



Ground Maintenance Contract
Overview Report
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Introduction

On instructions received from the Town Council, PBA Consulting carried out a review of the proposed contract documentation to ensure the document reflects current legislations and regulations; an in depth technical review did not part of the brief, however, for completeness a brief technical overview is given.

The review was carried out by Peter Barton of PBA Consulting in August 2005.

Overview

The *Contract Specification* is described as a performance output document with some operations given as specific work actions to be undertaken. The main operations are turf maintenance, tree, shrub and hedge maintenance, weed control, litter control, provision and maintenance of bedding schemes, maintenance and marking out of sports pitches, maintenance of changing rooms, inspection and maintenance of play area and play equipment, certain cleansing services, maintenance of exterior furniture, landscape construction and arboricultural works.

The *Conditions of Contract* appear to be based on Institute of Leisure and Amenity Management Conditions or similar. These conditions are extensively used in the industry and are generally adequate for this type of work and only require minor amendments to meet individual client requirements.

The Institute of Leisure and Amenity Management layout for *Instruction to Tenderers* and *Aims and Objectives* and other documents have also been followed

As part of our overview, we make the following observations; these are of a general nature and are by no means a detailed critique of the whole document.

A more detailed review was carried out of the *Conditions of Contract* along with the *instructions to tenderers* and other documents in reference to "TUPE", Health and Safety, Composting and other relevant legislation.

Recommendations

1. General Advice

A number of textural and grammatical/technical issues in the body of the documentation were noted, particularly in Section D. For instance, instructions are given to scarify sports pitches, this is defined as "... to clear the build-up of dead herbage and creeping stems in turf in order to leave an open surface in readiness for renewed growth."

Is this actually what is required and practical on sports pitches? Would not "harrowing" (definition required) be more appropriate?

It is recommended that a thorough review of the wording, textural and grammatical/technical issues be carried out to remove any possible ambiguities.

Technically, Section C: Clause 39 covers observance of all statutory requirements, however, legislation including "*The Transfer of Undertakings (Protection of Employment) Regulations*" and the "*Health and Safety at Work Act*" has been identified elsewhere within the document; these are complex and continually evolving and advice has been given within the appropriate section review on these issues.

The following recommendations are given as options for improving the efficacy and management of the contract.

The particular issues raised in the briefing e-mail are also covered.

2. Section B: Information & Instructions to Tenderers

Clause 4: Transfer of Undertakings (Protection of Employment) Regulations

The Transfer of Undertakings (Protection of Employment) Regulations 1981 (SI 1981/1794) (often referred to as 'TUPE') were introduced to implement the Acquired Rights Directive 77/187/EC. They are the main piece of legislation governing the transfer of an undertaking, or part of one, to another. The Regulations are designed to protect the rights of employees when a transfer occurs from one employer to another, enabling them to enjoy the same terms and conditions, with continuity of employment, as formerly.

Clause 4: Transfer of Undertakings (Protection of Employment) Regulations Cont.....

In incorporating the *Acquired Rights Directive* into the law of member states, a number of anomalies arose which were addressed by a new *Acquired Rights Directive 98/50/EC* and various amendments to the UK TUPE regulations. The most recent significant amendments have been subject to an extremely prolonged consultation – changes affecting pensions came into effect on 6 April 2005 and further changes are expected to come into force in April 2006.

Further statutes and regulations which have an effect on TUPE are:

- *The Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 1995 (SI 1995/2587)*
- *The Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 1999 (SI 1999/1925)*
- *Pensions Act 2004, especially sections 257 and 258*
- *The Transfer of Employment (Pensions Protection) Regulations 2005 (SI 2005/649).*

The law on relevant transfers in the case of contracting out and changes of contractors for labour intensive activities, such as security, catering, refuse collection, grounds and cleaning, has given rise to confusion. This situation will be clarified in April 2006: however, where a service provision change takes place, essentially, “TUPE” will apply.

The standard statement within the conditions of contract (Section B: clause 4) should be adequate for re-tendering the contract as we consider “TUPE” will apply.

3. Section C: Contract Conditions

Staffing Requirements

Clause 20 sub paragraph f details “trained, instructed and supervised staff”; no reference is made to their level of qualifications, either for the operators or the supervisors.

To ensure standards, continuing development and improvement, we advise that minimum qualifications for the operators and the supervisors are set. These should be related to National Vocational Qualifications (NVQ) The contractors CV’s for both the operators and management should be requested as part of the method statement.

This would also give a unified approach to evaluating the quality of the service being provided by the contractor.

