

Somerset Council
Scrutiny Committee
– 20th September 2023



Award of contracts for highways services

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Division / Local Member: All

1. Summary

1.1. The Executive Committee will shortly be considering the award of a new suite of highways related contracts and this Scrutiny paper and associated presentation outline the overall approach in advance of completing the procurement process:

- An NEC4 Surfacing Term Service Contract for a period of 4 years with the option to extend for a fixed 4-year period. The anticipated contract spend for the full duration is £50m.
- An NEC4 Surface Treatments Term Service Contract for a period of 4 years with the option to extend for a fixed 4-year period. The anticipated contract spend for the full duration is £50m.
- An NEC4 New Assets Framework Contract for a period of 4 years. The anticipated contract spend for the duration is £20m to £40m.
- An NEC4 Term Service Contract for Highway Maintenance for a period of 8 years with the option to extend for a fixed 4-year period. The anticipated contract spend for the full duration is £225m.
- An NEC4 Term Service Contract for Highway Lighting, Illuminated & Electrical Assets for a period of 8 years with the option to extend for a fixed 4-year period. The anticipated contract spend for the full duration is £15m to £30m or £60m to £75m depending on the Highway Lighting Assets previously owned by the four District Councils.

1.2. This Report links directly to pages 8, 10 and 14 of the Somerset Council Plan 2023 – 2027.

2. Issues for consideration / Recommendations

- 2.1.** The procurement process looks to offer best value to the Council, in terms of quality and price.
- 2.2.** The purpose of this Scrutiny meeting is an information session in advance of completing the procurement process.

3. Background

- 3.1.** 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 one-year extensions enabled by good performance in achieving contract key performance indicators. The contractor (Milestone) has not met the performance requirements which would enable extension of the contract. 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 the small improvement schemes, and safety schemes programmes).
- 3.2.** 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).
- 3.3.** 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, (Surfacing, Surface Treatments, New Assets and Term Maintenance), and agreed the

proposed scope of the contracts to be taken forward to the Market Engagement stage.

A network that is adapted and resilient to climate change with a reduced carbon output, both in usage and maintenance, to contribute to the commitment for Somerset to be carbon neutral by 2030

A safe, serviceable and sustainable network that is fit for purpose for all users under all conditions and supports the development of the local economy

A service based on the intelligent client model that develops and sustains collaborative partnerships that deliver the objectives of all partners

A flexible and agile service that attracts and retains the best people and embraces best practice and new technologies to enable innovation

Sustain a financially resilient service that adopts robust asset management principles and delivers best value with the resources available

Optimise service efficiency and maximise income from commercialisation and external funding

A service that maximises social value and provides valuable local opportunities for individuals and businesses

An informed community that has high public satisfaction and is engaged and enabled to do more for themselves

3.4. In light of the strategic objectives, the Council has resolved 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.

- 3.5.** A Non-Key Decision was taken in November 2021 authorising commencement of a procurement process and market engagement activity to replace the current Highways Term Maintenance contract by April 2024, 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’.
- 3.6.** In December 2021 a Non-Key Decision was taken to commence a procurement process and market engagement activity to replace the current Highway Lighting Term Maintenance contract by April 2024. In January 2022 the Project Board agreed to include this under the same governance and procurement process as the 4 Term Maintenance replacement contracts
- 3.7.** The market engagement process took place in early 2022 to test and refine the procurement strategy prior to preparing detailed contract documents.
- 3.8.** Following the preparation and review of contract documents including the scope of works, contract terms and evaluation process; invitations to tender were issued as follows:
- Highway Maintenance Contract:
 - Initial ITT issued 12th December 2022; tenders received 20th April 2023. This uses a competitive with negotiation procedure that allows negotiation on specific issues if beneficial prior to submission of final tenders, but also allows award based on the initial tender at the Council’s discretion. Following review of initial tenders, it is recommended that the Council proceed with the negotiation procedure.
 - Final ITT issued 24th July 2023; tenders received 18th August 2023.
 - Highway Surface Treatments Contract: ITT issued 23rd June 2023; tenders received 18th August 2023.
 - Highway Surfacing Contract: ITT issued 23rd June 2023; tenders received 1st September 2023.

- Highway Lighting illuminated and Electrical Assets: ITT issued 23rd June 2023; tenders received 15th September 2023.
- Highway New Assets Contract: ITT issued 14th July 2023; tenders received 22nd September 2023.

4. Consultations undertaken

- 4.1.** 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.

In June 2022 Hampshire County Council (HCC) were invited to carry out a peer review of the draft contract documentation.

Advance information was provided to HCC and three representatives visited County Hall, Taunton for three days between 28th and 30th June. They met with Somerset staff who updated them on the process to date and went through the draft tender contract documentation in more detail.

At the end of the three days, a “hot debrief” was held and HCC reported their observations to the Somerset group. This helpful information then fed into the programming, production and content of the contract documents from then on.

- 4.2.** In October 2022 a Prior Information Notice (PIN) Highway Lighting – Market Engagement – Somerset Illuminated Assets – Term Maintenance Contract was published. In November 2022, a total of 7 one-to-one sessions were held with the industry.

5. Implications

- 5.1.** These contracts will be the key contracts for most of the Council’s external spend on highway maintenance and the construction of smaller new highway asset schemes and will be an option for wider unitary Council spend, for instance in areas of public realm.
- 5.2.** There is a likelihood that the new contracts from 2024 will result in increased rates for capital and revenue highways activity since the previous procurement process (2017) included a price hurdle which sought to keep revenue rates in particular at a level that did not exceed that of the previous contract awarded in 2010.

- 5.3.** 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.
- 5.4.** 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.
- 5.5.** The MTFP process in the lead-up to award of the new contract will need to take account of financial modelling for the new contract which will emerge from the tender process. The MTFP process will need to consider options to accommodate an increase in rates in the context of the available capital and revenue budgets at the time including options such as reducing funding for activity elsewhere, reducing the annual programme of work delivered through the contracts, and reducing service levels on revenue funded routine maintenance activity.
- 5.6.** 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.

6. Appendices

- 6.1.** Appendix A - Decision Report – Non-Key Decision, Decision Date 21/12/21
Appendix B - Decision Report – Non-Key Decision, Decision Date 12/11/21
Appendix C – Scrutiny Committee Presentation

Note For sight of individual background papers please contact the report author