



## Environment Committee

18 January 2021

**Title**

**Procurement of Highways Term Maintenance Contractor**

**Report of**

Chairman of the Environment Committee

**Wards**

All

**Status**

Public

**Urgent**

No

**Key**

Yes

**Enclosures**

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### Summary

The current Highways Term Maintenance Contract is due to end on 31 March 2021. In line with the recommendations from the 30 June Environment Committee settlement discussions have been held with the current Highways Term Maintenance Contractor to extend the 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. These settlement discussions have resulted in a proposal for consideration by the Council.

In addition, in line with Clause 4.1 of the Environment Committee meeting of 30 June 2020 Officers have been in discussion with Transport for London (TfL) regarding the potential to access the recently awarded London Highway Maintenance and Projects Framework (HMPF) which has replaced the LoHAC arrangements. Consideration is being given as to whether this framework could provide a more economically advantageous solution to the council than extending the current contractual arrangements with the current Highways Term Maintenance Contractor.

This report sets out an overview of the two options and the intent to progress them both in parallel to ensure the council's interests are protected. This report also outlines the governance and approvals process that will be followed to deliver the most economically advantageous outcome to the council.

## **Officers' Recommendations**

- 1. That the Environment Committee notes the progress with the settlement discussions in relation to the extension of the current contract, aligned with the recommendations approved at the 30 June 2020 Environment Committee.**
- 2. That the Environment Committee notes that TfL have awarded the London Highway Maintenance and Projects Framework (HMPF) for the North Area and the potential alternative option this provides in relation to the provision of Highways Term Maintenance Contract services.**
- 3. That the Environment Committee delegates authority to the Executive Director for Environment following consultation with the Chairman of the Environment Committee to continue negotiations through the contract settlement discussions and in parallel to enter into discussions through the TfL HMPF framework and to subsequently award a contract on the basis of the most economically advantageous terms provided by one or other of the two options.**
- 4. That the Environment Committee delegates authority to the Executive Director for Environment following consultation with the Chairman of the Environment Committee to issue a letter of intent to the successful provider in the case that the Authority is unable to conclude the signing of the contract by 1 April 2021.**

### **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 The Executive Director for Environment 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 Following the recommendation of the Environment Committee 30 June 2020, this report updates on the settlement discussions held with the Council's current Highways Term Maintenance contractor including their recently submitted proposal. In addition, it makes Members aware of recent investigations undertaken by Officers with TfL regarding the recently awarded London Highway Maintenance and Projects Framework (HMPF) which has replaced the LoHAC arrangements.
- 1.4 This report sets out an overview of the options and the intent to progress the two options in parallel to ensure the Council's interests are protected, including the governance and approvals process to be followed to deliver the most economically advantageous outcome to the council.

## **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 companies in the Highways Term Maintenance Contact sector (averaging c.£35 - £40m of revenue for Transport for London (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 and thus the prerequisites for an extension.
- 2.2 As Members are aware the 30 June 2020 Environment Committee delegated authority to the then Interim Executive Director to finalise the terms of the contract extension and to enter into the contract extension. In addition, approval was given to enter into a formal contract settlement with the current Highways Term Maintenance Contractor to settle all outstanding claims before extending the current contract.
- 2.3 In line with the approval from the 30 June 2020 Environment Committee, the Executive Director for Environment has conducted formal settlement meetings with the current Highways Term Maintenance Contractor, and this has resulted in the provision of a final proposal for consideration by the council.
- 2.4 In addition, in line with Clause 4.1 of the Environment Committee meeting of 30 June 2020, Officers have been in discussion with Transport for London regarding the potential to access the recently awarded HMPF which has replaced the LoHAC arrangements. The Executive Director for Environment been seeking to ascertain whether HMPF provides a more economically advantageous solution for the council than extending the current contractual arrangements with the current Highways Term Maintenance Contractor. The TfL HMPF contract has a planned start date of 1 April 2021, which aligns with the council's contract extension start date.
- 2.5 The HMPF framework is divided into three areas (South, Central and North), the North Area includes the London Borough of Barnet and has been awarded to a joint venture between Kier and Tarmac for a period of eight (8) years with the potential of a four (4) year extension. The scope of works within the framework includes highway maintenance, emergency callout, reactive repair, and routine (cyclic) activities. In addition, it includes the delivery of asset renewals and minor improvement projects which would encompass the council's Network Recovery Programme.
- 2.6 The Executive Director for Environment is still of the view that a short-term procurement followed by a longer-term procurement following the recent award of the new HMPF framework contract and the end of the current Re Highways contract on 30 September 2023, would provide the opportunity for a better longer-term commission with a different allocation of responsibilities between the various parties.

