

## **EAST AYRSHIRE COUNCIL**

**CABINET – 1<sup>ST</sup> APRIL 2009**

### **CONTAMINATED LAND SUPPORT SERVICE CONTRACT**

#### **Report by Depute Chief Executive/Executive Director of Corporate Support**

#### **1. PURPOSE OF REPORT**

- 1.1 To seek Cabinet approval for entering into a negotiated Contaminated Land Support Service Contract with Enviro Consulting Ltd, 61 The Shore, Leith, Edinburgh EH6 6RA.

#### **2 BACKGROUND**

- 2.1 In order to meet legislative obligations with regard to Part IIA of the Environmental Protection Act 1990, Enviro Consulting Ltd were awarded, following an open competitive tendering exercise, on 4<sup>th</sup> August 2003 a contract to provide contaminated land support which includes a methodology (ECLIPSe) for the identification and prioritisation of potentially contaminated land. The original contract was for 3 years with three one year optional extensions to the contract which were all subsequently exercised. The current contract is therefore due to expire on 3<sup>rd</sup> August 2009.
- 2.2 The ECLIPSe methodology has been adopted by the Council as part of our Contaminated Land Strategy, which was updated and ratified in March 2008 by Cabinet.
- 2.3 The Council continues to use this methodology and electronic database on a day to day basis to select sites for further investigation and inspection. The initial inspection and investigations are carried out by Enviro Consulting Ltd on behalf of the Council as part of the Contaminated Land Support Service Contract.

#### **3 DISCUSSION**

- 3.1 By utilising the ECLIPSe methodology system and database provided by and designed by Enviro Consulting Ltd, we have identified and prioritised 2233 sites in the Council area which may require further detailed investigations in order to assess their status under Part IIA of the Environmental Protection Act 1990.

- 3.2 The Contaminated Land Service Contract with Enviro is an integral part of the Contaminated Land Strategy, and as such demonstrates how the Council is meeting its obligations under Part IIA, by having a robust and defensible methodology in its approach to the inspection, identification and remediation of contaminated land.
- 3.3 Enviro Consulting Ltd hold the Intellectual Property (IP) rights to the methodology (ECLIPSe) for the identification, prioritisation and defensible justification for further inspections. This approach is integrated into all aspects of the work undertaken relating to Part IIA and forms a unique and bespoke offering.
- 3.4 East Ayrshire Council can rely on and benefit from the Intellectual Property rights. However, other consultants would not have this benefit meaning that they would need to apply their own method and approach to the Part IIA processes. In essence this would be to start the identification and prioritisation process again using their own method of approach. This would be required to satisfy any new consultants' professional requirements in respect of due diligence, liability and professional indemnity.
- 3.5 As the identification and inspection of contaminated land is ongoing, any re-tendering of the existing contaminated land contract would, if it led to the appointment of a new contractor, be likely to seriously affect the timescales for investigative works and thereby undermine the Council's ability to progress timeously with the implementation of the Contaminated Land Strategy.
- 3.6 Current Status of Contaminated Land Strategy progress.
- The number of sites requiring inspection has been reduced by over 50% to 1,463 sites;
  - The Council has completed approximately 35% (c560) site inspections and are on target for Contaminated Land Strategy requirements;
  - All Priority 1 (very high) sites have been or are in the process of being inspected;
  - All Priority 2 (High) sites with dwellings located on or adjacent have either been or are in the process of being inspected;
  - 70% of all Priority 2 (High) Sites have been or are in the process of being inspected; and
  - 11% of all Priority 3 (Medium) sites have been or are in the process of being inspected.
- 3.7 The costs to the Council from any third party in respect to changing

current systems utilised in the Enviros Consulting Ltd contract are reasonably anticipated to be:

- Reviewing the identified sites and reclassifying the potential contaminated land sources (Typical cost would be £8k);
- Reviewing all of the GIS base datasets and configuration for prioritisation (£10k);
- Configuring and running a prioritisation model (£6k);
- Review of existing site inspections, desk studies and investigation in terms of scoring and placement on prioritisation system (£30k);
- Updating the prioritisation model based on results of the review (£8k);
- Review of the work schedules and approach (£3k);
- Update the EAC Contaminated Land Strategy document (£3k);

With management costs added to the above, costs to the Council to change systems is anticipated to be £75k minimum, in the event of an alternative contractor being appointed.

#### **4 LEGAL IMPLICATIONS**

- 4.1 The Council's standing orders in relation to contracts (paragraph 20(1)) require Cabinet approval to be sought before tender negotiations can take place with a single contractor.