Default in Performance

Clause 32 covers default in performance in detail, however, the level of financial penalties are such that it could be more preferable for the contractor to pay the fine and not complete the work, rather than complete the work to the required standard and avoid a heavy penalty.

It is recommended that within the rectification notices at paragraph f, a fine in excess of £100.00 should be applied should the contractor fail to remedy the failure within the period allowed.

Further more within the default notices section at paragraph d, we recommend that fines in the region of £250.00 to £500.00 are levied.

This would ensure that standards and performance are maintained by the provision of a severe penalty for non-performance.

Statutory Requirements

Clause 39 covers observation of statutory requirements and places the responsibility for observing all statutes and regulations on the contractor as follows:-

“The Contractor shall comply with all statutory and other provisions to be observed and performed in connection with the Services provided under the Contract and shall indemnify the Employer accordingly for any failure to so comply.”

As legislation, statutory and other provisions to be observed are continually changing, this clause ensures the contractor is fully responsible for meeting all requirements, however, we make the following recommendations.

An annual review of the contractor's Policy documents would ensure the latest requirements are met, however, the Supervising Officer would also need to be up to date.

Particular reference has been made in the document to the *Transfer of Undertakings - Protection of Employment* (Section B: clause 4) and, *Health and Safety Regulations* (Section C: Clause 42). Technically, these are covered with the above Clause, however, the legislations and implementation of these are complex and continually evolving and advice has been given within the appropriate section review.

The Health and Safety at Work Act

Clause 42 covers Health and Safety at Work; the *Health and Safety at Work Act (1974)* was introduced to protect the health and safety of employees, members of public and others in the work place. It is the main enabling legislation.

Further statutes and regulations which have an effect on Health and Safety include:-

The Noise at Work Regulations 1989

The Control of Lead at Work Regulations 1980

The Manual Handling Operations Regulations 1992

The Workplace (Health, Safety and Welfare) Regulations 1992

The Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR)

Lifting Operations and Lifting Equipment regulations 1998 (LOLER)

Provision and Use of Work Equipment Regulations 1998 (PUWER)

The Management of Health and Safety at Work Regulations 1999

The Control of Substances Hazardous to Health Regulations (COSHH) 2002

The Work at Height Regulations 2005.

The legislations and implementation of Health and Safety procedures are complex and continually evolving.

The responsibilities for the Health and Safety of persons involved in grounds maintenance and members of public should remain the responsibility of the contractor. It is imperative for the contractors to keep up to date. Continual review of the contractors Method and Risk assessments would ensure current legislation has been adopted

The Health and Safety at Work Act: Cont....

The list of legislation in Section C: Clause 42 a) is now out of date and may be misleading to contractors. This clause should be amended to an inclusive statement, similar to Clause 39 and with out reference to any particular legislation, it should cover all other legislations. We recommend the following revision:-

“The Contractor shall in performing the Services adopt safe methods of work in order to protect the health and safety of his own employees, the employees of the Employer and of all other persons, including members of the public and shall comply with the requirements of the Health and Safety at Work Act 1974 and of any other relevant Acts, Regulations, Orders or any European Directive pertaining to the health and safety of employed persons and of all other persons, including members of the public. The Contractor shall indemnify the Employer accordingly for any failure to so comply”.

This would ensure all current and future legislation is adopted.

4. Section D: Contract Specification

Performance

The contract is predominantly performance based, however, for a number of operations specific instructions and frequencies have been given. Concern is expressed over the potential for claims should the instructions or frequencies given not prove adequate for the operation and the output is not achieved.

We advise that where frequencies or work prescriptions are given, statements should be inclusive of other operations and/or the requirement for additional frequencies to the instruction given. This will ensure the contractor has the responsibility for making the decision on the actual work processes and that the output is achieved. For example the contract documentation calls for “aeration shall be carried out at fortnightly intervals”.

A recommended statement for such an item may be “regular aeration shall be carried out at least once per fortnight”.

With such a statement, if it is deemed necessary carry out higher frequencies to achieve the output required, the contractor has responsibility to make the decision to ensure the output is achieved; however, the output requirements should be stated.

Standards

A performance-based contract is measured by standards and outputs. There are few references to “current best practice” “fit and suitable for play/the purpose”.

Outputs should be stated; in addition to the above examples, codes of practice and governing bodies for sport etc can also be quoted.

Additionally the contractor is to carry out operations as agreed/instructed by the supervising officer; what happens if the operation is inadequate, who is responsible?

We advise that the contractor is empowered to plan the operations following an acceptance of a method statement by the supervising officer. This would ensure the responsibility for adequacy of the operation and the outcome remains the responsibility of contractor.

