

Subject:	Highway Works Framework Contract		
Date of Meeting:	21st September 2021		
Report of:	Executive Director Economy, Environment & Culture		
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Ward(s) affected:	All		

FOR GENERAL RELEASE**1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 As highway authority the Council has a statutory duty to main the Highway Asset and to facilitate this, employs a highway contractor to provide the specialist resources, plant and equipment to ensure that this duty is met. The Council also carries out a range of services related to the highway including new projects, lining works and maintenance of other assets. These services are delivered through a number of contracts that are approaching the end of their term.
- 1.2 The report seeks the committee approval to retender the contract which are expiring and incorporate other services into the tender process to improve efficiency.
- 1.3 The authority needs to maintain its assets and aims to reduce the number of claims that the Council receives. The new contract will be designed to support the risk based approach to highway maintenance that was approved at the ETS Committee in March 2021.
- 1.4 A report has been presented to the Procurement Advisory Board on the 6th of September.

2. RECOMMENDATIONS:

- 2.1 That the Committee authorises the procurement of a framework agreement for new highways works and grants delegated authority to the Executive Director Economy, Environments & Culture to enter into call-off contracts in accordance with the terms of that framework agreement.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 The Highways works Framework contract covers a range of services and enables the authority to deliver maintenance and several complex capital schemes that are delivered across the whole City. It enables the Council to be able to respond quickly to funding opportunities and enable sift delivery of projects to meet policy objectives.

3.2 The estimated lifetime value of the contract to be awarded exceeds £1million so will be also presented to the Policy and Resources Committee on the 7th October 2021.

3.3 The current Highway Works and Safety Maintenance Framework Contract has two lots and is used to maintain and improve the City's road network. The highway assets consist of carriageway (624km), footways (975km), cycleways, traffic management systems, signs, and street furniture.

Lot 1 is used to deliver projects across the city funded through the Local Transport Plan. The existing contract spend varies year on year and is approximately £6m per annum in terms of works ordered.

Lot 2 is used to deliver safety maintenance and urgent repairs to the highway. It provides supplementary winter maintenance duties and an emergency call-out provision. This includes approximately 7,000 works tickets annually. The existing contract spend varies year to year and is approximately £1.3m per annum in terms of services provided.

The value of each lot fluctuates depending on the funding available to and within the Council. Approximately 94% of the spend is by City Transport, through other divisions including Bereavement, Development Planning, Royal Pavilion and Museums, City Clean, Regeneration and Financial Services have also delivered works through the existing Highway Works and Safety Maintenance Framework.

3.4 The existing contract will end in April 2022 and cannot be extended any further. It is already used by a range of services, but there is scope to meet the needs of more, so the opportunity has been taken to fully review operational needs for this to inform the development of the new contract. An independent consultant has been commissioned to review the current contract and they have provided support and advice on the shape and scope a proposed new Framework.

3.5 The new contract will support the move to a risk-based approach to highway maintenance that has already been approved by the ETS Committee in March 2021. This strategy focuses the best use of available funding to reduce the Council's liability in relation to claims and targets delivery of maintenance schemes at the area of the highway asset that brings about maximum benefit, using detailed surveys of the condition of the network. The tender process will involve engagement with the private sector to ensure that the contract does deliver value for money.

The new contract will include additional service areas to improve efficiency and reduce procurement costs. Road lining, coastal protection, drainage, and structural maintenance will now be included in the contract.

3.6 It is proposed that the new Highways Works Framework contract for maintaining and improving the highway asset should be developed, tendered and awarded for a 4-year period with 2 possible extensions of 2 years taking the possible total contract period to 8 years. The contract will consist of the following lots:

- Lot1: Highways, coast protection and structures works & improvements (up to 3 suppliers)

- Lot2: Highways Safety Maintenance, operations and small pavement works (single supplier)
- Lot3: Road lining works for Parking Enforcement (single supplier)

The Council's consultant has advised that the rationale for contract award period (4 years plus two possible extensions of two year durations) is intended to provide the standard shortest duration feasible. If the contractor's performance is acceptable performance and they are continuing to provide value for money, the Council will have the opportunity to extend the contract as encouraged by the Government's Construction Playbook. This states that "the length and size of individual contracts should be designed for specific markets with suitable break points and clear contractual obligations to drive continuous improvement in safety, time, cost and quality".

The previous framework also had extension periods built into the contract and the extension periods will allow the council to drive value for money when they are due. They allow a review of the market and will enable informed decisions to be taken at each break point.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

4.1 The consultants advising the Authority independently assessed a range of delivery options for providing the contract.

