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Decision Report - Non-Key Decision

Decision Date - 12/11/21



NON-KEY DECISION TAKEN BY THE DIRECTOR FOR ECONOMIC AND COMMUNITY INFRASTRUCTURE COMMISSIONING

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Highways and Transport / 01823 356238

Details of the decision:

That the Director of Economic and Community Infrastructure Commissioning:

- Authorises commencement of a procurement process and market engagement activity to replace the current Highways Term Maintenance contract by April 2024.
- Appoint Mills & Reeve as legal advisors to support creation of contract Terms and Conditions under the Framework 'Wider Public Sector Legal Services RM3788' to a maximum value of £200k (noting that the cost incurred under this contract is likely to be of the order of £100k-£150k).

Reasons for the decision:

Somerset County 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 the 31st March 2024 and a new contract or set of contracts will need to be in place on the 1st April 2024 to ensure that the Council can continue to deliver essential highway maintenance services and construct new small and medium sized new asset schemes (such as the small improvement schemes, and safety schemes programmes).

Background to the decision:

Background

Skanska was awarded current the Highway Term Maintenance contract which commenced in April 2017 following a competitive procurement process. The contract subsequently transferred to Milestone in 2021 who acquired the Skanska highways business. The approximate annual value is circa £30m although this varies according to the available budget, with government grants tending to fluctuate significantly on an annual basis. The scope of the contract covers a wide range of capital (construction) and revenue (service

based) highway maintenance activity including winter and emergency service; and includes design services and construction of certain smaller new asset schemes.

Under the terms of the contract, it is due to finish on the 31st March 2024 and a new contract or set of contracts will need to be in place on the 1st April 2024.

A great deal of preparatory work has been undertaken through the stages of the commissioning cycle to date including:

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

A detailed project programme has been developed to undertake the procurement process between now with invitation to tender programmed for August 2022 and contract award targeted for September 2023 in order to enable mobilisation by April 2024. Resources are currently being put in place to support this programme within commissioning, commercial & procurement and highways operations. Engagement and input will also be needed from finance and HR services with TUPE issues likely to need HR resource at the relevant point in the process.

The next stage is to undertake a Market Engagement process with contractors in the Highways Sector to validate our assumptions regarding the preferred scope and formulation of contracts for effective delivery of highway maintenance services and delivery of new highway assets beyond 2024. This decision will enable the Market Engagement stage to commence shortly.

External expert legal support is required to prepare the legal contract documentation and having reviewed options it is proposed to appoint the firm Mills and Reeve who have substantial experience on advising the Council on highways contract matters. A compliant route to market to appoint Mills and Reeve is through the framework 'Wider Public Sector Legal Services RM3788' which is available to the Council and enables a direct award for services up to £200k value. Additional top-up resource from technical consultancies may well also be needed via existing frameworks for discrete elements of subject matter expertise.

Financial, legal and business risk implications.

The Medium Term Financial Plan (MTFP) has allocated £100k in 21/22 and indicatively £200k in 22/23 (subject to approval by Members in February 2022) to undertake this activity and this along with current vacancy underspends in highways and transport commissioning for 21/22 (circa £90k) is currently considered sufficient financial resource to undertake the procurement process.

There is a likelihood that the new contract 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. Whilst every effort will be 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. The 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 allows an appropriate profit margin for the contractor is more likely to lead to a collaborative and innovative relationship that can add real value to delivery of highway services. 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.

The new contract is likely to lead to a limited insourcing of some functions which are currently undertaken by the contractor and there will likely be TUPE processes to undertake as part of the demobilisation and mobilisation process. The highways service organisational structure is also likely to need to adapt to reflect the changes in the model of service delivery.

‘Due regard’ considerations.

Consideration has been given to people with protected characteristics. Whilst this work is at a very early stage with a decision to commence the procurement stage, an initial review has identified potentially positive outcomes as follows:

- Continued delivery of a well-maintained highway which if not maintained would present risks (such as trip hazards on footways) to older people and people with disabilities.
- Continued delivery of a well-maintained highway which is essential in providing rural areas with access to essential services.

Links to the County Vision, Business Plan.

The new highways contract or contracts will have strong links to the following business plan outcomes:

- A county infrastructure that drives recovery, supports economic prosperity, productivity and sustainable public services.

- Safe, vibrant and well-balanced communities, able to enjoy and benefit from the natural environment whilst addressing climate change.

Alternative options considered and rejected.

- Options around the timing of this procurement process have been considered and it has been concluded that, given the terms of the current contract, if we wish to use a contract for highway service delivery beyond March 2024 than we have a legal responsibility to undertake a compliant procurement process.
- Many options have been considered regarding delivery options for highway services as set out in the commissioning work referred to above. The work concludes that we should continue to utilise highways contracts for elements of service delivery beyond March 2024. The market engagement work triggered by this decision will enable us to complete the procurement strategy and finalise the shape and scope of contracts to be procured, and take a formal decision on these matters under the Councils scheme of delegation.

Background papers:

None.

