

## Decision Report - Executive Decision

Forward Plan Reference: FP/23/04/09

Decision Date – 4 October 2023

Key Decision – Yes



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### Award of contract for highways services

Executive Member(s): Cllr Mike Rigby. Executive Lead Member for Transport and Digital

Local Member(s) and Division: All

Lead Officer: David Carter. Service Director for Infrastructure and Transport

Author: Sarah Stanistreet, Principal Highways Transformation Officer.

Contact Details: sarah.stanistreet@somerset.gov.uk

### Summary/Background

1. This is to request a decision to award a contract for the Highway Maintenance services to the proposed supplier as per the attached confidential Appendix A for a period of 8 years with the option to extend for a 4 year period. The anticipated contract spend for the full duration is £225m. This paper covers the award of the Term Service Contract for highway maintenance (which includes activities such as grass cutting, gully emptying, drainage works, safety defects repair, patching, signs & lines, winter service and emergency (out of hours) services. A further Executive Decision is currently timetabled for November 2023 to award further separate contracts for Surfacing, Surface Treatments, New Asset Delivery and Maintenance of Highway Lighting & Electrical Assets
2. Somerset Council's current Highways Term Maintenance Contract (TMC) runs for 7 years to the end of March 2024 with the opportunity of three separate further one-year extensions enabled by good performance in achieving contract key performance indicators. The performance requirements which would enable an extension of the contract have not been met. Therefore, under the terms of the contract the existing Highways TMC is due to finish on 31st March 2024 and a new contract or set of contracts will need to be in place on 1st April 2024 to ensure that the Council can continue to deliver essential statutory highway maintenance services (in its capacity as Highway Authority), and construct new small and medium sized new asset schemes (such as safety schemes and infrastructure funded by the Bus Service Improvement Plan, and Active Travel programmes).

## Recommendations

### 3. The Executive

- a. Approves the award of an 8 year contract with the option of a four year extension to Supplier B as identified in the attached confidential Appendix A; for the provision of Highway Maintenance services from 1<sup>st</sup> April 2024.
- b. Delegates the future decision regarding the extension of the contract beyond its initial term of 8 years to the Executive Lead Member or equivalent responsible for Highways Services having due regard to the contract terms.
- c. Agrees that Appendix A be treated confidence, as the case for the public interest in maintaining the exemption outweighs the public interest in disclosing that information.
- d. Agrees to exclude the press and public from the meeting where there is any discussion at the meeting regarding exempt or confidential information (Appendix A).

### Reasons for recommendations

4. The proposed supplier offers best value to the Council, in terms of quality and price in accordance with the published evaluation model.
5. Appendix A contains exempt information. "Exempt Information" is defined by Section 100 of the Local Government Act 1972 and by Schedule 12A to that Act. The information in Appendix A is exempt information because it is considered to fall within paragraph 3 of Schedule 12A; "information relating to the financial of business affairs of any particular person (including authority holding that information). The public interest test is then applied and in this instance it is considered that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
6. The contract will deliver Statutory Highway requirements including safety defect repairs, winter service, emergency service, drainage cleansing, vegetation management, and maintenance of road markings and signs.

## Other options considered

7. Alternative delivery options were thoroughly considered in the earlier commissioning stages of the process, as set out in the 'Highway Service Delivery Options Review (Sept 2020)' which utilised a standardised Future Highways Research Group options toolkit to consider a range of in-house, outsourced and arms-length delivery models. The review concluded that we should continue to utilise highways contracts for elements of service delivery beyond March 2024 whilst strengthening our in-house asset management team.

## Links to Council Plan and Medium-Term Financial Plan

8. The contract will help achieve the Council Plan 2023-27 vision and priorities, in particular the priority for a greener, more sustainable Somerset which notes the importance of reducing carbon emissions from transport; a fairer Somerset which requires a well-maintained highway network to enable access to basic services such as employment, education and healthcare; and a flourishing & resilient Somerset which requires a well-maintained highway network to enable economic activity such as movement of goods.
9. The Medium-Term Financial Planning (MTFP) process is currently considering the cost pressure of maintaining current levels of service under the new contract taking into account the newly tendered rates. The new contract does not have any minimum spend thresholds, so the amount of activity delivered through the contract can be tailored to available budgets at any point in time and can reflect the outcome of the MTFP process each year via the agreement of an annual plan with the contractor.

