

Decision Report - Executive Decision

Forward Plan Reference: FP/23/07/12

Decision Date – 8 November 2023

Key Decision – Yes



Award of contract for highways services

Executive Member(s): Executive Lead Member for Transport and Digital

Local Member(s) and Division: All

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

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Summary/Background

1. This is to request a decision to award three contracts for Highway Surfacing, Highway Surface Treatments, and Highway New Assets, to the proposed suppliers as per the attached confidential Appendices A, B and C.

1.1 Highway Surface Treatments services

The contract is for a period of 4 years with the option to extend for a 4 year period. The anticipated contract spend for the full duration is £50m (which includes activities such as Carriageway surface dressing, thin overlay microsurfacing, footway crack sealing, ironwork strengthening & support, footway slurry sealing, preparatory drainage, patching & cleaning, post surfacing road markings, studs & high friction surfacing).

1.2 Highway Surfacing services

The contract is 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 (which includes activities such as carriageway surfacing, reconstruction, preparatory drainage & footway, post surfacing road markings, studs & high friction surfacing).

1.3 Highway New Assets services

The framework contract is for a period of 4 years. The anticipated contract spend for the duration is £20m to £40m (which includes activities such as safety

improvements & traffic calming, junction improvements, active travel, public transport mobility hubs, electric vehicle infrastructure, third party default works).

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 a 4 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 Surface Treatments services from 1st April 2024.
- b. Approves the award of a 4 year contract with the option of a four year extension to Supplier B as identified in the attached confidential Appendix B; for the provision of Highway Surfacing services from 1st April 2024.
- c. Approves the award of a framework contract for a period of 4 years to Supplier D as identified in the attached confidential Appendix C; for the provision of Highway New Assets services from 1st April 2024.
- e. Delegates the future decision regarding the extension of the contracts beyond their initial term to the Executive Lead Member or equivalent responsible for Highways Services having due regard to the contract terms.

f. Agrees that Appendices A, B and C be treated in confidence, as the case for the public interest in maintaining the exemption outweighs the public interest in disclosing that information.

g. Agrees to exclude the press and public from the meeting where there is any discussion at the meeting regarding exempt or confidential information (Appendices A, B and C).

Reasons for recommendations

4. The proposed suppliers offer best value to the Council, in terms of quality and price in accordance with the published evaluation models.
5. Appendices A, B and C contain 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 Appendices A, B and C 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 contracts will deliver Statutory Highway requirements including carriageway surfacing, carriageway surface dressing & other surface treatments.

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 contracts 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 services under the new contracts taking into account the newly tendered rates. The new contracts do not have any minimum spend thresholds, so the amount of activity delivered through the contracts 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 contractors.

Financial and Risk Implications

10. There is a likelihood that the new contracts 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, 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.

The budget for Surfacing and Surface Treatments is capital funding, predominantly from DfT: The proposed contracts include the following financial changes which the capital programme will need to account for:

- Surfacing capital works: 5% contract inflation and 9% Contract Price List Fluctuation.
- Surface treatments capital works 5% contract inflation and -25% Contract Price List Fluctuation.

The budget for New Assets is capital funding, from DfT and other sources and varies according to the nature of DfT funding programmes and competitive grants that have been secured. Schemes delivered under the current maintenance contract were usually costed individually by sub-contractors so there is no direct comparison possible with the new rates. The move to a set of agreed rates for items of work will now allow more surety of outturn costs for each scheme.

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 these contracts 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.

Likelihood	3	Impact	3	Risk Score	9 (Med)
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Legal Implications

12. These decisions 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 these contracts through to this recommendation report. Specialist external Legal Services were engaged when deemed necessary by the Council’s Legal Team. A compliant procurement process has been undertaken to enable a contract award to be made to the successful tenderers.

13. The situation regarding Somerset Council property for these three contracts is as follows:
- **Surface Treatments:** Somerset Council owned chipping landings. The tender documents state that Somerset Council makes available to the surface treatments contractor a number of chipping landings across Somerset. As part of the mobilisation for this new contract, the new surface treatments contractor will inform Somerset Council which, if any, of these landings it intends to use in connection with providing the service. Once this list has been confirmed, then a Licence to Occupy will be compiled and signed to cover this.
 - **Surfacing:** No Somerset Council property involved.
 - **New Asset Delivery:** No Somerset Council property involved.

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 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 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 contracts, and mobilisation of the new contracts. Some of the key equality implications considered include:
- **Equal opportunity in contracting:** When awarding highway 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 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 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 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 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 replacement contracts 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 replacement contracts 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 contracts that there will be up to a 50% reduction in carbon emissions over 4 to 8 years. These contracts 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 contracts for the surfacing and surface treatments contracts. 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 contracts 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 these contracts.

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 contracts include specific health and safety requirements for the contractors.

23. The highways construction and maintenance sector places considerable importance on the health and safety of the workforce and communities and customers.

24. The contractors' approach to health and safety was scored as part of the tender evaluation process and the successful tenderers met the requirements set out.

Health and Wellbeing Implications

25. Health and wellbeing implications have been considered and the contracts present no adverse impacts on health and wellbeing. The Highway services provided through the contracts 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 contractors are discussed in the confidential Appendices.

Scrutiny comments / recommendations:

27. Scrutiny considered the procurement strategy and are content that the award of the contracts proceed.

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. No public consultation has taken place since the contracts are simply a replacement mechanism to deliver existing highway activities which are set out in published service policy and standards.
34. The agreed procurement approach aims to:
- Take more control over the design and delivery of the highways 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 up to 50% reduction in carbon emissions over the lifetime of the contracts through an agreed climate change plan.
35. Following the preparation and review of contract documents including the scope of works, contract terms and evaluation process; an Invitation to Tender (ITT) for a new Surface Treatments contract was issued on 23rd June 2023, with final tenders received 18th August 2023; an Invitation to Tender (ITT) for a new Surfacing contract was issued on 23rd June 2023, with final tenders received 1st September 2023; an Invitation to Tender (ITT) for a New Assets framework contract was issued on 14th July 2023, with final tenders received 6th October 2023.

Background Papers

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

Appendices

- Appendices A, B and C – Confidential Tender Evaluation Reports

Report Sign-Off

	Officer Name	Date Completed
Legal & Governance Implications	David Clark	31/10/23
Communications	Peter Elliot	26/10/23
Finance & Procurement	Jason Vaughan/ Nicola Hix	31/10/23
Workforce	Alyn Jones	31/10/23
Asset Management	Charlie Field on behalf of Oliver Woodhams	30/10/23
Executive Director / Senior Manager	Mickey Green	30/10/23
Strategy & Performance	Alyn Jones	31/10/23
Executive Lead Member	Cllr Mike Rigby, Executive Lead Member for Transport and Digital	18/10/23
Consulted:		
Local Division Members	All	
Opposition Spokesperson	Cllr Diogo Rodrigues, opposition Spokesperson for Transport.	22/10/23
Scrutiny Chair	Cllr Martin Dimery, Chair of Scrutiny for Climate and Place	18/10/23