



Environment Committee

30 June 2020

Title

Procurement of Highways Term Maintenance Contractor

Report of

Chairman of the Environment Committee

Wards

All

Status

Public with exempt Appendix 1 - Alternative Options Considered and Not Recommended Exempt enclosure - Not for publication by virtue of paragraphs 3 of Schedule 12A of the Local Government Act 1972 as amended (Information relating to the financial or business affairs of any particular person)

Urgent

No

Key

Yes

Enclosures

Officer Contact Details

Jamie Cooke, Assistant Director Transportation and Highways Jamie.Cooke@Barnet.gov.uk

0208 359 2275

Summary

The current Highways Term Maintenance Contract is due to end on 31 March 2021. In line with the recommendations from the 11 September 2019 Environment Committee an options assessment has been conducted and a recommended course of action identified for approval. The recommended course of action is to extend the current Highways Term Maintenance Contract for a period of two years and six months to become coterminous with the Re Highways Contract which expires 30 September 2023. This extension enables the Council to conclude the Year 6 /7 Re Contract review and provide the opportunity for a better longer-term procurement with a different allocation of responsibilities between the various parties.

This report sets out the process to ensure the Council's interests are protected, including the governance and approvals process to be followed.

Officers' Recommendations

- 1. That the Environment Committee notes the outcome of the options assessment and the recommendation to progressing an extension of the current contract.**
- 2. That the Environment Committee approves the contract extension and provides authority for the Interim Director for Environment to enter into a formal commercial settlement with the current Highways Term Maintenance Contractor to settle all outstanding claims before extending the current contract.**
- 3. That the Environment Committee delegates authority to the Interim Executive Director for Environment to finalise the terms of the contract extension and to enter into the contract extension.**
- 4. That the Environment Committee are requested to note that subject to the agreement of recommendation 1, 2 and 3 above that there may be an additional budget requirement over and above what was agreed when the contract was originally let to account for an additional two and half years of throughput. Therefore, a report may need to be brought to Policy & Resources Committee which has responsibility for amendments to the revenue budget (Financial Regulations Section 2.4.3) and additions to the capital budget (Financial Regulations Section 2.4.5).**

1. WHY THIS REPORT IS NEEDED

- 1.1 The Environment Committee has responsibility for all policy and budgetary matters related to Highway Services in Barnet, with significant resources allocated annually to both footway and carriageway works.
- 1.2 Officers must inform and recommend decisions to be taken by the Environment Committee to ensure the safety, condition, and value of the Highways estate.
- 1.3 To report back on the investigations conducted by Officers, following the 11 September 2019 Environment Committee, with an options assessment and recommended course of action to engage a Highways Maintenance Contractor on a short-term basis to deliver service requirements post LoHAC expiry pending completion of a longer-term arrangement aligned to the end of the current Re contract.

2. REASONS FOR RECOMMENDATIONS

- 2.1 The current provider (ConwayAecom) was procured through a call off contract via the LoHAC framework arrangement that provides a significant volume of work to the major players in the Highways Term Maintenance Contact sector (averaging c.£35 - £40m of revenue for TfL works in each of the LoHAC areas). This provides a "footprint" for these suppliers in the London area for a relatively long period of time, which allows them to invest in depot, fleet, and personnel to service the LoHAC requirements.

- 2.2 Transport for London (TfL) is currently in the process of procuring the next generation LoHAC arrangement, with an indicative start date of 1 April 2021. The major market players and their suppliers are actively engaged in this procurement and would be waiting on the outcome, which is unlikely to be known before October 2020, to inform their decisions on approaching London Boroughs for their work. The principal reason for this is that success in LoHAC provides a base of operations including vehicle and plant, fleet, personnel, depots, and the systems required to deliver other Highways Maintenance Contracts (HMC) arrangements within the London area. Until the contractors know the result of the LoHAC procurement they are unlikely to bid competitively to any London Borough.
- 2.3 This is particularly the case in Barnet as the Authority does not have any depots to pass over to a new contractor. If there is a change of contractor(s) when the new LoHAC framework agreement is awarded the costs associated with the investment in new base of operations would be borne by the new LoHAC contractor(s). When Barnet awards its contract, it should be able to leverage this investment to encourage both more competitive interest and better value tender returns if it has waited until after the award of the LoHAC arrangement to approach the market.
- 2.4 Officers believe that a short-term procurement followed by a longer-term procurement following the award of the new LoHAC framework contract and the end of the current Re, contract, 30 September 2023, could provide the opportunity for a better longer-term procurement with a different allocation of responsibilities between the various parties. Officers are looking through the Year 6 / 7 Contract review, which is currently paused due to Covid-19, to identify strategic service options, including the development of a bespoke Barnet contract. As such Officers do not feel that, at this point in time, joining the new LoHAC contract from 1 April 2021 is the recommended option for the Council.
- 2.5 In line with the 11 September 2019 Environment Committee an options assessment has been conducted and the outcomes are set out in this report. The objectives of the assessment are in line with the Environment Committee recommendations in relation to procurement options available, including frameworks and a cost/benefit analysis of those frameworks versus the existing LoHAC Contract.