Grass Cutting

Within the grass cutting frequency a number of statements are made with regards to cutting of areas within a defined cutting regime that cannot be cut with the machines specified e.g.. “banks and steep slopes within defined cutting areas that cannot be cut with machines specified, shall be cut by other means agreed by the supervising officer so that the appearance and cut height is similar to the surrounding area”. Similar statements are made for inaccessible areas.

We advise that this statement should specify a performance output rather than detailing/agreeing the machine which currently places responsibilities for lack of performance with the Supervising Officer.

The following or similar is recommended: -

“grass cutting machines shall be appropriate for the size of the area being maintained and the standard of finish specified. Inaccessible margins corners and the like shall be maintained to the same standard by other suitable equipment.”

This description puts full responsibility on the contractor removing any possibility of claims on the supervising officer for lack of performance.

Grass Cutting: Cont....

Additionally we note there are various standards and categories of grass cutting specified within the contract, no reference is made to British Standards.

British Standards 7370 defines a number of categories of grass maintenance. Quoting these standards would provide a common reference point for the quality of finish required.

This would also provide independent verification for standards and best practice.

5. Section G: Bill of Quantities

This is extensive and covers both performance based and instructed categories. Some of the instructed items are essentially additional elements of regular maintenance.

We advise that a revision of the specification to make the maintenance of grass areas, shrub beds etc inclusive of edging, weed control, cultural techniques and other such items should be carried out. This would reduce the number of items required giving a concise schedule for regular maintenance items and, a more condensed bill for additional works. This would reduce verifications required and paper work.

Within the Bill Of Quantities Preliminaries: item 1/6 does not appear to be covered within the documentation as stated.

6. Other legislation

Particular reference has been made within the brief to composting and recycling. In Section D: (definitions), Section G: (Preamble 5), reference has been made to composting and Properly Licensed Disposal Site under the *Environmental Protection Act* and disposal of materials.

Technically, Section C: Clause 39 covers observance of all statutory requirements including waste disposal. However, we have reviewed a number of regulations, much of which came into force in July 2005. The following observations are made.

Waste Management Licensing Exemption (England & Wales) Regulations (2005)

The new composting exemptions had taken over five years to prepare and have been through two full public consultations. Exemptions within these regulations would have enabled small-scale composting sites to operate without incurring the costs of full waste management licences whilst ensuring protection of the environment.

However, DEFRA made an eleventh hour U-turn to the implementation of the Planned changes to the paragraph 12 composting exemption included in the *Waste Management Licensing Exemption (England & Wales) Regulations (2005)* for composting which were due to come into force on the 1st July 2005 (See letter at Appendix A). Therefore the current composting exemption in the *Waste Management Licensing Regulations 1994* will continue to apply.

However, there are a number of changes in legislation affecting hazardous waste, these include:-

Landfill Regulations

On 16 July 2004 the full requirements of the *Landfill Regulations 2002* came into force. In effect, this stops the practice of 'co-disposal' of hazardous and non-hazardous waste in the same landfill. It also requires that the hazardous wastes identified in the European Waste Catalogue must be pre-treated, according to a three-point test, to reduce their quantity and hazard before they are land-filled (unless this is of no practical environmental benefit). Landfill sites are being re-permitted to reflect these changes.

Waste Acceptance Criteria (WAC)

Used by landfill operators to decide whether they can accept hazardous waste into their landfill. The criteria are predominantly leaching limit values for waste going to landfills, setting the limits of contaminants permitted in waste going to landfill, together with testing standards and procedures that must be used.

Hazardous Waste Regulations

These replaced the *Special Waste Regulations 1996 (as amended) in 2005*. They will apply controls on movements of hazardous waste to the revised Hazardous Waste List. The regulations introduce revised and more streamlined procedures for monitoring movements of hazardous waste.

The above observations are for guidance only and no revision of the contract is considered necessary as Section C: Clause 39 requires the contractor to embrace all legislation.

With regards to particular issues of composting and recycling, it is recommended that unambiguous policy statements are made with regard to composting/disposal of green waste and, the recycling of other waste (Section E: Clause 6).

This will give clear guidance to contractors and assist parity between tenderers and the tender sums.

Conclusion

Generally the documentation provides a sound basis for tendering grounds Maintenance operations required by the Town Council.

Attention should be given to textural and grammatical/technical issues and consideration given to defining outputs, standards and objectives.

The recommended clause revisions detailed in the report should also be carried out.

Appendix A

Letter from DEFRA

Composting Exemption