractors

3.1 Finco Contracts Ltd:- a trawl of the Moodiesburn, Cumbernauld and Kilsyth, Airdrie and Coatbridge offices has identified concerns over the level of service being received and consequently it is considered inappropriate to continue to use this contractor.

3.2 McKean & Co:- a trawl of the Shotts, Wishaw, Motherwell, Bellshill and Viewpark area housing offices has identified that the level of service being provided is satisfactory.

4.0 TUPE Implications

4.1 The views of the Council's Head of Legal Services have been sought in respect of TUPE and he has advised that given as a part of the contract awards the Council did not impose any special contractual arrangements in respect of the Council's former employees who transferred to both contractors, the following position applies.

- (a) The exercise which was undertaken in respect of TUPE transfers when those employees were employees of the Council cannot be undertaken by the Council as it is no longer their employer.

- (b) Any responsibilities and powers in terms of the TUPE regulations rest with the existing employer, the new (if any) contractor who takes over the economic entity and its workload from the existing contractor, and each individual employee.
- (c) A final and definitive answer as to whether or not the TUPE regulations will apply where an economic entity and its workload are being taken over by a new employer can only be produced after an aggrieved employee has taken the new contractor to an employment tribunal (for example, in order to compel that new contractor to accept that he has to employ the aggrieved employee) and a final decision has been made by that tribunal.
- (d) However, in his opinion, if the measured term contracts are retendered by the Council and the work is awarded to new contractors, then the employees of Finco and McKean (whose work substantially comprised work on the current measured term contracts) should be transferred to the employment of the new contractors.
- (e) In a situation where any workload ceases to exist (such as the Council ceasing to have such work done at all) then the current employer is responsible for devising appropriate measures to deal with the loss of such work.
- (f) Such measures may include finding similar work elsewhere, redeploying affected employees to other work, retraining affected employees to undertake other types of work, assisting such employees to transfer to other employers as well as the possibility of making some of the workforce's jobs redundant.
- (g) In his opinion the Council has neither a legal power, nor a legal responsibility, to intervene in the selection of such measures by employers such as Finco and McKean.
- (h) If the Council should choose to re-tender the measured term contracts for tarmac renewal/repair then that exercise must be conducted in accordance with the Council's financial regulations and contract standing orders in exactly the same way as for any other contracts.
- (i) In his opinion the Council is not legally entitled to alter its tendering procedures to provide any special arrangements to take account of employees of Finco and McKean who were previously employed by the Council.

4.2 Given the aforementioned it is clear that the Council has no direct involvement and responsibility in respect of former employees. However, the Head of Legal Services has expressed the view that should new contracts be awarded to different contractors then employees currently carrying out work under these existing contracts should be transferred to any new contractors awarded any new proposed contracts.

4.3 To facilitate this process, the Council has discussed this matter with McKean & Co who have indicated that they will employ the 3 people currently employed by the outgoing contractor, Finco Contracts Ltd.

4.4 McKean & Co have also advised that they would utilise the Council's vehicles which would also become available. Committee should, however, note that consideration will require to be given to renewing the 5 vehicle fleet.

5.0 Proposals

5.1 Given the contractor's performance as outlined in paragraphs 3.1 and 3.2, it is proposed that all six contracts be awarded for a 3 year duration to McKean & Co with a 4% increase applied to the original baseline rates of 4 October 1999 for the first year of the new contracts which are to commence on 4 February 2002 with the appropriate annual fluctuation to apply for the remaining two years of the contracts.

5.2 Committee are advised that the aforementioned increase does not take account of a Government aggregate tax which comes into effect on 1 April 2002 which will require a further, as yet unknown, uplift in the contract rates.

6.0 Finance

6.1 Financial resources have been made available within the HRA for the provision of this service and full details will be provided in future budget monitoring reports to be submitted to Committee.

7.0 Recommendations

7.1 It is recommended that Committee

- (a) award all six contracts to McKean & Co, with the rates to be applied and contract(s) commencement date as detailed in 5.1 of this report.

8.0 Background

8.1 Background papers are available within the Department



Thomas McKenzie
Director of Housing & Property Services