#### **5 FINANCIAL IMPLICATIONS**

- 5.1 The Council has statutory obligations under Part IIA of the Environmental Protection Act 1990, (Contaminated Land) to investigate and remediate land within its area. These obligations are implemented through the Council's adopted contaminated land strategy and the Enviros contaminated land support service contract which requires the provision of ongoing finance in order to ensure that these statutory obligations are met.

- 5.2 In order to complete our inspections of sites identified as having the potential for contamination, it is envisaged that a 3 year contract term with the option of one 1 year optional extension will be required. Based on previous works undertaken and projected activity, we can anticipate an annual spend of around £115k to a maximum spend of £130k which equates to a maximum of £520k for the term of the contract plus a one year extension.

- 5.3 The anticipated annual spend will cover the preliminary site inspections site intrusive investigations, database management and upgrades. The annual spend does not include items such as site remediation, annual licence fees, internal charges for GIS management etc. It should also be noted that the total spend does not include any unforeseen circumstances where the cost of remedial works may fall to the Council as either, the owner of contaminated sites which meet the statutory definition of contaminated land, or where the land in question is an “orphan site” i.e. where the original polluter cannot be found and the current site owners/occupiers are excluded from liability. (We are presently not aware of any such sites).
- 5.4 It should be noted that until 2008/09 these costs were funded through a ring-fenced capital grant. Ring-fencing has been removed by the Scottish Government with previous allocations rolled up into a consolidated capital grant the allocation of which is subject to the discretion of the Council but which must be spent strictly in line with capital eligibility criteria. The type of costs referred to above are generally not eligible for capital funding. The Executive Head of Finance and Asset Management is currently reviewing the position with the objective of identifying appropriate funding and continues to draw the attention of the Scottish Government to this issue with a view to moving the relevant amount of capital grant to the revenue allocation. In the meantime the service will not make any further financial commitments.
- 5.5 With reference to “orphan sites”, we are presently not aware of any such sites in our Local Authority area, we are however aware of a recent case in another authority area where remediation was required at a former gasworks site which had been developed for residential housing. The remedial works included demolition of the houses, removal of subsurface tanks and remediation or removal of the soil below the site. Due to a range of circumstances, the Local Authority involved, accepted that the site would most probably be designated as an “orphan site”, and, as there was Scottish Executive funding available for voluntary remediation at the time, decided to table a bid for the total remediation works and other costs. In this case the Scottish Executive granted the Local authority £3.2m for funding the remediation. Unfortunately changes in contaminated land grant funding means that there is no longer the provision for bidding to the Scottish Executive to fund any such capital works and therefore any similar financial liabilities would have to be addressed through a review of the relevant Capital Expenditure Programme.

## **6 POLICY IMPLICATIONS**

- 6.1 The award of a further Contaminated Land Support Service contract is commensurate with the Council’s Contaminated Land Strategy, and supports the principles contained within the Community Plan relative to Improving the Environment.

## **7 RISK IMPLICATIONS**

- 7.1 In the event of the award of a further Contaminated Land Support Service contract to a party other than Enviro Consulting Limited there would be a high level of risk that the Council would incur both additional expense, reasonably estimated at approximately £75k, and significant delay in the ongoing implementation of the Council's Contaminated Land Strategy.

## **8 RECOMMENDATIONS**

- 8.1 It is recommended that Cabinet:
- (i) Gives approval for the Head of Legal, Procurement and Regulatory Services to negotiate a contract for the provision of Contaminated Land Support Services with Enviro Consulting Limited in accordance with paragraph 20 (1) of the Council's Standing Orders relating to Contracts and
  - (II) Otherwise to note the contents of this report.

Elizabeth Morton

**Depute Chief Executive/Executive Director of Corporate Support**  
EM/DM/CJ

19<sup>th</sup> March 2009

### **LIST OF BACKGROUND PAPERS**

1. The Contaminated Land (Scotland) Regulations 2000 and 2005
2. Scottish Executive Statutory Guidance (Edition 2, May 2006)
3. East Ayrshire Council, Inspection Strategy for the Identification and Remediation of Contaminated Land February 2008.

Any person wishing to inspect the Background Papers or wishing further information should contact David Mitchell, Head of Legal, Procurement and Regulatory Services, Tel: (01563) 576061

**IMPLEMENTATION OFFICER** : David Mitchell, Head of Legal, Procurement and Regulatory Services, email: david.mitchell@east-ayrshire.gov.uk