- An Alliance contract where parties collaborate to deliver services, share risk and work openly was considered. However, due to the need to have sufficient awareness of forward programmes of work, the need to have a technical team with sufficient skills and more resource as they do place more pressure on council resources to manage such a contract it was not recommended. This approach may also be at odds with the Councils social value policies as it is likely that any larger contractor would bring in senior management resources from some distance and not the local community
- Providing the service in-house would require significant investment in specialist equipment and would require the Council to absorb significant costs associated with the risk of a varying workload. The private sector is able to balance this with other works they undertake and utilise their supply chain to meet service demands.

An in-house contract would present real challenges in how the service deals with workloads and budget fluctuations. The Council has been fairly consistent in spend on highway maintenance over the past three years; however, the investment need is expected to increase in order to maintain a previously stable asset which has started to decline in quality and residual life in recent times. Over the next decade the expansion of active travel, change in vehicle fleet to low emission vehicles and need for electrical charging points, together with changes anticipated to accommodate autonomous vehicles are significant. This will need new specialist resources and true innovation which is readily available in the private sector to help overcome these new challenges and bring best global practice to Brighton and Hove. The service also has ongoing

challenges with staff recruitment, retention and absenteeism, all of which support continuing substantively with the current arrangements.

- A 'Joint Venture' option was considered, this is where the council works with a private provider to form a commercial company, but due to the lack of public accountability and the lack of an attractive offering these contracts would provide for the private sector investment it is not recommended. The authority is surrounded by larger county shires with their own contract providers so the market would be extremely limited and therefore likely to be unappealing to the private sector. The review concluded that the existing highways contract arrangement provide a flexible approach for service delivery and enables the authority to bring about change if and when required.

5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 Schemes delivered through the highways contracts are subject to consultation when they are being designed.

6. CONCLUSION

- 6.1 The independent review assessed not only what contract options exist, but how the contracts should interact with staff. It identified that the existing contract enables the authority to meet its obligations and that by bringing some changes to the way the contract is specified, should bring about improvements in service delivery. It also concluded that the recommendations set out above, offer the route to market with the least risk to the Council.
- 6.2 Including other services will reduce procurement costs and enable call off and delivery of services using clear methodology. This should improve how the various contractors will collaborate when delivering schemes.
- 6.3 The work undertaken in the review supports the recommendation as set out in the recommendations above.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 The safety works are funded through council revenue and the projects delivered through the framework using mainly Local Transport Funding although other grants or sometimes used.

Finance Officer Consulted: Jeff Coates

Date: 17/8/21

Legal Implications:

- 7.2 This contract exceeds the relevant threshold for the procurement of works contracts, and it therefore needs to be procured in compliance with the Public Contracts Regulations 2015. The Council's Contract Standing Orders (CSOs) will also apply.

Section 33(3) of the Public Contracts Regulations provides that 'The term of the framework agreement shall not exceed 4 years, save in exceptional cases duly justified, in particular by the subject-matter of the framework agreement.' The reasons why a term of 6 years is justified is set out at 3.6 above.

Lawyer Consulted: Rachel Pugh

Date: 31/08/21

Equalities Implications:

- 7.3 Any contractors will be obliged to meet the Council's policies on equality and inclusion. This will also form part of the evaluation criteria.

Sustainability Implications:

- 7.4 The new contract will offer the opportunity for new approaches to be taken that support the Council's ambitions to become carbon neutral by 2030. This includes a review of the vehicle fleet and a move away from the reliance on fossil fuels, as well as a chance to reconsider the impact of the materials that used to maintain the highway asset. There will be a requirement for the bidding contractors to set out how they can reduce the carbon impact of their operations, which will be assessed as one of the quality questions in the evaluation criteria.

Greater use of recycled materials will be a key element of the contract and achieving a more sustainable approach is why this aspect of the quality criteria will be independently evaluated.

Brexit Implications:

- 7.5 None

Any Other Significant Implications:

- 7.6 None

Crime & Disorder Implications:

- 7.7 None

Risk and Opportunity Management Implications:

- 7.8 A full risk assessment of the contract has been carried out. The top five risks identified from this assessment are:
1. Delay to award of new contracts leads to unsafe highway network
 2. Delay in provision of TUPE data from incumbent provider impacts tender process
 3. Assets deteriorate to a level that requires closure of assets (eg: Roads / Bridges)
 4. High Sustainability requirements reduce attractiveness to supply chain.
 5. Challenge to procurement process and award.

Public Health Implications:

7.7 None

Corporate / Citywide Implications:

7.8 None

SUPPORTING DOCUMENTATION

Appendices:

1. None

Background Documents

1. B&H Procurement Options Report