3. RECOMMENDED OPTION

- 3.1 The recommended option is to extend the current contract with ConwayAecom for a period of two years and 6 months from 1 April 2021 to the 30 September 2023. This would enable the Council time to conclude the Year 6 / 7 Contract review and provide the opportunity for a better longer-term procurement with a different allocation of responsibilities between the various parties aligned to the critical factors set out in the Environment Committee report of 11 September 2019.
- 3.2 The benefits of the recommended option are that it enables the Year 6 / 7 Contract review to reach its conclusion and deliver against its defined objectives, with the production of a set of clear deliverables in relation to maximising the strategic and commercial opportunities from a longer-term procurement. In addition, it naturally aligns with the end of the current Re contract on 30 September 2023, enabling wider strategic and commercial options to be considered by the Council going forward.

3.3 The extension of the current contract with ConwayAecom will be the subject to a legally binding agreement between the Council and ConwayAecom. This agreement will also be the subject of formal commercial settlement with ConwayAecom in relation to all outstanding claims the terms of which will ensure that the Council's interests are protected in relation to the core contractual requirements of:

- Performance
- Reporting and Data Sharing
- Payment Mechanisms
- Delivery Volumes
- Guaranteed Service Levels

3.4 The critical factor is that the contract extension will ensure continuity of service, whilst the longer-term strategic direction of the service is settled. It will ensure the delivery of the Council's Highways Authority responsibilities through the current established contractual mechanism, ensuring both planned and reactive maintenance programmes are delivered on time and to specified standard. For Members information the Contract will continue to include:

- Reactive maintenance response
- Local Improvement Plan
- Area Committee Scheme Implementation
- Network Recovery Plan, including:
 - Carriageway reconstruction
 - Footway reconstruction
 - Patching Programme
- Drainage and Gully Cleansing
- Crossover Installation
- Lines, Signs and Barriers
- Structure and Bridge Maintenance

3.5 The do-nothing scenario is unfortunately not an option as without an extension the current contract will come to an end on 31 March 2021 without alternative service provision being in place.

3.6 As part of the options appraisal several other contractual options were considered, and these are described in more detail under Section 4 of this report.

4. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

4.1 In line with the 11 September 2019 recommendations, a detailed options assessment has been conducted in relation to the potential short-term options available to the Council, the outcomes of this options assessment are set out in Appendix 1 of this report.:

- Access the new LoHAC 2 – North Area Framework
- Haringey (LCP) Construction Framework (Lot 5.1)
- Crown Commercial Services public works framework (Lot1.2)
- Use another Council's contract to procure works as an interim arrangement

Of these the only one that has the potential to access, albeit that timeframes are at risk of not aligning with the end date of the Council's current arrangement on 31 March 2021, is the new TfL administered LoHAC 2 North Area Framework, and officers consider that it would be beneficial to hold this option in reserve in case the recommended option is not able to be determined through the settlement process defined in Section 3.3 of this report.

5. POST DECISION IMPLEMENTATION

5.1 If Environment Committee approves the recommendations in this report, the formal commercial settlement will commence with Officers entering a formal commercial settlement phase with ConwayAecom. The terms of reference of this phase will ensure the integrity of this contract i.e. no material change to the core LoHAC contract and through this ensuring that that the Council's interests are protected in relation to the core contractual requirements of:

- Performance
- Reporting and Data Sharing
- Payment Mechanisms
- Guaranteed Service Levels

It is intended that the commercial settlement will be conducted during the period Early-July to Mid-August 2020, allowing sufficient time to report to a future meeting of the Policy and Resources Committee, if required.

5.2 After the approval to extend has been ratified Officers will undertake the final commercial and legal processes, including the Council publicly stating its intention at least 30 days in advance of entering into the contract extension to enable a seamless go to live on 1 October 2021.

5.3 In addition to the above Officers will maintain positive working relationships with TfL on the LoHAC 2 North Area Framework, in order to hold this option in reserve in case the recommended option is not able to be determined through the settlement process defined in Section 3.3 of this report.