## Financial and Risk Implications

10. There is a likelihood that the new contract will result in increased rates for capital and revenue highways activity from April 2024 onwards since the previous procurement process (2017) included a pricing mechanism which sought to keep rates for revenue funded services at a level that did not exceed that of the previous contract awarded in 2010. Whilst every effort has been taken through the procurement process to incentivise and achieve the best possible rates the market can offer; it would be unrealistic to assume that the rates awarded in 2010 can still be matched in 2024. A lessons learned review has also concluded that

seeking to achieve artificially low rates at the outset of a new contract can lead to a challenging commercial relationship and significant cost claims once in-contract. A contract that is commercially sustainable for the contractor is more likely to lead to a collaborative and innovative relationship that can add real value to delivery of highway services.

11. The key risk is that an increase in rates could lead to reductions in service levels and a failure to achieve published intervention levels (such as fixing safety defects within the period of time that is set out in our policies), which carries an associated risk of increased personal injury claims. The MTFP process will need to consider options to accommodate an increase in rates in the context of the available capital and revenue budgets including options such as reducing funding for activity elsewhere, reducing the annual programme of work delivered through the contracts, and if necessary, reducing published service levels on revenue funded routine maintenance activity.

The following financial pressures associated with the new contract scope and terms are being considered within the MTFP process: Loss of income for Highways Depot Rent £284,600; Rebate £128,000; 5% contract inflation on revenue works £216,000; 12% Contract Price List Fluctuation £544,000.

In the event that service levels and intervention criteria need to change to work within available budgets, then the risk of increased cost claims can be mitigated by updating the intervention criteria set out in the highway safety inspection manual. It is considered that the risk of not awarding this contract at this stage is greater given that the Council would then have no service delivery arrangements in place to continue to deliver statutory maintenance services beyond March 2024.

<b>Likelihood</b>	<b>3</b>	<b>Impact</b>	<b>3</b>	<b>Risk Score</b>	<b>9 (Med)</b>
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### **Legal Implications**

12. This decision will enable the Council to continue to deliver its statutory highway services. Consultation with Legal Services and Commercial & Procurement Services started in 2021. These services have supported the development of this contract through to this recommendation report. Specialist external Legal Services were engaged when deemed necessary by the Council's Legal Team.
13. A compliant procurement process has been undertaken to enable a contract award to be made to the successful tenderer.

## HR Implications

14. Any change in contractor will involve consideration of Transfer of Undertakings (Protection of Employment) (TUPE) Regulations 2006. Advice has been sought and provided from the HR Team with ongoing engagement. The new contracting model will involve in-sourcing of some functions which are currently undertaken by the contractor, and there are TUPE processes to undertake as part of the demobilisation and mobilisation process. The highways service organisational structure and business processes will also need to adapt to reflect the changes in the model of service delivery.

## Other Implications:

### Equalities Implications

15. The Somerset Equality Impact Assessment is appended to this report. Highway maintenance contracts can have various equality implications, and it is essential for Somerset Council and its contractors to consider and address these implications to ensure fairness, non-discrimination, and inclusivity. These have been considered and addressed through the commissioning and procurement phase, the demobilisation of the current contract, and mobilisation of the new contracts. Some of the key equality implications considered include:
  - **Equal opportunity in contracting:** When awarding highway maintenance contracts, Somerset Council has ensured fair and equal opportunities for all potential contractors, regardless of their size, ownership, or previous contracting experience. This has served to avoid discriminatory practices that favour certain groups or companies which can lead to inequalities in the distribution of public contracts.
  - **Supplier diversity:** Encouraging supplier diversity in highway maintenance contracts can have positive equality implications. Somerset Council has provided no barriers for main contractors or suppliers owned by minorities, women, veterans, or other underrepresented groups as contractors or subcontractors. Whilst further work will be necessary after contract award, the Council is committed to promote economic inclusion and help reduce disparities in contracting opportunities.
  - **Fair employment practices:** Contractors are required to follow fair employment practices, including non-discrimination policies, equal pay for

equal work, social inclusion, and reasonable accommodation for individuals with disabilities. These policies, sponsored through social value initiatives, will promote equality among workers and ensure a diverse and inclusive workforce.