## **3. RECOMMENDED OPTION**

- 3.1 The recommended option as a result of the TfL award of the HMPF Framework is to progress both the formal settlement negotiations with the council's current Highways Term Maintenance Contractor based on their submitted proposal in parallel with formal discussions with the awarded contractor for the TfL North Area HMPF Framework.

- 3.2 The Council will then be in a position to determine whether the most economically advantageous outcome is either to extend the current contract with Conway Aecom for a period of two years and 6 months from 1 April 2021 to the 30 September 2023, or to enter into a contract with the awarded contractor for the TfL North Area HMPF Framework. Either option would allow the authority adequate time to determine 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.
- 3.3 The benefits of the recommended option allow the council to 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 and overall service design. 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.
- 3.4 Either option would be subject to a legally binding agreement between the council and the contractor to ensure the council's interests are protected in relation to the core contractual requirements of:
- Scope
  - Contract Data
  - Performance
  - Reporting and Data Sharing
  - Payment Mechanisms
  - Delivery Volumes
  - Staff (including TUPE)
  - Depot Provision
  - Guaranteed Service Levels
- 3.5 The critical factor is to ensure quality of service, whilst the longer-term strategic direction of the service is settled. For Elected Members information the Contract will 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
- 3.6 The do-nothing scenario is unfortunately not an option as the current contract will come to an end on 31 March 2021 without essential statutory alternative service provision being in place.

3.7 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 below.

#### **4. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED**

4.1 The Environment Committee report of 30 June 2020 included a detailed options assessment in relation to the potential short-term options available to the Council, these included

- 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.

At the time Officers considered that it would be beneficial to hold the LoHAC 2 – North Area Framework (now TfL North Area HMPF Framework) in reserve. With the recent award of this contract, and as set out in this report, it is felt beneficial to consider this option in parallel with the settlement discussions with the council’s current Highways Term Maintenance Contractor to ensure the best possible service provision that the market has to offer is procured.

#### **5. POST DECISION IMPLEMENTATION**

5.1 If Environment Committee approves the recommendations in this report, the proposal presented by the Council’s current Highways Term Maintenance Contractor will be assessed in parallel against the TfL HMPF Framework proposal.

5.2 If the proposal presented by the Council’s current Highways Term Maintenance Contractor is deemed to be the most economically advantageous outcome to the council, the contract will be extended in line with the agreed recommendations of the 30 June 2020 Environment Committee.

5.3 However, if the assessment of the TfL HMPF Framework is that this option is deemed to be the most economically advantageous outcome to the council then the council will enter into a call-off contract with the North Area Contractor.

5.4 Both proposals will be assessed to ensure 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 assessment and approval will be concluded by the end of January 2021.

- 5.5 After the approved option has been ratified Officers will undertake the final commercial and legal processes, to enable a seamless go to live on 1 April 2021. For Elected Members information the commercial agreement will be within the approved annual revenue and capital highways budgets.
- 5.6 If the approved option is to enter into a call-off contact with the TfL HMPF Framework North Area Contractor discussions will be held and agreement reached with the council's current Highways Term Maintenance Contractor regarding a suitable (up to 3-month extension) in order to enable the seamless transfer of services to the new contractor.

## **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. Both options proposed in this report will enable this to happen whilst enabling the council to develop opportunities for a better longer-term procurement and overall service design 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 same whichever option is selected to 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, it is felt that either a short term two-year six months extension of the current contractual arrangement or a Call-off contract through the TfL HMPF Framework are the most appropriate courses 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 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.

## 6.2.3 Staffing

Through the formal commercial settlement proposal and the TfL HMPF Framework and subsequent legally binding agreement it is understood that TUPE will apply.