6. IMPLICATIONS OF DECISION

6.1 Corporate Priorities and Performance

6.1.1 The Corporate Priority of Keeping the borough moving, including improvements to roads and pavements is delivered through improving the condition of our roads and pavements. The extension of the current contract will enable this to happen whilst enabling the Council time to conclude the Year 6 /7 Contract review and provide the opportunity for a better longer-term procurement with a different allocation of responsibilities between the various parties

6.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

6.2.1 Finance & Value for Money

- 6.2.1.1 The annual spend for the current contract is £11.026m based upon the 2019/20 contractual budget outturn.
- 6.2.1.2 The underlying financial principles will be the subject of formal commercial settlement with ConwayAecom the terms of which will ensure that the Council's interests are protected in relation to the continued delivery of a value for money solution, specifically in relation to:
- Performance
 - Payment Mechanisms
 - Delivery Volumes
- 6.2.1.3 Under Article 7 of the Constitution, the Environment Committee has responsibility for all borough-wide or cross-constituency matters relating to the street scene including, parking, road safety, lighting, street cleaning, and can receive reports on relevant performance information and risk on the services under the remit of the Committee. This decision will result in additional budget requirement and so cannot be taken by the Environment Committee. Article 7 states that "No decisions which result in amendments to the agreed budget may be made by the Committee unless and until the amendment has been agreed by Policy and Resources Committee." If there is an identified additional budget requirement, this matter would need to be determined by the Policy & Resources Committee which has responsibility for amendments to the revenue budget (Financial Regulations Section 2.4.3) and additions to the capital budget (Financial Regulations Section 2.4.5).

6.2.2 Procurement

- 6.2.2.1 The current contract commenced 1 January 2014 by way of a Call-off contract under the LoHAC Framework which commenced 1 April 2013. The current arrangement is due to continue until 31 March 2021.
- 6.2.2.2 Following the options assessment, and given the need for the Council to conclude the Year 6 /7 Contract review it is felt that a short term two year six months extension of the current contractual arrangement is the most appropriate course of action, aligned to the outcomes of the options assessment set out in Section 4 of this report.
- 6.2.2.3 The procurement of highways services, including related supplies and works, must be done in compliance with public procurement rules, including the Public Contracts Regulations 2015 (PCR).
- 6.2.2.4 The proposal is to extend the current contract under Regulation 72 (1) (b) of the Public Contracts Regulations 2015 for the reasons set out in Section 6.4 of this report.

- 6.2.2.5 Aligned with the outcome of the Year 6 / 7 review, and at the appropriate time, the intention will be to engage with the market on the wider longer-term procurement aligned to the allocation of responsibilities identified through the review.

6.2.3 Staffing

Through the formal commercial settlement and subsequent legally binding agreement it is intended that there will be no material change to ConwayAecom employee terms and conditions and TUPE will not apply.

6.2.4 IT

The requirement to maintain the existing IT systems and connectivity with Exor (and any successor systems) will be formally confirmed, in order to deliver the contracted reporting and data sharing requirements during the period of extension.

6.2.5 Property

The current contractor provides depot facilities to service this contract. Through the formal commercial settlement, the provision of a depot will be formally confirmed to maintain integrity of service during the period of extension.

6.2.6 Sustainability

The current contract arrangements include for sustainability of operations, including recycling of spoil materials from highways reconstruction activities.

6.3 **Social Value**

- 6.3.1 The Public Services (Social Value) Act 2012 requires people who commission public services to think about how they can also secure wider social, economic and environmental benefits. Social value will be considered when looking at the options. Our current contracts have considered social value.

6.4 **Legal and Constitutional References**

- 6.4.1 As a highway authority Barnet has a duty under section 41(1) of the Highways Act 1980 to maintain the public highway.
- 6.4.2 In addition, Section 30 of the Greater London Authority Act 1999 confirms that the highways authority has the general power to, amongst other things, promote the improvement of the environment, and economic and social development.
- 6.4.3 The current contract commenced 1 January 2014 by way of a Call-off contract under the LoHAC Framework which commenced 1 April 2013. The current arrangement is due to continue until 31 March 2021.
- 6.4.4 Legal advice has been sought regarding the legitimacy of extending the current contract for a period of 2 years and six months. The legal view is that Regulation 72 (1) (b) of the Public Contracts Regulations 2015 (PCR) provides a legal basis to extend the current contract.

