

8 December 2021		ITEM: 12 Decision: 110592
Cabinet		
Highways Term Maintenance and Street Lighting Contract Procurement		
Wards and communities affected: All	Key Decision: Key	
Report of: Councillor Ben Maney - Portfolio Holder for Highway and Transportation		
Accountable Assistant Director: Julie Nelder - Assistant Director of Highways, Fleet and Logistics		
Accountable Director: Julie Rogers - Director of Public Realm		
This report is Public		

Executive Summary

The current Term Maintenance Contract which expires on the 31 March 2023, provides a delivery method for works derived from the Highways Infrastructure and Transport Development Teams within the Public Realm Directorate.

This report sets out the proposed way forward for procuring a new Term Maintenance Contract for the delivery of highway works and a separate Street Lighting Maintenance Contract to deliver revenue and capital works over an 8 year period commencing 1 April 2023.

1. Recommendations:

That Cabinet:

- 1.1 Delegate authority to the Director of Public Realm, in consultation with the Portfolio Holder for Highways and Transportation to decide the appropriate procurement route for the delivery of the Transport & Highways works for the next eight years commencing 1 April 2023.**
- 1.2 Approve the process to commence procurement of Transport & Highways works for a seven year period commencing 1 April 2023 which will be compliant with applicable Public Procurement Regulations, the Public Contracts Regulations 2015 and the Councils Contract Procedure Rules.**

- 1.3 **Delegate authority to the Director of Public Realm, in consultation with the Portfolio Holder for Highways and Transportation, to award any contracts necessary for the delivery of Transport & Highways works for an eight year period commencing 1 April 2023.**
- 1.4 **Delegate authority to the Director of Public Realm, in consultation with the Portfolio Holder for Highways and Transportation, to progress TUPE arrangements for any staff members affected by award of Contracts.**

2. Introduction and Background

- 2.1 The current Term Maintenance Contract which expires on the 31 March 2023 provides a delivery method for works derived from the Highways Infrastructure and Transport Development teams within the Public Realm Directorate.
- 2.2 These works programmes consist of the Department for Transport (DfT) Maintenance Block Allocation, DfT Integrated Transport Programme, Highways Infrastructure Revenue Allocation, Section 106 contributions and internal and external bid awards.
- 2.3 The current contract allows the highways and transportation services within the Public Realm directorate to gain efficiencies on reduced administration and procurement costs. There are also efficiencies in scale which can be achieved for the service provider resulting in reduced costs being passed down through competitive rates for the Authority.
- 2.4 This approach has allowed the Authority to demonstrate good practice with respects to efficient highway service delivery and meeting the objectives set out in the Incentive Fund application via the DfT Highways Maintenance Efficiency Programme (HMEP) and the Authority obtaining level Band 3 funding which is the maximum achievable.
- 2.5 Historically all work types have been combined with all work streams being delivered via the Term Maintenance Contract and whilst across the board it provides good competitive value, it is considered that as street lighting is a specialist area this service area would attract better value as a standalone contract. The justification for this is that there are a large number of street lighting only contractors that historically haven't submitted a tender for this service as they have been unable to fulfil the other requirements of the specification for service delivery. It is therefore considered for street lighting only, that better value would be obtained if this area of work was procured via a standalone contract over an 8 year period to match the Term Maintenance Contract.
- 2.6 Street lighting has an annual revenue allocation which is then matched with a variable annual capital allocation. This funding provides the mechanism for maintaining our Street Lighting stock which consists of over 27,000 assets. It is considered that a duration of 8 years should be applied to ensure a consist approach to the management of these assets. This contract enables us to

fulfil our statutory duty under the 1980 Highways Act with respects to the maintenance of street lighting assets.

2.7 The provision of the new Street Lighting Contract will enable the Authority to continue to manage the investment already made into lighting stock with the LED switch out programme. This resulted in approximately £354,822 worth of saving based on current electricity costs, in addition to 1,336 tonnes of CO² savings.