## 6.2.4 IT

The requirement to maintain the existing IT systems and connectivity with Exor (and its successor system Confirm) 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 and the TfL HMPF North Area contractor have confirmed the provision of depot facilities to service this contract. Through the formal contractual arrangement, the provision of a depot will be formally confirmed to maintain integrity of service during the period of extension / contract period.

## 6.2.6 Sustainability

The current / future 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 If Barnet enters into a contract extension to the current arrangement it will give public notice of the contract extension in compliance with the PCR requirements.
- 6.4.8 Acceptance of the extension of the existing contract can be approved by the Executive Director for Environment following consultation with the Chairman of the Environment Committee if the recommendations in this Report are agreed.

6.4.9 The TfL HMPF has been lawfully procured under the PCR and the Council can lawfully call off a contract from the North Area contractor appointed under the HMPF. The HMPF must cover the Council's highways requirements, and the call-off contract term and value must be in scope under the HMPF. The Council must follow the rules of the HMPF when calling off a contract.

## 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 If selected, the extension of the current contract with ConwayAecom will be subject to a legally binding agreement between the Council and ConwayAecom. This agreement will be the subject of a formal commercial settlement with ConwayAecom the terms of which will ensure that the Council's interests are protected in relation to core contractual requirements.

6.5.4 If selected, the entering into a Call-off Contract with the TfL HMPF North Area contractor will be the subject of a legally binding contract between the Council and Kier Tarmac. This contract will be in line with the TfL HMPF Framework Call-off contractual procedure and subject to the contractual and governance terms set out in the TfL contractual documentation.

## 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 Environment Committee Meeting 30 June 2020

<https://barnet.moderngov.co.uk/documents/s59143/Procurement%20of%20Highways%20Term%20Maintenance%20Contractor%20-%20Public.pdf>

7.2 Environment Committee Meeting 11 September 2020

<https://barnet.moderngov.co.uk/documents/s55126/Procurement%20of%20Highways%20Term%20Maintenance%20Contractor.pdf>

## Appendix 1

### Options Assessment

#	Option	Description	Access	Requirements	Status
1	Extend the current contractual arrangement with Conway Aecom	<p>Call-off contract procured via the LoHAC framework arrangement</p> <ul style="list-style-type: none"> <li>Reactive maintenance response</li> <li>Carriageway reconstruction</li> <li>Footway reconstruction</li> <li>Patching Programme</li> <li>Drainage and Gully Cleansing</li> <li>Crossover Installation</li> <li>Lines, Signs and Barriers</li> <li>Structure and Bridge Maintenance</li> </ul>	<p>The Council has approval, through the agreed recommendations from the 30 June 2020 Environment Committee to enter a contract extension subject to:</p> <ul style="list-style-type: none"> <li>Settling all outstanding claims before extending the current contract</li> </ul> <p>Finalising terms of the contract extension</p>	<p>In line with the recommendations set out in the Environment Committee Report – Procurement of Highways Term Maintenance Contractor dated 30 June 2020</p> <p>Through settlement discussions in relation to:</p> <ul style="list-style-type: none"> <li>Mobilisation</li> <li>Contract Organisation</li> <li>Depots and Infrastructure</li> <li>Digital Transformation</li> <li>Service Delivery</li> <li>Health and Safety</li> <li>Learning &amp; Development</li> <li>Customer Care</li> <li>Social Value</li> <li>Performance</li> <li>Commercial</li> </ul>	Contractors Proposal received currently subject to clarification, and evaluation
2	Access the new TfL HMPF – North Area Framework	<p>Three Lots – North, Central and South with one awarded contractor per lot</p> <p>Framework to deliver highway maintenance activities (including emergency call out, reactive repair, routine and cyclic</p>	The Council can access the TfL HMPF by entering into a call-off contract with the North Area contractor	<p>To enter into a Call-off Contract the Council needs to develop the following documents:</p> <ul style="list-style-type: none"> <li>Scope</li> <li>Contract Data</li> <li>TUPE details</li> <li>Performance management</li> <li>Depots and</li> </ul>	In discussions with TfL and the successful North Area contractor regarding the cost, quality and delivery of services through this contract in order to meet the council's quality and affordability criteria

#	Option	Description	Access	Requirements	Status
		activities) and the delivery of asset renewal and enhancement schemes  Framework duration 8 years (+4 years optional extension)		property	