Compliance section:

Members consulted; members informed :	Yes
Officer consultations completed:	Yes
Senior (including statutory) officer sign off completed	Yes
Public / other consultations undertaken	Not considered necessary
Do you have sufficient budget or additional funding available and approval to commit this budget or funding and has this been confirmed with the appropriate Finance Service or Strategic Manager?	Yes
Are there any legal considerations to be made?	Yes
Has Legal Services been consulted (specific requirement for changes in service delivery, procurement, contracts or property matters?	Yes
Are there any TUPE implications arising?	Yes
Has HR/OD been consulted?	Yes
Is the decision likely to lead to a procurement exercise or contract award / change ?	Yes
Has the Commercial and Procurement Team been consulted?	Yes
Strategic Commissioning Group consulted for commissioning ?	Yes
Are there any risks arising? (liaise with Pam Pursley regarding these below.	Yes – see below.
Have mitigating actions already been taken?	Yes
Have all Due Regard (equalities) implications been considered? (liaise with Tom Rutland regarding these)	Yes
If ticked 'No' or 'not considered necessary' for any of the above, please provide your justification below:	

Public consultation: Public consultation with respect to the contractual form of service delivery is not considered necessary or appropriate.

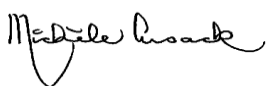
Risks: Risk in commencing the procurement process has been carefully considered and the key risk identified is the impact on other highways activity in directing staff capacity at this project. The project board to director level considers that as there is no choice but to undertake this activity, the risks should be monitored and managed appropriately. A specific risk in relation to the commercial management of the existing contract has been identified and will be monitored whilst there is reduced capacity in that area (for approximately 3 months).

Member consultation completed:	Name(s)	Date
Relevant local County Councillors consulted where decision directly affects their Division	Not Applicable.	
Relevant Cabinet Member(s) consulted (if applicable)	Cllr John Woodman – Cabinet Member for Highways and Transport	05/11/21
Opposition Spokesperson informed (if applicable)	Cllr Mike Rigby – Opposition Spokesperson.	11/11/21
Chairman of relevant Scrutiny informed (if applicable)	Cllr Anna Groskop for Scrutiny Place	11/11/21

Decision Maker

I am aware of the details of this decision, have considered the reasons, options, representations and consultation responses (where applicable) and give my approval / agreement to its implementation.

Signed by relevant SLT Director:



Name: Michele Cusack.

Post: Director Economic and Community Infrastructure Commissioning

Date: 15.11.21

Note – a copy of this signed decision should be sent to Scott Wooldridge, Monitoring Officer, Democratic Services

Somerset Equality Impact Assessment

Before completing this EIA please ensure you have read the EIA guidance notes – available from your Equality Officer

Version	1	Date	05/11/21
Description of what is being impact assessed			
Decision to commence procurement of a new highways contract or contracts.			
Evidence			
<p>What data/information have you used to assess how this policy/service might impact on protected groups? Sources such as the Office of National Statistics, Somerset Intelligence Partnership, Somerset's Joint Strategic Needs Analysis (JSNA), Staff and/ or area profiles,, should be detailed here</p>			
Professional judgement on typical impacts of highways service activity.			
Who have you consulted with to assess possible impact on protected groups? If you have not consulted other people, please explain why?			
None. Initial decision to commence procurement activity so consultation with protected groups not appropriate at this stage.			

Analysis of impact on protected groups

The Public Sector Equality Duty requires us to eliminate discrimination, advance equality of opportunity and foster good relations with protected groups. Consider how this policy/service will achieve these aims. In the table below, using the evidence outlined above and your own understanding, detail what considerations and potential impacts against each of the three aims of the Public Sector Equality Duty. Based on this information, make an assessment of the likely outcome, before you have implemented any mitigation.

Protected group	Summary of impact	Negative outcome	Neutral outcome	Positive outcome
Age	<ul style="list-style-type: none"> New contract will enable continued delivery of a well-maintained highway which if not maintained would present risks (such as trip hazards on footways) to older people. 	☐	☐	☒
Disability	<ul style="list-style-type: none"> New contract will enable continued delivery of a well-maintained highway which if not maintained would present risks (such as trip hazards on footways) to people with disabilities. 	☐	☐	☒
Gender reassignment	<ul style="list-style-type: none"> None identified. 	☐	☒	☐
Marriage and civil partnership	<ul style="list-style-type: none"> None identified 	☐	☒	☐
Pregnancy and maternity	<ul style="list-style-type: none"> None identified 	☐	☒	☐

Race and ethnicity	<ul style="list-style-type: none"> None identified 	□	⊗	□
Religion or belief	<ul style="list-style-type: none"> None identified 	□	⊗	□
Sex	<ul style="list-style-type: none"> None identified 	□	⊗	□
Sexual orientation	<ul style="list-style-type: none"> None identified 	□	⊗	□
Other, e.g. carers, veterans, homeless, low income, rurality/isolation, etc.	<ul style="list-style-type: none"> New contract will enable continued delivery of a well-maintained highway which is essential in providing rural areas with access to essential services. 	□	□	⊗

Negative outcomes action plan

Where you have ascertained that there will potentially be negative outcomes, you are required to mitigate the impact of these. Please detail below the actions that you intend to take.

Action taken/to be taken	Date	Person responsible	How will it be monitored?	Action complete
None	Select date			□
	Select date			□
	Select date			□

	Select date			<input type="checkbox"/>
	Select date			<input type="checkbox"/>
	Select date			<input type="checkbox"/>
	Select date			<input type="checkbox"/>
	Select date			<input type="checkbox"/>

If negative impacts remain, please provide an explanation below.

N/A

Completed by:	Mike O'Dowd-Jones
Date	05/11/21
Signed off by:	Mike O'Dowd-Jones
Date	05/11/21
Equality Lead/Manager sign off date:	
To be reviewed by: (officer name)	
Review date:	

(Officer Non-Key Decision between £50k and £499k – [Click **here** and type date])