2.8 As part of the Council's ongoing efficiency drive and review, consideration has also been given to testing the market for externalising the delivery of some or all of the highway services that are currently delivered in house. To enable the Authority to accurately test the market and ensure the current delivery method of reactive works is the most efficient, the proposal is to tender the following Lots so that an assessment can be made of the viability and efficiency of some or all of the services being delivered by an external contractor, outside of the Council.

- **Lot 1** – Planned Works consisting of Highway Maintenance and Improvements works
- **Lot 2** – Winter Gritting Service
- **Lot 3** – Out of Hours emergency response service
- **Lot 4** – Reactive Maintenance works (excl potholes)
- **Lot 5** – Reactive Maintenance potholes
- **Lot 6** – Gulley cleansing

The value of Lots include all estimated costs of works currently delivered via the external Term Maintenance Contract (Lot 1) and those delivered via the in house Highways Operational Maintenance team (Lots 2-6). The Lots / type of work currently delivered by the in house team are to be included in the tender exercise for the purpose of bench marking delivery costs and to ensure the current delivery method is the most efficient and effective. There is no commitment to award any of the Lots from 2-6 to an external bidder.

2.9 As a result of earlier initial market testing, it is considered that to enable the cost comparison to be undertaken and for the Winter Gritting Service to be commercially viable for an external supplier, a minimum contract duration of 8 years would be necessary as this allows for the procurement and payment of the specialist gritting vehicles that an external supplier would be required to provide. A shorter term duration makes it less commercially viable for a supply chain to provide the services and this would likely result in no tenders being submitted and therefore remove the ability for the delivery cost comparison to be undertaken. Therefore the recommendation for the Contract is for 8 years.

2.10 The Lots specified are not dependant on one another and will be compared with current delivery costs on an individual basis. Lot 1 will be an automatic renewal due to the specialist nature of the work and the size of the projects. Unless it is clear that efficiencies would be achievable by delivering some or

all of the remaining Lots externally, the tender exercise will provide a valuable benchmarking activity.

- 2.11 Subject to approval and a decision on the most appropriate procurement route, the procurement timetable below is proposed for both contracts.

Works Contract – Procurement Timetable

KEY EVENT	DATE
Issue of ITT	1 st July 2022
Deadline for clarification requests re ITT	31 st July 2022
Closing date for tender submissions	30 th September 2022
Notification of result of evaluation	30 th November 2022
Standstill period	10 days
Expected date of award of contract	19 th December 2022
New contract start date	1 st April 2023

3. Issues, Options and Analysis of Options

- 3.1 Thurrock Council, as the Highway Authority has a statutory duty under the Highway Act 1980 to maintain the Highway. This forms part of the defence when defending the Authority from claims. To enable the Highways service to fulfil this requirement, provision needs to be made to allow the delivery of works in a safe and expeditious way and in line with the relevant maintenance policy documents.
- 3.2 There is therefore a requirement for the procurement of a new works contract to avoid the risk of any challenge. Any new procurement routes will have to comply with applicable Procurement Regulations, the Public Contracts Regulations 2015 and the Councils Contract Procedure Rules.
- 3.3 The Public Contracts Regulations 2015 thresholds for Works and Services are as follows:
- For works contracts £4,733,252
- 3.4 Thurrock is continuing to seek further funding from sources such as the South East Local Enterprise Partnership, National Highways (formerly Highways England) and internal capital bid process.
- 3.5 Depending on the outcome of the market testing exercise for the delivery of internal highway services there would be a need to consider TUPE Regulations. This preserves employees' contractual terms and conditions when a business or undertaking, or part of one, is transferred to a new employer. Therefore delegated authority to the Director of Public Realm

would be necessary, in consultation with the Portfolio Holder to take this element forward if proven to be a cost effective method of future delivery.