6.4.5 Regulation 72(1)(b) provides 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 such as requirements of interchangeability or interoperability with existing equipment, services or installations procured under the initial procurement, and
- (ii) would cause significant inconvenience or substantial duplication of costs for the contracting authority, provided that any increase in price does not exceed 50% of the value of the original contract.

6.4.6 The Report sets out the facts and circumstances that support the view that (i) there are economic and technical reasons that prevent a change of contractor, and (ii) that these reasons would cause significant inconvenience or substantial duplication of costs for Barnet. In essence, this is based on the Council (i) having decided that its highways services arrangements will be reconfigured within a short, two year and six months period, (ii) it would incur significant costs and resources to conduct a fresh procurement for a new two-year contract to end co-terminously with the Re highways contract, and (iii) there would be unlikely to be an active market for such a short term contract. The Council can rely on these considerations to support the conclusion that in the circumstances there is an "economic" reason not to change contractor and that doing so would cause significant inconvenience and/or substantial duplication of costs.

6.4.7 Barnet will give public notice of the contract extension in compliance with the PCR requirements.

6.4.8 Under paragraph 6.1 of the Council's Contract Procedure Rules a single tender action (the awarding of a contract to a contractor without undertaking a competitive tendering exercise) is permitted in exceptional circumstances and must be approved in advance by the Director (Commercial and ICT Services). Exceptional circumstances may include where the works, supplies or services can be supplied only by a particular supplier. Procurement advice should be sought in all cases. The Director (Commercial and ICT Services) has approved this single tender action

6.5 Risk Management

6.5.1 The Council, as Highway Authority, has various responsibilities and duties. To address these responsibilities and duties the council has established policies, systems and processes that are regularly audited, reviewed and amended where necessary to reflect current policy and guidance and provide the council with a robust defence against insurance claims on the public highway.

6.5.2 The preparation of annual programmes of work for both footways and carriageways in the borough demonstrates the necessary use of asset planning and risk management principles for the distribution of available funding and resources on an agreed, clear and auditable basis utilising a prioritisation process and governance arrangements overseen by members and approved by the Environment Committee.

6.5.3 The extension of the current contract with ConwayAecom will be the subject to a legally

binding agreement between the Council and ConwayAecom. This agreement will be the subject of formal commercial settlement with ConwayAecom the terms of which will ensure that the Councils interests are protected in relation to core contractual requirements. If through this process it is clear that the formal commercial settlement does not meet the terms set out Officers will recommend that the process is terminated and that the procurement move to the fall back option of the LoHAC 2 North Area Framework.

6.6 Equalities and Diversity

6.6.1 The Equality Act 2010 requires organisations exercising public functions to demonstrate that due regard has been paid to equalities in:

- Elimination of unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010.
- Advancement of equality of opportunity between people from different groups.
- Fostering of good relations between people from different groups.

6.6.2 The Equality Act 2010 identifies the following protected characteristics: age; disability; gender reassignment; marriage and civil partnership, pregnancy, and maternity; race; religion or belief; sex and sexual orientation.

6.6.3 To assist in meeting the duty the council will:

- Try to understand the diversity of our customers to improve our services.
- Consider the impact of our decisions on different groups to ensure they are fair.
- Mainstream equalities into business and financial planning and integrating equalities into everything we do.
- Learn more about Barnet's diverse communities by engaging with them.

6.6.4 The broad purpose of this duty is to integrate considerations of equality into day to day business and keep them under review in decision making, the design of policies and delivery of services.

6.6.1 Good roads and pavements benefit all sectors of the community by removing impediments and assisting quick, efficient, and safe movement to access school, work and leisure facilities. This is particularly important for the elderly, people caring for children and those with mobility difficulties and sight impairments. The condition of roads and pavements is regularly at the top of concerns expressed by residents and the Council is listening and responding to those concerns by committing funding and resources to its planned highway maintenance programmes across the borough on a prioritised basis.

6.6.2 The physical appearance and the condition of the roads and pavements also have a significant impact on the quality of life of residents and visitors to the borough. A poor-quality street environment will give a negative impression of an area, impact on people's perceptions and attitudes as well as increasing feelings of insecurity.

6.7 Corporate Parenting

6.7.1 In line with the Children and Social Work Act 2017, the council has a duty to consider Corporate Parenting Principles in decision-making across the council. There are no

implications for Corporate Parenting in relation to this report.

6.8 **Consultation and Engagement**

6.8.1 This section does not apply to this report.

6.9 **Insight**

6.9.1 This section does not apply to this report.

7. **BACKGROUND PAPERS**

7.1 None