- **Accessibility and inclusivity:** Highway maintenance contracts should include provisions for accessibility and inclusivity, such as designing and maintaining roads and infrastructure to accommodate individuals with disabilities. The Council will be assuming the design function as part of the procurement process so a more integrated, and community-driven approach through Local Community Networks, will be advocated.
- **Environmental justice:** The Council will ensure that highway maintenance projects do not disproportionately impact communities as reasonably practicable. Scheme development will assess the potential environmental and health impacts of maintenance activities and mitigate any adverse effects on vulnerable communities.
- **Community engagement:** Somerset Council will involve the local community, especially underrepresented groups, in the decision-making process for highway maintenance projects. The Local Community Networks together with highway and traffic representatives will ensure that their concerns and needs are considered during planning and implementation.
- **Monitoring and reporting:** Through highway contract mobilisation, Somerset Council and its contractors will agree and establish mechanisms for monitoring and reporting on equality-related metrics throughout the duration of the contracts. This may include tracking the diversity of the workforce, adherence to fair employment practices, social value, and any environmental justice concerns.
- **Training and awareness:** The Council requires its contractors and subcontractors to provide training on diversity, equity, and inclusion to their employees working on the project. This helps foster a more inclusive work environment and reduces the potential for discrimination. This has been evaluated as part of the procurement process.
- **Dispute resolution mechanisms:** The Council, working in collaboration with its contractors, will establish clear dispute resolution mechanisms in case issues related to equality and discrimination arise during the contract's execution. This will allow for a fair and timely resolution of conflicts.

## Community Safety Implications

16. The implications for community safety have been considered and as the decision is to award a replacement contract this represents no change. The responsibility for policy and direction of services remains with the Council.
17. The implications for the public's perception of crime and disorder and anti-social behaviour rates in their neighbourhood in Somerset. The implications have been considered and as the decision is to award a replacement contract this represents no change. The responsibility for policy and direction of services remains with the Council.
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### **Climate Change and Sustainability Implications**

19. It is hard-wired into the contract that there will be at least a 50% reduction in carbon emissions over 8 years. This contract will collaborate with other Highway contracts via the Highways Contracts Collaborative Board. The carbon emissions in this contract will be baselined in year 1 and monitored using the Future Highways Research Group (FHRG) Carbon Calculation & Accounting Standard & Carbon Analyser (CCAS).
20. Key areas where decarbonisation will be achieved are as follows:
  - All vehicles up to and including 3.5 tonnes GVW must be EV within 18 months of the start of the contract. By moving to electric vehicles for 3.5 tonnes and under (and indeed much of the larger vehicle stock), and possibly moving to other alternative fuels for larger vehicles, there will be a significant reduction in vehicle emission pollution.
  - There is an emphasis on recycling to reduce waste, reduce carbon emissions and lessen the use of virgin materials such as aggregates which will reduce the demand on quarry products.
  - The contract will focus on reducing climate change factors by considering commuting to work, travel at work, processes and materials as these all form part of the Scope 3 Emissions that are actively monitored in this contract.
21. Continuing to maintain the highway will have no effect on the council's ability to meet the Local Development Framework.

## **Health and Safety Implications**

22. Health and safety implications have been considered. The new contract includes specific health and safety requirements for the contractor.
23. The highways construction and maintenance sector places considerable importance on the health and safety of the workforce and communities and customers.
24. The contractor's approach to health and safety was scored as part of the tender evaluation process and the successful tendered met the requirements set out.

## **Health and Wellbeing Implications**

25. Health and wellbeing implications have been considered and the contract presents no adverse impacts on health and wellbeing. The High Maintenance services provided through the contract include maintaining routes used for active travel.

## **Social Value**

26. The tender process required contractors to propose Social Value commitments in line with the Themes Outcomes Measures approach and the social value benefits associated with the proposed contractor are discussed in the confidential Appendix A

## **Scrutiny comments / recommendations:**

27. Scrutiny considered the procurement strategy and are content that the award of the contract proceeds.

## **Background**

28. A great deal of preparatory work has been undertaken through the stages of the commissioning cycle to date including:
  - Financial analysis of spend through the contract (June 2021).
  - Value for money review to establish a benchmarked value for money position compared to other authorities for current highway service/ contract delivery and improvement priorities. (issued June 2021)
  - Lessons-learned review in respect of procurement and delivery of the current highways contract. This covered overall approach and outcomes, commercial



and contract, service delivery, fleet maintenance and new asset delivery (April 2021).