- 3.6 The Council's Social Value Framework will be set out in the tender documents and bidders will be asked to propose added value initiatives that will enhance their bid and which will be subsequently incorporated into the contractual requirements. Typically with this type of service provision apprenticeships and using local suppliers would feature in the evaluation criteria, as would green initiatives and evidence to show a commitment for the reduction in the carbon footprint.
- 3.7 In order to deliver various Council projects within the timescales, it is recommended that the Director of Public Realm be given delegated authority, in consultation with the Portfolio Holder for Highways and Transportation, to determine and develop the procurement route for the Highways capital works programme and street lighting, followed by a tender process and subsequent delegated award.
- 3.8 Any procurement process will be undertaken in accordance with applicable Procurement Rules, the Public Contract Regulations 2015 and the Council's Contract Procedure Rules.

4. Reasons for Recommendation

- 4.1 To enable the Public Realm Directorate to continually deliver highways schemes and planned works, it is essential that there is sufficient provision in place via a Term Maintenance Contract and Street Lighting Contract. It will also enable the Authority to further explore and test the market for the delivery of highway services through a supply chain partner.

5. Consultation (including Overview and Scrutiny, if applicable)

- 5.1 Consultation has taken place with colleagues from the Procurement team in the writing of this report and the rationale for including services currently delivered by the in-house teams has been discussed with all members of the operational team that could potentially be affected, should Lots 2-6 be considered for delivery by an alternative provider. There is no commitment to award any of the Lots from 2-6 to an external bidder.
- 5.2 This report was presented to Planning, Transportation and Regeneration Committee on the 7th December 2021 for their review and information.

6. Impact on corporate policies, priorities, performance and community impact

- 6.1 This report and recommendations comply with Thurrock Council's policies, priorities and community impact. In particular it complies with the Thurrock Constitution and Procurement governance.

7. Implications

7.1 Financial

Implications verified by: **Laura Last**
Senior Management Accountant

This report recommends the procurement of an 8 year Highways Term Maintenance and Street Lighting Contract. These procurements will maximise cost efficiencies in the delivering of Transportation Development and Highway Infrastructure schemes within the borough.

7.2 Legal

Implications verified by: **Courage Emovon**
Principal Lawyer / Manager – Contracts & Procurement Team

This report outlines proposals for procurement of a new Term Maintenance Contract for the delivery of highway works and a separate Street Lighting Maintenance Contract to deliver revenue and capital Works over an 8 year period commencing from 1st April 2023. The Council has a statutory duty to maintain the Highway and procurement as proposed in this report falls within scope of that duty.

The value of the proposed procurements being considered are estimated at above the Procurement threshold for Works contract and requires such works contracts to be tendered competitively. Subject to Cabinet approval any procurement process will need to comply with applicable Public Procurement Regulations, the Public Contracts Regulations 2015 and the Councils Contract Procedure Rules.

Any TUPE implications identified will be subject to the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 2006.

The Public Service Social Value Act 2012 imposes a duty on Local Authorities to take into consideration the promotion of economic, social and environmental well-being when procuring services.

Social value must be considered when the Council procures public services contracts.

The contracts to be procured must comply with applicable Public Procurement Regulations, the Public Contracts Regulations 2015 and the Council's Contract Procedure Rules.

Legal Services will be available to advice on any issues arising from the proposed procurement.

7.3 **Diversity and Equality**

Implications verified by: **Roxanne Scanlon**
Community Engagement and Project Officer

This report and recommendations deals with the procurement of a Works and Street Lighting contract. Social value benefits must be considered when the Council procures public services contracts in line with the Council's Social Values Framework. Given the projected spend on these procurement it is seen that robust social value benefits can be achieved.

7.4 **Other implications** (where significant) – i.e. Staff, Health Inequalities, Sustainability, Crime and Disorder, and Impact on Looked After Children

Whilst there may be no impact for staff as a result of the tender process, the Human Resources team have been advised of the potential impact for staff currently delivering Lots 2-6. Any impact on staff will be determined / dependent on the bids received during the tender process and staff will be fully consulted accordingly. There is no commitment to award any of the Lots from 2-6 to an external bidder.

8. **Background papers used in preparing the report** (including their location on the Council's website or identification whether any are exempt or protected by copyright):

None

9. **Appendices to the report**

None

Report Author:

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