- Highway service delivery options review utilising a standardised Future Highways Research Group options toolkit. (issued Sept 2020).
- Internal scoping workshop to consider the preferred shape and scope of a replacement term maintenance contract. (July 2021).
- Highway services market analysis undertaken by DMSqd independent highways services consultancy. (issued August 2021).

29. In October 2021 the Project Board approved a new procurement strategy, based on the above, for replacing the current arrangements by dividing the Term Maintenance Contract activity into 4 separate contracts, (Term Maintenance Service, Surfacing, Surface Treatments, and New Assets Delivery). A separate related contract for maintenance of highway lighting and electrical assets is also being progressed.
30. A Non-Key Decision was taken in November 2021 authorising commencement of a procurement process and market engagement activity, and to appoint Mills & Reeve as legal advisors to support the creation of contract Terms and Conditions under the Framework 'Wider Public Sector Legal Services RM3788'.
31. In January 2022 a Prior Information Notice (PIN) Market Engagement – Highways Maintenance Future Requirements was published. In February 2022 a virtual Market Engagement event was held. During March and April 2022, a total of 21 one-to-one sessions were held with the industry to test and refine the procurement strategy prior to preparing detailed contract documents.
32. In June 2022 Hampshire County Council (HCC) undertook a peer review of the draft contract documentation which informed the programming, production and content of the contract documents from then on.
33. The negotiation stage of the procurement process enabled further feedback from potential contractors on final changes to the contract documentation which enabled contractors to optimise their proposals and associated value for money.
34. No public consultation has taken place since the contract is simply a replacement mechanism to deliver existing highway maintenance activities which are set out in published service policy and standards.
35. The agreed procurement approach aims to:

- Take more control over the design and delivery of the highways maintenance programmes, taking a stronger client asset management approach and determining the most appropriate standards and locations for treatment.
  - Develop a more direct relationship with the supply chain, reducing outsourced management of sub-contractors and enabling direct discussion about potential innovation.
  - Provide a more bespoke arrangement for delivery of new asset schemes (such as small and medium sized improvement schemes) to give greater cost predictability.
  - Where possible incorporate specification of a wider range of Unitary Council public realm maintenance services rather than solely highway related services (e.g., by widening the highway lighting contract to incorporate all illuminated and electrical assets) and allow flexibility for a wider range of relevant Unitary Council public realm maintenance services to be delivered through these contracts over time.
  - Include explicit requirements for at least a 50% reduction in carbon emissions over the lifetime of the contracts through an agreed climate change plan.
36. Following the preparation and review of contract documents including the scope of works, contract terms and evaluation process; an Invitation to Submit Initial Tenders (ISIT) for a new Term Service Contract for highway maintenance was issued on 12<sup>th</sup> December 2022, with initial tenders received 20<sup>th</sup> April 2023. A competitive with negotiation procedure was used to enable negotiation on specific issues prior to submission of final tenders. An Invitation to Submit Final Tenders (ISFT) was issued on 24<sup>th</sup> July 2023; with final tenders received 18<sup>th</sup> August 2023.

## **Background Papers**

Non-Key Decision to commence procurement of highways contracts Nov 2021

## **Appendices**

- Appendix A – Confidential Tender Evaluation Report

## Report Sign-Off

	Officer Name	Date Completed
Legal & Governance Implications	David Clark	21/09/23
Communications	Peter Elliot	22/09/23
Finance & Procurement	Jason Vaughan/ Nicola Hix	25/09/23
Workforce	Alyn Jones	21/09/23
Asset Management	Oliver Woodhams	25/09/23
Executive Director / Senior Manager	Mickey Green	19/09/23
Strategy & Performance	Alyn Jones	21/09/23
Executive Lead Member	Cllr Mike Rigby, Executive Lead Member for Transport and Digital	11/09/23
<b>Consulted:</b>		
Local Division Members	All	
Opposition Spokesperson	Cllr Diogo Rodrigues, opposition Spokesperson for Transport.	21/09/23
Scrutiny Chair	Cllr Martin Dimery, Chair of Scrutiny for Climate and Place	25/09/23